



SECURITIES & EXCHANGE COMMISSION OF PAKISTAN
(Securities Market Division)
Adjudication Department

Through Courier

File No. 1(128) SMD/ADJ/KHI/2018

October 29, 2018

Next Capital Limited,
Through its Chief Executive officer,
8th Floor, Horizon Tower, Plot No.2/6
Block-III, Clifton,
Karachi

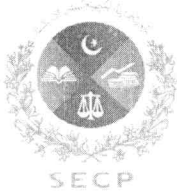
Subject: ORDER IN RESPECT OF SHOW CAUSE NOTICE DATED SEPTEMBER 13, 2018, BEARING NO. File No. 1(128) SMD/ADJ/KHI/2018

Dear Sir,

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

Yours truly,

Kamal Ali
Additional Director



Securities and Exchange Commission of Pakistan
Securities Market Division

Before the Commissioner (SMD)

In the matter of Show Cause Notice Issued to
Next Capital Limited

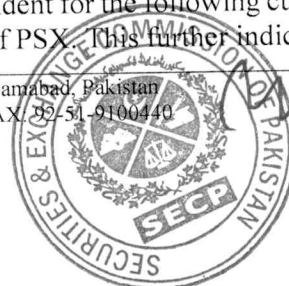
<i>Date of Hearing</i>	<i>October 05, 2018</i>
<i>Present at the Hearing</i>	<i>Najam Ali, CEO</i> <i>Nadeem ul Haq, CFO</i>
<i>Place of Hearing</i>	<i>Through Video Conference from Regional Office,</i> <i>Karachi</i>

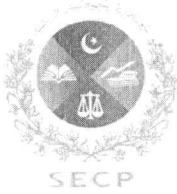
ORDER

This Order shall dispose of the proceedings initiated through Show Cause Notice (SCN) bearing No. 1(128) SMD/ADJ/KHI/2018 dated September 13, 2018. The SCN was served on Next Capital Limited (“Respondent”) by the Securities and Exchange Commission of Pakistan (“Commission”) under section 150 of the Securities Act, 2015 (“Securities Act”). The Respondent is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited (“PSX”) and licensed as a securities broker with the Commission under the Securities Act and the Securities Brokers (Licensing and Operations) Regulations, 2016 (“Brokers Regulations”).

2. Brief facts of the case leading to issuance of SCN are that the Commission vide order dated September 12, 2017, in exercise of the powers conferred under section 138 of the Securities Act, conducted inspection wherein a thematic review of compliance status of regulatory requirements relating to Anti Money Laundering (“AML”), Know Your Customer (“KYC”) and Customer Due Diligence (“CDD”) was carried out of the Respondent. The inspection report dated April 27, 2018 (“Report”) *inter alia* revealed the following:

- (i) The KYC/CDD Guidelines of PSX require brokers to ensure their approved policies are effectively disseminated to and understood by the relevant personnel. The Respondent had provided evidence of circulation of AML and KYC/CDD policies through its head of departments subsequent to the review period. However, employees’ acknowledgements with regard to understanding of AML and KYC/CDD policies were not provided. Further, the copies of acknowledgements as provided by the Respondent lacked addressee of the department and date of communication.
- (ii) It was observed that KYC/CDD/AML policy of the Respondent did not cover the aspect of maintenance and reporting of Currency Transactions (CTR). Moreover, KYC/CDD/AML policy of the Respondent did not include area of ‘Data Retention’ and ‘Employee Training’ as stated in KYC/CDD Guidelines of PSX.
- (iii) The Respondent had not documented the investment profiling of its customers as specified in the KYC/CDD Guidelines of PSX.
- (iv) It was observed that the customer information provided by the Respondent did not contain information regarding source of funds and nature of income. This is a requirement of the KYC/CDD Guidelines of PSX for risk assessment of customers.
- (v) The risk categorization conducted by the Respondent for the following customers was not in accordance with KYC/CDD Guidelines of PSX. This further indicated that the





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Respondent had not performed Enhanced Due Diligence (EDD) for its High Risk customers as required under the KYC/CDD Guidelines of PSX:

Code	Client Name	Status	Risk Categorization by Respondent	Risk Categorization as in KYC/CDD Guidelines
30071	Adnan Afridi	On-line	Low	High
30229	Salma Lodhi	On-line	Low	High
30405	Nilofer Habib Ullah	On-line	Low	High
2998	Muhammad Tashfeen Ishaque	Non-residents	Low	High
10843	Murtaza Kamil Shahbazker	Non-residents	Low	High
12278	Shehla Tariq Saigol	Non-residents	Low	High
15180	Tahir Ahmed	Non-residents	Low	High
15214	Muhammad Mansoor Ul Haq	Non-residents	Low	High
15636	Safiullah	Non-residents	Low	High
16428	Anjum Zahoor Iqbal	Non-residents	Low	High
16568	Muhammad Abubakar Janjua	Non-residents	Low	High
16964	Rana Nisar Ahmad	Non-residents	Low	High
17277	Ahad Nadeem Beg	Non-residents	Low	High
17343	Abdul Jalil Piracha	Non-residents	Low	High
17376	Najmul Saqib Waheed Khan	Non-residents	Low	High
17392	Ali Hammad Bin Jabbar	Non-residents	Low	High
17707	Kaleem Bari	Non-residents	Low	High
2270	Lucky Exim Private Limited	Local Institution	Low	Medium
2266	Al- Shifa Trust	Local Institution (Charitable Trust)	Low	High

(vi) Lack of documentation for the following High Risk customers of the Respondent was observed at the time of account opening which illustrated lack of EDD of these customers which is a requirement for all High Risk customers of a broker as required under the KYC/CDD Guidelines of PSX:

Code	Client Name	Risk Status	Remarks
601-690	MERRILL LYNCH INTERNATIONAL	High	Memorandum of Association and Articles of Association were not attached thereto. Further, Michel Swoelar has signed the account opening form as Managing Director of Merrill Lynch however his letter of authority and power of attorney not attached.
60446	ABDUL JALIL PIRACHA	High	Lack of proper documentation like source of funds etc
2266	AL SHIFA TRUST	Low	Lack of proper documentation like financial statements, Trust deed, Power of Attorney or Approval of Authorized Person, change in status

(vii) It was noted that the Respondent did not maintain summary reports of customers having net investment above or equal to the threshold during the review period, which is a requirement of Circular 10 of 2017 issued by the Commission. As per information





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received from NCCPL, following were the customers who exceed the threshold provided in the said Circular:

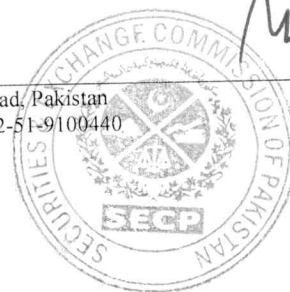
UIN	UIN_NAME	UIN CLASS	Net Value (Million)
0000488	HABIB BANK LIMITED	Corporate	71.27
0001053	NISHAT MILLS LIMITED	Corporate	66.99
0006469	D. G. KHAN CEMENT COMPANY LIMITED	Corporate	42.22
0027580	BANK ALFALAH LIMITED	Corporate	99.20
0036557	SECURITY GENERAL INSURANCE COMPANY LTD	Corporate	42.38
0067136	ADAMJEE LIFE ASSURANCE COMPANY LIMITED	Corporate	65.09
0077837	Y. B. PAKISTAN LIMITED	Corporate	57.12
0041649-17	MCB PAKISTAN ASSET ALLOCATION FUND	Corporate	32.36
0042274-03	UNITED STOCK ADVANTAGE FUND	Corporate	36.30
0042274-04	AL-AMEEN SHARIAH STOCK FUND	Corporate	55.16
0042274-16	AL-AMEEN ISLAMIC ASSET ALLOCATION FUND	Corporate	27.06
0042274-17	AL-AMEEN ISLAMIC DEDICATED EQUITY FUND	Corporate	25.24
MLI2312079EW	MERRILL LYNCH INTERNATIONAL	Corporate	55.77
OC371725-IBD	EXOTIX PARTNERS LLP-IBD	Corporate	105.98
3520115722929	IMRAN HAMAYUN MIAN	Individual	15.51
3520132054946	SAIMA FAISAL	Individual	9.86
3520152676235	FAISAL USMAN KHAN KHOKHAR	Individual	34.06
3520228225208	HANNA KHAN	Individual	20.84
4220199112265	SAAD IQBAL	Individual	6.48
4230111017205	NAVED ABID KHAN	Individual	35.22
4230123521649	AIJAZ RAHIM	Individual	12.06
4230130392303	ADNAN AFRIDI	Individual	7.04
4230168500803	QADEER ASHFAQ	Individual	20.62
4230172045389	MASOOD KARIM SHAIKH	Individual	5.00
4230191404439	KAZI RAHAT ALI	Individual	7.05
MLI2312079EW-IBD	MERRILL LYNCH INTERNATIONAL-IBD	Corporate	308.01

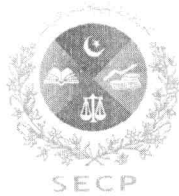
(viii) In view of absence of customer identification, improper risk assessment and categorization of clients, absence of enhanced due diligence and absence of ongoing due diligence, it appeared that the Respondent did not have adequate checks and controls to monitor and remain alert regarding suspicious transactions.

