SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

In the matter of

Islamic Investment Bank Limited - Show Cause Notice under Section 282 F of the Companies Ordinance, 1984

Dates of hearing:	15, 22, 26 and 27 July 2004
Date of Order:	10 August 2004
Before:	Abdul Rehman Qureshi, Commissioner Shahid Ghaffar, Commissioner Mohammad Hayat Jasra, Executive Director Ejaz Ishaq Khan, Executive Director
Present:	Mr. Umar Ata Bandyal, Advocate Mr. Tariq Khokhar, Advocate Mr. Nadeem Anwar, CEO, IIBL

This order will dispose of the proceedings commenced with the Show Cause Notice dated 23.4.04 issued under Section 282-F of the Companies Ordinance, 1984 ("Show Cause Notice" or "SCN") to Islamic Investment Bank Limited and its directors (hereinafter collectively referred to as "IIBL"), calling upon them to show cause as to why the board of directors should not be superseded for the reasons and on the grounds mentioned in the SCN.

Right from the outset, IIBL launched legal counter measures against the SCN. The history is short but extensive, but need not be gone into for the purposes of this order. Suffice it to say that pursuant to the order dated 5.7.2004 passed by the Hon'ble Lahore High Court, Rawalpindi Bench, in Writ Petition 1851/2004, the present committee was constituted to look into the affairs of IIBL and to dispose of the SCN proceedings.

The case made out in the SCN for IIBL to answer can be segregated into two broad categories, namely, (a) a long list of flagrant violations by IIBL of the law governing its business and affairs, and (b) the trend of serious deterioration of IIBL's financial condition for over seven years. Of course the two are not necessarily separable and in fact run into each other. A company's management callous to the legal requirements could very well be the cause of the ruin of financial affairs of that company. However, the alternate scenarios of a financially insolvent company with a legally compliant management or a financially healthy company with a legally delinquent management are equally possible. In the instant case, both the financial malaise of IIBL and the flagrant violations of law by its

management are relied on in the SCN as the grounds for superseding its board of directors unless cause to the contrary was shown by IIBL to the satisfaction of the Securities and Exchange Commission of Pakistan ("Commission").

IIBL filed its first written reply to the SCN on 10.5.2004 ("First Reply"). During the course of hearing, IIBL made oral submissions through its counsel which were then reduced into writing and filed on 4.8.2004 ("Second Reply"). We have perused the SCN, the First Reply, the Second Reply, our notes of the proceedings and oral submissions by learned counsel, the accounts of IIBL for the year ended 31.12.2003 ("FY-03 Accounts") and other material on record.

Violations of law

The regulation of non-banking financial institutions was carried out by the State Bank of Pakistan ("SBP") before the Commission became vested with this regulatory responsibility on 15.11.2002 by virtue of the Companies (Amendment) Ordinance, 2002. The said date for convenience is hereinafter referred to as the "cut-off date". Through the said amendments, the non-banking financial institutions were as a composite category renamed as non-banking finance companies ("NBFC"). Prior to the cut-off date, the SBP regulated the non-banking finance companies including IIBL under the Banking Companies Ordinance, 1962 ("BCO"), read with Rules of Business for Non-Bank Financial Institutions ("SBP NBFI Rules"). After the cut-off date, the Commission regulates the affairs of NBFCs under the Companies Ordinance, 1984 ("Ordinance"), the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 ("SECP NBFC Rules") and the Prudential Regulations for Non-Banking Finance Companies ("SECP PRs").

The list of legal violations by IIBL stated in the SCN comprises of violations both before and after the cut-off date. Most of the significant violations are of a recurring nature and continue to be violations as of today for being prohibited under the current legal regime administered by the Commission, regardless of the first date of their commission. This is a significant matter, as learned counsel for IIBL purported to argue that violations of law by IIBL prior to the cut-off date were not taken cognizance of by SBP and therefore ought not to form the basis of regulatory action by the Commission. We do not agree with this submission. It is established law that no person can claim any vested right in a particular forum: Moulla vs. The State, PLD 1981 Karachi 745 (DB). This legal principle, coupled with the fact that most of the violations which occurred before the cut-off date have not been rectified and continue in present, give ample authority to the Commission to take cognizance of such violations.

