



INSURANCE DIVISION
Islamabad

Before Hasnat Ahmad, Director/HoD(Enforcement)

In the matter of

Premier Insurance Limited

Show Cause Notice No. and Issue Date: ID/Enf/Premier/2019/463
February 12, 2019

Date of Hearing: March 22, 2019

Attended By: 1. Mr. Rashid Sadiq
Authorized Representative
2. Mr. Zeeshan Sattar
Authorized Representative &
Company Secretary, Premier
Insurance Company Limited

Date of Order: March 27, 2019

ORDER

Under Clause 3, 4, 5, 6 (v) & 7 of S.R.O. 20(I)/2012 and Clause 6 of Circular 17 of 2015 read with Section 156 of the Insurance Ordinance, 2000

.....
This Order shall dispose of the proceedings initiated against M/s. Premier Insurance Limited (the "Company"), its Chief Executive and Directors for alleged contravention of Clause 3, 4, 5, 6(v) & 7 of SRO 20(I)/2012 (the "directive") and Clause 6 of Circular 17 of 2015 (the "Circular"). The Company and its Directors shall be collectively referred to as the "Respondents" hereinafter.

2. The Company is registered under the Insurance Ordinance, 2000 (the "Ordinance") to carry non-life insurance business in Pakistan.

3. An onsite inspection of the Company was conducted to assess the compliance of the Company with the Anti-Money Laundering (AML) and Know-Your-Customer (KYC) requirements as given in the directive. The Commission initiated inspection of the Company vide order dated January 30, 2018 in terms of Section 59A of the Ordinance, which was concluded by the inspection team on October 26, 2018 by submitting the final inspection report.

4. The inspection team observed the following issues in violation of the provisions of the Circular, directive and the Ordinance.

- i. It was observed that the Company did not have mechanism in place to screen new and existing policyholders against the proscribed individuals and entities/ groups included in the list of UNSC 1267. The head of the

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underwriting department was not aware about the list under UNSC 1267 forwarded to the Company. The failure on part of the Company amounts to violation of related SROs and Clause 6 of the Circular.

- ii. The Company did not have any mechanism to scrutinize new policies and ensure continuous check over its portfolio against the Fourth Schedule list available on NACTA website to ensure that that no such direct or indirect relationship exists between the policyholders and Fourth Schedule list.
- iii. The Company did not comply with KYC requirements under Clauses 5 and 6(v) of the directive during the period from July 1, 2017 to February 24, 2018.
- iv. The Company did not comply with the requirements of the directive as evident from the following issues:-
 - a. The Company did not have board approved KYC/AML policy as required by Clause 3 of the directive.
 - b. Of the 40 files inspected by the team, no copies of CNIC of the customers were available, which was mandatory requirement as specified in Annexure to the directive. The Company stated that 'we have Nadra Portal for verification purpose. Hence, no need to have a copy of CNIC'.
 - c. Sample of all 40 policy files inspected by the team did not contain documents related to source of income/ employment of policyholders as specified in Annexure to the directive.
 - d. The Company did not have any practice of risk profiling of the customers or classes or products as required by Clause 4 of the directive.
 - e. The Company did not conduct any training program for staff on KYC/AML matters.
 - f. The Company though designated a Compliance Officer but he did not have responsibility for ensuring compliance with KYC/AML requirements as required under Clause 7 of the Directive, as the same is being dealt by Underwriting department / branches.
5. In view of the above, it appeared that the Company failed to comply with Clauses 3,4,5,6 (v) & 7 of the directive and Clause 6 of the Circular.
6. Clause 3, 4, 5, 6 (v) & 7 of the directive state that:

Clause 3 of the directive:

"Internal procedure, policies and controls shall be developed by the insurer to determine the true identity of all existing policy holders and customers/potential policy holders and

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compliance of other anti-money laundering obligations. Following Internal procedures, policies and controls shall be developed by the insurers:...."

Clause 4 of the directive:

"Every insurer shall classify the customers/ policy holders into high risk and low risk categories, based on the customer/ policy holder's profile and product profile. Insurer shall ensure implementation of guidelines for conducting Enhanced Customer Due Diligence when dealing with high-risk customers/ policy holders, business relationship or "transactions and when an existing low risk customer/policyholder becomes a high risk customer/policyholder...."

