



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION

Before Commissioner (SCD)

In the matter of Show Cause Notice issued to MCB Arif Habib Savings and Investments Limited under Section 282J (1) read with Section 282M (1) and Section 282D of the Companies Ordinance, 1984

Date of hearing: October 10, 2016

Present (on behalf of MCB AHSIL): i. Mr. Muhammad Saqib Saleem (CEO)

Assisting the Commissioner (SCD) i. Mr. Imran Inayat Butt (Executive Director)
ii. Mr. Javed Akhter Malik (Joint Director)

ORDER

This Order shall dispose of the proceeding initiated against MCB Arif Habib Savings and Investments Limited (the "Company" or "MCB AHSIL" or "Respondent") through show cause notice (the "SCN") bearing No. SCD/AD-AMCW/ MCBAHSIL/05/ 23/2016 dated September 15, 2016 under section 282J (1) read with section 282M (1) and Section 282D of the Companies Ordinance, 1984 (the "Ordinance").

2. The brief facts of the case are as follows:

- i. Supervision and Enforcement Department of Specialized Companies Division (the "Department") sought information from MCB AHSIL for the quarter ended March 31, 2016 through e-mails dated June 8, 2016 and June 28, 2016 to perform quarterly offsite review of the Company. Scrutiny of the information revealed that internal auditor has highlighted certain instances regarding charging of front end load ("FEL") through churning and circumventing FEL Policy by the employees and Distributor(s) of the Company.
- ii. Head of Internal Audit and Head of Compliance of the Company were called for a meeting on July 15, 2016 to discuss the observations of the internal audit report. Moreover, further information pertaining to details of investments made by various clients of MCB AHSIL during the period from June 30, 2015 to June 30, 2016 in funds managed by the Company where FEL deducted was called through e-mail dated July 18, 2016.
- iii. As per information provided by the Company, several instances were observed in which multiple transactions were conducted in one account on the same day and for the same fund. All transactions were routed through either of the two Distributors of the Company i.e. Standard Chartered Bank (SCBL) and MCB Bank Limited (MCBL) which is a group



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Company of MCB AHSIL. Details of all the instances have been referred in Annexure A of the SCN.

- iv. The Distributors split the larger amount of investment into multiples of Rs.15 million or below to earn the FEL as the offering documents of the funds did not allow charging of FEL on investment of over Rs.15 million.
- v. Total amount of Rs. 19.865 million was deducted as FEL on all these transactions. Out of the total FEL, SCBL and MCBL were beneficiary of Rs. 2.44 million and Rs. 17.42 million respectively.

3. It was construed from the above facts that the Company and its Distributors have violated Regulation 38 (1) (a & b), 38 (2) (l) and Regulation 66A (c) (ii & iii) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the "Regulations"), clause (2) of Circular 23 of 2013 dated December 6, 2013 and clause (a & b) of Circular 26 of 2015 dated July 27, 2015. Consequently, the SCN was issued to the Respondent whereby it was called upon to show cause in writing as to why penal action may not be taken against it for the aforesaid contraventions.

4. In response to SCN, the chief executive of the Company requested for extension in time for submitting reply to the SCN and reschedule in hearing date and the same was granted. On behalf of Respondent, the chief executive of the Company submitted reply to the SCN through letter dated October 3, 2016. With reference to contents of the SCN, a brief of submissions of the Respondent are reproduced below:

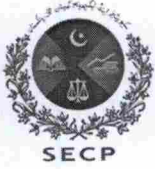
- i. Violations of Circular 23 and 26 of 2016 alleged in the SCN are not correct as:
 - a) There is no misselling of units.
 - b) There is no evidence of making false or misleading statement or concealment of omission of material facts on the part of Respondent or its Distributors.
 - c) All factors and material information was duly disclosed to the investors and copies of the relevant offering documents and sales brochures were provided to investors.
 - d) There is no complaint of any kind from any of these investors.
- ii. There is no violation of Regulation 38 (1) (a & b) or 66 A (c) of the Regulations as MCB AHSIL and its Distributors have not taken any advantage for themselves or for related parties.
- iii. There has been no churning of investments with the intent to charge FEL or to circumvent the load policy of MCB AHSIL as all transactions forming subject matter were within the range of up to Rs. 15 million each and therefore FEL was rightly charged.