IIBL has not established any worthwhile defence to the allegations of legal violations. In fact, the evidence emerging from the inspection reports of the SBP and the reports of the statutory auditors mentioned in the SCN is overwhelming for the conclusion that such violations were in fact committed and continue as of today.

Amongst the long list, the significant violations and instances of material non-compliance with mandatory legal requirements specifically discussed at length during the course of hearing are the following:

i) *Negative equity of IIBL – being in violation of Rule 5(2)(b)(i) of the COMMISSION NBFC Rules*

In order to qualify for a licence to undertake investment finance services, IIBL is required under law to have equity of Rupees 300 million. The material on record indicates that a like requirement under the SBP NBFI Rules and the directives issued from time to time by the SBP were not complied with by IIBL for a significant number of years, leading SBP to cause the Commission to issue a show-cause notice dated 24.10.2001 for winding-up IIBL. However, it now transpires that the SBP issued another letter dated 12.11.2001 allowing IIBL to meet the minimum equity requirement by 1.1.2003. It is stated on this basis that the winding-up notice was merely a 'stick' whereas SBP was amenable to revival measures by IIBL. Learned counsel for IIBL further referred to eight letters dated 27.1.2003, 30.4.2003, 12.5.2003, 11.6.2003, 19.6.2003, 15.9.2003, 24.9.2003 and 22.4.2003 written to the Commission with the aim to propose a rehabilitation plan and for injection of fresh equity in the bank for compliance with minimum capital requirements. Learned counsel stated that none of these communications were replied to by the Commission, and applications for injection of fresh equity were declined on the grounds that a show-cause notice for winding-up was pending against IIBL. It was argued on this premise that by its inaction the Commission on the one hand encouraged IIBL to believe that it may continue its operations and on the other made it impossible for IIBL to improve its equity.

On perusal of the record we come to the conclusion that the proposed equity injection by IIBL for which the permission was declined by the Commission would have been wholly insufficient to meet the legal minimum equity requirement of Rupees 300 million. We also note that subsequent to the rejection of its first request for injection of fresh equity on the grounds that winding-up proceedings against IIBL were pending, IIBL again moved for permission by the Commission in this regard. However, IIBL failed to provide the information sought by the Commission vide its letter dated 2.8.2002, which led to rejection of the application vide this Commission's letter dated 8.7.2003; the second rejection was on account of IIBL's own failure to provide the requisite information. We do not countenance the argument on the analogy of estoppel as purported to be argued by the learned counsel, as there cannot be any estoppel by representation or by silence against a mandatory requirement of law. It is beyond question that at all times when the said applications for injection of fresh equity were being made, IIBL was practically insolvent, its current liabilities were far in excess of its current assets, its own statutory auditors had qualified the audit reports for consecutive years on 'going concern assumption' basis, and IIBL

was therefore (and still remains) a case fit for winding-up under the principles and law declared by the Superior Courts.

The FY-03 Accounts reveal that IIBL is a long distance away from the required minimum equity of Rupees 300 million. In the SCN, in WP 1851/2004, as well as during the hearing the sanctity of these accounts as 'audited' was an issue of debate for not having been signed by auditors. Stepping aside this issue (for which penalties are independently provided under law), the FY-03 Accounts 'initialed' by the auditors indicate the following status of equity:

a) Without taking the qualifications expressed by the auditors into account, the negative equity comes to Rupees 507 million, necessitating injection of fresh equity of Rupees 807 million to meet the minimum equity requirement of Rupees 300 million.

b) Taking the qualifications expressed by the auditors into account, the negative equity comes to Rupees 840 million, necessitating injection of fresh equity of Rupees 1,140 million to meet the minimum equity requirement of Rupees 300 million.

