



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
Securities Market Division
Adjudication Department

No. 1(64)SMD/ADJ/LHR/2019

October 17, 2019

First Capital Equities Limited
Through its Chief Executive Officer,
2nd Floor, Pace Shopping Mall,
Fortress Stadium Lahore Cantt,
Lahore

SUBJECT: Order in Respect of Show Cause Notice dated May 03,2019 Bearing Number No. 1(64)SMD/ADJ/LHR/2019

Please find enclosed herewith a copy of order in the title matter for your record and necessary action.



Muhammad Akram Farooka
Assistant Director



Securities and Exchange Commission of Pakistan
Securities Market Division

Through Courier

Before the Commissioner (SMD)

In the matter of Show Cause Notice issued to First Capital Equities Limited

Date of Hearing	September 12, 2019
Present at the Hearing	i. Syed Ali Rizvi (Authorized Representative)
Representing First Capital Equities Limited	ii. Mr. Shahzad Jawahar (Company Secretary)
	iii. Mr. Waseem Ul Hassan (Chief Financial Officer)

ORDER

This Order shall dispose of the proceedings initiated through the Show Cause Notice bearing No. 1(64)SMD/ADJ/LHR/2019 dated May 3, 2019 (“SCN”) issued to First Capital Equities Limited (“Respondent”) by the Securities and Exchange Commission of Pakistan (“Commission”) under section 40A of the Securities and Exchange Commission of Pakistan Act, 1997 (the “Act”).

2. Brief facts of the case are as follows:

- (a) The Respondent is a Trading Rights Entitlement Certificate (TREC) holder of the Pakistan Stock Exchange Limited (“PSX”) and licensed as a securities broker under the Securities Act, 2015.
- (b) The Joint Inspection Team of PSX, Central Depository Company and National Clearing Company of Pakistan Limited (herein after referred to as “JIT”) conducted an inspection of the Respondent (“Inspection”) to assess its compliance with the regulatory requirements contained in Securities and Exchange Commission of Pakistan (Anti Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (“AML Regulations”).
- (c) The Inspection, *inter alia*, revealed the following:

- i. The Anti Money Laundering/Know Your Customer (AML/KYC) policy was not updated so as to meet the requirements of the AML Regulations in contravention of Regulation 4(a) of the AML Regulations which requires that a regulated person





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shall develop and implement policies, procedures and controls, which are approved by its board of directors, to enable the regulated person to effectively manage and mitigate the risks that are identified in the risk assessment of ML/TF or notified to it by the Commission.

- ii. The Respondent failed to provide AML training to its employees in contravention of Regulation 20(b) of the Act which requires that a regulated person shall chalk out and implement suitable training program for relevant employees on annual basis, in order to effectively implement the regulatory requirements and regulated person own policies and procedures relating to AML/ CFT.
- iii. The Respondent did not have a mechanism for ongoing monitoring of its clients in contravention of Regulation 13 which requires that all business relations with customers shall be monitored on an ongoing basis to ensure that the transactions are consistent with the regulated person's knowledge of the customer.
- iv. The Respondent had failed to perform Customer Due Diligence of 20 of its clients i.e. information such as source of income, monthly/yearly income, business and its ownership and control structure etc. was not obtained at the time of opening of the account in violation of Regulation 6(2) which requires that a regulated person shall apply Customer Due Diligence measures when establishing business relationship with a customer.
- v. Out of a sample of twenty clients, the Respondent, had assigned incorrect risk ratings to eighteen clients while two clients were not assigned any risk rating in contravention of Regulation 3 (1)(a) that requires a regulated person to take appropriate steps to identify, assess and understand, its money laundering and terrorism financing risks in relation to its customers, document its risk assessments and keep them updated.
- vi. The Respondent had not established beneficial ownership of twelve of its clients whose profile did not match with their trading in violation of Regulation 6(3) and 6(7) which requires a regulated person to identify the beneficial owner.
- vii. Regulation 14 requires a regulated person to pay special attention to all complex and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The background and purpose of such transactions shall as far as possible, be examined, the findings established in writing, and be available to assist the relevant authorities in inspection and investigation. The transactions, which are out of character, are inconsistent with the history, pattern, or normal operation of





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the account or are not commensurate with the level of income of a customer shall be viewed with suspicion, be properly investigated and referred to Compliance Officer for possible reporting to FMU under the AML Act. The basis of deciding whether an STR is being filed or not shall be documented and kept on record together with all internal findings and analysis done in relation to a suspicion irrespective of the fact that transaction is subsequently reported or not. The Respondent had not documented the reason of its decision to file STR or not in case of five of its clients and CTR in ten cases.

