



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
POLICY, REGULATION AND DEVELOPMENT DEPARTMENT

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 the violation of Regulation 38 (2) (s) and Regulation 66 A (b), (c) &(d) of Non-Banking Finance Companies Regulations 2008 and Clause (c) of Circular 26 of 2015

Date of hearing:

March 27, 2019

Present (on behalf of Al-Meezan
Investment Limited)

- i. Mr. Mohammad Shoaib, CEO
- ii. Mr. Salman Muslim, Head of Internal Audit & Compliance
- iii. Mr. Muhammad Ismail, Head of Compliance Meezan Bank Ltd

Assisting the Commissioner (SCD)

- i. Ms. Bushra Aslam, Executive Director
- ii. Ms. Tanzila Nisar Mirza, Additional Director

ORDER

This Order shall dispose of proceedings against Al-Meezan Investment Management Limited ("AMIML", 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/ADJUDICATION/AMIML/276/2019 dated February 01, 2019 under Section 282J (1) read with Section 282M (1) of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are that Ms. Shagufta Kanwal (the "Complainant") had lodged a complaint on October 24, 2018 alleging that she had invested an amount of Rs.5 million on October 3, 2017 in funds managed by the Company. Rs.4 million were invested in Meezan Balanced Fund (MBF) while Rs.1 million was invested in Meezan Sovereign Fund (MSF). Further, an amount of Rs.94,020 was charged as front-end load on the said investment. However when the Complainant proceeded for redemption, the investment amount had declined to Rs.4.634 million as on October 12, 2018. The Complainant did not receive any account statement until September 2018.

3. Upon receipt of complaint, the matter was referred to the Supervision and Enforcement Department of Specialized Companies Division (the "Department"). The Department advised the company to provide complete record related to the subject investment, vide its email dated November 05, 2018.

4. The Company in its reply vide email dated November 6, 2018 informed that the Complainant has not provided her email address due to which the e-statements were not delivered to her, which are normally sent to the investors through email by the Company. Relevant documents in this regard were shared with the Commission. On perusal of the relevant record provided by the Company, the Department came up with following observations:

- i. The risk profile form shared by the Complainant and the Company was left blank by the distributor of AMIML. The blank risk profile form confirmed that AMIML had not conducted suitability assessment for the investor.
- ii. As per the conversation of the Complainant and her husband (Mr. Waheed Akhtar) with Mr. Noman Bhatti (branch manager) through WhatsApp, Mr. Noman Bhatti had committed that minimum 10% return can be earned on the aggregate investment. He further emphasized that no one had incurred loss on such investments.
- iii. The welcome letter sent to the Complainant did not mention the net amount invested in MBF and MSF.
- iv. The Complainant received only one statement from the distributor of AMIML that too was after a number of visits/requests to the branch. Further, the account statement was not sent to the investor at her registered mailing address as required in the regulatory framework.
- v. The Company had marked the account status as 'DND' (Do not dispatch) without any direct instruction from the investor.
- vi. The Company failed to discharge its obligation of ensuring the suitability of collective investment scheme for the investor.

5. Subsequently, the Company was called upon to show cause in writing as to why penal action should not be taken against the Company, under section 282J (1) read with Section 282M (1) of the Ordinance in violation of Regulation 38 (2) (s), Regulation 66 A (b) (c) & (d) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the "Regulations") along with Clause (c) of Circular 26 of 2015.

6. A written reply was received vide letter dated February 14, 2019 from the Company, wherein the contentions made in the SCN were categorically addressed. The following arguments were provided in the reply;

- i. The AMC recognized the responsibility of distributor to get the risk profile form filled, but the responsibility also lies with the investor not to sign any blank forms. It was the responsibility of the both the investor and the distributor to act vigilantly. The forms such as basic fact sheet provided to the investor clearly specified the risk inherent in MBF, as it invests in equity and debt securities.
- ii. The moderate risk level of MBF and low risk level of MSF had been elaborated to the investor/Complainant in the call back confirmation, which is performed as a standard practice. Upon inquiry by the customer regarding 10% profit on MBF medium risk fund, the agent did not confirm this profit rate and requested the customer to contact the branch upon which she agreed.

- iii. A welcome letter was sent to the complainant on October 6, 2018 that stated the gross amount of investment and load charged. The net investment amount mentioned in SCN could be arrived at by deducting the load charged from gross amount as contained in the welcome letter. The investment acknowledgment letter is sent to every customer within 48 hours as per regulatory requirements. However, in this case, it could not be sent because the account was marked DND on the Complainant's verbal instructions.
- iv. Since the account was marked DND the statements could not be sent either. They were provided as and when requested by the customer. However, it may be pointed out that the welcome letter sent to the customer contains information on multiple sources of communication to request account statement.
- v. The Company has shared the transcript of one of the WhatsApp conversations in which no firm commitment had been given; rather the uncertainty of such schemes had been explained. However, it is difficult to establish something conclusively as we are not aware of the context of the WhatsApp conversation. Apparently, the responses by the distributor must have been in context of some questions asked by the customer. However, in the transcript there is no firm commitment as the words "suppose", "past performance" and "agar" have been used. In the absence of knowing the exact context of the conversation, Commission is requested not to take the transcript at face value.
- vi. The allegation of mis-selling in the show cause notice is denied. We have been constantly engaged with the customer ever since the complaint was received. Acting in good faith and to facilitate the customer and without any prejudice to any liability on our part, we have compensated full loss incurred by the customer. It is pertinent to mention that the Company in order to maintain a business relationship offered refund of Sales Load to the Complainant subject to unconditional withdrawal of her complaint and issuing a satisfaction note in favor of AMIML. The Complainant refused this offer upon which the AMIML acting in good faith offered to compensate full loss incurred to her to which the Complainant agreed and as a result issued a satisfaction note in the Company's favor vide letter dated February 8, 2019.

