



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN  
SPECIALIZED COMPANIES DIVISION  
(ADJUDICATION)

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 Violations of, inter-alia Regulation 38(1)(a) & 38(2)(1) of NBFC Regulations, 2008

Date of hearing:

August 1, 2019

Present (on behalf of NBP Fund Management Limited)

- i. D. Amjad Waheed, CEO
- ii. Mr. Raheel Rehman, Head of Compliance

Assisting the Commissioner (SCD)

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

**ORDER**

This Order shall dispose of the proceedings against NBP Fund Management Limited (“NBP Funds”, the “Company” or the “AMC”), 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/ADJ/30/2019-02 dated July 03, 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. Zahra Gauhar (the ‘Complainant’), approached the Securities and Exchange Commission of Pakistan (SECP or the Commission) with her complaint via the complaint management system (SDMS) on January 28, 2019. The complainant informed that she had opened an investment account with NBP Funds on August 16, 2016. She had made two investments of Rs.10 million each on August 16, 2016 and October 06, 2016 respectively, in NAFA Income Opportunity Fund (NIOF). As informed by complainant, she was a walk-in customer and therefore no front-end load was to be charged on these investments in terms of circular 26 of 2015.

3. Thereafter the complainant further invested an amount of Rs.1.8 million in NIOF on February 07, 2017 but an amount of Rs.17,821 was charged as Front-end load (FEL) along with taxes on FEL of Rs.2,316 on the said investment. Subsequently, she requested the AMC for a fund-

to-fund conversion from NAFA Income Opportunity Fund (NIOF) to NAFA Stock Fund (NSF) on April 24, 2017, amounting to Rs.22.375 million. Against this transaction, NBP funds charged Rs.219,366 as FEL and Rs.28,517 as taxes on FEL. The aggregate amount charged as Front-end load (including taxes on FEL) amounted to Rs.268,020. Further, as informed by complainant and evident from her account statement, no front-end load was charged on the above-mentioned first two investments of Rs.10 million each on August 16, 2016 and October 6, 2016 respectively in NIOF. However, the Company charged front-end load on the two subsequent transactions without any prior intimation to the complainant about charging load or change in company's policy of charging front-end load.

4. The complaint was referred to the company on January 28, 2019. On February 8, 2019, the Company informed that it had replied directly to the complainant vide letter dated December 31, 2018. In its letter, the company had informed the complainant that investment was made in the stock market fund at a time when the market had started declining due to political and economic instability. Consequently, the returns began to decline along with the principal invested in the equity fund. The company further stated that the deduction on account of FEL was communicated to the complainant through the account statement sent within 48 hours of the investment transaction. Company's response was forwarded to the complainant.

5. The complainant responded back on February 14, 2019 and informed that she was not satisfied with the reply. She alleged that blank investment forms duly signed by her had also been obtained by the sales staff of NBP Funds to carry out transactions in the future. The complainant requested SECP to investigate the matter in depth. The complaint was referred to SECP's Specialized Companies Division (Supervision & Enforcement Department) on February 14, 2019 for further scrutiny. SCD (S&ED) examined the customer's complaint in detail, along with the available evidence and took up the matter with the company vide email dated February 18, 2019. Some aspects of the complaint (call center records, CCTV recording etc.) were also referred to the inspection team (which was conducting an onsite inspection of NBP Funds at the time) for further verification. Upon review of the information/documents provided by the Company, the inspection team reported some observations which are hereunder;

- a. It was noted that the account opening form of the complainant contained a statement "Sales Load off 100%", due to which the company did not charge any front-end load (FEL) on the complainant's first two investments in NIOF but had charged FEL on her next two transactions. However, the complainant was not informed about any change of FEL policy on her transactions.
- b. The complainant had not been provided any proof/note/investor's copy of the form as an acknowledgement or receipt of the transaction form.
- c. The company did not have any authentic and verifiable mechanism to classify transactions between walk-in customers or customers approached by sales staff. Sales staff were responsible for ticking the appropriate check box on the form i.e. 'Self' or

‘Approached by Sales staff’, and the operations department or any other relevant department was completely dependent on sales staff for filling in the correct information.

