

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, the 28th April, 2017

NOTIFICATION

S.R.O. 299 (I)/2017. - In exercise of the powers conferred under sub-section (3) of section 175 of the Securities Act, 2015 (III of 2015), read with clause (c) of sub-section (2) of section 175 thereof and clause (b) of section 43 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), the Federal Government is pleased to make the following rules, the same having been previously published *vide* notification No. S.R.O. 469(I)/2016 dated 1st June, 2016 as required by sub-section (3) of section 175 of the said Act, namely:-

1. Short title and commencement.- (1) These Rules may be called the Customers Compensation Fund (Establishment and Operation) Rules, 2017.

(2) They shall come into force at once.

2. Definitions.- (1) In these Rules, unless there is anything repugnant in the subject or context, –

- (a) "Act" means the Securities Act, 2015 (III of 2015);
- (b) "claim" means the claim of a customer against a defaulter in respect of any dealing, handling or custody of securities in accordance with the provisions of the Act and rules or regulations made thereunder;
- (c) "defaulter" means a Trading Right Entitlement Certificate (TRE certificate) holder of a securities exchange which has been declared as a defaulter under regulations of the securities exchange;
- (d) "Fund" means the Customers Compensation Fund established under these rules;
- (e) "regulations" means regulations made by the Commission under clause (h) of sub-section (2) of section 169 of the Act; and
- (f) "trust" means the trust constituted by the trust deed under the Trust Act, 1882 (II of 1882).

(2) Words and expressions used but not defined in these Rules shall, unless the context otherwise requires, have the same meaning as assigned to them in the Act, the Companies Ordinance, 1984 (XLVII of 1984), the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), Central Depositories Act, 1997 (XIX of 1997), Stock Exchanges (Corporatisation, Demutualization and Integration) Act, 2012 (XV of 2012), or the Trust Act, 1882 (II of 1882).

3. Purpose of the Fund.- The Fund shall be established and operated in the manner provided in these rules to compensate, either fully or partially, customers of a defaulter in the manner as provided in the regulations.

4. Establishment of Fund.- (1) The securities exchanges shall establish a centralized Fund in the form of a trust which shall be administered by trustees appointed in the manner as provided in these rules:

Provided that where only one securities exchange is licensed under the Act at the time of commencement of these rules, the investor protection fund maintained by such securities exchange, immediately prior to commencement of these rules shall be deemed to be a centralized Fund subject to compliance with these rules and the regulations:

Provided further that where more than one securities exchange is licenced under the Act, the Commission may direct the securities exchanges to establish and operate a centralized Fund under these rules and regulations.

(2) The securities exchanges shall provide a secretariat for the Fund.

(3) The securities exchanges shall ensure that all the assets comprising the Fund are segregated from the assets of the securities exchanges and that the Fund is insulated from any liabilities of the securities exchanges.

5. Size of the Fund.- The minimum size of the Fund shall be determined by the securities exchanges from time to time based on a methodology approved by the Commission which may include stress testing, actuarial valuation or any other internationally recognized method.

6. Contributions to the Fund.- The Fund may comprise contributions from the following in the manner as provided in the regulations:

(i) initial contributions comprising of amounts transferred from trust funds for protection of customers, TRE certificate holders or clearing houses, by whatsoever name called, of the securities exchange which is licensed or whose licence was surrendered or cancelled as a result of integration of the securities exchanges; and

(ii) ongoing contributions comprising *inter alia* levy on the value of securities traded, proportion of total revenue of the securities exchange, fines and penalties collected by securities exchange and such other contributions as specified by the Commission.

7. Utilization of the Fund. - (1) The Fund shall only be utilized to compensate customers against their claims against defaulters in the manner provided in the regulations.

(2) The Fund may be utilized to meet any directly attributable expenses incurred for administration of the Fund:

Provided that any existing securities exchange may continue to charge any existing fee for the management of the Fund till June 30, 2017.

8. Operation of the Fund. - (1) The Fund shall be administered by the trustees who are fit and proper persons in terms of the criteria applicable on the directors and senior management officers of the securities exchanges, as may be applicable, under section 151 of the Act and appointed for a specific period by the securities exchanges, with prior approval of the Commission.

(2) Subject to sub-rule (1), the total number of the trustees shall be determined from time to time by the securities exchanges and each securities exchange shall appoint an equal number of trustees on the Fund which also includes chief executive officers of the securities exchanges:

Provided that the Commission may specify the number of trustees out of total number referred to in sub-rule (2), who shall be independent directors of the securities exchanges.

(3) Where an investor protection fund is deemed to be a centralized Fund under sub-rule (1) of rule 4, the securities exchange shall ensure that the trustees are appointed in compliance with the requirements of these rules within a period of three months from the date of commencement of these rules or such extended time period as may be allowed by the Commission.

(4) A trustee may resign at any time on giving notice in writing to the securities exchanges, which shall immediately fill up the vacancy with the approval of the Commission.

(5) The appointment of a trustee may be cancelled in case he becomes non-compliant with the fit and proper criteria and the securities exchanges shall immediately fill up such vacancy with the approval of the Commission.

(6) No remuneration shall be payable to the trustees except for expenses incurred by the trustees in the administration of the Fund.

(7) The trustees shall also ensure that;

- (a) the Fund is duly registered with the Federal Board of Revenue or with any other agency of the Federal or Provincial Government, as the case may be, to have tax or other benefits as available to any non-profit trust under the applicable laws within a period of six months from the date of commencement of these rules or such extended time period as may be allowed by the Commission;
- (b) the trust deed of the Fund is in accordance with the requirements of these rules and the regulations and in case an investor protection fund is deemed to be a centralized Fund under sub-rule (1) of rule 4, the trustees shall ensure that the existing trust deed of such Fund is brought in conformity with the requirements of these rules and the regulations within a period of three months from the date of commencement of these rules or such extended time period as may be allowed by the Commission;

- (c) no change in the trust deed is carried out without the prior approval of the Commission;
- (d) the contributions are made into the Fund in accordance with provisions of these rules and the regulations;
- (e) an investment policy is made for the Fund with the approval of the boards of directors of the securities exchanges;
- (f) the claims of customers are admitted after due verification process and payments are made against the admitted claims in accordance with these rules and the regulations;
- (g) the money, property or income of the Fund or any part thereof are utilized solely for promoting its objective as stated in these rules and the regulations;
- (h) no portion of the money, property or income of the Fund is paid or transferred directly or indirectly by any means to a person other than specifically allowed under these rules and the regulations;
- (i) the properties of the Fund are properly maintained;
- (j) proper books of accounts and records of the Fund are maintained;
- (k) financial statements of the Fund are audited by a firm of chartered accountants having satisfactory QCR rating; and
- (l) in the event of dissolution of the Fund or winding up of the securities exchanges, the assets of the Fund are transferred to another Fund established for the purpose of protection of customers as per the directions of the Commission after meeting or providing for outstanding liabilities.

9. Reporting requirements. - (1) The trustees shall forward financial statements along with audit report regarding the Fund to the Commission within four month of the close of its financial year.

(2) Where the Commission is satisfied that it is in the public interest to do so, it may appoint in writing an auditor for special audit to examine, audit and report, either generally or in relation to any matter, on the books, accounts and records of the Fund.

[No.Sy/SECP/8/13]



(Bilal Rasul)

Secretary to the Commission