



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
ADJUDICATION

Before the Commissioner (SCD)

In the matter of Show Cause Notice under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 for violations of inter-alia Regulation 6(4), 6(5a), 7(1)(a), 7(1)(b), 9(2)(c), 9(4)(b) read with Regulation 9(3) and Regulation 13(1) and 13(3) of AML and CFT Regulations, 2018 read with Section 17(vii) of the Guidelines on AML and CFT Regulations.

Date of hearing:

October 2, 2019

Present (on behalf of UBL Fund
Managers Limited)

i. Mr. Yasir Qadri, CEO
ii. Mr. Hadi Hassan Mukhi, Head of Risk &
Compliance

Assisting the Commissioner (SCD)

Ms. Bushra Aslam, Executive Director

ORDER

This Order shall dispose of proceedings against UBL Fund Managers Limited (“UBL Funds”, the “AMC” or the “Company”), which is a public limited company licensed to undertake the business of Asset Management and Investment Advisory Services, initiated through Show Cause Notice (the “SCN”) bearing No. SCD/AMCW/ADJ/40/2019-32 dated September 6, 2019 under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 for violations of inter-alia Regulation 6(4), 6(5a), 7(1)(a), 7(1)(b), 9(2)(c), 9(4)(b) read with Regulation 9(3) and Regulation 13(1) and (3) of the Securities and Exchange Commission of Pakistan (Anti-Money Laundering and Countering Financing of Terrorism) Regulations, 2018 (the AML and CFT Regulations) read with Section 17(vii) of the Guidelines on the AML and CFT Regulations.

2. A scope specific inspection of UBL Funds was ordered under powers conferred upon Securities and Exchange Commission of Pakistan (SECP or the Commission) under Section 282I of the Companies Ordinance, 1984 vide inspection order bearing No. SCD/S&ED-IW/UBLFM/2019/106 dated April 30, 2019.

3. The scope of the inspection comprised reviewing compliance of the AMC with respect to the AML and CFT Regulations. However, during the course of inspection, various violations/non-compliances were observed. The inspection team highlighted several deficiencies in the customers’ record/documentation (selected on sample basis) which were in violation of several provisions of AML and CFT Regulations.

4. The Company was called upon to show cause in writing vide SCN dated September 6, 2019 as to why penal action should not be taken against the Company for violations of, inter-alia, Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 for violations of inter-alia Regulation 6(4), 6(5a), 7(1)(a), 7(1)(b), 9(2)(c), 9(4)(b) read with Regulation 9(3) and Regulation 13(1) and (3) of the AML and CFT Regulations read with Section 17(vii) of the Guidelines on the AML and CFT Regulations.

5. A written reply was received vide letter dated September 17, 2019 from the Company, wherein the contentions made in the SCN were categorically addressed. The following arguments were provided in the reply:

- i. *AML/CFT Regulations promulgated in June 2018 with Guidelines issued in September 2018 with changes made till November 2018 and various SECP sessions being conducted by the Commission for the knowledge and awareness of industry participants conducted in ensuing months. Accordingly, the development based on the understanding started in December 2018 which not only included system for capturing of information regarding 3rd party for individual unitholder and all natural persons of corporate (authorized signatories, directors, partners, trustees, governing members, major shareholders) but also included other triggers/sub processes such as modification in risk classification, transaction monitoring system etc. Due to huge development work involved, the final module was implemented manually on May 8, 2019. Accordingly, the details of accounts opened after this date was captured in the system for initial and ongoing screening. For the details of the accounts opened after the implementation of AML Regulations but before the system live date (October 2019) we started to maintain the database of the said information.*

With respect to verification of beneficial owner/major shareholder, in most of the cases major shareholder are same person named as directors/trustees/governing members etc. and are automatically screened via screening system. However, where the major shareholder is or were found to be different, we performed initial screening via manual search and later on via World Check and only upon clearance we opened the account. Further, for ongoing screening the AMC has checked all changes communicated via SRO/Notifications on this database manually. The system has already been developed and is under testing and would be implemented live by start of October 2019.

We would like to put forth before the Commission that UBL Funds have always been striving to better its KYC regime and manage the associated risks. In accordance with this ideal UBL Funds was one of the first AMCs to start screening of its unitholder both individual and corporate voluntarily since 2014-15 even though it was not required under Circular 12 of 2009. Moreover, the screening is done at the stage of onboarding of new customer as well as on semi-annual basis for the entire existing database. This is done against various sanctioned lists (covering EU, US, HM Treasury, OFAC, UN regions and NACTA and UBL Bank negative list) hosted in the Hotscan to effectively manage the AML/CFT Risks.

Based on the above submissions we would request the honorable Commission to have a lenient view while assessing application of Regulation 6(5a) read with section 17(vii) of AML/CFT Guidelines.