- d. The complainant asserted that the transactions were conducted in her absence, while she was away for official trainings, through pre-signed blank forms earlier obtained by sales staff.

The company was directed to provide the account statement of the complainant and respond to the above observations.

6. 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(1)(a) & 38(2)(l) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the “Regulations”).

7. A written reply was received vide letter dated July 12, 2019 from the Company, wherein the contentions made in the SCN were categorically addressed. The following arguments were provided in the reply:

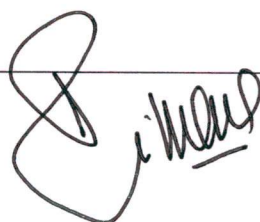
- i. NBP Funds contended that in the month of August 2016, the investor, Ms. Zahra Gohar, was briefed about the various products (Collective Investment Schemes) offered by the NBP Funds together with the risk and returns guidelines by the sales person, Mr. Kashif Taimuri, in her house. Her husband was a client of NBP Funds since October 2015. Ms. Gauhar initially invested in NAFA Income Opportunity Fund (NIOF), and no sales load was charged to her as generally the sales staff waives sales load on income funds.
- ii. NBP Funds further asserted that subsequent to this investment, Ms. Zahra Gauhar started receiving personalized services from the Sales Staff, and the sales staff usually visited her house for meeting purposes as and when she required. This is evident from the complaint lodged by her where she has explicitly mentioned that the Sales staff has visited her house to discuss her investment portfolio.
- iii. The AMC mentioned that after a lapse of eight months i.e. in April 2017, the investor carried out Exchange of Units transaction from NAFA Income Opportunity Fund (NIOF) to NAFA Stock Fund (NSF), and was charged a sales load on the above-mentioned transaction, which was duly communicated to the investor. NBP Funds further highlighted that 3% sales load on investment is charged in equity funds, however, the investor was not willing to pay 3% sales load, and therefore it was agreed between the investor and the relationship manager that 50% of the sales load will be charged and 50% will be waived.

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- iv. NBP Funds informed that in December 2018, the Investor called the CEO requesting that she has experienced a loss in NAFA Stock Fund, and she should be compensated for the loss. The CEO mentioned that stock fund is exposed to market risk, and the same is mentioned in the exchange of unit form that she had signed. She then requested the CEO to at least waive the sales load that was charged to her at the time of investment in the stock fund about 20 months earlier. The CEO asked the compliance department to review if the sales load was charged to her as per rules and regulations, and was informed that this was the case.
- v. NBP Funds also claimed that following the transfer of investment from NAFA Income Opportunity Fund to NAFA Stock Fund, the Statement of Accounts was emailed to her the next day which clearly states the amount of transaction and the related front-end load deducted. As per SECP Regulations, any investor who is not aware of the deduction of front-end sales load has the right to get the full value of his or her investment back within three days of the receipt of the issuance of the Initial Account Statement. In this regard, no oral or written communication/complaint from Ms. Zahra Gauhar was received within these three days on account of charging of sales load without her consent. In addition to the email referred to above, all transactions are immediately reported to investors via SMS on their registered mobile number. The AMC concluded that it did not seem possible that Ms. Gauhar was not aware of the transaction.
- vi. NBP Funds emphasized that the front-end sales load was deducted on the transaction carried out in the month of April 2017, however, the complaint for the incorrect deduction of the front-end sales load was received in November 2018 i.e. after a lapse of nineteen months. During the said time i.e. from April 2017 till October 2018, the monthly Statement of Accounts indicating the market value of the investment amount as of that specific date, was sent to the registered email address of the investor.
- vii. With respect to the complaint of the investor regarding the submission of blank signed forms to the sales staff, the AMC contended that it was not possible that Dr. Zahra being an educated person, possibly a medical doctor by profession can hand over blank signed forms to a sales person. The AMC asserted that this is a false claim. The AMC further asserted that Sales Staff are restricted by NBP Funds to obtain any blank signed forms from the investor, and acknowledgement of the same is obtained from the Sales Staff through signature on Standard Code of Ethics for Sales and Marketing Staff.
- viii. The AMC confirmed that it had also communicated to SECP inspection team that no call was received from the customer registered mobile number from February 2017 till June 2017 - the period of the transaction in question. We admit that we do not maintain any log for walk-in customers, neither was this a requirement of SECP.