When questioned as to why the qualifications by the auditors should not be taken into account while determining the real status of the financial affairs of IIBL, learned counsel argued, firstly, that the Commission should not substitute itself for the auditors and, secondly, the qualifications related to 'provisioning' for the matters stated in the qualifications and, provisioning being a matter of prudence only, did not impact the true financial position of IIBL. We find both these submissions without merit. To address the first submission, reference is made to the following paragraphs of the Auditing Standard 13 (The Auditors' Report on Financial Statements, Members' Handbook, Institute of Chartered Accountants of Pakistan):

"37. **A *qualified opinion* should be expressed when the auditor concludes that an unqualified opinion cannot be expressed but the effect of any disagreement with management, or limitation on scope is not so material and pervasive as to require an adverse opinion or a disclaimer of opinion. A qualified opinion should be expressed as being 'except for' the effects of the matter to which the qualification relates.**

45. The auditor may disagree with management about matters such as the acceptability of accounting policies selected, the method of their application, or the adequacy of disclosures in the financial statements. **If such disagreements are material to the financial statements, the auditor should express a qualified or an adverse opinion.**"

(text in bold is as provided in original)

Accordingly, the three 'exceptions' stated by the auditors in the FY-03 Accounts, though not material to the extent for the auditors to give an adverse opinion or disclaim their opinion, were material enough to cause disagreement with the management of IIBL and for the auditors to make their opinion 'subject to' those exceptions. Although the Commission does not substitute itself for the auditors, there can be no objection if in analysis of the financial statements the impact of the 'exceptions' is taken into account; this is the standard practice anyway.

Regarding the second argument, the provisioning is not just a matter of prudence; it is integral to the financial statements giving a 'true and fair view' of the financial affairs of the company. Learned counsel has with one swoop purported to discard the wisdom and rationale behind provisioning applied under all norms and standards of accounting and mandated under law. We need say no more on this.

We cannot but express our grave doubts on the actual profit being claimed in the FY-03 Accounts, as it stands wiped out if the qualifications of auditors are even partially taken into account. The explanations given in the Directors' report in respect of these qualifications are mere puffs, generalities and do not inspire any credence. If such were the explanations offered to the auditors, it is no surprise they did not agree with the management. What is surprising in fact is why the auditors proceeded to agree to the profit figures of IIBL despite these significant qualifications.

Keeping the afore-said in view, we find that IIBL is in material breach of Rule 5(2)(b)(i) of the SECP NBFC Rules.

ii) *<u>Investment in equities /capital market operations in excess of the liquid net worth of IIBL in violation of Rule 15 of the COMMISSION NBFC Rules</u>*

It is common ground that the liquid net worth of IIBL has been negative for the past several years, and continues to be so. However, IIBL has invested heavily in equities in disregard of the legal prohibition under Rule 15 (and its predecessor rules). It was stated for IIBL that such operations have helped the bank to survive and therefore must be condoned. This submission is frightful, and is tantamount to justifying violations of law for beneficial consequences. This so-called beneficial consequence is also purely fortuitous given the up-swing in the stock market. To countenance such submission will lead to the odd conclusion that just what is intended by the Rule, that is, to allow a NBFC to invest <u>only</u> its own funds in risky capital market operations, should be turned on its head by permitting a NBFC in financial distress to play fast and lose with its depositors' money. We are surprised at this submission and reject it outright as being unworthy of consideration.