- ii. *Accounts selected during the onsite inspection pertain to the period prior to the promulgation of the Regulations and some cases are 5 to 12 years old. We fully agree that an AMC is obligated to review the existing unitholders to bring them in conformity with the requirements of the Regulations and accordingly we have already initiated the review exercise in December 2018 starting first with High Risk accounts (as also suggested by the FAQs on AML/CFT Regulations) resulting in review and resolution of various legacy accounts.*

Furthermore, to support our endeavor of reviewing and remediating the High-Risk Account we have also on-boarded an audit firm that will review these accounts independently, help us in remediation wherever possible and highlight areas for resolution. We are confident that with these initiatives we will be able to bring all high-risk accounts in conformity with AML/CFT Regulations, 2018.

We have already started phase-wise review of all High-Risk accounts both Individual and Corporate. However International Foundation and Garment (Pakistan) (Private) Limited is not classified as High Risk being private limited company. Upon identification the information/ details of major shareholders have been obtained and shared with the Commission. Furthermore, the details have also been screened from UNSC and NACTA List for any positive match.

- iii. *As confirmed in our first reply dated July 8, 2019 the customer has withdrawn all of her funds in the month of June 2019 and we have frozen the customer account for any credit activity. Only upon furnishing the required information, she will be able to transact in her account. This customer's account was opened in July 2016. To comply with the requirement of ongoing monitoring (Regulation 13(1) and 13(3) of AML/CFT Regulations) we have set up an investment tolerance limit and accounts above this threshold were reviewed. Accordingly, the account of Nazneen Laljee was also highlighted and additional documents in the form of TDRs to support her investment were obtained. As pointed out in the SCN that the investor has stated 'Inheritance' as source of income. She has also mentioned 'Investment' as additional source of fund in the account opening form and upon our inquiry she shared proof of investment which supported the investment profile and we drew comfort on the same. Moreover, the said case and documents were shared with the AML department of the Commission in January 2018 on account of Circular 9 review with no observations raised by them.*

Furthermore, since the FAQs on AML/CFT Regulations allowed evidences from independent third party to be acceptable for KYC/CDD purposes. We obtained and submitted the evidence of the amount of Tax Paid by the customer in support. The tax paid by the customer as reflected in the Tax Directory 2017 is approx. Rs.3.9 million. With respect to obtaining bank statement, SECP has on various platforms disallowed to consider bank statement as source of fund evidence.

We request the Commission to review the supporting arguments and documents while assessing application of Regulation 13(1) and 13(3) of AML /CFT Regulations in this case.

- iv. *Please note that as mentioned in our response to Letter of Findings and as also reiterated above, we have already started the phase-wise review-addressing all High-Risk accounts both Individual and Corporate. This account is not classified as High Risk being private limited company. However, upon identification the information/ details of major shareholders have been obtained and shared with the*

Commission. Further, the details have also been screened from UNSC and NACTA List for any positive match.

The entity was classified as Low-Risk in the data shared with the onsite inspection team however, on subsequent review the classification was corrected and Tariic was classified as High Risk. The same is also evident from the Annual Risk Assessment Annexure submitted to the Commission as on June 30, 2019. Further, we submitted all documents as required under Annexure I of the AMC/CFT Regulations along with the approval of senior management, on account of EDD measure for a High-Risk account. Since the account was opened in September 2015 therefore the Ultimate Beneficial Ownership information was not sought earlier. On the identification of the onsite team we requested the customer to provide the said information as well as collected this information from public source and shared the results. As evident, the said account was in conformity with AML/CFT Regulations, 2018 and only verification related to Ultimate Beneficial Owner was performed subsequently. Furthermore, we have also screened the available details of UBO from World Check and found no matches.

We would also like to apprise the Commission that the account has been closed for this customer and we have also asked the business to credit block the account so that any further investment would only be done after fulfillment of the required documents.

We would like to bring into the notice of the honorable Commission that we have till date reported 13 suspicious accounts to FMU which to some extent shows the effectiveness of controls installed at UBL Funds and demonstrates our commitment towards implementation of AML/CFT Regulations. Furthermore, we have already started the practice of blocking of accounts in case any key information is deficient which may lead to refund of money. We, in the recent past, have refunded the money to a customer on account of non-provision of required information. We also take this opportunity to apprise Commission on various initiatives/ developments already implemented.

- a) Transaction Monitoring (Trigger) System for ongoing monitoring:
- Inactive account becoming active;
 - Transfer to another customer without proper justification;
 - Lack of concern by the customer regarding losses and/or back-end/contingent load on early redemption;
 - Transaction exceeding the fixed threshold of Rs.10 million for individual; Rs.50 million for Trust and Rs.100 million for Corporate;
 - Investment Tolerance limit, for individuals, calculated based on Salary/amount earned
 - Alerts based on High Risk Accounts such as Non-Resident, PEPS, High Net Worth, customer belonging to high risk countries (as marked in the system), High risk occupation as marked/identified in the system and No. of transactions threshold in a month.
- b) Countries marked as High Risk in the system not only covering 'High risk Jurisdictions' as identified by the FATF but also included

countries/jurisdictions based on Corruption Perception Index and jurisdictions that are classified as High Risk by our parent company (UBL Bank).