Clause 5 of the directive:

"(i) Insurers are required to:

- I. *at all times maintain and keep in place systems to monitor all business related transactions on regular basis;*
- II. *update customer/ policy holder Information records regularly; and*
- III. *maintain proper records of the customer/ policy holder identifications and clearly specify in record, if any exception is made In fulfilling the Customer Due Diligence/ Know Your Customer measures."*

Clause 6(v) of the directive:

(v) In case of existing customers/ policy holders, Know Your Customer (KYC) exercise shall be completed within one year of the date of this directive.

Clause 7 of the directive:

"(i) All Insurers shall designate a "Compliance Officer" in their respective organizations, who will primarily be responsible for the areas including, but not limited to:

- I. *the insurer's effective compliance to the relevant provisions of the Anti-Money Laundering Act 2010, the Anti-Money Laundering Regulations 2008 and the Anti-Money Laundering Rules 2006; .*
- II. *ensuring that the internal policies and procedures approved by the Board of Directors of the respective insurers for prevention of money laundering and terrorist financing are effectively implemented; . .*
- III. *providing assistance In compliance to other departments and branches of the insurer; _*
- IV. *timely submission of accurate data/ returns as required under the applicable laws; . .*
- V. *monitoring and timely reporting of the suspicious transactions to the Financial Monitoring Unit, Government of Pakistan; and*

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VI. such other responsibilities as the insurers may deem necessary in order to ensure compliance with this directive.

(ii) All Insurers are hereby advised to furnish to Securities and Exchange Commission of Pakistan, not later than June 30, 2012, the contact details including 'the full name, designation, address, phone number, fax number, mobile number and email address of their designated Compliance Officer.....

(iii) Any subsequent change in the nomination of the Compliance Officer should immediately be reported to the Securities and Exchange Commission of Pakistan, along with the reason for change."

7. Clause 6 of the Circular provides that:

"All insurance companies are advised to regularly access the aforesaid consolidated list to ensure compliance with measures in para 3 above in line with the UNSC resolutions. The updated consolidated list should be accessed by the insurance company which will be checked by the SECP during the course of inspection."

8. Accordingly, a Show Cause Notice (SCN) No. ID/Enf/Premier/2019/463 dated February 12, 2019 was issued to the Respondents, calling upon them to show cause as to why the fine as provided under Section 156 of the Ordinance should not be imposed on them for the aforementioned alleged contraventions of the law.

9. The Company, vide letter dated February 25, 2019, sought additional time to submit reply to the aforesaid SCN. The request of the Company was acceded to and extension was granted until March 10, 2019.

10. Thereafter, the Respondents submitted their reply vide letter dated March 4, 2019, which is summarized below:-

- i) The Company duly checks the list provided by the Commission as per the Circular in our database as per stipulated requirements. Further, we also check that whether any particular of the provided information matches with any other client profile to ensure compliance with the requirements of the Circular. The latest screening of database was conducted on February 08, 2019, whereas no matches were found;
- ii) The Company does have mechanism and the fourth schedule list provided by the Commission & available on NACTA website is duly checked and marked in our database on time to time basis, which restricts the system to issue new policy against the marked individuals (if any), therefore, any matches with the provided data can be noted easily;
- iii) The Company did comply with the requirements of KYC under Clauses 5 and 6 (v) of the directive during the period from July 01, 2017 to February 24, 2018;



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- iv) The Company has in place approvals of the Board of Directors for KYC/AML Policy;
- v) Copies of CNICs of all customers are available in KYC folder, which is maintained separately;
- vi) Risk profiling is being carried out through KYC form, which is available in KYC folders maintained separately;
- vii) The staff of the Company keeps itself updated on the requirements of the KYC/AML policy by reading the guidelines issued by the Commission on time to time basis and the Company also sends its employees to attend training programs conducted by third parties;
- viii) The Company has appointed the compliance officer who is duly responsible for the KYC/AML requirements as per SRO;
- ix) In light of the superior courts judgements, technical contraventions of the law should not be allowed to undermine the just and equitable outcome of a proceeding;
- x) The Commission may be pleased to withdraw the SCN without any adverse action against us.

