

**REVISED DRAFT OF THE NON-BANKING FINANCE COMPANIES
(ESTABLISHMENT AND REGULATION) RULES, 2003**

S.R.O. .- In exercise of the powers conferred by section 282 B of the Companies Ordinance, 1984 (XLVII of 1984), the Federal Government is pleased to make the following rules, namely:-

**THE NON-BANKING FINANCE COMPANIES (ESTABLISHMENT AND
REGULATION) RULES, 2003**

CHAPTER - I

General

1. Short title and commencement.- (1) These rules may be called the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.

(2) They shall come into force at once.

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

(i) "Administrator" means a person appointed by the Commission to manage the affairs of a collective investment scheme or venture capital fund upon cancellation of licence granted to the NBFC by the Commission to operate as investment adviser or asset management company or to manage the venture capital fund, subject to such terms and conditions as may be deemed appropriate by the Commission;

(ii) "asset management company" means a company which has been licensed by the Commission to offer investment schemes under trust deeds, manage portfolios for both individual and institutional clients on a discretionary basis and to issue redeemable securities;

(iii) "asset management services" mean the services provided for management of open-ended schemes and include offering of investment schemes under trust deeds, managing portfolios for both individual and institutional clients on a discretionary

basis and issue of redeemable securities;

(iv) "assets" mean properties of all kinds, tangible or intangible, including shares, units, certificates, securities, deposits, right and bonus shares, cash, bank balances, profits, dividends, fees, commissions, all receivables, claims, contracts, derivatives, licences, privileges, accrued or accruing or contingent;

(v) "associated companies" mean associated companies and associated undertakings as defined in sub-section 2 of section 2 of the Ordinance;

(vi) "bankers' acceptance" means a draft drawn on a commercial bank by an individual or firm ordering the drawee bank to pay to the order of a certain person a specified sum of money, either on demand or at some future specified date, and accepted by the drawee;

(via) "brokerage services" mean the services being provided by a broker registered under the Brokers and Agents Registration Rules, 2001;

(vii) "central depository company" means central depository as defined under the Securities and Exchange Ordinance, 1969 (XVII of 1969);

(viii) "Certificate of Deposit" or "CoD" means a certificate issued by a NBFC, duly licensed by the Commission to undertake leasing or investment finance services or housing finance services and the permission to issue certificates of deposit has been obtained by such NBFC from the Commission in terms of sub-rule (2) of rule 12;

(ix) "closed-end fund" means an investment company or a closed-end scheme;

(x) "closed-end scheme" means a scheme constituted by way of trust to raise funds through issue of certificates to the public for investing in securities including money market instruments for a definite or indefinite period but which does not continuously offer certificates entitling the holder of such certificates, to receive, on demand, his proportionate share of the net assets of the closed-end scheme;

(xi) "close relative" includes spouse, lineal ascendants and descendants and brothers

and sisters;

(xii) "collective investment scheme" includes a closed-end fund or an open-ended scheme;

(xiii) "Commission" means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997(XLII of 1997);

(xiv) "company" means a company as defined under the Companies Ordinance, 1984 (XLVII of 1984);

(xv) "connected" or "connected person" in relation to a NBFC and collective investment scheme, means, -

(a) any person or company or trust beneficially owning, directly or indirectly, ten per cent or more of ordinary share capital of the NBFC or the closed-end fund being managed by it, or being able to exercise, directly or indirectly, ten per cent or more of the total voting power in that NBFC or the closed-end fund being managed by it;

(b) any person or company or trust controlled by a person who or which meets one or both, of the descriptions given in sub-clause (a);

(c) any member of the group of which that person, company or trust forms part;

(d) any collective investment schemes managed by the same NBFC, licensed as an asset management company or investment adviser, as the case may be; or

(e) any director or officer of that NBFC, or the closed-end fund being managed by it, or of any of their connected persons as specified in sub-clauses (a), (b) and (c);

(xvi) "constitutive documents" mean the principal documents governing the formation of a closed-end scheme or an open-ended scheme and all related material agreements;

(xvii) "custodian" includes a bank licensed under the Banking Companies Ordinance, 1962 (LVIII of 1962) or a trust company which is a subsidiary of such a bank or a banking institution incorporated outside Pakistan or a central depository company approved by the Commission or a NBFC carrying out investment finance services provided it has been approved by the Commission to act as custodian or such other company as may be approved by the Commission to act as custodian;

(xviii) "distribution function" means the functions with regard to,-

(a) receiving application and money for units, shares, securities or certificates;

(b) issuing receipts in respect of the applications received in accordance with clause (a);

(c) issuing contract notes to the applicants; and

(d) receiving redemption notices, transfer instructions and conversion notices from the holders for immediate transmission to the asset management company or the open-ended scheme or the client;

(xix) "equity" includes paid up share capital, reserves and unappropriated profits (minus accumulated losses) excluding deferred tax reserves, Surplus on Revaluation of Fixed Assets Account as described in section 235 of the Ordinance, treasury stocks and redeemable preference shares;

(xx) "facility" includes a financing under a system which is based on participation in profit and loss, mark-up or mark-down in price, hire-purchase, lease, rent-sharing, bills of exchange, promissory notes or other instruments with or without buy-back arrangement by a seller, participation term certificate, musharika or modaraba certificate, term finance certificate or any other mode, guarantee, indemnity, letter of credit and any other obligation, whether fund based or non-fund

based;

(xxi) "form" means the forms annexed to the rules;

(xxia) "group" means persons, whether natural or juridical, if one of them or his close relatives, in case it is a natural person, or, its subsidiary or associated company, if it is a juridical person, have control or hold substantial ownership interest or have power to exercise significant influence over the other. For the purpose of this clause the expression-

(a) "subsidiary" will have the same meaning as defined in sub-section (2) of section 3 of the Ordinance;

(b) "control" will have the same meaning as defined in section 2 of the Listed Companies (Substantial Acquisition and Voting Shares and Takeovers) Ordinance, 2002;

(c) "substantial" ownership means beneficial shareholding of 20% by a person or by close relative; and

(d) "significant influence" refers to the management control of the company or the ability to participate in financial and operating policies, either exercised by representation on the Board of Directors, through partnership or by statute or by agreement in the policy making process or affiliation in terms of shadow director;

(xxii) "housing finance company" means a company licensed to provide housing finance services as mentioned in rule 20;

(xxiii) "housing finance services" mean financial services related to development and construction of residential and commercial properties and comprise the services as specified in rule 20;

(xxiv) "investment adviser" means a company licensed by the Commission to engage in investment advisory services;

(xxv) "investment advisory services" mean the services provided for management of closed-end funds and include the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing or selling of securities for remuneration ;

(xxvi) "investment company" means a company registered with the Commission under rule 38 to engage principally or wholly in buying and selling securities of other companies;

(xxvii) "investment finance company" means a company licensed by the Commission to provide investment finance services as mentioned in rule 14;

(xxviii) "investment finance services" include money market activities, capital market activities, project finance activities, corporate finance services and general services as described in rule 14;

(xxix) "leasing" includes financial services provided on operating lease or finance lease basis (in accordance with International Accounting Standard-17) or any other admissible mode determined by the Commission from time to time;

(xxx) "leasing company" means a company licensed by the Commission to undertake leasing;

(xxxi) "margin loan" means a loan made by a NBFC, licensed to provide investment finance services to partly finance investment by the client in marketable securities, which shall be held by the NBFC as collateral, the amount invested by the client being the "margin" against the loan;

(xxxii) "NBFC" means a non-banking finance company that is licensed by the Commission to engage in one or more forms of business in terms of rule 5 provided that its memorandum and articles of association permit it to do so, and includes asset management company, discount house, housing finance company, investment adviser, investment finance company, leasing company, venture capital company and such other company or body corporate as the Federal Government may, by

notification in the Official Gazette, specify for the purpose;

(xxxiii) "net assets", in relation to a collective investment scheme, means the excess of assets over liabilities of the collective investment scheme, such excess being computed in the manner specified hereunder, namely: -