We accordingly find that IIBL is in violation of Rule 15 of the SECP NBFC Rules.

iii) *Investment in real estate in violation of Rule 13(6) of SBP NBFI Rules and Regulation 7(5) of Part II of SECP PRs*

IIBL invested heavily in real estate and continues to own real estate in violation of the afore-stated legal provisions, details whereof are set out in the SCN. During the hearing, IIBL purported to justify such investments with assertions of profits on disposal. As already discussed above, beneficial consequences do not justify non-compliance with mandatory legal provisions. However, despite repeated enquiries, IIBL failed to satisfy us about the true state of affairs. The Sale Agreement placed on record with the Second Reply does not inspire confidence in it being an 'arms' length' and a genuine transaction, for being apparently a transaction at undervalue with favourable terms for the vendee. The connected matter pertaining to the US Dollar Bearer Bonds identified in the SCN and further deliberated upon during the hearing also remains unresolved and we remain unsatisfied with the explanations offered by IIBL. It is not possible for us to assume an investigative role into these transactions. Suffice it to say that all these transactions appear to be extremely shady and call for a deeper probe by the Commission.

iv) *Deposit taking despite below investment grade credit rating*

Rule 12 (1)(c) of the SECP NBFC Rules prohibits deposit taking by a NBFC unless it has obtained credit rating of minimum investment grade. This matter was discussed at some length during the hearing. It is an admitted fact that IIBL's credit rating would be below investment grade. However, IIBL continues to raise deposits in flagrant violation of this Rule. No defence in this respect was advanced by IIBL. Accordingly, IIBL is in violation of the afore-said Rule.

We accordingly find IIBL to be in continuing violation of the above cited legal provisions. There is yet a long list of other violations which may be investigated and dealt with separately under the relevant provisions of law.

The Financial Condition and Future of IIBL

Far more significantly, the case stated in SCN relates to the financial position of IIBL having deteriorated consistently for the last several years, without any reasonable expectation of recovery. The case made out in SCN is based on annual inspection reports of the SBP from 1997 to 2001, the adverse and 'going concern assumption' opinions of statutory auditors of IIBL for the years ended 31.12. 2001 and 2002 and the qualified opinion with 'going concern assumption' for the year ended 31.12.2003. The SCN also refers to the inspection report of the Commission dated 5.3.2003, but we do not take its results into account for the reason that IIBL has claimed never to have seen that report and given an opportunity to comment thereon. Finally, the SCN relying on the FY-03 Accounts makes out the case that the actual financial position of IIBL has deteriorated abysmally.

The mismanagement of IIBL's financial affairs is evident from perusal of the financial statements of IIBL and the inspection reports of SBP. For instance, the trend of fresh borrowings at high financing cost to retire existing liabilities led to a debt trap which kept spiraling upwards year after year. Prior credit appraisals for lending were rarely carried out. It appears that no risk management policies or manuals were in force. Unusually high and unsustainable returns on deposits were offered. Other like examples are on record. During the hearing IIBL did not contest the allegations of mismanagement; in fact, these were admitted by stating that the revival measures now being proposed were targeted at removing the above-mentioned and other instances of mismanagement noted in the SBP inspection reports and the SCN.

IIBL had obviously no answer when confronted with the question as to why its managements' attempts at playing down the financial results should be given any credence in view of the consistent adverse reports of the SBP as well as its own auditors. However, IIBL purported to make out a case as to the turn-around in its financial fortunes, primarily with reference to the progressive reduction in its pre-tax losses since 2001 culminating in the after-tax profit of Rs. 59 million reported in the FY-03 Accounts. As already discussed hereinabove, we have serious reservations about the existence of profit in view of the auditors' qualifications. The grave financial situation is further compounded by the huge gap between its liabilities and the sources available to discharge and provide for these liabilities. The following gaping mismatch between its financial assets and financial liabilities as per its FY-03 Accounts indicates that the financial collapse of IIBL has already occurred:

Total Financial Assets	2,424.92 (million Rs.)
Total Financial Liabilities	(3,422.66)
Gap	(997.74)
Interest Bearing Financial Assets	927.67
Interest Bearing Financial Liabilities	(3,204.02)
Gap	(2,276.35)
Non-interest bearing Financial Assets	1,497.25
Non- interest bearing Financial Liabilities	(218.64)
Gap	1,278.61

It also appears that the non-interest bearing financial assets comprise of assets a significant portion of which was acquired by violating the rules of the game or represents receivables and the like which have been qualified in serious terms by the auditors. Such assets also comprise of 'expectations' of recoveries as opposed to actual recoveries.