- viii. The Respondent has not devised mechanism for maintaining the clients records in violation of Regulation 15.
- ix. The Respondent had not designed job description of its compliance officer in accordance with the requirements of AML Regulations detailed in Regulation 18(c).
- x. The Respondent had not developed an independent audit function in violation of Regulation 4(d).

3. It appeared from the preceding that the Respondent *prima facie* acted in contravention of the AML Regulations. Accordingly, the Commission took cognizance of the aforementioned facts and served the SCN requiring the Respondent to explain its stance in person on May 10, 2019. Mr. Syed Ali Rizvi (Advocate High Court) on behalf of the Respondent submitted its reply vide its letter July 02, 2019, which is reproduced below:

- i. *That it is most pertinent to mention here that prior to the enactment of the Securities Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations 2018 (the "Regulations"), the Respondent company had been in complete compliance with all previous laws and procedures to ensure that the dealings of the Respondent company remained transparent and compliant with the applicable laws and procedures. The Respondent company has prior to the instant Notice a clean track record before this Authority in respect of its compliances with any/all its money laundering requirements and disclosure obligations.*
- ii. *That following the enactment of the Regulations the board of the Respondent company in order to ensure compliance with the Regulations and all related laws passed a board resolution dated 04.10.2018, whereby not only was the Anti-Money Laundering and Countering Financing of Terrorism policy for the Respondent Company duly approved, but the relevant officers were granted the authority to ensure that all necessary corporate and legal formalities in this regard were duly completed. Copy of the board resolution dated 04.10.2018 is annexed herewith as Annexure-"A".*

That in furtherance of the aforesaid board resolution the Respondent company established an internal committee comprising of the following officers in order to implement the resolve and





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objectives mentioned in the aforesaid board resolution:

NAME	DESIGNATION
A) Mr. Shahid Iqbal	Risk and Compliance Officer (previously working as Assistant Accounts Manager)
B) Mr. Faisal Darvesh	Dealer Equities
C) Mr. Mujtaba Mohsin	Dealer Equities

The aforesaid officers of the Respondent company are hereinafter collectively referred to as the "Officers". Copy of letter whereby internal committee was set up to implement the Regulations is annexed herewith as **Annexure-"B"**.

- iv. That the Respondent company had arranged and had conducted an extensive training program of the aforesaid Officers as per the requirements of the Securities Act, 2015 (the "Act") and the Regulations with the view that once the said Officers were trained and cognizant of the requirements of the Act read with the Regulations they would in turn provide such training and knowledge to their colleagues and subordinates to ensure that ultimately the Respondent company was in compliance with any/all its legal obligations.
- v. That similarly the Respondent company had also prepared the relevant and updated/revised Anti-Money Laundering and Countering Financing of Terrorism policy through such internal committee.
- vi. That the aforesaid exercise referred to at clauses 4 and 5 above was an extremely exhaustive, time and resource consuming exercise undertaken by the Respondent company. That in this regard money as well as time was invested by the Respondent company on the Officers so that they could, once trained, impart such training, knowledge, mechanism and information to their other colleagues. That it is vital to mention here that the aforesaid exercise was undertaken by the Respondent company between September, 2018 to February, 2019.
- vii. That in the midst of the aforesaid exercise conducted by the Respondent company it was being considered by the board of the Respondent company to restructure the business operations of the Respondent company by way of initially reducing the said business operations and eventually ceasing of all such operations in the due course of time. It was thereafter and subsequently also disclosed in the Directors Report the Shareholders dated 28 February 2019, that the Company has decided to right size its operations and close branches in various cities of the country.
- viii. That in and around November/December 2018 the aforesaid consideration of the board of the Respondent' company became public (due to no fault of the board of the Respondent company) and the market was abreast with rumors that the Respondent company had resolved to windup its business operations and was on the way to shut down the same.
- ix. That most unfortunately and due to the market rumor with respect to the business operations of the Respondent company, a state of panic occurred amongst the employees of the Respondent company, which employees included but were not limited to the Officers. That it was only natural for the salaried employees of the Respondent company to fear for their future