(a) a security listed on a stock exchange shall be valued at its last sale price on such exchange on the date on which it is valued or if such exchange is not open on such date, then at its last sale price on the next preceding date on which such exchange was open and if no sale is reported for such date the security shall be valued at an amount neither higher than the closing asked price nor lower than the closing bid price;

(aa) a debt security listed but not traded regularly on a stock exchange shall be valued at the average rate, notified by the Mutual Funds Association of Pakistan based on the rates quoted by three brokers dealing in the debt securities, and record of such rates shall be maintained by the respective investment adviser or asset management company and Mutual Funds Association of Pakistan for a period of at least 3 years for verification by relevant parties including auditor of a collective investment scheme;

(b) an investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security held and the cash account of the collective investment scheme shall be adjusted to reflect the purchase price;

(c) an investment sold but not delivered pending receipt of proceeds shall be valued at the net sale price;

(d) the value of any dividends, bonus shares or rights which may have been declared on securities in the portfolio but not received by the collective investment scheme as of the close of business on the valuation date shall be included as assets of the collective investment scheme if the security upon which such dividends, bonuses or rights were declared is included in the assets and is valued ex-dividend, ex-bonus or ex-rights as the case may be;

(e) mark-up accrued on any mark-up-bearing security in the portfolio shall be included as an asset of the collective investment scheme if such accrued mark-up is not otherwise included in the valuation of the security;

(f) any other income accrued up to the date on which computation was made shall also be included in the assets;

(g) all liabilities, expenses, taxes and other charges due or accrued up to the date of computation which are chargeable under these rules, other than the paid-up capital of the closed-end fund, shall be deducted from the value of the assets;

(h) the remuneration accrued up to the date of computation payable to the investment adviser or asset management company, as the case may be, for providing management and other services shall be included as an expense;

(i) a security not listed or quoted on a stock exchange, other than a government or debt security, shall be valued at investment price or its break up value as per last audited accounts, whichever is lower;

(j) a government security not listed on a stock exchange and traded in the interbank market shall be valued at the average rate quoted on a widely used electronic quotation system and such average rate shall be based on the remaining tenor of the security; and

(k) such method of valuation of assets and liabilities as may be specified by the Commission from time to time;

(xxxiv) "net capital", in relation to a NBFC licensed to operate as an investment adviser, means an amount by which the current assets, i.e. cash in hand or in bank, money receivable within a period of twelve months from the date of the balance sheet and such other assets, not being the value of securities referred to in clause (b) of rule 33, as are classified under generally accepted accounting principles, exceed the current liabilities, i.e. money payable within a period of twelve months from the date of the balance sheet and such other liabilities as are classified under

generally accepted accounting principles;

(xxxv) "offering document" means a document containing information on a scheme calculated to invite offer by the public for purchase of certificates or units in that scheme;

(xxxvi) "open-ended scheme" means a unit trust scheme constituted by way of a trust deed which continuously offers for sale a security which entitles the holder of such security on demand to receive his proportionate share of the net assets of the scheme;

(xxxvii) "Ordinance" means the Companies Ordinance, 1984 (XLVII of 1984);

(xxxviii) "person" includes an individual, a Hindu undivided family, a firm, an association or body of individuals whether incorporated or not, a company and every other juridical person;

(xxxix) "promoter" means a person who has made an application to the Commission to form a NBFC under rule 4;

(xl) "records" mean all documentary and electronic materials created, generated, sent, communicated, received or stored, regardless of physical form or characteristics;

(xli) "risk assets" include marketable securities, units or certificates of collective investment schemes, modaraba certificates and other assets held by a NBFC in the ordinary course of its business except securities issued by State Bank of Pakistan or Government of Pakistan;

(xlii) "Schedule" means the schedule to these rules;

(xliii) "shadow director" means a person, in relation to a NBFC or a collective investment scheme, in accordance with whose directions or instructions (not being advice given in a professional capacity) the directors or chief executive or any other officer or share registrar of that NBFC or investment company or trustee or custodian

of that collective investment scheme are accustomed to act and may include the majority shareholders in the NBFC or the holding company or one who controls the majority holding whether directly or indirectly or through group, in the NBFC;

(xlv) "trust" means a trust established by a deed under the provisions of the Trusts Act, 1882 (II of 1882);

(xlv) "trustee" includes a bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962) or a trust company which is a subsidiary of such a bank or a banking institution incorporated outside Pakistan or a central depository company approved by the Commission or a NBFC carrying out investment finance services provided it has been approved by the Commission to act as trustee or such other company or trust as may be approved by the Commission to act as trustee;

(xlvi) "unlisted security" means a security not listed or quoted on a stock exchange;

(xlvii) "venture capital company" means a company licensed by the Commission to invest in venture projects through equity or other instruments whether convertible into equity or not and provides managerial or technical expertise to venture projects, or acts as a management company for management of venture capital fund;

(xlviii) "venture capital fund" means a fund registered under rule 26;

(xlix) "venture capital investment" means financing of any venture project by a NBFC licensed to operate as a venture capital company or by a venture capital fund being managed by such NBFC, through equity or other instruments whether convertible into equity or not;

(xlix) "venture project" means a project which is in the start-up phase of its business or commercial operations or undergoing expansion or engaged in a service, manufacturing or production activity based on a new process, service or technology or located in a remote or underdeveloped area of the country and is financed by a venture capital fund or a NBFC licensed as venture capital company and includes a wholly owned subsidiary of the NBFC provided it invests in the projects having the above said characteristics.

Provided that the shares of the venture project shall not be listed on any of the stock exchanges in Pakistan at the time of investment by the venture capital company or venture capital fund and the project shall not engage in any of the following business activity, namely: -

- (a) arms and ammunitions;
- (b) high explosives;
- (c) radioactive substances;
- (d) security printing, currency and mint;
- (e) manufacture of alcoholic beverages;
- (f) environmentally hazardous projects;
- (g) gold financing;
- (h) real estate; or
- (i) any other form of business carried on by non-banking finance companies.

(2) Words and expressions used but not defined in these rules shall have the same meaning as assigned to them in the Ordinance or the Securities and Exchange Ordinance, 1969 (XVII of 1969).

3. Eligibility criteria for the establishment of a NBFC.- A NBFC may be established, if each of its promoters, proposed directors, chief executive and chairman of the Board of Directors fulfills the terms and conditions mentioned in the fit and proper criteria as the Commission may, from time to time, specify.

4. Permission to form a NBFC.- (1) A person desirous of forming a NBFC shall make an application to the Commission as set out in Form-1 providing information,

as given in Annexure thereto, along with all the relevant documents and receipt evidencing the payment of non-refundable processing fee amounting to one hundred thousand rupees.

(2) The Commission may, if it is satisfied that the person seeking permission to form the NBFC has fulfilled the criteria in terms of rule 3, permit by an order in writing such person to establish a NBFC.

(3) The permission granted under sub-rule (2) shall be valid for a period of six months unless extended for a maximum period of three months under special circumstances, on the application of the promoters made before the expiry of said six months. During the validity of this permission, the promoters of the NBFC shall get the NBFC incorporated as a public limited company under the Ordinance.

5. Conditions for grant of licence.- (1) A NBFC shall make separate applications to the Commission for grant of licences for carrying on different forms of business, as specified in section 282 A of the Ordinance. The said application shall be submitted to the Commission in Form-II along with a non-refundable processing fee amounting to one hundred thousand rupees for each such licence:

Provided however that the Commission if satisfied may issue a single licence for investment finance services, leasing and housing finance services and a single licence for both investment advisory and asset management services.

