



Securities and Exchange Commission of Pakistan
Securities Market Division

Through Courier

Before the Commissioner (SMD)

In the matter of Show Cause Notice issued to We Financial Services Limited

Date of Hearing	May 13, 2019
Present at the Hearing Representing We Financial Services Limited	Mr. Humayun Javed (Chief Executive Officer)

ORDER

2. This Order shall dispose of the proceedings initiated pursuant to Show Cause Notice No. 2(131) SMD/ADJ/2019, dated April 19, 2019 (the "SCN"), issued by the Securities and Exchange Commission of Pakistan (the "Commission") to M/s We Financial Services Limited (the "Respondent") for *prima facie* violations under Section 69 read with Section 152(b) and Section 156 (1) of the Securities Act, 2015 (the "Act") and Regulation 4(e) and Regulation 10 of Securities Brokers (Licensing and Operations) Regulations, 2016 (the "Licensing Regulation 2016").

3. Brief facts of the case are that the Respondent is a Trading Rights Entitlement Certificate holder of the Pakistan Stock Exchange Limited ("PSX") and licensed as a securities broker under Securities Act, 2015.

4. Pakistan Stock Exchange ("PSX") forwarded an application of the Respondent for renewal of license as broker under the Licensing Regulation 2016 with effect from January 01, 2019. During the course of review, it was observed that the Credit Information Bureau (CIB) report of the Respondent dated November 5, 2018 reflect an amount of Rs. 12.6 million overdue more than 365 days.

5. In terms of regulation 4(e) of the Licensing Regulation 2016 requires that "the applicant, its sponsors, directors and senior management officers are fit and proper persons as per the criteria specified in Annexure B. Relevant parts of the Fit and Proper Criteria set out in Annexure B of the Regulations are reproduced hereunder:

"Sub clause (iii) of the clause (a)The person and companies, firms, sole proprietorship etc. where the person is a chief executive, director (other than nominee director), owner or partner etc., has/have no overdue payment to any customer,





Securities and Exchange Commission of Pakistan Securities Market Division

financial institution, securities exchange, clearing house, central depository and / or defaulted in payment of any taxes in the individual capacity or as a proprietary concern or any partnership firm or as director in any private unlisted and listed company."

6. In terms of Regulations 9(5) of the Licensing Regulation 2016 provide that;

"The Commission upon being satisfied that the applicant continues to meet the requirements for licensing, is in compliance with the provisions of the Act, the Futures Act, any rules, regulations, notifications, directives, guidelines or codes issued thereunder and it is in the public interest and interest of the capital market, may renew the licence of a securities broker as recommended by the securities exchange for another calendar year and convey the same to the securities exchange for onward dissemination to all stakeholders."

7. Section 69 of the Act empowers the Commission to refuse the application for renewal of license if the Fit and Proper criteria is not met. The relevant provision is reproduced hereunder:

"(1) Subject to the provisions of this Act, the Commission may, on an application duly made in accordance with section 68, grant the licence or refuse the application."

8. Section 152 of the Act empowers the Commission to cancel the license of a regulated person. The relevant provision is reproduced hereunder:

"Other circumstances for disciplinary action in respect of licensed persons.—(1) Subject to section 151, the Commission may cancel the license, whether in relation to all or any of the activities for which he is licensed, or suspend his licence, whether in relation to all or any of the activities for which he is licensed, for such period or until the occurrence of such event as the Commission may specify, if (b) where the regulated person is a company,

(v) the Commission has reason to believe that the company or any of its directors or employees has not performed his duties honestly and fairly;

(vi) the company is in breach of this Act, any rule or any regulation made under this Act,

(ix) by reason of any other circumstances, the company is no longer a fit and proper person to hold a license."

9. Subsequently, a SCN was served to the Respondent dated April 19, 2019 under Section 69 read with Section 152(b) and Section 156 (1) of the Act and Regulation 4(e) and 10 of the



Securities and Exchange Commission of Pakistan
Securities Market Division

Regulations, 2016. whereby, it was called upon to explain why the application for renewal of license of the Respondent may not be refused/cancelled.

