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SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN**Adjudication Department-I****Adjudication Division**

ORDER	
Name of Company	Zakriya Gold Commodities (Private) Limited
Number and Date of Show Cause Notice (SCN)	No.2(466)SMD/Adj-1/2024-96 dated September 27, 2024
Date of Hearing	November 11, 2024
Case represented by	Mr. Muhammad Shahid Zakriya; (as the Authorized Representative.)
Provisions of law involved	Regulations 4(1)(g) & (h) read with Annexure B of the Futures Brokers (Licensing and Operations) Regulations, 2018 and Section 104(4) of the Futures Market Act, 2016.

This Order shall dispose of the proceedings initiated through the Show Cause Notice No. No.2(466)SMD/Adj-1/2024-96 dated September 27, 2024 (the "SCN") by the Securities and Exchange Commission of Pakistan (the "Commission") against Zakriya Gold Commodities (Private) Limited (the "Company") under Section 104(4) of the Futures Market Act, 2016 (the "Act") for failure to comply with Regulations 4(1)(g) and (h) read with Annexure B of the Future Brokers (Licensing and Operations) Regulations, 2018 (the "Regulations"). The Company holds a Trading Right Entitlement Certificate (TREC) from the Pakistan Mercantile Exchange Limited ("PMEX") and is engaged in the business of futures/commodities brokerage as permissible in the Act and applicable Regulations.

2. The brief facts of the matter are that the Company was incorporated on January 20, 2022 as a private limited company and was granted license by the Commission on May 11, 2022 under the Regulations with the following Chief Executive Officer (CEO)/Directors:

Sr. No.	Name	Designation
1.	Mr. Sajjad Munir	CEO/Director
2.	Mr. Muhammad Shahid Zakriya	Sponsor/Director
3.	Mrs. Sana Bibi	Director

3. During the review of the license renewal application for the year 2024-2025 (the "Renewal Application"), it was revealed that the CEO of the Company has been changed and that 'Mr. Muhammad Shahid Zakriya' took charge as the CEO with effect from February 06, 2023 without intimation to the Commission as required under Para 2 of Annexure B read with Regulation 4 of the Regulations.

4. In order to probe the matter, the Commission vide email dated July 29, 2024 sought explanation from the Company and subsequently issued reminders vide emails dated August 01, 2024 and August 08, 2024. In response, the Company vide email dated August 09, 2024, acknowledged the aforementioned non-compliance. Therefore, the Company had, *prima facie*, contravened Para 2 of Annexure B of the Regulations read with Regulation 4 thereof.

Handwritten signature and date: 1-11-2024

5. Furthermore, the Company vide aforementioned email dated August 09, 2024, also admitted that Mr. Muhammad Shahid Zakriya does not fulfil the fit and proper criteria related to educational qualification and professional experience as required under Clause b(3) of Annexure B of the Regulations. The Company, in this regard, explained the challenges faced by it in onboarding of a CEO who meets the fit and proper criteria and, *inter alia*, submitted the following response:

"Finding a CEO and Director who meet the stringent criteria of the Futures Brokers (Licensing and Operations) Regulations 2018 has proven to be a challenging task. When Zakriya Gold Commodities was initially formed, we appointed individuals who fully met the fit and proper criteria....., especially given our dealings in physical gold. As a result, I, as the owner, had to take charge of the company to prevent further losses.

While I acknowledge that I may not meet all the criteria, it was a necessary decision to protect the company. However, since your office has raised this as a violation. I understand that I may need to relinquish my designation.

Request for Consideration: I kindly request your office to either Provide a relaxation of the fit and proper criteria for my continued role as CEO and Director, which would enable us to run the business without the fear of fraud and maintain stability, or Grant us additional time to find a fit, proper, and trustworthy individual for these critical positions."