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- livelihood and the stability of their employment.*
- x. *That despite all the efforts made by the Respondent company to adequately deal with the apprehensions/fears of its employees and despite the confidence building measures undertaken by the Respondent company, the market rumors and news eventually proved to be a prevailing factor and led to the resignation and/or departure of over 50 employees of the Respondent company out of total number of employees i.e. 62 employees, which included but were not limited to the Officers of the Respondent company. That in this regard it is pertinent to mention here and bring to the knowledge and attention of this Authority that from September 2018 to February 2019 over 50 employees of the Respondent company left the Respondent company. Copy of resignations letters and/or documents establishing removal of over 50 employees are annexed herewith as **Annexure-“C”**.*
- xi. *That similarly the Officers also resigned/left on the following dates (i) Mr. Shahid Iqbal left on 28 February 2019, (ii) Mr. Faisal Darvesh resigned on 09 October 2018, (iii) Mr. Mujtaba Mohsin resigned on 18th February 2019, (iv). Copy of the resignation letters of the Officers are annexed herewith as **Annexure-“D”**.*
- xii. *That up till the time of resignation of the Officers they had achieved the following:*
- a. *The revised updated Anti-Money Laundering and Countering Financing of Terrorism policy (the “Policy”) was already developed and in its final stages; Copy of the Policy is annexed herewith as **Annexure-“E”**.*
- b. *Training of all other employees with regard to implementation of the Policy, the Act and the Regulations was underway by the Officers;*
- c. *The monitoring policy was updated and revised and in the final stages of being implemented;*
- d. *The customer KYC, due diligence, rating beneficial ownership, STR and CTR requirements and maintenance of customer records mechanisms were revised and updated by the internal committee of the Respondent company comprising of the Officers and was in its final stages of being implemented along with the training of other employees in this regard.*
- xiii. *That simultaneous to the employee crises referred to above the Respondent company had by 28 February 2019 shut down and closed six out of its total eight branches and since February 2019 the market rumor was confirmed.*
- xiv. *That in this regard it is also pertinent to mention here and bring to the attention of this Authority that since the news of the closure of the business operations of the Respondent company became public and authentic the primary business operation of the Respondent company i.e. trading of securities has almost been minimal/zero. Copy of the documents depicting slow and almost nil trading activity by the Respondent company between 28th February 2019 to 31st May 2019 is annexed herewith as **Annexure-“F”**.*
- xv. *That since 01 March 2019 the Respondent company which was having over 62 number of employees was left with 07 number of employees only.*
- That despite all the efforts put in by the Respondent company to invite and arrange for the hiring of new employees the matter proved to be very difficult for the Respondent company in*





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view of the fact that it was common knowledge in the market that the Respondent company was on the verge of ceasing its business operations and that there was no job stability in joining the organization of the Respondent company.

- xvii. That presently the Respondent company is operating with only 03 employees and is faced with a predicament whereby junior level staff has had to fill the shoes of the seasoned and trained employees of the Respondent company. That the Respondent company is compelled to make do with such services.
- xviii. That it was at such time when six out of the eight branches of the Respondent company stood closed, business operations and trading activity being undertaken by the Respondent company was minimal if not zero and the Respondent company was using the services of only 07 number of employees most of which were low level staff that the Respondent company was served with an inspection order bearing number Inspection/-T017 dated 06.03.2019 (the "Inspection Order").
- xix. That following the inspection in terms of the Inspection Order a report was submitted on 04.04.2019 (the "Inspection Report"). That it is most vital to bring to the attention of this Learned Authority that the support staff of the Respondent company assisting the inspection team was not at all well-versed and were people who had assumed the roles and designation of their seniors in light of the foregoing factual background. Moreover it is also most essential to mention here that as per the record the Inspection Report was finalized prior in time to receiving the comments of the Respondent company and are therefore express a one-sided point of view.
- xx. Moreover when the matter was put before some of the directors of the board of the Respondent company/remaining senior level employees a request was made to the inspection committee to grant the Respondent company with sufficient time to respond to the comments of the inspection committee dated 04.04.2019. That most unfortunately and surprisingly such request was declined and the Respondent company was only provided with a period of 48 hours to respond to the report of the inspection committee dated 04.04.2019.
- xxi. That it is pertinent to mention here that the entire exercise referred to in the preceding para was conducted in haste from both sides and that had the Respondent company been provided with ample time or sufficient opportunity most of the matters/issued subject-matter of the present Notice would have been adequately handled and dealt with.
- xxii. That it is also vital to bring to the knowledge of this Learned Authority that the Respondent company has approved in principle for the surrender of TRE Certificate in May 2019 and finally on 11 June 2019, the Company has filed an application for the surrender of TRE certificate to the concerned authority. Copy enclosed as Annexure "G".
- xxiii. That is essence due to the aforesaid predicaments and dilemmas being faced by the Respondent company the inspection team was not properly assisted by the make-shift staff/employees of the Respondent company and in fact the old Policy Manual dated 09 June 2017 was shared by such make-shift staff/employees with the Inspection Committee as opposed to the revised/updated Policy referred to above. Moreover and due to factors beyond the reasonable control of the Respondent company as are elaborated hereinabove, the Respondent company face serious hurdles to implement the Policy devised by the Respondent company as required by the provisions of the Regulations. It is also pertinent to mention here