10. In response to the SCN, the Respondent who reiterated arguments provided in their written replies vide its letter dated April 30, 2019 are as follows;

- I. *the said violation on the ground that the said overdue amount is under litigation, as exception provided through explanation in Regulation 4(e);
"In case where such overdue amount is under litigation and the same is also appearing as amount under litigation in CIB Report"*
- II. *the notice has wrongly assumed the 'Fit and Proper Person' criteria contrary to annexure B to the Regulations. It is submitted that the power to examine the fitness propriety of the Applicant is not derived from Regulation 4(e) of the Regulations. The Criteria of 'Fit' and 'Proper' is quite exhaustive and any assumption of such criteria must be based upon and limited to parameters prescribed under Section 151 of the Act;*
- III. *bare reading of the above said Section, it is beyond iota of doubt that the Applicant squarely falls within the said exception. Thus, on mere assumption of applicability of the Regulations, the applicant may not be penalized. Any action taken against Applicant shall cause serious and irreparable prejudice to the Applicant. Indeed, the Act as well the Regulations are both special in nature. However, the law is clear and should both conflict, the Act is to prevail.*

11. The Respondent was accorded hearing opportunity on May 13, 2019 wherein, Mr. Humayun Javed (Chief Executive Officer) and Mr. Zia Javed (Director) hereinafter, called as (the "**Representatives**") attended the hearing on behalf of the Respondent. During the hearing proceedings, the Authorized Representatives reiterated the argument as submitted in response to the SCN.

"Respondent admitted the issue raised in the Show Cause notice, however, further requested the time as they have taken up the matter with the State Bank of Pakistan respectively, requested them to change the status of the litigation section of the CIB report as highlighted by the SECP"

12. During the hearing, Respondent submitted that they will take up the matter with State Bank of Pakistan ("**SBP**") to clear its factual position from CIB report showing overdue amount. Therefore, Respondent was rendered further time to rectify the outstanding amount reflecting on the past 365 days.



5



Securities and Exchange Commission of Pakistan
Securities Market Division

13. The arguments put forth by the Respondent during the course of hearing and analyzed as follow;

- a. It transpires from the Respondent contention during the hearing, wherein admitted to the observations highlighted in the SCN and found non-compliant with the Fit and Proper Criteria as prescribed for applicant, sponsors, directors and senior management officer of securities brokers specified in Annexure B of the Regulation 2016.
- b. In terms of applicability of regulation 4 is concerned, the fit and proper test is perpetual in nature. In this regard, reference is drawn to Annexure B of the Regulations i.e. Fit and Proper Criteria. The first line of the Annexure envisage that "This Fit and Proper Criteria is perpetual in nature and its compliance is mandatory."

Therefore, the notice was rightly served to the Respondent for being non-compliant with the regulatory framework as prescribed under Licensing Regulation, 2016. Similarly, Section 151 of the Act empowers the Commission to prescribe the fit and proper criteria for licensed person or in case of company, member of the board of directors and senior management officers of licensed person. Therefore, the Fit and Proper Criteria is indeed within the four corners of the said section under the Act.

14. The record available to the Commission, has confirmed that subsequent to the hearing, Respondent raised his apprehensions to SBP regarding the CIB report. However, it was observed through the updated CIB report dated August 9, 2019 (Report Ref. CPD/PU-101/09-08-2019 10:08:04-3194162) that the outstanding amount appearing in past dues 365 column has increased from Rs 12.600 million to Rs 202.224 million.

15. I have analyzed the facts of the case, relevant provisions of the Act and the Licensing Regulation, 2016 and the arguments put forth by the Respondent. The Respondent has failed to clear its overdue amount appearing in the CIB Report. Therefore, the Respondent is non-compliant with the Fit and Proper Criteria as specified under Annexure B of the Licensing Regulations 2016. Consequently, I hereby suspend the license of the Respondent with immediate effect. However, the Respondent can apply for removal of suspension to the Commission subject to compliance with the regulatory requirements.

16. Furthermore, the Respondent is hereby directed to inform all its existing customers regarding suspension of the licence, settle all dues of the customers within fifteen days and be responsible for clearing and settlement of all his obligations till date.





Securities and Exchange Commission of Pakistan
Securities Market Division

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



Shauzab Ali
Commissioner (SMD)

Announced on September 6, 2019
Islamabad