6. In addition to the above, the review of the Renewal Application also revealed that Mr. Zakriya was holding the position of CEO in Zakriya Gold (Private) Limited till January 25, 2024, contrary to the requirements of Regulation 4(1)(h) of the Regulations, which prohibits the CEO of futures broker from holding any office in any other company. In response to the Commission's email dated June 13, 2024, seeking an explanation on the aforementioned non-compliance, the Company vide email dated July 23, 2024 admitted the said violation and further informed that it has ensured compliance and, *inter alia*, submitted the following response:

"Regarding violation related to Mr. Shahid Zakriya holding the position of CEO in two companies, we proactively addressed this by obtaining his resignation from Zakriya Gold Pvt. Before the issue was raised by SECP. We request your understanding and leniency in the matter."

7. It was further observed during the review of the Renewal Application that there is no qualified director on the board of the Company as required under Clause b(2) of Annexure B of the Regulations, which requires at least one director should have the required qualification and experience as prescribed under the said Regulations. In response to the Commission's email dated June 13, 2024 seeking explanation on the aforementioned non-compliance the Company vide email dated July 23, 2024, *inter alia*, submitted the following response:

"The sponsors of our company have decided to make significant changes in the management to ensure compliance with the SECP Regulations.

This includes appointing a new Chief Executive Officer, Director and Compliance Officer who meets all the regulatory requirements. We request your office to grant us 30 days to implement these changes and submit the updated management details."

8. Taking cognizance in the matter, the SCN was issued to the Company to show the cause in writing as to why a penal action may not be taken against it for multiple non-compliances of the requirements of the Act and Regulations. In response to the SCN, Mr. Zakriya as the Authorized Representative of the Company (the "AR"), vide letter and email dated October 08, 2024 and October 10, 2024 respectively, made the following written response:

- (i) Please note that the earlier appointed CEO was removed from his position and Mr. Zakriya took charge as CEO and Director to safeguard the Company.*
- (ii) Fully understand that the primary responsibility for adhering to the concerned laws lies with the Company's officers.*
- (iii) Unfortunately, at that time preoccupied with the operations of the Company which caused overlooked this matter and apologize for the same*
- (iv) Additionally, regarding the dual CEO violation, the Company has already initiated the process of Mr. Zakriya's resignation from Zakriya Gold (Private) Limited to comply with Clause b (3) of Annexure B of the fit and proper Criteria read with Regulation 4(1)(h) of the Regulations.*
- (v) This resignation process has been pending since January 25, 2024, and the matter is currently stuck at the relevant CRO.*
- (vi) Given the high standards of quality that the Company must adhere to, especially with the rigorous testing involved in gold transactions, finding a suitable and experienced candidate for the CEO position has been challenging.*
- (vii) It took us longer than anticipated to select a trustworthy and experienced individual who meets the necessary qualifications for the position. As the field requires someone with substantial expertise in gold trading, as maintaining the highest quality standards is critical for our business operations. However, apologize for the delay in fulfilling the requirements.*
- (viii) Pleased to inform that the Company has now appointed Mr. Irfan Ahmad as CEO who brings a wealth of bullion market and has a proven track record in this domain, and*
- (ix) Sincerely regret the delay in fulfilling the requirements of law.*

9. In order to provide opportunity of personal representation and to meet the ends of justice, hearing in the matter was fixed for November 11, 2024 which was attended by the AR. During the course of hearing, the AR reiterated the written submissions made earlier vide letter dated October 08, 2024 and made the further following submissions:

- (i) The Company mainly deals in the physical gold market.*
- (ii) He had no awareness that a CEO cannot hold two positions at the same time. However, upon becoming aware of the same, he promptly resigned from the position of CEO of Zakriya Gold (Private) Limited; and*
- (iii) Requested to condone the default and take a lenient view in the matter.*

[Handwritten signature and date: 20-01-2025]

10. I have reviewed the facts of the case and also considered the written and verbal submissions made by the AR. At this juncture, it is important to discuss the following legal and factual elements:

