

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to Horizon Securities Limited

Date of Hearing	November 19, 2020
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Order-Redacted Version

Order dated December 24, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of Horizon Securities Limited. Relevant details are given as hereunder:

Nature	Details
• Date of Action	Show Cause notice dated June 02, 2020.
• Name of Company	Horizon Securities Limited.
• Name of Individual	The proceedings were initiated against the Company i.e. Horizon Securities Limited.
• Nature of Offence	Proceedings under Section 40A of the Securities and Exchange Commission of Pakistan Act, 1997.
• Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <p>I have carefully examined the facts of the case in light of the applicable provisions of the law and have given due consideration to the written as well as verbal submissions and arguments of the Respondents. I am of the considered view that the Respondents did not ensure their compliance with the mandatory provisions of the Regulations in the following instances:</p> <ol style="list-style-type: none">i. The argument of the Respondent in its reply to the observation related to non-provision of evidence of source of funds or source of income /beneficial owners of 5 clients, is not tenable. In the letter of finding, the Respondent had stated that the document relating to the inspection team, any documentary evidence with respect to source of fund, thus contravening Regulation 6(3) (a) of the AML Regulations.ii. Similarly, the argument of the Respondent in its reply to the observation related to the non-provision of evidence of source of funds/income/beneficial owners of 3 other clients is not tenable either. In its reply to the letter of finding, Respondent stated the same argument that the document related to the proof of employment/source of income of the respective clients will be provided in due course of time. The Reply reflects that the requisite documentation in these respective instances, were not available for the review of the inspection team to prove that the deficiency does not exist or had been regularized. However, the Respondent failed to provide to the inspection team any documentary evidence which could either confirm the source or that monitoring of accounts/transactions, was being conducted on an ongoing basis in relation to these clients, in violation of Regulation 6(3) and 13(1).

