GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
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Islamabad, the September 19, 2023

NOTIFICATION

S.R.O. 1348 (I)/2023. – In exercise of the powers conferred by section 510 of the Companies Act, 2017 (XIX OF 2017) read with sub-clause (b) of clause (i) of sub-regulation (1) of regulation 10 of the Shariah Governance Regulation, 2023, the Securities and Exchange Commission of Pakistan is pleased to notify the following acceptable quantitative tolerance levels and other conditions for Shariah screening of securities and companies:

1. In the case of companies, whether listed or not: -

(a) For the purposes of sub-section (1) of Section 451 of the Companies Act, 2017, the following minimum acceptable quantitative tolerance levels for Shariah screening of shares of the companies, whether listed or not, shall be applied, while considered an application under regulation 4, in addition to the qualitative criteria and other conditions provided in the Shariah Governance Regulations, 2023.

(i) **The ratio of interest-bearing debt to total assets** should be less than 37%, i.e., the collective amount raised as a loan or debt on interest by the company, whether long-term or short-term, does not exceed thirty-seven percent of the total assets of the company on the reporting date.

For this purpose, interest bearing debt includes bonds, term finance certificates, commercial papers, conventional bank loans, finance lease, hire purchase, issuing preference shares, etc.;

(ii) **The ratio of non-Shariah-compliant investments to total assets** should be less than 33%, i.e., the total amount of non-Shariah-compliant investments by the company, whether short-, medium-, or long-term, shall not exceed thirty three percent of the total assets of the company on the reporting date.

For this purpose, non-Shariah compliant investments include interest bearing deposits, equity investments in non-Shariah compliant companies, investments in conventional mutual funds, conventional money market instruments, commercial paper, bonds, Pakistan investment bonds, foreign investment bonds, treasury bills, certificate of investments, certificates of deposits, term-finance certificates, defence saving certificates, national saving certificates, derivatives, etc.; and

(iii) **The ratio of non-Shariah-compliant income to total revenue** should be less than 5%, i.e., the amount of non-Shariah-compliant income should not exceed five percent of the total revenue of the company, irrespective of whether the revenue is generated by undertaking a prohibited activity, by ownership of a prohibited asset, or in some other way.

For this purpose, total revenue includes gross revenue plus any other revenue earned by the company; and non-Shariah compliant income includes income from gambling, income from interest based transactions, income from *gharar* based transactions i.e. derivatives, insurance claim reimbursement from a conventional insurance company, any penalty charged on late payment in credit sale, income from casinos, addictive drugs, alcohol, dividend income from above mentioned businesses or companies which have been declared non-Shariah compliant due to non-compliance to any of the mentioned criteria for Shariah compliance, etc.

(b) For the purposes of the transfer of shares of such companies due to sale or purchase,

(i) the ratio of illiquid assets to total assets should be at least 25%, and

(ii) the market price per share in the case of a listed company or the breakup price per share in the case of an unlisted company should be at least equal to or greater than net liquid assets per share on the reporting date.

Calculated as:

$$\text{Net Liquid Assets Per Share} = \frac{\text{Liquid Assets} - \text{Total Liabilities}}{\text{Total number of outstanding shares}}$$

(c) In case of non-compliance with the conditions stipulated in clause (b) above, on the date of transfer, a certificate from any registered Shariah advisor, providing therein a Shariah basis for the permissibility of the pricing and transferability of the shares of the unlisted company, shall be obtained. In the case of shares of listed companies, the responsibility to ensure Shariah compliance at the transfer of shares shall rest with the transacting parties.

(d) The Commission may, for reasons to be recorded in writing and subject to such conditions or restrictions as it may deem fit, on recommendation of the Shariah Advisory Committee, relax any of the requirements of this notification in case any difficulty arises in giving effect to any of the requirements of this regulation in a particular case or class of cases.

2. In the case of listed securities of companies

(a) For the purposes of sub-section (2) of Section 451 of the Companies Act, 2017, every person (e.g., index provider), other than the issuer, who claims that shares of a listed company are Shariah compliant, in addition to the qualitative criteria like nature of business of the said company and other conditions provided in the Shariah Governance Regulations, 2023, shall use the following minimum acceptable quantitative tolerance levels for Shariah screening of listed securities:

(i) **The ratio of interest-bearing debt to total assets** should be less than 37%, i.e., the collective amount raised as a loan or debt on interest by the company, whether long-term or short-term, does not exceed thirty-seven percent of the total assets of the company on the reporting date.