11. The Commission vide letter dated March 13, 2019 bearing No. ID/Enf/Premier/2019/159 scheduled the hearing on March 20, 2019, however, the Company, vide email dated March 18, 2019 requested to reschedule the hearing on March 22, 2019. The request of the Respondents was acceded to and the Commission rescheduled the hearing on March 22, 2019 at the Head Office of the Commission in Islamabad.

12. The hearing of March 22, 2019 was attended by the Authorized Representatives of the Respondents namely Mr. Rashid Sadiq and Mr. Zeeshan Sattar (Company Secretary) in person at the Commission's Head Office.

13. Arguments presented by the Authorized Representatives in the defense of the Respondents are summarized below:-

- i) The Company has maintained three files i.e. KYC, clients and policies.
- ii) Inspection team did not see the files, where missing record was maintained.
- iii) The Company provided all the requisite files to the inspection team.
- iv) The inspection team should have asked questions from the compliance officer instead of the underwriting officer.
- v) KYC/AML policy was there but not approved by the Board.
- vi) Training was not done but received from the Commission.



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vii) The Anti-Money Laundering and Countering Financing of Terrorism Regulations, 2018 are outside the Securities and Exchange Commission of Pakistan Act, 1997 (the "SECP Act") and the Ordinance.

viii) Additional submission will be provided to the Commission.

14. Thereafter, the Authorized Representatives, vide letter dated March 26, 2019 provided additional submission for consideration of the Commission, which are summarized below:--

- i) There is no mention in the content of the Circular as to which powers of the Commission it has been issued under. If one is to assume that it was issued pursuant to the provisions of Section 40B of the SECP Act, then the provisions of Section 40B of the SECP Act are quite clear to expressly state that the power of the Commission to issue directives, circulars, guidelines, etc. is only for carrying out the purposes of the SECP Act, the rules and regulations made thereunder and any administered legislation.
- ii) The issuance of the circular cannot be construed as being issued to carry out the purposes of the SECP Act or any rules or regulations made thereunder. In any event, the circular has not been issued under the authority of any enabling legislation.
- iii) Further, the SCN proposes the imposition of a penalty, under Section 156 of the Ordinance, for failure to comply with the provisions of the Circular. However, the Circular cannot be classified as a direction for the purposes of Section 156 of the Ordinance and therefore non-compliance of a circular cannot be subject to penalty under Section 156 of the Ordinance.
- iv) It was also noted that though the Commissioner (Insurance) has been authorized, through SRO 750(I)/2017 to issue circulars pursuant to Section 40B of the SECP Act, there is no mention of any delegation of powers to take cognizance of violations of provisions of the Circular.
- v) The Circular has, even otherwise, been issued when the provisions of Section 40B of the SECP Act had been amended vide insertions through the Finance Act, 2007 to include references to circulars.
- vi) It was submitted that the Circular cannot be read with the provisions of Section 156 of the Ordinance to impose penalties on the Company for perceived violations thereof. It was further submitted that the Circular cannot be considered a directive for the purposes of Section 156 of the Ordinance since the imposition of directives under the Ordinance may only be through following the process provided for under Section 60 of the Ordinance.
- vii) Similarly, the notification has apparently been issued under Section 40B of the SECP Act read with Section 20(4)(u) and Section 20(6) (fa) and (g) of the

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SECP Act. The notification, through Clause 1 thereof, also provides that it is a directive is issued to all insurers registered under the Ordinance. Directives may only be issued pursuant to the processes provided under Section 60 of the Ordinance.