7. The hearing in the matter took place on March 27, 2019 wherein Mr. Mohammad Shoaib, Chief Executive Officer, Mr. Muhammad Ismail, Head of Compliance and Mr. Salman Muslim, Head of Internal Audit appeared on behalf of the Company before the Commissioner (SCD). They reiterated the facts stated in the written reply. The Respondents further submitted that they acknowledge that despite all efforts towards training the sales staff, instances of mis-selling do occur, which is a challenge. Nevertheless, the AMC is trying its best to improve its systems further and is focusing more on training the sales staff. Moreover, the DND list has been revisited to verify that proper written instructions are present in the record.

8. The Company has *prima facie* violated Regulation 38 (2) (s), Regulation 66 A (b), (c) & (d) of the Regulations and Clause (c) of Circular 26 of 2015.

Relevant Provisions of Law:

S. No.	Relevant Provision of Law
i.	<i>Regulation 38 (2) (s) provides that; An Asset Management Company shall: (s) send an investment account statement to each unit/certificate holder on the registered mailing address provided by the unit holder at least once in a year. An Asset Management Company shall provide the account statement to the investors within 7 working days from the receipt of such request.</i>
ii.	<i>Regulation 66 A (b) provides; An Asset Management Company shall enter into a written agreement with the distributors clearly stating the terms and conditions for avoidance of fraud and mis-selling of Collective Investment Scheme.</i>
iii.	<i>Regulation 66 A (c) provides; An Asset Management Company and distributor shall not: i. involve either directly or indirectly in the mis-selling of Collective investment schemes; ii. sell units of Collective Investment Scheme directly or indirectly by making a false or misleading statement; iii. sell units of Collective Investment Scheme directly or indirectly by concealing or omitting material facts of the scheme; and iv. sell units of Collective Investment Scheme directly or indirectly by concealing the risk factors associated with the scheme.</i>
iv.	<i>Regulation 66 A (d) provides that; An Asset Management Company or distributor shall take reasonable care to ensure suitability of the scheme to the investor.</i>
v.	<i>Clause (c) of Circular 26 of 2015, which provides as under; The AMC shall ensure following complete disclosures along with the requisite documents: (c) Issue to the unit holder, within 48 hours of the realization of funds, breakup of the total amount received from the unit holder, sales load charged and net amount invested in the fund on his behalf;</i>

9. I have examined the facts of the case, considered the written responses submitted along with documentary evidences placed on record and the arguments put forth by the Respondent Company. I am of the view that the arguments submitted by AMIML are not tenable on the following grounds;

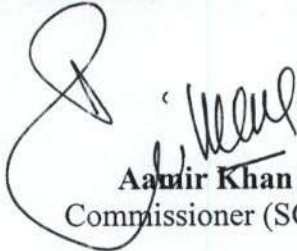
- i. The argument is not satisfactory. It is the key responsibility of a distributor to train its sales staff with respect to the products. In the instant case, the lady was a housewife and cannot be expected to be completely conversant with mutual funds. In any case, for a first time investor it is challenging to understand the dynamics of mutual funds without adequate support and guidance from the seller. Had the sales agent acted with diligence, he would have explained the product and its associated risks and would have advised the complainant to fill out and sign the form, before accepting it from her. In my view, since the distributor is selling the products of the AMC, it is imperative to ensure that the sales staff are fully equipped with complete information pertaining to all the products the AMC is offering. The sales agents must be able to guide the investors regarding the suitability of the products being pitched, in line with the risk profile of that particular investor.
- ii. The Call Back Confirmation (CBC) also left much to be desired. The CBC should be able to answer questions pertaining to the product being offered to the investor. In this

case, the person making the CBC did not address the question regarding rate of return of the fund and failed to share historical trends or underlying risk. He instead referred the customer to the branch. Moreover, in my opinion scripting of CBC should be standardized, which is a practice in various jurisdictions, locally and internationally.

- iii. A more professional attitude should have been adopted towards marking the customer account as DND instead of doing the same on the basis of verbal instructions of the customer. This reflects failure of the operational procedures of the AMC.
- iv. The words and phrases referred to in the WhatsApp conversation seem to have created confusion and doubts by the person conversing/chatting with the complainant. There is little clarity in the conversation and on balance, the complainant is within her rights to claim that she was not adequately educated prior to her investment decision and ambiguity must be viewed as a failing on part of the sales agent.
- v. Compensating the loss incurred by the complainant, does not imply that the incidence of mis-selling did not occur. In order to lock in the sale, the practice of some sales agents to highlight the returns more without highlighting the associated risks and explaining potential downside of investing in mutual funds would be a case of mis-selling. In the instant case, the complainant had invested an amount through Mr. Noman Bhatti, Branch Manager, Malir Cantonment Branch, Meezan Bank Limited (the Distributor of AMIML).
- vi. In my opinion sales and marketing of mutual funds is a specialized area and the concerned branch manager appeared to have not been trained for this line of work.

It is hence concluded that the arguments provided by AMIML are not plausible due to the reasons mentioned above. However, by taking a lenient view in this instance, owing to the compensation made to the complainant by the AMC and assurance by the Company that it will improve its shortcomings, AMIML is hereby warned to ensure comprehensive training for its staff as well as distributor's sales staff and take strict disciplinary action against those who are found to be mis-selling. Moreover, AMIML must ensure strict compliance with the applicable regulatory framework in future.

10. This order is 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.


Amir Khan
Commissioner (SCD)

Announced on May 03, 2019
Islamabad.