(2) The Commission may, after making such inquiry and after obtaining such further information, as it may consider necessary, and if it is satisfied that the company has fulfilled the criteria in terms of rule 3, the promoters thereof are persons of means and integrity having knowledge of matters which the company may have to deal with, in respect of the business for which the licence is being sought, shall grant licence to such company in Form-III for one or more of the functions or activities subject to compliance of the following conditions, namely: -

(a) the company is incorporated as a public limited company under the Ordinance having at least seven directors;

(b) the company is not in direct competition with the business of its holding company and a license to carry on the same business has not been issued to any group company;

(ba) the company has minimum equity as may be determined by the Commission from time to time, in respect of each business activity mentioned in section 282A of the Ordinance;

(c) the company has allotted at least twenty per cent of the paid-up share capital to the promoters;

(d) the company's promoters, major shareholders and directors have given undertaking that they shall not dispose of their shares for a minimum period of three years from the date of commencement of business and there after only with the prior approval of the Commission;

Explanation: For the purpose of this clause, expression "major shareholder" means a person who, individually or in consort with family or as part of a group, holds twenty percent or more of the paid-up share capital of the company;

(e) the company appoints its chief executive who does not hold such office in any other company except for a fund being managed by the said company, provided that prior approval of the Commission has been obtained in this regard;

(f) the company has given an undertaking that no change in the Memorandum of Association, other than increase in the authorised share capital, shall be made without prior approval of the Commission;

(g) the company has given an undertaking that the conditions of operation as set out in these rules or regulations or specified by special order of Commission or any direction given by the Commission shall be duly complied with; and

(h) the company has furnished an undertaking that within ninety days of the grant of certificate of registration it shall furnish evidence to the satisfaction of the Commission that the personnel employed by it for executive positions, research or other related functions possess sufficient educational qualifications and professional experience to undertake the proposed form of business of the NBFC.

(3) Without prejudice to the conditions prescribed under sub-rule (2) , the Commission may, while granting licence, impose such conditions, as it may deem necessary.

(4) The licence granted to the NBFC under these rules shall be valid for one year and each licence shall be renewable annually on an application as set out in Form IV along with payment of a fee of rupees twenty five thousand.

(5) The Commission may, after making such inquiry and after obtaining such further information, as it may consider necessary, renew the licence of such NBFC, for one year in Form V on such conditions, as it may deem necessary.

Provided that till the Commission renews the licence or refuses to do so, the existing licence of the NBFC, which has applied for renewal under sub-rule (4), would remain valid.

(6) Every company in existence which is engaged in one or more forms of business as specified in section 282A of the Ordinance shall apply in writing to the Commission, as provided by sub-section (3) of section 282C of the Ordinance, for grant of a licence along with a non-refundable processing fee of rupees fifty thousand:

Provided that till such time that a new licence is issued, the existing licences or registrations shall be deemed to be valid for the purposes of these rules unless the company fails to apply for licence as specified in sub rule (6) or the Commission declines to grant such licence for reasons to be recorded in writing.

Provided further that a company which fails to submit necessary documents for grant of licence or fails to meet the conditions in rule 5 or other

regulatory requirements shall have no right for the grant of licence on the basis of incomplete or inadequate application submitted previously.

6. Commencement of operations by NBFC.- (1) A NBFC shall commence or continue its business and operations only after it has been issued a licence in terms of rule 5 for forms of business as mentioned in section 282A of the Ordinance and all conditions contained in rule 5 have been complied with.

(2) Without prejudice to the terms and conditions prescribed in rule 7, the Commission may, subsequent to the grant of licence to the NBFC, impose any other condition, as it may deem necessary in the public interest.

(3) If a NBFC fails to commence business within one year of the issuance of licence in terms of rule 5, the licence shall be deemed cancelled.

7. Conditions applicable to a NBFC.- (1) A NBFC shall, -

- (a) maintain such books of accounts and other records, as prescribed under the Ordinance, as shall depict a true and fair picture of its state of affairs including,
 - (i) journals, cash books and other records of original entry forming the basis of entry in any ledger;
 - (ii) ledgers (or other comparable record) reflecting assets, liabilities, income and expenses;
 - (iii) ledgers (or other comparable record) showing securities in the portfolio;
 - (iv) record of transactions with banks;
 - (v) record of the meetings of the board of directors; and
 - (vi) original record of all reports, analysis and memoranda containing investment advice distributed; and

(b) maintain such books of accounts and other records for a period of not less than ten years;

(c) appoint its financial or chief accounting officer who is-

(i) a chartered accountant; or

(ii) a cost and management accountant; or

(iii) a member of a recognized foreign accountancy organization; or

(iv) a person having master's degree in commerce or business administration with finance specialization and has senior management level experience of at least five years in financial institutions;

(ca) appoint an internal auditor who is-

(i) a chartered accountant;

(ii) a certified internal auditor;

(iii) a member of a recognized foreign accountancy organization;

(iv) a person having master's degree in commerce or business administration with finance specialization and has relevant audit experience of at least five years in financial institutions; or

(v) a chartered accountancy firm to whom this function is outsourced;

(cb) appoint such executives, as may be required by the Commission, who shall fulfill the terms and conditions mentioned in the fit and proper criteria specified by the Commission from time to time;

(cc) appoint-

(i) at least two of its directors (excluding chief executive officer) who have senior management level relevant experience of at least five years;

(ii) at least two independent directors; and

(iii) major shareholders who, directly or indirectly, hold twenty percent or more of the paid-up capital of the company or nominees representing major shareholders where such major shareholders have given an undertaking that they will be liable and responsible for the acts of the nominees;

Provided that not more than fifty percent of the directors of a NBFC shall be from the same sponsoring institution or same family, including spouse, lineal ascendants and descendants, and brothers and sisters.

Provided further that the same person can simultaneously fulfill the criteria as mentioned in (i) and (ii) or (i) and (iii).

(cd) appoint or change its chief executive or any of its directors, excluding director(s) nominated by the Federal Government or Provincial Governments, subject to approval of the Commission;

(d) prepare its accounts in conformity with the International Accounting Standards notified under sub-section (3) of section 234 of the Ordinance and technical releases issued by Institute of Chartered Accountants of Pakistan from time to time;

(da) within one month of the close of first and third quarters and within two months of the close of second quarter of the year of account of the NBFC, furnish to the Commission balance sheet as at the end of that quarter, a profit and loss account, a cash flow statement and a statement of changes in equity for that quarter, whether audited or otherwise;

(db) furnish a copy of the company's annual report together, with copies of the balance sheet, income and expenditure account and the auditors report to

the Commission or any other person as required by the Commission within four months of the close of the accounting period;

(e) disclose in its accounts all facilities whose present/market value exceeds twenty per cent of its equity;

(f) follow directions issued to protect NBFCs against their involvement in money laundering activities and other unlawful trades;

(g) obtain credit rating and, in the case of investment adviser and asset management company, management quality rating, as and when it becomes eligible for rating as per the rating criteria of the rating agency, which should be at least of a minimum grade or such rating as may be specified by the Commission from time to time, from a rating agency registered with the Commission, and such rating shall be updated at least once every financial year.

Provided that the NBFC shall within one year of the down grading in its credit rating from the grade specified above, obtain a fresh credit rating and during the period that its credit rating is below the grade so specified, the NBFC may be allowed by the Commission to continue its operations on such conditions as are deemed appropriate;

(h) publish the credit rating and management quality rating, as the case may be, in its annual report and quarterly reports, annual and quarterly reports of the collective investment schemes managed by an investment adviser or asset management company, if applicable, and any advertisement and brochures in relation to promotion of its business; and

(i) acquire and maintain membership of the relevant association and follow the code of conduct prescribed by the said association which is approved by the Commission.

(2) A NBFC shall not,-

(a) appoint as directors persons who hold such office in any NBFC engaged in a similar business while holding a similar license under these rules.

Provided that this clause shall not apply to the nominees of the Federal or Provincial Governments on the board of any NBFC;

(b) purchase anything from, or sell anything to any director, officer, employee of the NBFC or from or to a person who either individually or in concert with close relatives beneficially owns ten per cent or more either of the equity or other securities with voting rights, if any, issued by such NBFC, without the prior approval in writing of the Commission.

Provided that this restriction shall not apply to employees and chief executive of a NBFC (barring the directors) if purchase or sale is effected in accordance with the written policy, which has been duly approved by the Board of Directors of the NBFC;

(c) transfer ownership of shares in subsidiary or associated company, merge with, acquire or take-over any other company unless it has obtained prior approval of the Commission in writing to such transfer or scheme of such merger, acquisition or takeover;

(d) make a loan or advance money to any person except in connection with the ordinary course of business of the NBFC.