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with regard to the observation mentioned at Para 3 (j) of the Notice that the Respondent company has already set-up an independent internal audit department directly reporting to Audit Committee & Board on AML/CFT systems and controls. In this respect it is further clarified that Mr. Shaheer Junaid, a qualified Chartered Accountant was appointed as Internal Auditor of the Company on 30 November 2018 by the Board of Directors. Copy of Form 29 for his appointment is attached as Annexure "H".

- xxiv. That the foregoing submissions clearly depicts and strengthens the view that there was no ulterior and malafide motive on part of the Respondent company and that the problems and issues faced by the Respondent company in implementing its Policy were due to factors beyond the control of the Respondent company. Moreover the Respondent company had taken all reasonable measures and steps to mitigate the hurdles to the best of its ability and continues to do so to date. In this regard it is vital to mention that even the Inspection Committee has not pointed out a single transaction that has actually resulted in causing any damage/harm during the period in question and the matter before this Learned Authority is related simply to the implementation and absorption of the provisions of the Regulations in the business operations and working of the Respondent company.
- xxv. In view of above clarifications and in the absence of the necessary mens rea and any type of loss, it is most humbly requested that the matter is condoned and no penalty may be imposed on the Respondent Company.
- xxvi. That it is also requested that the undersigned counsel may kindly be provided with an opportunity to present the case in person to the Authority supported by all requisite documents etc.

4. The Respondent was accorded an opportunity of personal hearing on September 12, 2019. Mr. Waseem Ul Hassan (Chief Financial Officer), Mr. Shahzad Jawahar (Company Secretary) Mr. Syed Ali Rizvi (the Authorized Representative) (the "**Representatives**") appeared for and on behalf of the Respondent and reiterated the submissions made through the written reply.

5. I have examined the written as well as oral submissions of the Respondent and its Representatives. The primary argument of the Respondent was that large number of employees left the Respondent and it had to close down six out of eight branches. It was left with only seven (7) employees since March 2019 and currently operating with three (3) employees. Consequently, the staff available to assist the Inspection was not well versed. The Respondent contended that due to shortage of trained staff, old AML policy manual was shared. Perusal of the record suggests that the AML policy of the Respondent framed in accordance with the requirements of the AML Regulations was not approved by its board of directors at the time of the Review. Further, the evidence suggests although there were some resignations by employees but in most cases, the Respondent at its own consent terminated employment contracts. Therefore, the justification extended by the Respondent does not hold merit.





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6. The Respondent did not specifically contend other alleged violations. Rather, the argument of the Respondent was that the Inspection has not pointed any transaction that has resulted in damage. The purpose of regulatory framework and enforcement mechanism is to ensure compliance with applicable regulatory framework. Determination of loss or damage as a result of noncompliance of law is not a necessary ingredient for enforcement. The argument of the Respondent is not found cogent.

7. The Respondent contended that it had provided AML training to three of its employees who subsequently provided training to remaining employees. However, no evidence to substantiate its claim was provided. Therefore, the argument of the Respondent does not hold merit.

8. The Respondent informed that it had established an independent internal audit department reporting directly to the Audit Committee & Board on AML/CFT systems and controls and appointed a qualified Chartered Accountant on November 30, 2018 i.e. before the inspection. Therefore, the Respondent is not held accountable on this count.

9. In view of para 5 to 7, contraventions of the provisions of AML Regulations have been established. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of **Rs. 300,000/- (Rupees three hundred thousand)** under section 40A of the Act is hereby imposed on the Respondent.

10. The Respondent is directed to deposit the aforesaid penalty in the account of the Commission being maintained in the designated branches of MCB Bank Limited within 30 days of the date of this Order and furnish Original Deposit Challan to this office.

11. This Order is issued without prejudice to any other action that the Commission may initiate against the Respondent in accordance with the law on matter subsequently investigated or otherwise brought to the knowledge of the Commission.




Shauzab Ali
Commissioner (SMD)

Announced on October 16, 2019
Islamabad