- (i) In terms of Para 2 of Annexure B read with Regulation 4 of the Regulations, the Company was required to report any change in the submitted information regarding key personnel within a period of seven business days to the Commission. This requirement ensures transparency and allows the regulator to assess whether the changes align with the fit and proper criteria. Prompt reporting is critical for maintaining the integrity of the futures market, safeguarding investors' interests, and ensuring that the company operates under capable and compliant leadership. However, the Company replaced its CEO, without reporting the same within the required seven business day period to the Commission; thereby contravening Para 2 of Annexure B read with Regulation 4 of the Regulations.
- (ii) Clause b(3) of Annexure B read with Regulation 4(1)(g) of the Regulations requires that the CEO must possess the requisite qualifications, experience, and integrity to lead a futures brokerage firm. This safeguards the company's operations and fosters investor confidence by ensuring competent leadership. However, the newly appointed CEO, Mr. Zakriya did not meet the educational and professional experience requirements specified in the Regulation. Despite acknowledging this deficiency, the Company proceeded with the appointment, justifying it as necessary to protect the interests of the business; thereby contravening Clause b(3) of Annexure B read with Regulation 4(1)(g) of the Regulations.
- (iii) Regulation 4(1)(h) of the Regulations requires that a CEO of the Company cannot hold any office in any other company. It helps maintain focus on regulated activities and avoids compromising the futures broker's operations. However, Mr. Zakriya served as CEO of Zakriya Gold (Pvt.) Limited until January 25, 2024; while simultaneously being the CEO of Zakriya Gold Commodities (Pvt.) Limited. It is also pertinent to observe that as per Form 20 of Zakriya Gold (Private) Limited dated January 31, 2024, Mr. Zakriya resigned as CEO of the said company effective from January 25, 2024. Mr. Zakriya had held the position of CEO since February 06, 2023 till January 25, 2024; thereby, contravening provisions of Regulation 4(1)(h) of the Regulations.
- (iv) Clause b(2) of Annexure B read with Regulation 4(1)(g) of the Regulations requires that at least one director on the board must possess the requisite qualifications and experience. This requirement contributes to the company's stability and ability to meet market demands effectively. It is relevant to note that in the reported judgement of 2019 SCMR 1952 SC, the esteemed Court signified the adherence to the fit and proper criteria established under law by observing that *"the Board of Directors is a body that owes fiduciary duty to the stakeholders of the company and its role is not of a mere bystander. The role of the Board as envisaged by law is central and pivotal...Such duty needs to be performed by employing independent and honest individuals with training and expertise in the relevant field, with the highest level of integrity, honesty and probity."* However, the Company does not have any director who met the educational and professional criteria as required under the Regulations. Despite assurances to rectify this issue, the Company has failed to timely implement the necessary changes; thereby contravening

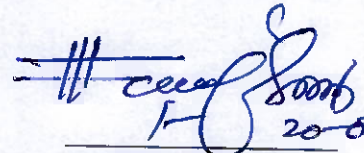
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Clause b (2) of Annexure B read with Regulation 4(1)(g) of the Regulations.

11. In view of the foregoing and admissions made by the AR, non-compliances/contraventions with Para 2, Clause b(2) and b(3) of Annexure B read with Regulations 4(1)(g) & (h) of the Regulations have been established beyond doubt which attracts a penal action in terms of Section 104(4) of the Act. I have also given due attention to the ground presented by the AR to the said non-compliance, however, none of the ground seems to justify the non-adherence with the provisions of the Act and the Regulations. I, therefore, hereby, in terms of powers conferred under Section 104(4) of the Act read with read with S.R.O. 1545(I)/2019 dated December 06, 2019, impose a penalty of **Rs.100,000/- (Rupees One Hundred Thousand only)** on the Company on account of established default and advised it to meticulously adhere to the applicable legal framework in the future.

12. The Company is further advised to ensure the appointment of a qualified and competent CEO and individuals as directors in accordance with the relevant laws and regulations within 60 days of the date of this order and make necessary reporting to the relevant Division/Department of the Commission accordingly.

13. The Company is hereby directed to deposit the aforesaid fine in the designated bank account maintained in the name of Securities and Exchange Commission of Pakistan with MCB Bank Limited or United Bank Limited within thirty (30) days from the date of this Order and furnish receipted voucher issued in the name of the Commission for information and record.


20-01-2025
(Sohail Qadri)

Director / Head of Department
Adjudication Department-I

Announced:
January 20, 2025
Islamabad