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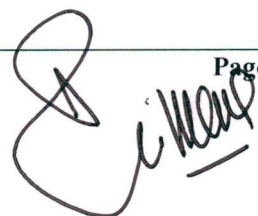


- ix. The AMC agreed that form is silent on the question of "Self" or "NAFA Sales Staff", so nothing can be concluded from this. However, the investor has herself mentioned in her email that our sales staff visited her in her house, neither did she complain of sales load being charged upon immediately receiving the email and for nineteen months thereafter.
- x. In regards to charging 50% sales load the AMC pointed out that on the form where the investor was initially waived the full load, the stamp says 100% off. However, where she was waived 50% load after negotiations with the sales person at the time of transfer to the stock fund, the form says 50% sales load off.
- xi. With regards to the acknowledgement of the transaction provided to the investor, the AMC asserted that for all transactions, carbon copy/perforated portion of the transaction form is provided to all investor as an acknowledgement at the time of signing of the form. The AMC was of the view that it was not possible that Ms. Gohar, being an educated and professional lady, would not ask for the carbon copy at the time of investment. The AMC further contended that in case of all transactions, an SMS is also sent to the registered mobile number of the investor, which is an adequate acknowledgement of the fact that NBP Funds has recorded the transaction.
- xii. The AMC claimed that the above submissions clearly demonstrate that it was not in violation of Regulations 38(1) (a) and 38(2) (l) of the NBFC Regulations, 2008.

8. The hearing in the matter took place on August 1, 2019 wherein Dr. Amjad Waheed, Chief Executive Officer and Mr. Raheel Rehman, Head of Compliance appeared on behalf of the Company. They reiterated the facts stated in the written reply.

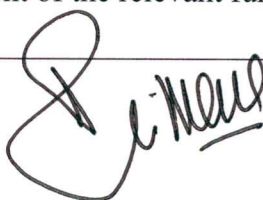
9. On perusal of the material available on record, giving regard to the facts and circumstances of the case, and considering the arguments put forth by the Respondent Company, I am of the view that the arguments submitted by NBP Funds are not tenable on the following grounds:

- i. The husband of the complainant was already a customer of the AMC and it seems from the argument furnished by the AMC that the sales agent had the liberty to visit the customer at his residence as and when required for execution of his transactions. Moreover, since her husband had already invested his funds with the AMC, the complainant was aware of the dynamics of mutual funds and therefore intended to invest. On the basis of these grounds she has to be considered as a walk-in client and not a customer being approached by the sales agent, as incorrectly indicated by the AMC. The mere fact that the sales agent visited her husband at his residence does not imply that he had approached and persuaded the complainant for investment in the AMC. Moreover, in case of a walk-in client no sales load is to be charged in terms of Circular 26 of 2015, therefore the argument that "no sales load was charged to her as generally our sales staff waives sales load on income funds", is not plausible.