Provided that the NBFC may make loans and advances to its employees (subject to the provisions of section 195 of the Ordinance) in accordance with the company's pre-defined policy in writing, which has been duly approved by the Board of Directors;

(e) enter into transactions with any connected broker, which exceed ten *per cent* of the transactions of the NBFC in any one accounting year; subject, however, that such connected broker shall not have a common director or officer or employee with the NBFC;

(f) remove any of its records or documents relating to its business from Pakistan to a place outside Pakistan without the prior permission of the Commission;

(g) make investment in un-quoted shares of any company unless approved in a board meeting after carefully analysing the merits and financial impact of the investment and recording the decision in sufficient detail in minutes of the meeting.

Provided that such decisions shall be communicated to the Commission within fourteen days of the board meeting along with copy of the minutes;

Provided further that the total investment in un-quoted shares shall not exceed twenty percent of equity of the NBFC. In exceptional circumstances, however, the limit of twenty percent may be exceeded with the prior approval of the Commission. Any existing company, whose investment in un-quoted shares is in excess of twenty percent of the time of this rule becoming effective, shall bring such investment up to twenty percent within a period of twelve months from the date of effectiveness of this rule;

(h) offer any of its own or other securities for any consideration other than cash nor make any loan or advance against these securities; and

(i) hold, deal or trade in real estate except where the NBFC is licensed as a housing finance company or for use of NBFC itself or where specific prior approval is obtained from the Commission.

3) The existing NBFCs shall raise their respective equity in respect of each form of business to the minimum equity requirement as mentioned in clause (b) of sub-rule (2) of rule 5 latest by the 31st December, 2003, or any such extended date that may be allowed by the Commission, in view of the particular circumstances of the concerned NBFC.

8. Opening of branches.- (1) Opening or closure of any branch of a NBFC must be approved in a board meeting by the board of directors of a NBFC after carefully analyzing its merits and financial impact and the reasons must be recorded in minutes of board meeting. Such decisions shall be communicated to the Commission within fourteen days of the said meeting and at least fourteen days prior to closure of any branch.

(2) Opening or closure of any Booths or Facilitation Counters of a NBFC shall be approved in a meeting of the board of directors of a NBFC after carefully analyzing its merits and financial impact and the reasons must be recorded in minutes of board meeting. Such decisions shall be communicated to the Commission within fourteen days of the said meeting. These Booths and Facilitation Counters shall however not deal in receiving deposits as allowed under rule 12 or transacting in cash but shall be allowed to receive rental income for which adequate insurance coverage is available.

9. Insurance coverage.- A NBFC and trustee of the collective investment scheme shall obtain sufficient insurance coverage on its own or for its clients' benefit against any losses that may be incurred as a result of employee's fraud or gross negligence:

Provided that the Commission may, from time to time, specify the nature and extent of insurance coverage to be obtained by the NBFC and the trustee.

10. Exchange fluctuation risk.- A NBFC shall make satisfactory arrangement to insulate itself from exchange fluctuation risks associated with foreign currency obligations and transactions.

11. (Deleted)

CHAPTER - II

Operations

12. Issue of Certificates of Deposit.- (1) A NBFC that is licensed by the Commission and which fulfills the following conditions may apply to the Commission for permission to issue Certificates of Deposit, namely: -

- (a) the company has been profitably engaged in the business of leasing or investment finance services or housing finance services , as the case may be, for a period of two years;
- (b) the corporate and fiduciary conduct of the company and its directors has been satisfactory; and

(c) the company has obtained credit rating of minimum investment grade (BBB+ or equivalent) from a credit rating agency registered with the Commission, and such credit rating shall be updated at least once every year during the currency of the issue.

(2) If the Commission is satisfied that the NBFC fulfils the conditions of eligibility specified in sub-rule (1), it may give permission to such NBFC to issue CoD.

Provided that the company shall publish the credit rating in each financial statement and any advertisement and brochures in relation to promotion of its business. If during the tenure of CoD, the credit rating of the company falls below the investment grade, the company shall immediately cease to issue further CoD or roll-over the existing CoD upon maturity and permission to issue CoD shall stand cancelled with immediate effect. The existing CoD shall be encashed as and when they become due.

If the credit rating of the NBFC is subsequently upgraded to investment grade, it may apply to the Commission for a fresh permission for issuance of CoD to be obtained under these rules.

(3) The NBFCs issuing CoD shall observe the following conditions, namely: -

(a) a CoD issued under these rules shall be registered in the name of the person to whom it is issued and can only be transferable through a CDC account;

(aa) a product disclosure statement, setting out such information as may be specified by the Commission from time to time, shall be submitted along with the application to seek permission to issue CoD and shall also be attached with the CoD itself. On issuance of CoD, a copy of product disclosure statement shall be available free of cost at every premises of the NBFC:

Provided that NBFCs who are currently allowed to issue CoD or certificates of investment shall submit a product disclosure statement to the Commission, setting out such information as specified by the Commission, within sixty days of the date of effectiveness of this rule;

(b) the maturity period of CoD shall not be less than seven days:

Provided that a certificate shall be redeemable before its maturity period subject to the terms and conditions laid out in the deposit agreement or product disclosure statement;

(c) a CoD may be issued at fixed or floating rate of interest as specified in the product disclosure statement wherein the mechanism for determining the rate of interest shall also be disclosed;

(ca) all the advertisements for inviting general public for making investment in CoD shall be in conformity with the guidelines on advertisement as may be specified by the Commission from time to time and shall also contain the credit rating of the NBFC along with the name of the rating agency that has issued the rating and the date on which the credit rating was issued and shall be submitted to the Commission within three days from the date of issue;

(cb) at any point in time the total amount of CoD raised from individual depositors shall not exceed 3 times the equity of the NBFC; and

(d) not less than fifteen per cent of the resources raised through CoD, excluding the CoD held by financial institutions, shall be invested in Government securities or listed securities subject to the conditions prescribed in the rules made for investment of provident funds in listed securities, and such investments shall be kept un-encumbered.

Leasing

13. Terms and conditions for undertaking leasing business.- A NBFC licensed by the Commission to undertake leasing business shall operate in accordance with the following conditions, namely: -

(a) the NBFC shall invest at least seventy per cent of its assets in the business of leasing, unless it is duly licensed by the Commission to undertake any other form of business in addition to leasing;

Provided that cash and bank balances and investment in government securities shall be excluded to calculate investment in leasing business for purposes of this definition;

(b) the NBFC shall not engage in leasing operations pertaining to -

(i) open land; and

(ii) residential buildings and apartments; and

(ba) the NBFC shall not fix the period of lease for less than three years in the case of any finance lease agreement, except in case of computers and other equipment used in information technology or consumer leasing.

Investment Finance Services

14. Terms and conditions for undertaking investment finance services.- A NBFC licensed by the Commission to undertake investment finance services may undertake the following activities or functions provided that its memorandum and articles of association permit it to do so, subject to the conditions prescribed by these rules and any other conditions that may be specified by the Commission from time to time, namely: -

(a) in case of money market activities,___

(i) issue certificates of deposit or short-term paper of its own or investments of not less than seven days maturity subject to the conditions prescribed by these rules and any other conditions that may be specified by the Commission from time to time;

(ii) discount or trade in commercial paper issued by its client, government securities, promissory notes and bills, bankers' acceptances and other money market instruments, acting either as a broker or acting on its own account;

(iii) assist in the issue of commercial paper, including introduction of companies to the money market, preparation of documentation, distribution and market making; and

- (iv) act as broker or on its own account in the call money market;
- (b) in case of capital market activities,___
 - (i) trade in listed securities, both equity and non-equity instruments, acting either as broker or acting on its own account;
 - (ii) provide professional analysis of securities to institutional and individual investors either directly in writing or through publications, as to the advisability of investing in, purchasing or selling of securities for remuneration;
 - (iii) underwrite stocks and shares, short and long term participation term certificates and other negotiable term obligations of corporations and financial institutions, acting singly or jointly as manager, underwriter and distributor of such issues and taking an active part in all stages of preparation for such issues either public issues or private placement;
 - (iv) manage portfolios of stocks and shares, pension and provident funds, participation term certificates and other negotiable and debt instruments for both individual and institutional clients on a discretionary as well as non-discretionary basis and disclose separately details of such portfolio in its annual and quarterly accounts:

Provided that discretionary client accounts shall be managed separately from other activities and in accordance with the guidelines issued by the Commission, each investment or disinvestment decision being taken independently on its own merit without consideration of any other potential or actual involvement of the NBFC; and
 - (v) provide margin loans to individual and institutional investors;
- (c) in case of project financing activities,___
 - (i) make investment in projects through underwriting of public issue of stocks, shares and securities, short-term and long-term

participation term certificates and term finance certificates of varying features;

(ii) guarantee and counter-guarantee loans and obligations, including establishment of documentary credits; and

(iii) open letters of credit for their corporate clients for the import of machinery for installation, expansion, balancing, modernization and replacement.