3. It appeared from the foregoing that the Respondent *prima facie* acted in violation of section 74(b) of the Securities Act, regulations 16(1)(k), 16(1)(o) and 16(8) of the Brokers Regulations, Circular No. 10 of 2017 dated April 21, 2017 issued by the Commission, regulation 4.17 of the PSX Regulations and the Know Your Customer & Customer Due Diligence Guidelines issued by PSX on March 16, 2012.

4. The Commission took cognizance of the aforementioned alleged violations and served the SCN dated September 13, 2018 under section 150 of the Securities Act to the Respondent. The Respondent was called upon to Show Cause in writing within seven days from the date of receipt of the SCN and the case was scheduled for hearing before the undersigned on September 27, 2018. The Respondent filed written reply to the SCN vide letter of October 02, 2018. Hearing in the matter was rescheduled and held on October 05, 2018.

5. The submissions made by the Respondent in response of the SCN and verbally during the course of hearing are summarized as under:

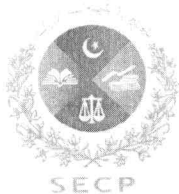




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- (i) *Approved policies relating to AML and KYC/CDD were not only circulated amongst relevant staff but also briefed by senior members from risk management, compliance and sales team. Later regular discussion took place on the subject in response to various queries raised by staff members for understanding AML, KYC and CDD. As the handouts were provided to staff members within office premises by hand therefore name of every person was not mentioned separately but acknowledgements obtained for record. Due to importance of these topics and general interest of public/employees, AML and KYC/CDD are the main topics of our in-house employees' regular training program.*
- (ii) *Section 9 of our Anti Money Laundering Policy & Procedures deals with Currency Transaction Reporting ("CTR") as states that "Next Capital limited will report the currency transaction report to the relevant authorities as and when required. Currency Transaction Report is a threshold based report of cash transaction undertaken by the customers of Reporting Entities. A CTR has been defined under section 2(c) of AML Act 2010, according to which, a CTR is a report on currency transaction of such an amount as may be specified by the National Executive Committee by notification in the official Gazette. Section 5 of Regulations 2015 further explains that the CTR is filed when a cash-based transaction involving payment, receipt, or transfer of an amount, as specified by the National Executive Committee, on a prescribed format. As per Gazette notification SRO 73 (1)/2015 dated 21-01-2015, the minimum amount for reporting a CTR to FMU is two million rupees. Accordingly, all cash-based transactions of two million rupees or above involving payment, receipt, or transfer are to be reported to FMU as MR. Likewise, cash-based foreign currency transaction equivalent to two million rupees or above are to be reported as CTR. Every single cash transaction of two million rupees or above is to be reported as CTR". Every cash receipt transaction over 25,000 rupees is already being reported regularly. It is a regulatory requirement for decades from Federal Board of Revenue to retain data for at least five years hence, Data Retention policy is not only a part of our Finance Department Manual but also a part of our "Internal control Policy". In order to strengthen our Data Retention System, we are maintaining record with a specialized company in this regard called 'Data Recall Record Management Services', who is managing our record for years. Our 'Human Resource & Administration Departments Policies and Procedures' not only covers functions, responsibilities and procedures of inducting employees to NCL but also contains complete sections on how, where and when training will be provided to staff members. Also Appraisal Section of this policy is based not only on performance evaluation but on training programs attended by employees as well. In light of the above, it is clear that NCL follows all rules, regulations, guideline, etc. from regulatory authorities and retains separate comprehensive policies on every aspect. Absence of some points in one policy doesn't mean that the regulation is not a part of our policy framework.*
- (iii) *As a general policy investment profiling of the customers are done on the basis of nature of customers e.g. Institution, Company, individuals, etc. and size of portfolio maintained by the customers in NCL. Based on portfolio size limits are assigned for positions in ready and future markets. Respondent claimed during the hearing that it has in place controls relating to nature of investment through placement of limits on clients' trading. It claimed that documentation is also available in back office which is linked to trading system.*



