

Before Ali Azeem Ikram, Executive Director/HOD (Adjudication-I)

In the matter of Show Cause Notice issued to UBL Fund Managers

Date of Hearing

February 06, 2020

Order-Redacted Version

Order dated September 4, 2020 was passed by Executive Director/Head of Department (Adjudication-I) in the matter of UBL Fund Managers. Relevant details are given as hereunder:

Nature	Details
1. Date of Action	Show cause notice dated January 23, 2020
2. Name of Company	UBL Fund Managers
3. Name of Individual*	Not relevant. The proceedings were initiated against the Company i.e. UBL Fund Managers
4. Nature of Offence	Proceedings under Section 282J(1) read with Section 282M(1) of the Companies Ordinance, 1984 for violations of Regulations 38(2) (b), Regulation 66A(c)(i), Regulation 66A(c)(iv), Regulation 66A(d) and Regulation 66A(f) of the Non-Banking Finance Companies and Notified Entities (NBFC) Regulations, 2008
5. Action Taken	<p>Key findings of default of Regulations were reported in the following manner:</p> <p>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 UBL Funds are not tenable on the following grounds:</p> <ol style="list-style-type: none">i. The available evidence indicated that according to company's own assessment of both the respective complainants, their investment knowledge was basic since both of them were only graduate/undergraduate and they had no experience of investment in the capital market. The Complainants not being conversant with investment avenues, could not have been expected to understand, without adequate guidance from the AMC's representative, the dynamics of mutual funds/plans or to reasonably understand the risk level attached to the said plan, which had potential for high equity exposure. I am of the view that merely getting an undertaking signed by the investor that he has fully understood the dynamics and associated risks of the product does not demonstrate that the same was explained, to the best satisfaction of the customers. The sales



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representatives 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. In any case selling mutual funds/plans as an investment product which guarantees profit and protection of the principal amount tantamount to mis-selling in contravention of Regulation 66A(c)(i) of the NBFC Regulations.

- ii. It is a generally understood fact that for an investor it is challenging to understand the dynamics of mutual funds without adequate support and guidance from the seller. This is adequately demonstrated by the statutory provisions making it incumbent on the AMC to take due care in their selling practices. It is, therefore, the responsibility of the AMC that members of its sales team have the capacity to evaluate the level of awareness of the customers with the dynamics of the mutual funds/capital market and the associated risks. However, as informed by the respective complainants, the AMC's representative did not discuss with them the risks associated with the respective plans and did not adequately inform them about the probability of loss which could emanate from the said plans. Instead, the complainants had been given verbal assurances of profit on their investment at the time of account opening. The fact that both the complainants were oblivious to investment in mutual funds warranted that best possible efforts were made by the sales representative to explain the dynamics of mutual funds/plans along with the risks that these products entailed. However, it is apparent that the risk factors associated with the scheme were not elaborated enough for the understanding of the investors. Explanation of the associated risk was prima facie concealed so as to persuade the complainant to invest; prime objective of the sales representative being to profit from the commission on the investment, thereby contravening Regulation 66 A(c)(iv) of the NBFC Regulations.
- iii. Suitability of the plan offered to the complainants had not been assessed appropriately. The risk tolerance level of the complainants was moderate, based on the risk assessment carried out by UBL Funds. The recommended solution for moderate risk tolerant investors as given in UBL fund's need assessment form is Capital Protection funds, Aggressive Income Funds, Asset Allocation/Balanced Funds, Plans with moderate allocations. However, suitability of offered plans for the complainants was not assessed appropriately as asset allocation plans with aggressive allocation towards equity securities were offered to the complainants as against the AMC's own risk assessment. It was observed that the average investment by AIAAP-VIII in equity funds from inception i.e. May 2017 to July 2019 was 66.11%, whereas the average investment by AIAAP-IX in equity funds from inception i.e. August 2017 to July 2019 was 67.75% which appears to be on the higher side.