Despite this hopeless scenario, IIBL has come forward with earnest pleas for opportunity to revive the bank. While the salient features of the proposal for revival have varied over time as well as during the course of the proceedings, the one placed on record is dated 20.7.2004, read with the proposed measures stated at pages 20 to 21 of the Second Reply (together referred to as the "Revival

Package"). The quantifiable features of the Revival Package are relevant and are reproduced below:

i) Injection of fresh equity of Rs. 516 million by 31.12.2004, comprising of rights issue of Rs. 266 million and preference shares of Rs.250 million;

ii) Capital adequacy limit will be met by 31.12.2005;

iii) The total liabilities including deposits will be capped at the level stated in the FY-03 Accounts;

iv) Weighted average cost of funds will not exceed the benchmark stated in the FY-03 Accounts; and

v) The stock-market portfolio stated in the FY-03 Accounts will not be exceeded.

In support of its Revival Package, IIBL's case before the Committee has focused on the following main submissions:

i) Segregation of the financial affairs of IIBL into two time segments – one before the year 2003, and the other after;

ii) Segregation of the regulatory and legal compliance status by IIBL into two time segments, one before the cut-off date and the other after;

iii) Despite having the powers to this effect under the BCO, the SBP did not take any steps to remove the board of IIBL despite knowledge of legal violations and deteriorating financial position of IIBL. The SBP caused the Commission to issue the winding-up notice while at the same time gave over one year to IIBL to set its affairs in order vide its letter dated 24.11.2001, which means that the SBP was working with IIBL towards making it viable;

iv) While accepting the fact that IIBL had violated various legal provisions, it was stated that at the same time it was in constant touch with the Commission regarding its revival package. In all fairness, any action plan should have been considered and if at all it was not acceptable to the Commission, it should have been rejected with reasons and communicated to IIBL. This was not done; rather, a show-cause notice was issued for superseding the Board; and

v) IIBL be given all relaxations and exemptions from the legal provisions as may be necessary for it to implement the Revival Package.

Learned counsel for IIBL ably presented a case which in essence pleads for the Commission to ignore the past, hold IIBL's hand and assist it in rehabilitating itself, and award it not only a licence without compliance with the mandatory legal provisions, but also grant all exemptions as may be required for it to continue as at

present including by engaging in capital market operations, raising deposits despite being rated below investment grade, and others.

In our view, to accept IIBL's Revival Package as it is and let it be free to go about its business as at present would tantamount to injustice to the stakeholders in IIBL as well as to the industry at large, and could very well be a case of violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, which postulates equal treatment under law of all persons. When questioned as to the reasonableness of exercise of discretion under Rule 84 of the SECP NBFC Rules in favour of IIBL, learned counsel relying on the doctrine of substantial compliance and citing PLD 1963 SC 382 and PLD 1989 SC 222 purported to argue that the rules were to be treated as 'stepping stones' and not 'stumbling blocks' for those administered under the rules. The doctrine of 'substantial compliance' is well acknowledged, but it is hard to see how this doctrine is applicable in this case. It is not a question of a shortfall of some million Rupees in meeting the minimum capital requirement, an errant investment in equities or invitation of deposits under a borderline investment grade rating; it is, among other significant violations, a case of negative equity, a deliberate and planned significant portfolio of equity investments and without investment grade credit rating. If anything, this is a case of substantial non-compliance and not the other way round.