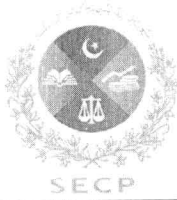


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- (iv) *Most of the customers show reluctance in providing detail of their source of funds and nature of income which is a requirement of KYC/CDD Guideline of PSX for risk assessment of customers. At the time of account opening they provide some detail relating to source of income but later when we start getting information for enhanced due diligence then customers get aggressive and question about authority under which we asking them to provide this information, Unfortunately we have no enforcement tools or authorities to gather such information directly from any third part like Banks, FBR, Credit Rating Agencies, etc. Respondent stated during the hearing that it does not have the capability to access source of funds/income of clients. It does not open accounts without knowing the person. Respondent argued that if such information is solicited from high net worth clients they'd never provide the same and would probably request to close the account.*
- (v) *SCN claims that KYC/CDD Guidelines of PSX for risk assessment of customers have not been followed in some case and Enhanced Due Diligence (EDD) has not been performed. Whereas, fact is that risk profiling of such clients was conducted on bases defined in the light of guidelines and risks were enhanced with Enhanced Due Diligence performed in following manner:*

Code	Client Name	Risk Categorization in Back-Office	EDD Performed through
30071	Adnan Afridi	High	Mr. Afridi is a businessman, running his own logistics business. He has been Managing Director of the Karachi Stock Exchange (Gtee) Limited means he is publicly known figure. Mr. Afridi is also a shareholder of NCL. This account was initially setup in low risk category in 2010 thereafter on high amount of activities his category was changed. Source of his income are clearly known to CEO of NCL and he has always provided funds from his own accounts which are already verified.
30229	Salma Lodhi	Low	Ms. Salma is a housewife and her account was setup in 2013 with low risk category. Since 2017 there is no activity in this account therefore, we received no funds from her and yet no EDD requirement arose.
30405	Nilofer Habib Ullah	Low	Ms. Nilofer is a businesswoman and her account was setup in 2015 with low risk category. Initially she sold some shares from NCL in her account and delivery of those shares were received from her CDC Investor Account therefore, there was no point in raising her risk category and also she never bought deliveries through NCL hence, we received no funds in her account. Ms. Nilofer holds a franchise of a food chain means her source of income is identified. Since 2017 there is no activity in this account therefore, we have no reason to raise risk category of a dormant account.
Variou s	Non-Resident	High	Risk category of non-resident clients was enhanced to high risk category in our back office system under Due Diligence Guideline of PSX. Through EDD it is understood that these clients are remitting money from abroad in their personal accounts through regular banking channel in Pakistan and transferring funds to NCL from these accounts as and when require for settlements.
2270	Lucky Exim Private Limited	Medium	Risk category of Private limited Companies was enhanced to medium risk category in our back office system under Due Diligence Guideline of PSX. While performing EDD it is understood that these clients are using their own funds for investments and providing funds to NCL from official accounts





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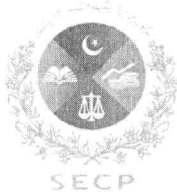
			<i>as and when required for settlements. NCL never receives/ pays third party cheques from/to clients.</i>
2266	<i>Al- Shifa Trust</i>	<i>High</i>	<i>Risk category of Al-Shifa Trust was enhanced to high risk category in our back office system under Due Diligence Guideline of PSX. Al-Shifa Trust is a reputed organization in Pakistan, involved in charitable work relating to human eye treatment. They have established eye hospitals in the country and providing free eye treatments to more than 80% patients. Complete profile of its trustees and activities are available on its website. While performing EDD it came to our knowledge that major funds are being received in its accounts directly through normal banking channel and they are using idle funds for investments. They provided funds to NCL from official accounts as and when required for settlements. NCL never receives/pays third party cheques from/to clients.</i>

(vi) *Regarding lack of documentation of certain clients mentioned in SCN, please note following detail:*

Code	Client Name	Risk Status	Remarks
601-690	MERRILL LYNCH INTERNATIONAL	High	Articles of Association were available in soft copy and its copy is furnished for your kind perusal and record. Regarding signature of Managing Director on Account Opening Form, copy of Power of Attorney is furnished which authorizes Managing Directors, SVPs, General Council, AGCs or equivalents or more senior officers to act as true and lawful attorneys.
60446	ABDUL JALIL PIRACHA	High	Mr. Paracha resided in United Kingdom, came back to Pakistan after retirement from accounting job in UK and opened account with NCL. There were some very limited activities in his account relating to sale of shares which were delivered from his CDC Investor Account with CDC. NCL never received any funds in his account except from sales of share through NCCPL. Later he closed this account.
2266	AL SHIFA TRUST	High	Al-Shifa Trust's Account was managed by NAFA Asset Management who professionally manages funds and other accounts therefore, Trust account was professionally maintained. Copies of Trust Deed, Agreement of Discretionary Portfolio Management between Al-Shifa Trust and NAFA Fullerton Asset Management Limited, Signing Authorities and Financial Statements are furnished for perusal.