- c) Updated NACTA and Politically Exposed Person (PEP) lists hosted in the system thereby highlighting any positive match at the time of input in the system and not allowing account opening (in case of NACTA match).*
- d) Pre-check of compliance department for opening of all corporate accounts.*
- e) System based utility for checking SRO/Notification by NAB or any other government agency.*

6. The hearing in the matter took place on October 2, 2019 wherein Mr. Yasir Qadri, CEO, and Mr. Hadi Hassan Mukhi, Head of Risk and Compliance appeared on behalf of the Company. They reiterated the facts stated in the written reply. The respondents also stated that they fully realize that the Company was not fully compliant with the AML and CFT Regulations and was trying its best to expedite efforts in this regard by constantly upgrading the systems, training the staff and improving internal processes. They stated that:

- a. Deloitte has been appointed in August 2019 to review and streamline 3,000 accounts of high-risk unit holders.
- b. 6 to 7 employees have been appointed to streamline remaining 70,000 accounts.
- c. Reporting mechanism for board committee on fortnightly basis has been devised.
- d. All fresh renewals are done after ensuring compliance with all AML/CFT requirements.

7. I have analyzed the facts of the case, considered the documentary evidence placed on record and the arguments put forth by the Respondent Company. I am of the considered view that the submissions by UBL Funds are not plausible on the basis of the following reasons:

- i. The system has been implemented on May 8, 2019 and would go live in October 2019. Delay in implementation of the requirements of AML and CFT Regulations is not acceptable as this information should be maintained irrespective of system. Till date UBL Funds remains non-compliant with the relevant AML and CFT Regulations.
- ii. The AML and CFT Regulations were issued in June 2018 and effective immediately after their issuance, and warranted that UBL Funds initiated the process of obtaining documents immediately. The statement of the AMC that the accounts selected by the inspection team are 5 to 12 years old is not tenable. The review was conducted in April 2019 which is almost one year after the issuance of the regulations i.e. June 2018 and that too when observations were raised by the inspection team. It is my considered view that a year delay indicates weakness in responsiveness on the part of management.



- iii. The view of UBL Funds in respect Ms. Nazneen Lallijee is not tenable. The account was opened on June 6, 2016. However, at the time of inspection, the AMC was non-compliant with the relevant regulations because the AMC had failed to obtain evidence of source of income from the investor. TDR's and extract from tax directory is not sufficient. The requisite information was provided after the inspection team highlighted the deficiency. Further detail of inheritance is not available. Hence constituted violation of Regulation 9(3), Regulation 9 (4) and Regulation 13(1) of the AML and CFT Regulations.
- iv. The various instances observed by the inspection team indicated lapses in identifying the beneficial ownership of various investors. It is a concern that even almost a year after the issuance of AML and CFT Regulations (i.e. issued in June 2018), UBL Funds had not been able to complete the process of verifying customers/ beneficial owners' identity. In the absence of requisite documents/information, as mentioned in the preceding paragraphs, the screening of unitholder database is rendered ineffective and does not serve the purpose/objective of screening of unitholders/ beneficial owners completely. The absence of such critical information is likely to expose the Company to inefficient screening of its customers with SROs/notifications issued by NACTA/provincial governments/ Ministry of Foreign Affairs, etc. This constituted violation of Regulation 7(1) (a) and Regulation 7(1) (b) of the AML and CFT Regulations.

8. It is my considered view that given its professional management and sizeable customer base, UBL Funds should set a much higher benchmark for compliance. It is the obligation of the management to ensure that it is implementing the AML and CFT Regulations in its letter and spirit. I note with concern that the AMC took steps to rectify the deficiencies observed in the inspection only after the same were brought to its' notice. It is most likely that had the inspection not been carried out, the AMC would have remained non-compliant with respect to AML and CFT regulatory framework.

9. It is my considered opinion that while an effort to comply with AML and CFT Regulations is being made, UBL Funds will need to continue to review and monitor on a continuous basis. UBL Funds is, therefore, directed to provide a time bound plan by October 31, 2019, wherein it should provide a roadmap for ensuring complete compliance with the AML and CFT regulatory framework.

10. However, based on my observation at paras 7 and 8 above, I am of the considered view that leniency on non-compliance towards requirements of Regulation 6(4), 6(5)(a), 7(1)(a), 7(1)(b), 9(2)(c), 9(4)(b), 9(3), 13(1), 13(3) of AML and CFT Regulations, is not possible, since SECP is responsible for ensuring implementation and enforcement of the applicable regulatory framework by entities that fall under its regulatory ambit. Therefore, I hereby conclude the proceedings initiated under section 282J (1) read with section 282M (1) of the Companies Ordinance, 1984 by imposing an aggregate fine of Rs.200,000/- (Rupees Two hundred thousand only) on the Respondent.



11. The aforesaid fine must be deposited in the designated bank account maintained with MCB Bank Limited in the name of SECP within seven days from the receipt of the order. The receipt or bank challan is to be furnished to SECP. In case of non-deposit of penalty within the given time, a penalty of Rs.25,000 per day during which default continues shall be charged, after which proceedings for recovery of the fine as arrears will be initiated.

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



Farrukh H. Sabzwari
Commissioner (SCD)

Announced on:
October 10, 2019 at Islamabad