(d) in case of corporate finance services,___

(i) act as adviser and financial agent for companies in obtaining direct bank loans, syndicated loans, export credits, leases and project finances, both domestically and internationally;

(ii) assist companies in private placement of debt and equity, domestically and abroad;

(iii) act as adviser to companies in corporate or financial restructuring as well as in the preparation of resource mobilization plans;

(iv) act as adviser to companies in mergers, acquisition and divestitures.;

(v) assist companies with cash management systems;

(vi) prepare feasibility, market or industry studies for companies, both domestic and foreign;

(vii) raise equity, such as through private equity and venture capital, for new and existing companies, by acting as financial intermediary;

(viii) act as custodian for securities owned or held by clients pursuant to their instructions and provide each or any of the following services; custody of securities, placing or execution of orders for

purchase or sale of securities, receipt of dividends and other income on securities, execution of voting and other rights in connection with securities, holding the securities in the name of investment finance companies on behalf of their clients, and transacting aforesaid activities through nominees, agents, or attorneys;

(ix) act as nominees, agent, attorney, administrator, executor or trustee for clients;

(x) act as trustee for collective investment schemes, private equity funds, venture capital funds, real estate investment trusts and debt instruments, if so approved by the Commission; and

(e) in case of general activities,

(i) raise funds through equity, foreign and local debentures both short and long term, commercial paper issued locally or abroad, sale of short and long term participation term certificates and term finance certificates:

Provided that the period of term finance certificates and other instruments shall not be less than thirty days;

(ii) act as authorized seller for securities and certificates, denominated in local or foreign currency, issued by Federal or Provincial Governments, statutory bodies, and state-owned corporations, including instruments of National Savings Schemes (NSS);

(iii) provide safe deposit vaults to clients;

(iv) handle payments and collections for clients; and

(v) make direct loans.

15. Total investment in equities.- The total investment in equities shall not exceed five times the equity of the NBFC duly licensed by the Commission to operate as an investment finance company, except equities taken up as consequence of

underwriting commitment in which case this limit may be exceeded by the amount of equities taken up for a period of six months.

Explanation: For the purpose of this rule the expression "equities" would include listed and un-listed shares, units and certificates of collective investment schemes (excluding money market and fixed income schemes) and venture capital funds, modaraba certificates, investments through continuous funding system, reverse repo and futures.

16. (Deleted)

17. Underwriting commitments.- All underwriting commitments shall be fully backed by either available funds or firm standby lines of credit or other funding arrangements.

18.Principles for margin loans.- The grant of margin loans to clients shall be governed by the following principles, namely: -

- (a) the aggregate of margin loans granted by a NBFC duly licensed by the Commission to operate as an investment finance company shall not exceed fifty per cent of its equity;
- (b) the margin to be maintained by the client shall not be less than thirty per cent of the loan amount outstanding calculated as the residual value obtained after deducting from the portfolio's market value the loan amount outstanding;
- (c) margin loans to a single client or associated company or undertaking shall not exceed ten per cent of the equity of the NBFC; and
- (d) margin loans shall be approved in accordance with a pre-defined policy in writing duly approved by the Board of Directors for the purpose and shall not be granted to any employee, officer, director, or a shareholder having a beneficial ownership including that of close relatives of more than ten per cent in the paid-up capital of the NBFC whether directly or indirectly (through their close relatives, companies controlled by them, affiliates, subsidiaries, or by way of acting in concert with others).

19. Deleted

Housing Finance Services

20. Terms and conditions for undertaking housing finance services.- A NBFC licensed by the Commission to undertake housing finance services may undertake the following activities or functions provided that its memorandum and articles of association permits it to do so, subject to the conditions mentioned below and any other conditions that may be specified by the Commission from time to time, namely,-

- (a) provide long term finance for the purpose of constructing, purchasing or making any additions, alterations or improvement to or in any property;
- (b) lease and rent on hire purchase basis buildings for residential and commercial purposes;
- (c) establish and manage housing schemes without engaging in business of buying and selling of real estate for capital gains or work as subsidiary or holding company or as joint venture of construction business;
- (d) carry out surveys and valuations of land and properties;
- (e) arrange for the insurance of pledged property from the present approved insurance companies;
- (f) manage mortgage investments as agents;
- (g) manage public or private sector projects, in the housing and urban development sectors;
- (h) make loans and advances for house building or non-residential properties to individuals, corporate, projects and housing companies;

(i) financing against existing property by way of mortgage, provided that the same property shall not be accepted as security unless the facility extended is settled; and

(j) raise funds, in addition to share capital from,-

(i) commercial paper, any security and deposits of not less than thirty days maturity approved by the Commission;

(ii) foreign debentures both short and long term;

(iii) issuance of redeemable capital (participation term certificates or term finance certificates, etc.);

(iv) lines of credit;

(v) re-discount facilities;

(vi) loans on mark up to other NBFCs providing housing finance services; and

(vii) investments in government securities, approved securities and such other approved modes as may be allowed to NBFCs from time to time.

21. Deleted

Venture Capital Investment – (A)

22. Terms and conditions for operating as a venture capital company.- Unless granted a general or specific waiver by the Commission, a NBFC licensed by the Commission to undertake venture capital investment shall,-

(a) not expose more than forty per cent of its equity attributable to venture capital investment segment to any single person or group of companies;

Explanation: For the purposes of this rule group of companies shall mean companies controlled by the members of one family including spouse, lineal ascendants and descendants and brothers and sisters; and

(b) disclose in its accounts all investments in companies and group of companies attributable to the venture capital investment segment of the NBFC.

23. Private placement.- In addition to its equity attributable to the venture capital investment segment, a NBFC may receive funds for investment in venture projects through private placement of such securities as may be notified by the Commission from time to time.

24. Placement memorandum.- A NBFC duly licensed by the Commission to operate as a venture capital company shall, before soliciting placement of its securities, file with the Commission a placement memorandum which shall inter alia give details of the terms subject to which funds are proposed to be raised from such placements.

Venture Capital Investment – (B)

25. Eligibility conditions of a venture capital fund.- A venture capital fund shall not be registered by the Commission unless it fulfills the following conditions, namely: -

(a) it is incorporated as a company under the Ordinance;

(b) it is not engaged in any business other than that of investment in venture projects;

(c) it has a minimum equity of fifty million rupees raised through private placement; and

(d) for the purpose of managing its entire business, it has entered into a contract, in writing, with a NBFC duly licensed by the Commission to operate as a venture capital company and a copy of which has been filed with the Commission.

26. Condition for registration.- (1) No venture capital fund shall commence business unless it is registered by the Commission under these rules.

(2) For registration a venture capital fund shall,-

(a) make an application, as set out in Form VI, to the Commission providing information as sought in Annex thereto, along with all the relevant documents;

(b) submit a bank draft payable to the Commission evidencing the payment of non-refundable application processing fee amounting to fifty thousand rupees; and

(c) submit an undertaking that no change in the memorandum of association, other than increase in the authorised share capital, shall be made without prior written authorization of the Commission and that all conditions for registration shall be complied with.

(3) On being satisfied that a venture capital fund is eligible for the grant of registration and that it would be in the public interest so to do, the Commission may grant registration as set out in Form VII.

(4) Without prejudice to any other conditions under these rules, the Commission may while granting registration impose any conditions, as it may deem necessary.