For this purpose, interest bearing debt includes bonds, term finance certificates, commercial papers, conventional bank loans, finance lease, hire purchase, issuing preference shares, etc.;

(ii) **The ratio of non-Shariah-compliant investments to total assets** should be less than 33%, i.e., the total amount of non-Shariah-compliant investments by the company, whether short, medium, or long-term, and other Shariah non-compliant investments, shall not exceed thirty three percent of the total assets of the company on the reporting date.
For this purpose, non-Shariah compliant investments include interest bearing deposits, equity investments in non-Shariah compliant companies, investments in conventional mutual funds, conventional money market instruments, commercial paper, bonds, Pakistan investment bonds, foreign investment bonds, treasury bills, certificate of investments, certificates of deposits, term-finance certificates, defence saving certificates, national saving certificates, derivatives, etc.; and

(iii) **The ratio of non-Shariah-compliant income to total revenue** should be less than 5%, i.e., the amount of non-Shariah-compliant income should not exceed five percent of the total revenue of the company, irrespective of whether the revenue is generated by undertaking a prohibited activity, by ownership of a prohibited asset, or in some other way.

For this purpose, total revenue includes gross revenue plus any other revenue earned by the company; and non-Shariah compliant income includes income from gambling, income from interest based transactions, income from gharar based transactions i.e. derivatives, insurance claim reimbursement from a conventional insurance company, any penalty charged on late payment in credit sale, income from casinos, addictive drugs, alcohol, dividend income from above mentioned businesses or companies which have been declared non-Shariah compliant due to non-compliance to any of the mentioned criteria for Shariah compliance, etc.

(b) For the purposes of trading at the securities exchange and the transfer of shares of such companies due to sale or purchase,

(i) the ratio of illiquid assets to total assets should be at least 25%, and

(ii) the market price per share in the case of a listed company or the breakup price per share in the case of an unlisted company should be at least equal to or greater than net liquid assets per share on the reporting date.

Calculated as:

$$\text{Net Liquid Assets Per Share} = \frac{\text{Liquid Assets} - \text{Total Liabilities}}{\text{Total number of outstanding shares}}$$

(c) In case of non-compliance with the conditions stipulated in clause (b) above, on the date of transfer, the responsibility to ensure Shariah compliance at the transfer of shares shall rest with the transacting parties, who may seek guidance from Shariah advisor.

(d) A person that has been granted approval by the Commission under regulation 9 of the Shariah Governance Regulations, 2023, shall prepare an initial list of Shariah-compliant shares in accordance with the above-mentioned criteria.

(e) In cases of legitimate reasons, deviation may be allowed from the aforementioned criteria for the preparation of the initial list of Shariah-compliant shares, subject to the following additional conditions:

(i) prior approval from the Shariah supervisory board or the Shariah advisor, of the person as mentioned in clause (a), as the case may be, shall be obtained;

(ii) the Shariah supervisory board or the Shariah advisor, as the case may be, shall record the reasons and the Shariah basis before granting such approval; and

(iii) Complete disclosure of (i) and (ii) above shall be made through the official website of the person granted approval by the Commission under regulation 9 of the Shariah Governance Regulations, 2023, and through other suitable means in a timely manner.

(f) For the purposes of clause (e) above, special consideration may be given to the companies where the company

(i) is engaged in technology, services, or other businesses that do not require large infrastructure;

(ii) has circular debt or any other similar debt due to government policy or practice;

(iii) is in the process of listing and public offering, and its total assets need to be adjusted to reflect the expected sum of money raised from the public offering.

(iv) is in breach of any of the minimum acceptable quantitative tolerance levels temporarily and provides its commitments to rectify the breach within a maximum of the next two quarters.

(g) In the event of the exclusion of any security from the initial list due to a breach of any of the minimum acceptable quantitative tolerance levels for Shariah screening, investors may retain previously purchased securities until Shariah status changes. If the company remains non-compliant after the next two quarters, the investor or company may disinvest such security(s) within the next 30 days.

(h) The Commission may, for reasons to be recorded in writing and subject to such conditions or restrictions as it may deem fit, on recommendation of the Shariah Advisory Committee, relax any of the requirements of this notification in case any difficulty arises in giving effect to any of the requirements of this regulation in a particular case or class of cases.

3. **In the case of unlisted securities: -** For the purposes of sub-section (2) of Section 451 of the Companies Act, 2017, any person other than the issuer who claims that any unlisted security is Shariah compliant shall obtain approval of the Commission under regulation 9 and clause (a), sub-regulation (1) of 11 of the Shariah Governance Regulations, 2023.

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(Bilal Rasul)
Secretary to the Commission