- ii. The AMC has mentioned that in the complaint Dr. Zahra Gauhar had highlighted that the Sales staff had visited her house to discuss her investment portfolio but has refrained from mentioning the displeasure the complainant showed with regards to the sales staff bringing another person/employee with him, and discussing her account information/profile in front of him, in breach of customer confidentiality.
- iii. The complainant has clearly expressed in her complaint that the company had charged the front-end load on the two transactions without any prior intimation. The AMC's claim that there was an agreement between the complainant and the relationship manager for charging 50% of the sales load seems somewhat questionable in view of the complainant's concern. Moreover, the fact that the account opening form of the complainant contained a statement "Sales Load off 100%", warranted that no load should have been deducted on any transactions. Had it been necessary to do so, the sudden change in company's FEL policy towards Ms. Zahra Gauhar should have been communicated to her prior to the execution of the disputed transactions.
- iv. The argument is not clear as to whether the CEO on receiving the complainant's phone call had acquiesced to her request and instructed to compensate the complainant for the loss as a goodwill gesture or otherwise.
- v. The SMS sent to the investors does not contain the details of the transaction with respect to FEL deduction and only confirms that the transaction has been executed. In my view, even if Ms. Gauhar did receive the SMS and was aware that the transaction had been executed, she could not have known about the FEL being deducted on the respective transactions, as the details were not provided in the SMS.
- vi. Objection raised by the company that complaint for the incorrect deduction of the front-end sales load was received in November 2018 i.e. after a lapse of nineteen months, is not appropriate. I firmly believe that it is the right of a complainant to express/complain about any concern with regards to her account whenever she realizes that she has been treated unfairly; therefore, this argument is not tenable.
- vii. The argument is not considered plausible. The complainant provided certain evidence to prove that she was not present in the city to conduct transactions with NBP funds or submit the forms physically and transactions were conducted in her absence through pre-signed blank forms earlier obtained by sales staff, even though she had not given any instructions for any transaction to be executed during the period. Moreover, it was observed by the inspection team that the customers were generally not provided with any proof of submission of transaction forms, which is usually the cause of disputes with regard to place, time and date of transaction form submission etc. In the instant case, the complainant was not provided any proof/note/investor's copy of the form as an acknowledgement or receipt of the transaction form, in contravention of Section 4.4.4 of the Offering document of the relevant funds (NIOF and NSF).

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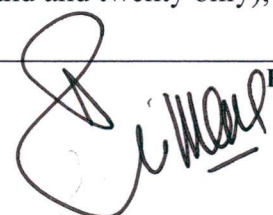


- viii. I find merit in the submissions of the AMC. No evidence was found for any oral or written communication /complaint from Ms. Zahra Gauhar from February 2017 till June 2017 - the period of the subject transaction.
- ix. In my opinion the argument is not tenable since the inspection team also verified that the company did not have any authentic and verifiable mechanism to classify transactions as walk-in customers or approached by sales staff. The Sales staff was responsible to tick the appropriate check box in the form i.e. 'Self 'or 'Approached by Sales staff' and the operations department or any other relevant department was completely dependent on sales staff for either filling in the correct information or manipulating the information. Moreover, the company has failed to provide any concrete evidence whereby it could be clearly established that the subject transactions were conducted through approach of its sales staff. The company informed the inspection team that no log was being maintained for walk-in customers.
- x. The argument does not provide reasonable justification. The account opening form of the complainant contained a statement "*Sales Load off 100%*", by virtue of which no load was to be deducted on any future transaction. Ms. Zahra Gauhar had no prior intimation of the deduction nor was she provided with the copy of the form or any other receipt, which confirmed that sales load shall be deducted to the extent of 50%.
- xi. The complainant was neither provided any proof/investor's copy of the form as an acknowledgement or receipt of the transaction form, in contravention of the offering documents, nor evidence of any SMS being sent to the registered mobile number of the investor was provided by the AMC, to prove its claim. The argument with respect to providing acknowledgement of the transaction to the complainant, is hence rendered invalid.

10. It is pertinent to mention that redressal of investors' grievances is extremely important for the Regulator to regulate the capital market. If the grievances are not redressed amicably and within a reasonable time, it leads to frustration among the investors' who may be demotivated and stop further investments in the capital market. I am of the view that all fund managers should demonstrate at all times, the highest standards of professionalism by complying with all relevant provisions of the prevailing regulatory framework. Any negligence or contravention with the relevant provisions cannot be viewed leniently.

11. NBP Funds is further directed to amicably settle complaints of similar nature and manage them at their end before the matter reaches a point that a complainant is forced to approach SECP for the resolution of his/her issue. Moreover, NBP Funds must ensure strict compliance with the applicable regulatory framework in future.

I hereby direct the Respondent Company to reimburse the FEL deducted from the Complainant amounting to Rs.268,020/- (Rupees Two hundred sixty eight thousand and twenty only), since the



losses have been caused due to contravention of the Regulations 38(1)(a) and 38(2)(1) including inability of the AMC to carry out its fiduciary responsibilities adequately.

12. 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.

13. In terms of the above, the instant SCN is disposed of.



**Aamir Khan**  
Commissioner (SCD)

**Announced on:**  
September 4, 2019 at Islamabad.