We would have had no hesitation in rejecting IIBL's plea outrightly, were it not for the fact that the winding-up notice was not actively pursued for over two years and the concerned Division did not respond to several communications by IIBL. Citing 1998 SCMR 2268 (at page 2277) and 1998 SCMR 2419, learned counsel argued vehemently that the Commission, by not being proactive, did not advance the objective of the statutory enactments and, further, that being reactive only, the Commission disregarded the modern jurisprudence which views regulatory organizations as facilitators and not policemen. The argument is not without force. Although the responsibility for the present state of affairs of IIBL lies squarely on its management, the afore-said inaction certainly did not improve the matters, and neither did the SBP's encouragement to IIBL in parallel with the winding-up proceedings initiated at SBP's instance. At all times, and even as of today, the financial condition of IIBL has all the trappings identified by the Superior Courts as circumstances on which a company should be wound-up. We are congisant that the consideration in not pursuing the liquidation route actively might have had been the inordinate legal and procedural delays which rob the liquidation proceedings of their efficacy and result in dissipation of the available assets away from the deserving stakeholders. Though easier said than done (and more so in hindsight), perhaps the preferable course of action might have had been to engage IIBL actively and to put the brakes on its dubious activities for which ample legal powers existed with the Commission.

Even now the SCN makes out a case for supersession of the board (with the winding-up proceedings continuing in parallel). The person or body of persons replacing the board is for convenience hereinafter referred to as the 'administrator'. The administrator, besides acting as the board, may be given several additional tasks to perform which may only be determined once his terms of reference are written. Such administrator could be asked to look into the financial affairs of IIBL to ascertain the true position, to determine whether the bank should continue to exist at all as well as to ensure that whatever assets remain with the bank are not

siphoned-off and remain available to satisfy IIBL's obligations to the depositors and investors on a pro rata basis.

We would indeed have inclined to agree to the route of appointment of administrator being adopted but for sub-section (4) of Section 282F of the Ordinance, which provides immunity to the administrator against actions taken in his capacity as the substitute board. It appears that while a liquidator is fastened with punitive consequences for any malfeasance or breach of trust during the course of winding-up, an administrator replacing the management of a NBFC under Section 282F is given immunity for his actual or intended actions. The rationale for this is far from clear. While instances of deliberate abuse of position may not be protected under law, it is a debate into niceties of law we cannot get into at this stage. Speaking strictly for IIBL, given its precarious financial condition and several dubious and off-balance sheet transactions the fruits of which may be hidden away but well within reach, we do not find it prudent to entrust the affairs of IIBL to an administrator with immunity for his actions under law.

Be that as it may, the appointment of an administrator in case of IIBL would suffer from another apparent inconsistency. An administrator generally is appointed to run the entity in lieu of its management, and the implicit assumption is that the entity can be turned around or run profitably if the management were replaced. Given the present financial condition of IIBL, we find it hard to accept that IIBL can be run, if at all, by any other than one with direct financial, career and reputational stakes, and fastened with fiduciary obligations the breach of which attracts penal consequences. The market has a memory of its own and does not easily forgive those who take it for a ride. Let the management of IIBL face the consequences of its actions and omissions. If an administrator is appointed and he fails in running the bank, the present management from that day onwards would be free from blame and may very well hold the Commission responsible for preventing a turn-around by permitting the implementation of its Revival Package, regardless of how far-fetched that possibility may sound at present.

All facts being considered, we are of the view that the circumstances stated in the SCN taken as a whole would point to the liquidation of IIBL as the preferred course of action rather than replacing the board with a person with immunity for his actions provided under law.

That leads us to the last, but most crucial, point of justification for the purported supersession of the board, being the preservation of the available assets of IIBL as well as ensuring that innocent depositors are not further deprived of their money. The words "Islamic" and "Bank", coupled with the unrealistically high returns IIBL offers continue to lure the depositors to trust in IIBL. In this particular case our sympathies are higher for small individual depositors than for institutional investors (even though the latter ultimately utilize deposits of the public) and high net worth individuals, as the latter two invest in IIBL despite their professional ability or capacity to examine the financial affairs of IIBL through its published accounts for the last several years – in their case it is a willful and calculated assumption of risk, and commercial risks lie where they fall. Not so for small individual depositors, who have only the Commission to protect their interests. At present, as stated by IIBL during the hearings, deposits by individuals are approximately Rupees 1,017 million, and constitute about 40% of the total deposit base. This is a significant sum for which the available assets of IIBL are wholly