27. Terms and conditions of operation.- Unless granted a general or specific waiver by the Commission, a venture capital fund shall,-

(a) not expose more than forty per cent of its equity to any single person or group of companies:

Explanation: For the purposes of this rule group of companies shall mean companies managed by the members of one family including spouse, lineal ascendants and descendants and brothers and sisters;

(b) disclose in its accounts all investments in companies and group of companies exceeding ten per cent of paid-up capital of venture capital fund;

(c) ensure that the maximum exposure of the venture capital fund to its directors, affiliated companies and companies in which any of the directors and their family members including spouse, lineal ascendants and descendants and brothers and sisters hold controlling interest, shall not exceed ten per cent of the overall portfolio of venture capital; and

(d) not accept any investment from any investor, which is less than one million rupees.

28. Suspension of registration.- (1) The Commission may after making such enquiry and after obtaining such further information as it may consider necessary, suspend the registration of a venture capital fund by an order in writing.

Provided that no such order shall be made except after giving the venture capital fund an opportunity of being heard.

(2) Suspension of registration of a venture capital fund under sub-rule (1) shall be initially for a period of sixty days, which may be further extended by sixty days if deemed appropriate by the Commission.

(3) The venture capital fund must rectify the conditions that prevailed at the time

of suspension of registration within such time as the Commission may allow and thereafter apply to the Commission for restoration of registration.

(4) If the venture capital fund continues to operate under conditions which are deemed fit for continued suspension under sub-rule (1) of this rule, the Commission may proceed for cancellation in terms of rule 32 of these rules.

29. Private placement.- A venture capital fund shall raise and receive funds for investment in venture projects through private placement of such securities as may be notified by the Commission, from time to time.

30. Placement memorandum.- A venture capital fund shall, before soliciting placement of its securities, file with the Commission a placement memorandum, which shall inter alia give details of the terms subject to which funds are proposed to be raised from such placements.

31. Enquiry.- The Commission may cause an enquiry to be made, by any person appointed in this behalf, into the affairs of any venture capital fund.

32. Cancellation of registration.- (1) Where the Commission is of the opinion that a venture capital fund has contravened any provision, or has failed to comply with any requirement of any rule or any provision of applicable laws or conditions imposed by the Commission or order passed by the Commission or direction made or given hereunder, the Commission may, if it considers necessary in the public interest so to do, by order in writing, cancel the registration of the venture capital fund:

Provided that no such order shall be made except after giving the venture capital fund an opportunity of being heard.

(2) Upon cancellation of registration, the functions and carrying on the business of the venture capital fund shall cease and the Commission may apply to move the Court for a winding up order in respect of the venture capital fund or take such other action against the venture capital fund, as the Commission may deem fit.

(3) Notwithstanding cancellation of registration under sub-rule (1), the directors, chief executive, chairman and other officer of the venture capital fund shall not be absolved of any civil and criminal liability under these rules, the Securities and Exchange Ordinance, 1969 (XVII of 1969), or any other law for the time being in force.

(4) Where the registration of the venture capital fund has been cancelled under sub-rule (1), the Commission may, by an order in writing, appoint a person as Administrator to manage the affairs of the fund subject to such terms and conditions as may be specified in the order.

(5) The management of the affairs of the venture capital fund, shall vest in the Administrator on and from the date of the Administrator's appointment until a liquidator is appointed by the Court.

**“Asset Management Services or Investment Advisory Services -
(A)**

33. Terms and conditions to undertake asset management services or investment advisory services .- (1) A NBFC licensed by the Commission to operate as an investment adviser or asset management company shall appoint a designated fund manager, who shall be responsible for investment management function of not more than three collective investment schemes at a time, or such lesser number as may be specified by the Commission, and who fulfills the terms and conditions mentioned in the fit and proper criteria specified by the Commission from time to time.

(2) (a) Each asset management company or investment adviser shall have at least one investment committee and may appoint more than one investment committee whether for various funds or various asset classes. The investment committee shall, at all times, act separately and independently for each fund.

(b) The investment committee shall comprise relevant key personnel of the asset management company or investment adviser, as the case may be, including the chief investment officer and designated fund manager, and shall have a minimum of three members. The constitution of the investment committee shall be approved by the Board of Directors of the asset management company or investment adviser, as the case may be. Alternatively the Board may specifically delegate the authority to the chief executive to appoint investment committee. A member of the investment committee shall not:

(i) hold office as member of the investment committee of any collective investment scheme managed by another NBFC;

(ii) hold office as director of another NBFC licensed to undertake investment advisory services or asset management services; and

(iii) be engaged in brokerage services.

(c) The investment committee shall be responsible to the chief executive, who shall ensure that the committee functions effectively.

(d) At least two-thirds of the investment committee members shall be present prior to taking any investment related decision or other decisions relating to the responsibilities of the investment committee. However, if the quorum is not present in the event of any emergency, the fund manager, in consultation with another member of the investment committee, may take decisions and shall record in writing the decisions and the circumstances of the emergency and circulate the document to other members of the investment committee.

(e) The investment committee shall meet at such frequency as decided by it and shall:

- (i) ensure that investments made are consistent with the objectives and investment policy of the collective investment scheme;
- (ii) ensure that investments do not deviate from the constitutive documents or these rules or directions given under these rules and the Ordinance;
- (iii) develop an investment decision making process specific for each collective investment scheme;
- (iv) ensure that due process is being followed to arrive at investment decisions including having reasonable and adequate basis for investment decisions;
- (v) ensure that the risk undertaken is consistent with the declaration made in the constitutive documents;
- (vi) regular review the economic, political and market conditions;
- (vii) form an opinion on the broad asset allocation and security selection, keeping in view the market conditions; the responsibility of market timing may be delegated to the fund manager;
- (viii) ensure that investment decisions are implemented in an ethical way and without conflict of interest;
- (ix) review the performance of the collective investment scheme on a regular and timely basis;
- (x) ensure proper record keeping of meetings and investment decisions; and

(xi) develop criteria for appointing a diverse panel of brokers and monitoring compliance thereof to avoid undue consideration of business with any single broker.

(3) An investment adviser or asset management company shall be eligible to act as an investment adviser or asset management company, as the case may be, of more than one collective investment scheme if it fulfils the conditions specified by the Commission which may include minimum rating of the investment adviser or asset management company, track record in investment advisory services or asset management services, minimum rating and the performance of the collective investment schemes of which it has been or is an investment adviser or asset manager, as the case may be.

(4) A NBFC duly licensed by the Commission to provide asset management services or investment advisory services or investment company shall not,-

(a) obtain the management of a collective investment scheme, unless it has obtained the prior approval of the Commission in writing to do so;

(b) pledge any of the securities held or beneficially owned by a collective investment scheme except for the benefit of such scheme;

(c) accept deposits from a collective investment scheme;

(d) make a loan or advance money to any person except in connection with the normal business of the collective investment scheme;

(e) participate in a joint account with others in any transaction;

(f) apply any part of its assets to real estate except property for its own use;

(g) make any investment with the purpose of having the effect of vesting the management, or control, in the collective investment scheme;

(h) enter into transactions with any connected broker, which exceed ten *per cent* of the transactions of the collective investment scheme in any one accounting year of that scheme; subject, however, that such connected broker shall not have a common director or officer or employee with the investment adviser or asset management company or investment company:

Provided that the Commission may, in each case on merit, permit the limit of ten *per cent* to be exceeded if the connected broker offers advantages to the fund that are not available elsewhere;

(i) undertake brokerage services on stock exchanges or in the money market; and

(j) enter on behalf of the scheme into underwriting or sub-underwriting contracts.