(vii) *Circular number 10/2017 of SECP pertaining to maintenance of summary reports of customers having net investment above or equal to the threshold was issued on April 21, 2017. Maintenance and monitoring of record of net traded amount (Buy-Sell) by every single customer during a month is humanly not possible in absence of a tool/software. Therefore, NCL requested its vendor (Softech) for development of preparing such report in its Back-Connect software but soon after such order in July 2017, SECP team started its inspection, while the report was under process of preparation. Soon after team's departure Softech provided us requisite KYC CDD Report and we started monitoring. A copy of the Report from Back Connect System is furnished herewith pertaining to the month of August 2017 which discloses the*





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exact result but the software has no feature to change the risk level of customers automatically which is being done manually.

(viii) In view of the above discussion that NCL maintains proper customer identification, risk assessment and clients categorization for due diligence, enhanced due diligence and ongoing due diligence process. NCL has adequate control and monitoring systems to remain alert regarding suspicious transactions.

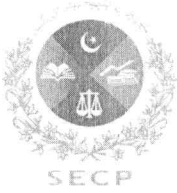
6. I have heard the arguments presented by Representative of the Respondent during the hearing. Additionally, I have perused the available record, existing regulatory framework and written response filed by the Respondent. The primary allegation against the Respondent is that it acted in non-compliance with provisions of the relevant laws mentioned in para 3 above.

7. In order to arrive at a decision, it is essential to consider that:

- (i) Respondent has stated that its policies have been disseminated to and adequately understood by its staff as required under the KYC/CDD Guidelines of PSX;
- (ii) Respondent has argued that CTR, data retention and employee training are adequately covered in its policies;
- (iii) although the Respondent has stated that it performs investment profiling of customer which includes documentation of their nature of investment in back-office record, no evidence for the same was furnished to the inspection team or in response to the SCN;
- (iv) Respondent has accepted that it does not have details relating to source of funds and nature of income of its customers, due to reasons stated in its response, which illustrates that it is in non-compliance with the law;
- (v) Risk categorization of Adnan Afridi has been changed to High Risk however the record furnished to the inspection team revealed that he was categorized as Low Risk during the review period which reveals that the Respondent had inaccurately categorized the said customer earlier. Similarly, the Respondent has also changed categorization of non-resident customers who were marked as Low Risk earlier. Risk categorizations of Lucky Exim Private Limited and Al-Shifa Trust have also been rectified by the Respondent;
- (vi) Respondent has now furnished missing information relating to Merrill Lynch International and Al-Shifa Trust which illustrates that the same were not available with the Respondent earlier as these documents were not shared with the inspection team; and
- (vii) Respondent has admitted that it was not maintaining record as required under Circular 10 of 2017, due to reasons stated in its response, during the review period which illustrates non-compliance.

8. Before arriving at a decision, it is pertinent to mention that regulatory requirements relating to KYC/CDD and AML have been implemented since the year 2012 considering the public interest, integrity of the Pakistani capital market and the country's international commitments. Hence, all licensed persons are expected to ensure strict compliance with this regime by remaining vigilant and putting in place requisite policies and procedures to curtail activities relating to money laundering and financing of terrorism. The Commission has adopted a zero tolerance policy towards any gaps in this area and will not show any leniency for non-compliances in future.





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9. Based on the above and the fact that the Respondent has accepted certain non-compliances in its response and during the course of the hearing, some of which have been rectified, I have reasons to conclude that it is established that the Respondent was guilty of misconduct in terms of section 150(5) of the Securities Act, as the Respondent is non-compliant with provisions of relevant laws mentioned in para 3 above.

10. In view of the foregoing, violations of the regulatory framework committed by the Respondent are established. However, since the thematic review of the Respondent for AML, KYC and CDD has been carried out for the first time, I have decided to take a lenient view. Considering the same, no monetary penalty is being imposed, however, the Respondent is strictly warned to ensure compliance with the relevant legal framework.

11. Furthermore, the Commission will carry out a follow-up review within due course of time to assess whether the aforementioned violations have been rectified by the Respondent and in case of continued non-compliance, the Commission shall adopt a stringent course of action.

12. 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.



(Shaukat Hussain)
Commissioner

Announced on October 29, 2018
Islamabad.