



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION

Before Commissioner (SCD)

In the matter of Show Cause Notice issued to NBP Fullerton Asset Management Limited under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984

Date of hearing:

September 28, 2016

Present (on behalf of NAFA):

i. Dr. Amjad Waheed (CEO)

Assisting the Commissioner (SCD)

i. Mr. Imran Inayat Butt (Executive Director)

ii. Mr. Javed Akhter Malik (Joint Director)

ORDER

This Order shall dispose of the proceeding initiated against NBP Fullerton Asset Management Limited (the "Company" or "NAFA" or "Respondent") through show cause notice (the "SCN") bearing No. SCD/AD-AMCW/ NAFA/04/22/2016 dated September 8, 2016 under section 282J (1) read with section 282M (1) of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are as follows:

- i. The Securities and Exchange Commission of Pakistan (the "SECP" or "Commission") conducted snap checks of the branches of Asset Management Companies ("AMCs") to ascertain compliance with Circular 26 of 2015 especially whether prospective investors are being informed or not by the sales staff about charging of no sales load in case of direct approach to AMCs for making investment in mutual funds.
- ii. Employee of SECP namely Mr. Muhammad Ali visited NAFA Regional Office located at - Noon Avenue, Canal Bank, Muslim Town, Lahore on August 12, 2016. He sought information from sales representative for making investment in mutual funds and was not informed that sales load shall not be applied to him considering the fact that he has directly approached the Company.
- iii. He opened an account with rupees ten thousand by investing in NAFA Stock Fund.
- iv. NAFA deducted front end load (FEL) of rupees two hundred and ninety one and sales tax of rupees thirty eight which was shown in the transaction statement sent to him by NAFA.

3. It was construed from the facts gathered that the Respondent, *prima facie*, has not made compliance to the requirement of Circular 26 of 2015. Consequently, the SCN was issued to the Respondent whereby it was called upon to show cause in writing as to why penal action may not be taken against it for the aforesaid contraventions. In response to the SCN, the Chief Executive Officer



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(CEO) of the Company through letter dated September 16, 2016 submitted its reply. With reference to contents of the SCN, a brief of submissions of the Respondent are reproduced below:

- i. *Circular 26 of 2015 was circulated to all regions on August 20, 2015 and was also covered in the presentation of Head of Audit during sales conference of NAFA held from October 7, 2015 to October 10, 2015.*
- ii. *Training session for the sales force was conducted by the management of NAFA on May 14, 2016 wherein the sales staff from all over Pakistan participated. In this training session, the sales staff was specifically advised to abide by the said circular.*
- iii. *NAFA has largest sales team of about 350 staff which share a portion of the sales load charged to the investor as commission. Despite management's clear instructions, some may opt to violate the respective Circular due to greed.*
- iv. *The reported instance of violation of the referred circular is an individual act of the sales staff involved and not any violation on part of the Respondent.*
- v. *The SECP inspector who invested with NAFA as walk-in client and was charged the FEL should have approached NAFA pursuant to receipt of letter by him which mentions that if an investor has any queries or concerns, he/she should feel free to contact NAFA at its toll free number or e-mail. Had the inspector approached NAFA, we would have simply reimbursed the load amount to him.*

4. A hearing in the matter was held on September 28, 2016 before the undersigned wherein Dr. Amjad Waheed (CEO) appeared on behalf of the Respondent and made verbal submissions mainly reiterating the earlier written submissions. The CEO also admitted their non-compliance to Circular 26 of 2015 and requested for a lenient view. The CEO also informed that FEL along with charges shall be reimbursed to the investor. He, further, apprised that the following additional measures shall be taken which would also act as deterrence so that such non compliances should not occur in future:

- i. Increasing training frequency of its sales team.
- ii. Conducting periodic mystery shopping.
- iii. Ensuring that standees and banners regarding non applicability of FEL are prominently displayed in each branch in both Urdu and English languages.
- iv. Code of Ethics and Declaration of Responsibility shall be signed by all the sales force that they have understood all the directions of the Commission and onus of any violation on their part may lead to adverse consequences for them.
- v. Warning letters shall be issued to the sales staff involved along with its supervisor and certain portion of the monthly salary shall be deducted to give a message to the entire sales team that this type of behavior is not acceptable.



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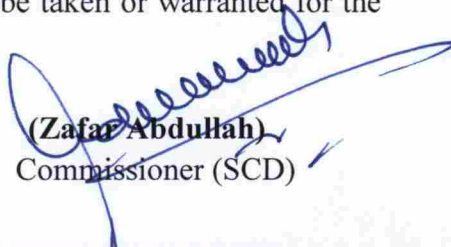
5. I have analyzed the facts of the case, relevant provisions of the Circular referred and the arguments put forth by the Respondent in writing as well as during the course of hearing. My observations are as under:

- i. The Respondent has admitted that compliance to the requirement of Circular 26 of 2015 has not been made in this case.
- ii. The plea that the reported instance of violation of the referred circular is an individual act of the sales staff involved and not any violation on part of the Respondent is not tenable as the Respondent is responsible for the acts and omissions of all persons including its employees to whom it may delegate any of its function in terms of Regulation 38 (2) (b) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 ("NBFC Regulations").
- iii. The argument that the investor should have approached the Respondent after receipt of letter and had the investor approached NAFA, the FEL would have been reimbursed is neither tenable nor acceptable as it is the responsibility of the Respondent to ensure that investors should have been informed about the directives of SECP pertaining to sales load at the time of investment.

6. Based on my observation at para 5 above, I am of the view that even though the Respondent has initiated additional measures and given firm commitment to avoid such instances in future and committed to reimburse the FEL to the investor, however, leniency on non-compliance towards requirement of Circular 26 of 2015 is not possible as safeguarding the investors' interest is paramount and supreme objective of SECP. Therefore, I hereby conclude the proceedings initiated under section 282J (1) read with section 282M (1) of the Ordinance by imposing an aggregate fine of Rs. 100,000/- (Rupees one hundred thousand only) on the Respondent. Moreover, in exercise of powers conferred under Section 282 D of the Ordinance, I hereby direct the Respondent to submit quarterly reports on the results of additional measures till June 30, 2017 and immediately reimburse the FEL to the investor if not already done.

7. 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 this Order and furnish receipted bank challan to SECP. In case of non-deposit of the penalties, proceedings for recovery of the fines as arrears of land revenue will be initiated.

8. This Order is issued without prejudice to any action, which may be taken or warranted for the above said defaults under any other provision of the law.


(Zafar Abdullah)
Commissioner (SCD)

Announced: October 25, 2016 at Islamabad.