34. Obligations of a NBFC licensed to operate as an asset management company or investment adviser of an open-ended or closed-end scheme.- A NBFC licensed by the Commission to operate as an asset management company managing an open-ended scheme or an investment adviser of a closed-end scheme shall, -

(a) be obliged to manage the assets of the open-ended or closed-end scheme in the interest of the unit or certificate

holders in good faith and to the best of its ability and without gaining any undue advantage for itself or any of its related parties or its officers;

(b) account to the trustee for any loss in value of the assets of the open-ended or closed-end scheme where such loss has been caused by its negligence, reckless or willful act or omission;

(c) be responsible for the acts and omissions of all persons to whom it may delegate any of its functions as manager as if they were its own acts and omissions;

(d) maintain at its principal office, proper accounts and records, to enable a complete and accurate view to be formed of the assets and liabilities and the income and expenditure of the open-ended or closed-end scheme, all transactions for the account of the open-ended or closed-end scheme and amounts received by the open-ended scheme in respect of issues of units and paid out by the open-ended scheme on redemption of units and by way of distributions by the closed-end or open-ended scheme;

(e) prepare and circulate the annual report, together with a copy of the balance sheet, income and expenditure account and the auditor's report of the open-ended or closed-end scheme within four months of closing of the accounting period, to the unit or certificate holders, and the balance sheet and income and expenditure account shall comply with requirements set out in Schedule-I (for closed-end scheme) and Schedule IV (for open-ended scheme);

(f) within one month of the close of first and third quarters and within two months of the close of second quarter of the year of account of the open-ended or closed-end scheme, prepare and circulate to the unit or certificate holders, the Commission and stock exchanges, on which the units or certificates of the scheme are listed, balance sheet as at the end of that quarter, a profit and loss account, a cash flow statement and a statement of changes in equity for that quarter, whether audited or otherwise:

Provided that the Commission, subject to any applicable conditions, may allow the asset management company or investment adviser to transmit the said quarterly accounts to the unit or certificate holders by placing them on the company's website. The asset management company or investment adviser, as the case may be, shall, however, make available the printed copy to any certificate or unit holder, free of cost, as and when requested.

(g) maintain a register of unit or certificate holders of the open-ended or closed-end scheme and inform the Commission of the address where the register is kept;

(h) appoint, with the consent of the trustee, at the establishment of the open-ended or closed-end scheme and upon any vacancy, an auditor who shall be a chartered accountant and independent of the auditor of the asset management company or investment adviser, as the case may be, and the trustee and such auditor shall not be appointed for more than five consecutive years and contents of the auditor's report shall be in accordance with Schedule I (for closed-end funds) and Schedule IV (for open-ended schemes);

(i) furnish a copy of the annual report together with copies of the balance sheet, income and expenditure account and the auditor's report of the open-ended or closed-end scheme to the Commission within four months of the close of the accounting period together with a statement containing the following information, namely: -

(i) total number of unit or certificate holders; and

(ii) particulars of the personnel (executive, research and other) of the asset management company or investment adviser, as the case may be;

(j) be obliged to obtain a rating of the open-ended or closed-end scheme, once the scheme becomes eligible for rating as per the rating criteria of the rating agency, and such rating shall be updated at least once every financial year and also published in the annual and quarterly reports of the open-ended or closed-end scheme; and

(k) in the case of an investment adviser, appoint as its nominee on the board of an investment company such person who is not on the board of an investment company managed by any other investment adviser.

Investment Advisory Services for Investment Companies– (B)

35. Regulation of the business of investment companies. - No company shall commence or continue business as an investment company unless it is duly registered with the Commission under rule 37.

36. Eligibility for registration.- A company proposing to commence or continue business as an investment company shall be eligible for registration if it complies with the following conditions, namely: -

(a) that such company is registered as a public company under the Ordinance;

(b) that it is to function as a closed-end fund with equity of not less than one hundred million;

(c) that no director, officer or employee of such company has been convicted of fraud or breach of trust;

(d) that no director, officer or employee of such company has been adjudicated as insolvent or has suspended payment or has compounded with his creditors; and

(e) that the promoters and directors of such company are, in the opinion of the Commission, persons of means and integrity and have specialized knowledge of matters which the company may have to deal with as an investment company.

37. Registration.- (1) Any company which is eligible for registration under rule 36 as an investment company may make an application as set out in Form X to the Commission for registration under these rules.

(2) An application under sub-rule (1) shall, besides the other documents referred to in Form X, be accompanied by a receipt evidencing a payment of an application processing fee of twenty-five thousand rupees along with an undertaking or evidence as per clause (b) of rule 36.

(3) The Commission, if it is satisfied after such enquiry and

after obtaining such further information as it may consider necessary.-

- (i) that the applicant is eligible for registration; and
- (ii) that it would be in the interest of the capital market so to do, may grant a certificate of registration to such company as set out in Form XI.

(4) In case an investment company fails to commence business within six months from the date of registration, its registration shall be liable to be cancelled, unless the period has been extended by the Commission on receipt of application submitted by the company before the expiry of six months.

38. Appointment of investment adviser.- (1) No investment company shall appoint any NBFC as an investment adviser except by a contract in writing setting out duties, rights and obligations of the parties and clearly providing for mechanism to enforce the terms of the contract and the circumstances under which the agreement can be revoked.

(2) The contract shall, initially or on renewal, be valid for a period not exceeding ten years and shall not be renewed or modified unless such renewal or modification has been authorized by the shareholders of the investment company in general meeting and approved by the Commission.

(3) If the contract, as initially entered into or as renewed, is terminated within the first five years of the contract, and not later, compensation for each year of the unexpired period of the contract shall be paid to the investment adviser at the rate of one-fourth of his annual average remuneration during the expired period of the contract.

Explanation: Where the expired period is a fraction of a year or includes a fraction of a year, the remuneration for the fraction of the year shall be converted pro rata into full year's remuneration and then the average annual remuneration shall be worked out to determine the compensation payable for the unexpired period of the contract.

(4) The contract shall, among other things, provide that the investment adviser shall bear all expenditure in respect of the secretariat and office space of the company and professional management, including all administrative, accounting and legal services, and that the fee payable to the auditors and the custodian, taxes on income of the company, brokerage, stamp duty and any other duties or taxes connected with the sale or purchase of securities shall be payable by the investment company.

(5) A copy of the investment adviser contract shall be submitted to the Commission for approval.

(6) The investment company may, with the prior approval of the Commission, change its investment adviser.

39. Custody of assets.- (1) Every investment company shall place and maintain all assets owned or held by the company with a custodian appointed by it with the prior approval in writing of the Commission.

(2) The investment company shall settle with the custodian a scheme for the custody of assets, which shall, among other matters, provide for the circumstances in which the assets may be released from custody.

(3) The custodian shall, if any release of any asset from custody is contrary to the provisions of these rules, report the matter to the Commission forthwith.

40. Conditions applicable to custodian.- (1) A custodian shall be;

(a) a scheduled bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962), which has minimum A+ rating from a credit rating company registered with the Commission, and has been in business for at least five years; or

(b) a trust company which is a subsidiary of a scheduled bank with minimum A+ rating from a credit rating company registered with the Commission; or

(c) a foreign bank operating as a scheduled bank in Pakistan and operating as custodian or trustee internationally; or

(d) a central depository company approved by the Commission; or

(e) a NBFC undertaking investment finance services which has minimum A+ rating from a credit rating company registered with the Commission:

Provided that the said NBFC is not licensed to undertake investment advisory or asset management services, and that such NBFC has been approved by the Commission to act as custodian; or

(f) such other company or trust as may be approved by the Commission to act as custodian, subject to such criteria as may be specified by the Commission from time to time.

(2) The custodian shall not in any way be related to the investment adviser or investment company.

(3) A director or employee of the custodian shall not be involved in the affairs of investment adviser.

41. Maintenance of books of accounts and other documents.-

(1) Every investment company shall maintain such books of accounts and other records as shall depict a true and fair picture of its state of affairs, including,-

- (a) journals, cash books and other records of original entry forming the basis of entry in any ledger;
- (b) ledgers (or other comparable record) reflecting assets, liabilities, income and expenses;
- (c) ledgers (or other comparable record) showing at any time securities which are receivable or deliverable;
- (d) record of transactions with the bank;
- (e) register of transaction in securities; and
- (f) record of the meetings of the board of directors.

(2) The books of account and other records to be maintained under sub-rule (1) shall be preserved for a period of not less than ten years.

42. Periodical reports to shareholders, etc.- (1) Every investment company shall transmit to its shareholders and the Commission,-

- (a) an annual report, together with a copy of the balance sheet and income and expenditure account and the auditor's report, not less than twenty one days before the date of the general meeting at which it is to be laid before the

shareholders; and

(b) a quarterly report, within thirty days of the close of first and third quarter and within two months of the close of second quarter of the year of account of the investment company.