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- iv. There is no evidence of making a false or misleading statement or concealment of omission of material facts as relevant offering documents and sales brochures were provided to the investors.
- v. MCB AHSIL had not foreseen that FEL policy could have been abused by the Distributors.
- vi. Investors had voluntarily chosen to enter into multiple transactions for practical convenience and personal reasons. They willingly paid the FEL and MCB AHSIL or Distributors haven't placed their own interest before the interest of the investors. The investors were taken into complete confidence and FEL was charged separately and no cumulative deduction of Rs. 19.865 million was done.
- vii. MCB AHSIL has already made changes in the FEL policy by making amendments in the offering documents of Funds as a restitution measure to create a line of defense against the possible exposure to unnecessary liability.
5. A hearing in the matter was held on October 10, 2016 before the undersigned wherein Mr. Muhammad Saqib Saleem, CEO of MCB AHSIL appeared on behalf of the Respondent and made verbal submissions mainly reiterating the earlier written submissions. He requested that SCN may be discharged based on the submitted legal and factual position. The CEO was informed in detail that their submission does not hold merit. The CEO requested additional time to discuss the matter with its board of directors to voluntary refund of FEL to all the investors by MCB AHSIL which was granted. The CEO vide its letter dated October 20, 2016 informed that the Respondent has decided to refund the FEL amounting to Rs. 19.865 million to the investors and will share the proof of refund shortly which was later submitted through e-mail dated November 2, 2016. The Respondent has also requested to take a lenient view on the subject matter and decide the SCN without any adverse order against the Respondent.
6. I have analyzed the facts of the case, relevant provisions of the Circulars, Regulations and Ordinance referred and the arguments put forth by the Respondent in writing as well as during the course of hearing. My observations are as under:
- i. No evidence has been provided by the Company that the Distributors have informed the investors about the FEL policy i.e that if investor invests Rs.15.00 million or more no FEL load shall be deducted. Additionally, this fact has not been disclosed to the investors in any of the documents submitted by the Respondent with this office.
- ii. The argument that MCB AHSIL has not foreseen that FEL policy could have been abused by the Distributor is not tenable as in terms of Regulation 38 of the regulations it is the duty of an asset



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management company to establish comprehensive controls to enable it to identify, assess, mitigate, control and monitor risks in the best interest of unit holders.

- iii. The argument of the Respondent that investors voluntarily chose to enter into multiple transactions and MCB AHSIL or Distributors haven't placed their own interest before the interest of the investors is not maintainable as there is no incentive for the investors to enter into multiple transactions by splitting their investment amount into less than Rs. 15 million and paying handsome amount of money in the shape of FEL to the Distributors. On the contrary, the Distributor is the ultimate beneficiary as they get FEL if the investors split their entire investment in multiples of Rs.15 million or low.
- iv. The transactions were structured in such a way that Distributors were eligible to charge FEL and there was cumulative deduction of Rs.19.865 million on all the identified transactions which had been mentioned in the SCN.

7. Before proceeding to decide this case, I consider it necessary to highlight that SECP is deeply thoughtful of protecting the rights of investors and any unjust treatment with the investors cannot be tolerated to maintain investors' confidence in the mutual fund industry. For the foregoing reasons and facts cited at para 6 above, I am of the view that the Distributors have failed to ensure compliance to the provisions of clause (2) of Circular No. 23 of 2013, clause (a & b) of Circular No. 26 of 2015, Regulation 38(1) (a & b), 38(2) (l) and 66A (c) (ii & iii) of the Regulations and the Respondent being the principal is responsible for their acts and omissions. However, considering the fact that the Respondent has voluntarily refunded the entire amount of Rs. 19.865 million charged to the investors as FEL and already amended its FEL policy so that the same may not be misused by the Distributors or employees in future, I conclude the proceedings initiated under the aforementioned SCN with a warning to the Respondent to be careful in future and ensure meticulous compliance by it and its Distributors towards applicable laws, circulars and directions of the Commission.

8. This Order is issued without prejudice to any action, which may be taken or warranted for the above said defaults under any other provision of the law.


(Zafar Abdullah)
Commissioner (SCD)

Announced: November 15, 2016 at Islamabad.