insufficient. We are not persuaded by the argument of the learned Counsel that at any given time the actual funds available to a bank are usually a fraction of the total deposit liabilities of a bank, as in those cases adequate statutory liquidity reserves are maintained by banks. During the course of the hearing, IIBL categorically refused to accept a condition of moratorium on individual deposits as a quid pro quo for accepting its Revival Package on the grounds that it would send negative signals about the bank to the market. We are more concerned about any signals by the Commission to the market that all is well with IIBL.

With the foregoing in view, we are inclined to give one final opportunity to IIBL to implement its Revival Package by way of an offer in the following terms:

i) IIBL will inject fresh equity of Rupees five hundred sixteen million (516,000,000), for consideration in cash, no later than 31.12.2004. The rights issue of Rupees two hundred sixty six million (266,000,000) will be made by 31.10.2004 and the preference issue will be made no later than 31.12.2004. All preparatory measures for the preference issue will be taken well in time. The rights issue will be made strictly in accordance with the provisions of the Companies (Issue of Capital) Rules, 1996. It is noted in this connection that the appropriate level of discount for the rights issue will be determined by the Commission in accordance with law.

ii) IIBL's investment in listed equities, real estate and shares of non-listed companies would be realized/disposed of by 31.12.2004 in order for IIBL to become compliant with the SECP NBFC Rules and SECP PRs.

iii) IIBL will not accept any fresh deposits from individuals for an amount less than Rupees ten million (10,000,000) per individual.

iv) IIBL will create a reserve fund for repayment of existing deposits of individuals by apportioning twenty percent (20%) of its profits to the reserve fund, and shall invest the reserve fund in Government securities.

v) IIBL will comply strictly with the requirement of publication of its credit rating under Rule 12 of SECP NBFC Rules in all its publications or advertisements inviting deposits.

vi) The weighted average cost of funds for IIBL will not exceed the benchmark stated in the FY-03 Accounts.

vii) IIBL's liabilities and deposits shall not exceed the figures stated in the FY-03 Accounts.

viii) IIBL shall submit fortnightly progress and status reports in the format specified by the Commission, for monitoring compliance with the afore-said conditions.

Should these conditions be acceptable to IIBL, it should signify its consent in writing to the Commission within one week of the date of receipt of this Order. It is clarified that no counter-offer from IIBL shall be entertained. In case of any questions of interpretation during implementation, the Commission shall interpret the same within the spirit of this order.

In case of acceptance, concomitant relaxations under Rule 84 will be deemed to have been granted to IIBL by virtue of this order, provided that, such relaxations will be limited to the extent required to comply with these conditions within the stipulated time-frame and for IIBL to continue its business consistent with the terms of the Revival Package and subject to the afore-said conditions. Punitive action by the Commission in respect of the violations of SECP NBFC Rules 5(2)(b)(i), 12 and 15, and Regulation 7(5) of Part II of SECP PRs (and their predecessor provisions under SBP NBFI Rules) shall remain suspended until 31.12.2004, and would be dropped altogether in case of substantial compliance by IIBL with the terms hereof and upon substantial achievement of the targets stated by IIBL in the Revival Package (except for condition number (i) relating to injection of fresh equity which must be fulfilled without any margin, 'substantial' for the purpose hereof means compliance with a margin of not more than ten percent (10%)).

Should IIBL's acceptance to these conditions be not received by the Commission within the afore-said period (with time being of the essence), or should these conditions after acceptance be not complied with by IIBL at any time, the Commission shall be free to take all appropriate action under law including filing of a petition for winding-up of IIBL.

The SCN is accordingly disposed of.

Abdul Rehman Qureshi
Commissioner

Shahid Ghaffar
Commissioner

Mohammad Hayat Jasra
Executive Director

Ejaz Ishaq Khan
Executive Director