



Corporate Supervision Department
Company Law Division

Before Abid Hussain – Executive Director

In the matter of

Fauji Fertilizer Company Limited - Provident Fund Trust

Number and date of notice:	No. CSD/ARN/453/2017-3443-47 dated April 24, 2017
Date of hearing:	June 5, 2017 & February 7, 2018
Present:	Mr. Muhammad Azhar Khan, Deputy Manager Finance, FFC Mr. Zahir Riaz, Orr Dignam & Co., Advocates Mr. Anjum Tanweer, Orr Dignam & Co., Advocates (Authorized Representatives)

ORDER

Under Section 227 and the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996 read with Section 229 & 476 of the Companies Ordinance, 1984

This Order shall dispose of the proceedings initiated against the Trustees (*the "Respondents"*) of Fauji Fertilizer Company Limited - Provident Fund Trust (*the "Trust"*) through Show Cause Notice (*the "SCN"*) dated April 24, 2017, issued under the provisions of Section 227 of the Companies Ordinance 1984 (*the "Ordinance"*) and the Employees' Provident Fund (Investment in Listed Securities) Rules, 1996 (*the "Rules"*).

2. The brief facts leading to the case are that the Trust vide its letter dated January 30, 2017, submitted the information regarding the investment made out of the Trust, in compliance with Rule 5 of the Rules. Review of the said information revealed that as at December 31, 2015, the Trust made investment of Rs 3,026.258 million in listed securities, which constituted 56.53% of the total size of the Fund which stood at Rs.5,636.791 million. This investment exceeded 30% threshold as stipulated in the Rules. Furthermore, Fauji Fertilizer Company Limited (*the "Company"*) made disclosure under



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Note 11.1 of the annual audited accounts for the year ended December 31, 2015 ("Accounts-2015") which is stated below:

"Investments out of the provident funds have been made in accordance with the provisions of section 227 of the Companies Ordinance, 1984 and the rules formulated for the purpose, except for the prescribed limit for listed securities."

3. In view of the foregoing, a SCN dated April 24, 2017 was issued to the Respondents, to show cause as to why penalty may not be imposed on them as provided in Rule 5 of the Rules and Section 229 of the Ordinance.

4. The Trust vide its letter dated May 4, 2017 in reply to the SCN, requested extension up to May 31, 2017 to submit the reply. Thereafter, the Trust submitted the reply to the SCN vide its letter dated May 17, 2017, brief of which is stating below:

- Trustees acted in good faith and have solely invested all amounts for the betterment of the members of the Trust. It is important to note that no loss has been caused to any member of the Trust on account of any investment in listed securities.
- Trust has taken steps in the year 2016 to reduce the investment in the listed securities to conform with the prescribed limits. This is evident in the Trust letter No. EF/SECP/01 dated January 30, 2017 in which the investment in the listed securities has been reduced to 30.66 % (Rs 2,185.024 million) against the size of the fund as at December 31, 2016 (Rs 7,127.025 million). In other words, after the repeal of 1996 Rules and notification of 2016 Rules the Trust is in transition in term of Rule 1(3) of the 2016 Rules.
- To further exemplify the Trust's good and bona fide we submit our unconditional commitment to act in accordance with the law and would request the SECP to take lenient view and not take any penal action against the Trust in the matter.



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5. In view of the submission of the Respondents, a hearing was fixed on June 5, 2017 and then on February 7, 2018, which was attended by Muhammad Azhar Khan, Deputy Manager Finance of the Company, Mr. Zahir Riaz of M/s Orr, Dignam & Co., Advocates and Mr. Anjum Tanweer of M/s Orr, Dignam & Co., Advocates (the "Authorized Representatives") who reiterated their written arguments in the hearing.

6. Before proceeding further, it is necessary to advert to the following relevant provisions of Ordinance and the Rules:

Rule 3 of the Rules states that:

"Where it is decided to make investment, out of the provident fund constituted for the employees of a company, in securities of the companies listed on any stock exchange in Pakistan, such investment shall be subject to the following conditions, namely:-

(i) *Total investment in listed securities shall not exceed thirty per cent of the provident fund"*

Rule 5 of the Rules provides that:

"whoever fails or refuses to comply with or contravenes any provision of these rules, or knowingly and willfully authorizes or permits such failure, refusal or contravention shall, in addition to any other liability under the ordinance, be also punishable with fine not exceeding two thousand rupees, and, in case of continuing failure, refusal or contravention to a further fine not exceeding one hundred rupees for every day after the first during which such contravention continues."

Section 229 of the Ordinance provides that:

"whoever contravenes or authorizes or permits the contravention of any of the provisions of section 227 shall be punished with a fine which may extend to five thousand rupees and shall also liable to pay the loss suffered by the employee on account of such contravention."



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7. In terms of the Commission's notification SRO 1003 (I)/2015 dated October 15, 2015, the powers to adjudicate cases under Section 237 of the Ordinance have been delegated to Executive Director (Corporate Supervision Department).

8. I have analyzed the facts of the case, relevant provisions of the Ordinance, and submissions made by the Respondents. I appreciate that the Trust made efforts to reduce the level of investment made in listed securities to conform with the provisions of Rule 3 of the Rules. The information provided by the Trust revealed that the investment in listed securities has been reduced from 56.53% (as on December 31, 2015) to 33.26% (as on December 31, 2016) reflecting positive commitment of the Respondents to comply with the provision of the Rules. Authorized Representatives also provided assurance that the investment in listed securities will be reduced up to the threshold of 30% of the size of the Fund as stipulated in the Rules.

9. Considering the above mentioned facts and keeping in view the satisfactory compliance history of the Company, I am of the view that the Trustees have made corrective efforts to conform to the relevant provisions of the Rules, which is depicted through reduction in balance of investment of the provident fund in the listed securities as on December 31, 2016. I, therefore, taking a lenient view of the matter, conclude the proceedings with a warning to the respondents with direction to ensure compliance of the requirements of the law in letter and spirit in future.

Abid Hussain
Executive Director
Corporate Supervision Department

Announced:
February 22, 2018
Islamabad