- viii) In relation to the notification having been issued pursuant to Section 40B of the SECP Act, it was also submitted that the ambit of the provisions of Sections 20(4)(u) and 20(6)(fa) and (g) does not allow issuance of directives or notifications for carrying out the purposes of the anti-money laundering legal framework.
- ix) With regards to the nature of the perceived violations, if any, which are of a technical nature and even otherwise are not substantial violations in any measure. It was noted that the Supreme Court of Pakistan has commented on their needing to be a substantial finding of guilt before a commensurate penalty is imposed in the case of Securities and Exchange Commission of Pakistan v. First Capital Securities Corporation Limited [2011 CLD 907]. This ruling of the Supreme Court was affirmed by Shams Mehmood Mirza, J. in the unreported case of Nishat Mills Limited v. SECP Appellate Bench in its order dated December 5, 2017.,
- x) The violations perceived to have been committed by the Company do not justify the imposition of penalties under Section 156 of the Ordinance, where the penalty would be a harsh consequence for a merely technical violation, which has had no substantial impact on the AML objectives to be achieved by the Company.
- xi) Submissions with regards to the obligation of the Commission to exercise its powers uniformly were also made. In particular reference to Section 20(6)(c) of the SECP Act was made. Reference was also made to the provisions of Section 24A of the General Clauses Act, 1897. The requirement for uniformity was noted in the unreported case of Nishat Mills Limited v. SECP Appellate Bench by Shams Mehmood Mirza, J. in his order dated December 5, 2017
- xii) Even where there had been a substantial finding of guilt, the Commission has exercised restraint, as was done in the matter of Crescent Star Insurance Limited vide order dated June 1, 2016 passed by the Commissioner (Insurance).
- xiii) The matter at hand must be decided along the lines of other decisions of the Commission. In the past, the Commission has condoned more grievous violations in the following matters:
- a. UBL Insurers Limited v. Executive Director, SECP, SECP Appellate Bench - order dated December 23, 2009;
- b. In re: Excel Insurance Company Limited - order dated June 16, 2011;

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- c. Askari General Insurance Company Limited - orders dated July 10, 2017 & April 13, 2012;
 - d. State Life Insurance Corporation of Pakistan - order dated February 23, 2017;
- xiv) More recently the Commission has also condoned the 2018 Regulations by the insurers by issuing instructions on how to rectify the non-compliances and has warned them to keep to the timeline within which compliance must be ensured.
- xv) To ensure consistency and fairness, the Commission may exercise leniency as the Company intends to become fully compliant with all requirements of the law that are legitimately imposed upon it.
- xvi) Jurisdictional matters were also broached during the hearing and it was argued that the SCN is issued without jurisdiction as there is no enabling provision of the delegating notification/circular.
- xvii) The SCN may be withdrawn on the basis of having been issued without jurisdiction.
- xviii) There is no reference in the Letter of Finding (LOF) to any perceived violation of the above provision of the Circular. The SCN mentions the same for the first time through Clause 4(i) thereof and submissions with regards to the same were made at the hearing as under:
- a. That the Company has a mechanism in place;
 - b. Regular screening, as required, is carried out;
 - c. A Compliance Officer is in place who is ensuring compliance with the provisions of the Circular and is not part of the underwriting department;
 - d. The list is checked regularly and the IT system has been set to automatically block issuance of policies to persons highlighted by the Commission's AML Department through its list shared with the Company/ consolidated list;
- xix) Where no violation has been pointed out by the Commission in LOF, no fine may be imposed.
- xx) Similar submissions to the ones made in response to the requirements for reference to the UNSC List were made with regards to the NACTA website list.
- xxi) Where no violation has been pointed out by the Commission in LOF, no fine may be imposed.



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- xxii) As to perceived violations of the Notification noted at Paragraph 4(iv) of the SCN, submissions as made by the Company through its Comments given in response to the LOF were reasserted and added to in the hearing.
- xxiii) The Company intends to fully address the concerns of the Commission and ensure compliance with all applicable provisions of the law
- xxiv) No adverse action be taken against the Company as it intends to fully comply with the requirements of the law as they may become applicable to its operations and that the Commission may exercise leniency to ensure fairness and justice in the exercise of its powers.

15. During the meeting with the head of underwriting of the Company, he was enquired regarding the mechanism in place at the Company to ensure the compliance with screening of the portfolio of the Company against the proscribed individuals and entities / groups included in the list of UNSC 1267. It was informed by the head of underwriting that he had no information if the Company was receiving the list under UNSC 1267. Upon receiving the request from head of underwriting, the said list was shared with him vide email dated May 24, 2018, with the advice to immediately run the check on the entire portfolio of the Company and freeze those assets and report back in case any positive matches were found. Further, the Company was advised to keep the updated list under UNSC 1267 and start implementing it immediately by screening against the updated list, before issuing any new policy; and also perform ongoing monitoring of its portfolio.

16. Further, after publication of the list of Fourth Schedule on NACTA website, the Company needed to scrutinize its new policies as well as continuous checks over its portfolio against the said list. The Company was required to ensure that no such relationship exists directly or indirectly, through ultimate control of an account and in case where any such relationship exists with the individuals/entities included in above referred two lists as well those proscribed under the Anti-Terrorism Act, 1997, along with their associates and facilitators, the Company was required to take immediate action as per law, including freezing the funds and assets of such proscribed entity/individual and reporting to the Commission.