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	<p>iv. The average investment in the above referred plans indicates that these plans were with aggressive allocation rather than conservative or moderate allocation, therefore, the said plans were not deemed suitable for such investors whose risk tolerance level is moderate. Furthermore, the risk appetite column in the needs assessment form of UBL Funds had not been allocated a correct score. Keeping in view other considerations/criteria given in the form and scoring given against them, prudence demanded that risk appetite column to be scored as low, rather than moderate. Due to an unconsidered appraisal of the risk appetite of the complainants, asset allocation plans with moderate allocation towards equity securities were offered to the complainant. Failure to assess the suitability of the offered investment plan to the complainant, prima facie resulted in violation of Regulation 66 A (d) of the NBFC Regulations.</p> <p>v. I have further noted that assets of AIAAP-VIII and AIAAP-IX remained heavily invested in high risk funds i.e. equity funds despite the fact that the risk level of the subject plans was declared as 'Moderate' in term sheets, which actually does not correspond with the asset allocation of these active allocation plans. I have also noted that clause 2.2.1 of the Offering Document of Al-Ameen Islamic Financial planning fund -II states that</p> <p>"The Al-Ameen Islamic Active Allocation Plan-VIII/Plan IX is an Islamic Allocation Plan under Al-Ameen Islamic Financial planning fund -II with an objective to earn a potentially high return through active asset allocation between Islamic Equity Scheme(s) and Islamic Income Scheme(s) based on the Fund Manager's outlook on the asset classes."</p> <p>The offering document further states that for each plan the minimum percentage allocation invested in each CIS category i.e., Islamic Equity, Islamic Income, Islamic Money Market schemes shall be 0%- 95% respectively. Although the term sheets indicate the minimum and maximum percentage allocations of the authorized investments broadly, they do not specify the percentage allocation of equity segment as per conservative, moderate and high exposure to equities. In my view, the risk/need assessment form and term sheets lack transparency with respect to recommended solutions vis-à-vis risk tolerance levels. Due to lack of clarity in the forms, customers are likely to make uninformed decisions while making investments. Lack of clarity in the forms/term sheets has rendered them to be misleading and deceptive, hence contravening Regulation 66A (f) of the NBFC Regulations.</p> <p>vi. The laws provide autonomy to the AMC vis-à-vis its investment portfolio. However, this autonomy is to be exercised in line with its</p>
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fiduciary role and responsibility. Two wrongs cannot make a right. An aggressive investment portfolio fund should not be marketed as a low risk or moderate risk fund neither by the Respondent or its peers.

It is important to take in to account that the respective complainants were oblivious to the dynamics of the capital market and mutual funds/plans, and had invested their funds for the purpose of growth. In pursuance of instances referred above, I am of the considered view that UBL Funds is responsible for selling such products to the complainants, which were neither suitable nor in consonance with their risk assessment. UBL Funds is therefore fully responsible for the acts and omissions of its representatives, to whom it had delegated the sales function, as per Regulation 38(2)(b) of NBFC Regulations 2008.

AMC needs to ensure that the investor understands the decision he/she is taking in choosing a high-risk product and to this effect, should take proper acknowledgment from investor for his/her selection. Fact of the matter is that investors only listen to what the sales representative is pitching and seldom read what is written on the forms. Question is what steps are taken by the AMC to actually make the investors understand what their investment decision entails and to ensure that they have fully understood the upside and downside of the investment along with the associated risks. The complainant's claim that the sales representative had guaranteed profit and preservation of capital cannot be completely overlooked. 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. Many instances have come to the knowledge of SECP with similar assertions against UBL Funds and warrants that UBL Funds makes extra efforts to curtail the instances of mis-selling. The AMCs should consider to modify and explicitly indicate risk levels of all the plans while placing asset allocation funds /plans in the moderate-risk category. To conclude, UBL Funds has not acted in the best interest of the complainants, and is hence responsible for the losses incurred by the complainants, in violation of above-mentioned NBFC Regulations.

Investor confidence is the key for flourishing of the mutual fund industry. An AMC can inspire this confidence by being fair and transparent in its dealing with its customers and ensuring that the fairness and transparency is demonstrated through its conduct. However, the conduct of the relationship managers as established by the Complainants' narrative still raises many questions with respect to the manner of conducting business by the relationship managers.

It is my considered opinion 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



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	<p>the capital market. Therefore, I hereby refer the matter to the Supervision and Enforcement Department of SCD, who may issue Direction to the AMC for making good the complainant's loss in exercise of powers conferred to them under Section 282D of the Companies Ordinance 1984.</p> <p>In view of the foregoing, I hereby impose a fine of Rs. 400,000/- (Rupees Four Hundred Thousand Only) on the Respondent Company who has been issued SCN under Section 282J(1) read with Section 282(M)(1) of the Companies Ordinance, 1984, for contravention of the Regulation 38(2) (b), Regulation 66A(c)(i), Regulation 66A(c)(iv), Regulation 66A(d) and Regulation 66A(f) of the NBFC Regulations.</p> <p>Penalty order dated September 4, 2020 was passed by Executive Director (Adjudication-I).</p>
6. Penalty Imposed	A penalty of Rs. 400,000/- (Rupees four hundred thousand) was imposed on the Company.
7. Current Status of Order	Appeal has been filed.

Redacted version issued for placement on the website of the Commission.