	<p>iii. The Respondent has not denied that it had not adopted NADRA Verisys system of CNIC verification. The non-compliance is attributed to difficulties faced in obtaining NADRA Verisys due to non-cooperation of NADRA. Therefore, the contravention of Regulation 6(4) of the AML Regulations read with Annexure I which clearly stipulates that the photocopies of identity documents shall be validated through NADRA Verisys, has been established. I have, however noted that the Respondent had also formally applied to the NADRA for the provision of E-Verisys Services and as soon as NADRA installs its services, the Respondent will validate all the identity documents of the clients. I have also taken into account that the Respondent had already started the Biometric Verification of the clients from the NADRA system so that the authentication of the client from the NADRA record can be ensured and achieved.</p> <p>iv. The AML Regulations clearly prohibit the Respondent from establishing any relationship with any person who himself is proscribed or is an associate or affiliate of a proscribed person. However, the JIT highlighted the following deficiencies;</p> <ol style="list-style-type: none"> a. Mechanism to identify the Beneficial Ownership of Legal Persons and Legal Arrangements was not mentioned in the AML/CFT policy of the Broker. b. Details of beneficial owner were not being maintained in its client database. c. No evidence regarding forward (beneficiary) and backward (Husband, Parent) screening of its customers was provided by the Respondent. d. No system-based screening mechanism existed, rather it was being performed manually. e. Periodic screening of customers/nominee/join account older/ authorized persons/ Board of Directors/ Trustees/ Office bearers was not being carried out. <p>I have noted that it has been admitted by the Respondent in its reply, reproduced below:</p> <ol style="list-style-type: none"> 1) The beneficial owners are either clients or joint account holders or nominees and complete details are present in our client database. 2) HSL has a proper manual on going screening mechanism. 3) It is pertinent to mention here that there is no requirement in AML Regulations or in its guidelines regarding the screening of its clients hence no question can be raised regarding the deficiency of screening of its clients in HSL AML/CFT Policy. Now as the screening of its client has been required in AML Guidelines updated in April 2020. HSL Board has revised its AML/CFT policy and has included a complete paragraph about the screening of its clients. 4) After the screening, the fortnightly report is regularly submitted to NCCPL under SRO 1110(1)/2010 and Compliance report on statutory regulatory orders issued by the Ministry of Foreign Affairs on United Nations Security Council Resolutions and Intimation from
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	<p>National Counter Terrorism Authority/Ministry of Interior regarding the updates in list of proscribed persons under the Anti-Terrorism Act, 1997, are submitted to SECP AML Department under the SRO 245(1) 2019 date February 22, 2019. Further it is once again reiterated that as screening was not required under AML Regulations, 2018, hence observation regarding the alleged non-compliance of Regulations 15(3) of AML Regulations is without any merit and legal ground.</p> <p>v. However, JIT had observed that the Respondent had not provided any evidence in support of the aforementioned irregularities. It is pertinent to mention that in response to the letter of findings, the Respondent had stated that periodic review of existing record of clients had been started and would be completed in shortest possible time, which implies that that contravention of the respective Regulations existed at the time of the inspection.</p> <p>vi. I am of the considered view that the argument of the Respondent that "there is no requirement in AML Regulations or in its guidelines regarding the Screening of the clients" shows that the Respondent had not been able to grasp either the understanding or the implication of Regulation 4(a) which clearly stipulates that "a regulated person has to 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 " and Regulation 13(7) which envisages "that the regulated person should monitor their relationships with the entities and individuals mentioned in sub-regulation (5a) of regulation 6, on a continuous basis and ensure that no such relationship exists directly or indirectly, through ultimate control of an account". It is impossible to comply with these Regulations without having an adequate risk-based screening mechanism in place. Therefore, if the AML regulations/guidelines did not actually spell out the requirement of screening, it was very much required to be undertaken in terms of the aforementioned regulations. The Regulator expects that the regulated entities go an extra mile to ensure that menace of terror financing is not further nurtured and is nipped in the bud, which is only possible when the AML Regulations are understood and implemented in true letter and spirit.</p> <p>vii. The reply clearly envisages that the Respondent had failed to implement any control for screening of the customers and their associates before the inspection, as a consequence of which the inspection team could not verify that the profiles of the clients and their associates were being screened against the UNSC and NACTA lists and therefore such a deficiency was aptly highlighted by the JIT. This has led me to believe that lapse in adequate screening has not only rendered the screening process ineffective but has also led to non-filing of STRs in a timely manner. The AML and CFT Regulations, 2018 were applicable immediately after their issuance in June 2018 and warranted that the Respondent initiate the process of</p>
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	<p>verification of customers /beneficial owners, and monitoring of the business relation with them on an ongoing basis in terms of Regulation 4(a) and 13(7), at its earliest. Failure to do so thus exhibits weakness on part of the management for not implementing the AML and CFT Regulations. The submission of the Respondent is not tenable and I find it in violation of regulation 4(a), 13(7) and 15(3) of the AML Regulations.</p> <p>viii. In view the aforesaid it is my considered view the Respondent had a fiduciary responsibility to ensure compliance of the mandatory legal framework. It appears the Respondent prior to inspection and the proceedings at hand did not grasp the severity and gravity of issues being addressed by the AML/CFT regime. The Respondent is advised to strengthen the screening processes in accordance with AML Regulations.</p> <p>ix. In view of the foregoing facts, I am of the considered view that flagrant and multiple violations of the provisions of the AML Regulations have been established. Therefore, in terms of powers conferred under section 40A of the Act, a penalty of Rs. 260,000/- (Rupees Two Hundred Sixty Thousand only) is hereby imposed on the Respondent Company.</p> <p>x. I, also, hereby, direct the Respondent to report within 60 days of the date of this Order, provide documentary evidence that:</p> <p>a. screening of all clients, their associate and facilitators has been completed; and</p> <p>b. Nadra verisys /biometric verification, as prescribed, has been initiated.</p> <p>Penalty Order dated December 24, 2020 was passed by Executive Director (Adjudication-I).</p>
<ul style="list-style-type: none"> Penalty Imposed 	Penalty of 260,000/- (Rupees Two Hundred Sixty Thousand only) was imposed.
<ul style="list-style-type: none"> Current Status of Order 	Appeal has been filed against the Order.

Redacted version issued for placement on the website of the Commission.