17. It was also informed by the above-referred official that the Company has adopted the practice of getting filled a prescribed proforma on KYC matters. However, it is observed that the said practice was initiated after February 24, 2018, as evident in email sent by EVP Underwriting to its team, directing them to fill those proformas for new policies as well as those issued after July 1, 2017. The contents of the email dated February 24, 2018 are reproduced below:-

"Please be noted that as per SECP directives Customer Due Diligence / Know Your Customers to be done by every insurer. In this connection, attaching herewith KYC forms(s) for both Conventional and Takaful for new customers as well as old clients. Kindly note that no new clients will be opened unless and until concerned department at HO, receive duly completed form from the relevant region /authority.



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As per CEO instruction, you are also requested to complete these forms for those customers who are renewed and introduced as new after 1st July 2017.

....."

18. The inspection team noted that the Company does not comply with the requirements of the directive, (valid as on the cutoff date of the inspection) due to the following issues:

Sr. #	Non-Compliances	Company's Comments
1	The Company does not have board approved KYC/AML policy.	As advised, we will get it approved by the Board also.
2	No copies of CNIC of the customers were available, which is mandatory requirement.	We have Nadra Portal for verification purpose. Hence, no need to have a copy of CNIC.
3	Documents related to source of Income/employment of policyholders were not found in policy files.	These detail are available in KYC folder, which is being maintained separately.
4	The Company does not have any practice of risk profiling of the customers or classes or products.	Risk profiling is being maintained through our KYC form.
5	The Company has not conducted any training program for staff on KYC/ AML matters.	we will ensure the compliance in future
6	The Company though has a Compliance Officer but he does not have responsibility for ensuring compliance with KYC/AML requirements, as the same is being dealt by Underwriting department / branches.	Compliance of the same has been duly ensured

19. As evident from the above, the Company did not contest observations of the inspection team. Some of the points raised during the reply to the SCN and hearing held on March 22, 2019 were not contested at the time of inspection. If the Company had maintained the files strictly in compliance with the directive, the same should have been provided to the inspection team and if found in compliance with the directive, the inspection team would not have raised the observation regarding missing documents/records.

20. It is pertinent to mention here that during the period under review by the inspection team, the Company did not fully comply with the requirements of the directive. The Respondents, in their response have claimed that the Company maintained record for the KYC, clients and policies separately. However, the Company failed to provide the same to the inspection team and also the Company did not highlight the same in its comments provided to the inspection team. Therefore, it can be inferred that no such record existed at the time of inspection and the Company was non-compliant for the year 2017 and before, with the directive.



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21. It is important to state here that the directive was issued under Section 40 read with Clause (u) of subsection (4) of Section 20 and Clauses (fa) and (g) of subsection (6) of Section 20 of the SECP Act.

22. Clause 9 of the directive states that:

"Any failure on part of any insurer to comply with the above directions of the Securities and Exchange Commission of Pakistan is punishable under Section 156 of the Insurance Ordinance, 2000."

23. The Commission under various laws administered by it has been given the power to issue circular, codes, directives etc. and it is not necessary that a circular specific power of these circulars be mentioned in the instrument. The point of concern should have been whether the Commission has the power to issue circular or not. In this respect, SECP Act is an umbrella law, which in terms of schedule attached to it provides for various Clauses administered by the Commission under the SECP Act. The said schedule also includes the Ordinance. Further, all the administered laws primarily include the obligation of the Commission while performing its function under sub-section (4) of Section 20 of the SECP Act, which categorically empowers the Commission to perform the function and duties under the law of insurance. Therefore, the Commission issued the Circular under Section 40B of the SECP Act.

24. As far as the objection on Section 40B of the SECP Act is concerned with respect to amendment through Finance Act, 2007, it may be noted that all the amendments made in the Companies Ordinance, 1984 as well as laws administered by the Commission through various Finance Acts have been declared to be made validly from the date of commencement of such Acts. In this respect, Section 513 of the Companies Act, 2017 is relevant and may be perused.

25. Of the violation of requirements of the Circular, attention of the Respondents is drawn to the provisions of the SECP Act and Ordinance, which reinforce each other and/or meant to give effect collectively for the effective regulation of insurance sector in Pakistan especially to minimize the money laundering and terrorist financing.

26. Circulars are issued to the regulatees whereby the regulators deem appropriate that any regulatory requirements are necessary to be communicated to the regulatees for effective communication or dissemination of the regulatory requirements. In this regard, it may also be noted that the Commission has been obligated to control and minimize misconduct, market abuse and financial crimes in financial services monitored by it and in other sectors regulated by it under sub-Section (4) of Section 20 of the SECP Act. As anti-money laundering and combatting terrorist financing, also comes within the ambit of financial crimes, therefore it is the responsibility of the Commission to enforce such measures in order to avoid the occurrence of such financial crimes and their possibility. On the basis of the above, the argument that the penalty under Section 156 of the Ordinance cannot be imposed is not tenable.



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27. In addition to the above, plain reading of Section 60(1) of the Ordinance clearly reveals that direction can be issued where there is apprehension under certain grounds that insurer has failed to comply with certain conditions of registration under Section 11 of the Ordinance. Further, aforesaid direction is not meant to be given to the entire industry as a whole, while direction issued through the directive under SECP Act is meant for the entire insurance industry. Therefore, the point raised by the Company does not merit consideration.

28. Furthermore, in para 33 of the response dated March 26, 2019, the Company has admitted that it is not fully compliant. Para 33 of the aforesaid letter is reproduced below;

"Accordingly, it was submitted that the Company intends to fully address the concerns of the Commission and ensure compliance with all applicable provisions of the law."

29. As far as technical contravention is concerned, it is clarified that the entire requirement through the Circular and directive had been given to ensure the technical requirement regarding Customer Due Diligence, Know Your Customer etc. These were also operational requirements with specific emphasis on anti-money laundering framework and regulatory compliance. Through application of this requirement, violations of AML framework will be emerged and cannot be ignored.

30. With regards to the uniform application of the law, it is explained that wherever violation is observed, the Commission analyzes and evaluates instances of the alleged violations and thereafter collectively takes holistic view of the violations and possible impact on the insurance industry. Thereafter, a company is given an opportunity to provide its feedback/comments on the alleged violations and after taking into account the written and oral representation of the company, the Commission on case to case basis exercises its adjudicatory role for the beneficial regulation of the insurance sector.

31. I have carefully examined and given due consideration to the written and verbal submissions of the Respondents, and have also referred to the provisions of the Ordinance, the Rules made thereunder and/or other legal references. I am of the view that the violations of Clause 3, 4, 5, 6(v) & 7 of the directive and Clause 6 of the Circular, are clearly established, for which the Respondents may be penalized in terms of Section 156 of the Ordinance.

32. Section 156 of the Ordinance provides that:

"Penalty for default in complying with, or acting in contravention of this Ordinance.- Except as otherwise provided in this Ordinance, any insurer who makes default in complying with or acts in contravention of any requirement of this Ordinance, or any direction made by the Commission, the Commission shall have the power to impose fine on the insurer, and, where the insurer is a company, any director, or other officer of the company, who is knowingly a party to the default, shall be punishable with fine which may extend to one million rupees and, in the case of a continuing default, with



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an additional fine which may extend to ten thousand rupees for every day during which the default continues."

33. In exercise of the power conferred on me under Section 156 of the Ordinance, I, take a lenient view and do not impose fine on Board of Directors of the Company. However, I impose a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) on the Company under the said provision of the Ordinance, due to the non-compliances, as mentioned hereinabove. The Company is further directed to report compliance with AML/CFT laws and Regulations within one month of the date of this Order. Moreover, the Respondents are hereby warned and directed to ensure full compliance with the Ordinance, rules, regulations and directives of the Commission in future.

34. Hence, the Company is hereby directed to deposit the applicable fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty (30) days from the date of this Order and furnish receipted vouchers issued in the name of the Commission for information and record.

35. This Order is issued without prejudice to any other action that the Commission may initiate against the Company and / or its management (including the CEO of the Company) in accordance with the law on matters subsequently investigated or otherwise brought to the knowledge of the Commission.

Hasnat Ahmad
Director/HoD (Enforcement)