(2) Such report, so far as may be applicable, shall be in accordance with requirements laid down in clauses (e), (f) and (h) of rule 34 and shall contain a statement showing the securities owned at the beginning of the relevant period, securities purchased or sold during such period, and the securities held at the end of such period together with the value (at cost and at market), and the percentage in relation to its own assets and the paid-up capital of the company whose securities are owned.

(3) The statement of income and expenditure of the investment company shall include a statement of income and expenditure of the investment adviser in relation to the investment company.

(4) A copy of the annual report referred to in sub-rule (1) shall, within the time specified therein, be furnished to the Commission together with a statement containing the following information in respect of the investment company as at the end of the year, namely: -

(a) total number of security holders;

(b) particulars of persons holding five *per cent* or more of the securities of the investment company at any time during the year;

(c) names and number of securities held by directors and officers of the investment company;

(d) any security of any other issuer sold and then bought during any six-month period;

- (e) particulars of the personnel (executive, research and other) of the investment company;
- (f) remuneration paid to the investment adviser;
- (g) particulars of the personnel (executive, research and others) of the NBFC operating as investment adviser; and
- (h) fee paid to the auditors.

43. Appointment of auditor.- An investment company shall appoint an auditor, who shall be a chartered accountant provided that the auditor,-

- (a) is not the auditor of the NBFC operating as the investment adviser or the custodian appointed by the investment company; and
- (b) has not been the auditor of the same investment company for more than five consecutive years.

**Asset Management Services or Investment Advisory Services -
(C)**

44. Appointment of trustee.- Every open-ended or closed-end scheme for which authorization is requested shall appoint a trustee with the approval of the Commission.

45. Conditions applicable to trustee.- (1)A trustee shall be,-

- (a) a scheduled bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962), which has minimum A+ rating from a credit rating company registered with the Commission, and has been in business for at least five years;
- or

(b) a trust company which is a subsidiary of a scheduled bank with minimum A+ rating from a credit rating company registered with the Commission; or

(c) a foreign bank operating as a scheduled bank in Pakistan and operating as trustee internationally; or

(d) a central depository company approved by the Commission; or

(e) a NBFC undertaking investment finance services which has minimum A+ rating from a credit rating company registered with the Commission:

Provided that the said NBFC is not licensed to undertake investment advisory or asset management services, and that such NBFC has been approved by the Commission to act as trustee; or

(f) such other company or trust as may be approved by the Commission to act as trustee subject to such criteria as may be specified by the Commission from time to time.

(2) In exercising its authority under rule 44, the Commission shall consider the availability of appropriate systems, personnel, management and such other criteria, as may be specified by the Commission from time to time.

46. Obligations of trustee of the open-ended or closed-end scheme.- A trustee shall,-

(a) take into its custody or under its control all the property of the open-ended or closed-end scheme and hold it in trust for the unit or certificate holders in accordance with the law and the provision of the constitutive documents and the cash and registerable assets shall be registered in the name of, or to the order of, the trustee;

(b) be liable for any act or omission of any agent with whom any investments are deposited as if they were the act or omission of any nominee in relation to any investment forming part of the property of the open-ended or closed-end scheme;

(c) be liable for the acts and omissions of the lenders and its agents in relation to assets forming part of the property of the open-ended or closed-end scheme and, where borrowing is undertaken for the account of the open-ended or closed-end scheme, such assets may be registered in the lender's name or in that of a nominee appointed by the lender;

(d) ensure that the sale, purchase, issue and transfer of units or certificates effected by the open-ended or closed-end scheme and repurchase, redemption and cancellation of units effected by the open-ended scheme are carried out in accordance with the provisions of the constitutive documents;

(e) carry out the instructions of the asset management company or investment adviser, as the case may be, in respect of investments unless they are in conflict with the provisions of the prospectus or offering documents or constitutive documents;

(f) ensure that the investment and borrowing limitations set out in the rules and constitutive documents and the

conditions under which the open-ended or closed-end scheme has been authorized are complied with;

(g) issue a report to be included in the annual report to be sent to unit or certificate holders whether, in his opinion, the asset management company or investment adviser, as the case may be, has in all material respects managed the open-ended or closed-end scheme in accordance with the provisions of the constitutive documents, and if the asset management company or investment adviser has not done so, the respects in which it has not done so and the steps which the trustee has taken in respect thereof;

(h) ensure that the asset management company or investment adviser, as the case may be, has specified criteria to provide for a diverse panel of brokers at the time of offering of a scheme and shall also ensure that the asset management company or investment adviser has been diligent in appointing brokers to avoid undue concentration of business with any broker; and

(i) in an open-ended scheme, ensure that units are not issued until subscription moneys have been paid.

47. Retirement or removal of trustee.- (1)A trustee may, subject to prior approval of the Commission, retire from his office on appointment of a new trustee and the retirement shall take effect at the same time as the new trustee is appointed with the approval of the Commission or from the date of assumption of assets of the open-ended or closed-end scheme by the newly appointed trustee, whichever ever is later.

(2) In circumstances where the Commission is of the opinion that trustee has been in violation of these rules or the trust deed or found

guilty of misconduct or failed to discharge its obligations under rule 46, it may remove the trustee after giving an opportunity of being heard.

48. Trustee and the asset management company or investment adviser to be independent.- (1) The trustee shall not in any way be related to the asset management company or investment adviser, as the case may be.

(2) A director or employee of the trustee shall not be involved in the affairs of asset management company or investment adviser, as the case may be.

49. Authorization of open-ended or closed-end scheme.- (1) No open-ended or closed-end scheme shall be offered to the public or continued unless the same is authorized by the Commission.

(2) An application for authorization of an open-ended or closed-end scheme shall contain information as set out in Form XII for closed-end scheme and Form XIII for open-ended scheme and shall be accompanied by the following information and documents, namely: -

(a) the open-ended/closed-end scheme's constitutive documents, contents of which have been set out in Schedule-II for closed-end scheme and Schedule V for open-ended scheme;

(b) the latest audited accounts, if applicable, of the NBFC licensed by the Commission to operate as the asset management company or investment adviser, as the case may be, and resumes of its directors;

(c) the trustee's latest audited accounts, if available;

(d) letter of consent by the trustee for his appointment;

(e) an undertaking from the NBFC licensed by the Commission to undertake asset management services that it will invest or arrange the investment of two hundred and fifty million rupees for a minimum period of two years.

Provided that the undertaking may not be given in case a scheme has been established prior to the commencement of these rules:

Provided further that the Commission may reduce this requirement to one hundred million rupees, where the asset management company has good performance record of maintaining better rate of total annual return on the open-ended scheme managed by it during the previous three years, relating to a benchmark which the Commission may specify by an order in writing from time to time to measure performance of the scheme;

(f) an undertaking from the NBFC licensed by the Commission to undertake investment advisory services that it will invest or arrange the investment in equity securities of a closed-end fund of an amount which is equal to ten per cent of the paid-up value of such securities for a minimum period of two years:

Provided that investment adviser of a closed-end fund, the capital of which has already been issued, subscribed and listed, shall comply with the rule within six months of the registration or authorization of such closed-end fund with the Commission; and

(g) application fee of one million rupees in the form of bank draft payable to the Commission or copy of paid Challan Form showing payment of fee in the designated bank branch in

favour of the Commission.

50. De-authorization of open-ended or closed-end scheme.- (1)

Following the authorization of an open-ended or closed-end scheme, its asset management company or investment adviser, as the case may be, shall give at least three months' notice to unit or certificate holders if it intends not to maintain such authorization.

(2) If the Commission considers that further continuation of the authorization of the open-ended or closed-end scheme will not be in the interest of unit or certificate holders, it may give a three months' notice to the unit or certificate holders about the Commission's intention not to maintain such authorization:

Provided that authorization shall not be cancelled without providing an opportunity of being heard to the asset management company or investment adviser, as the case may be.

(3) In case of de-authorization under this rule or pursuant to sub-rule (4) of 66, the asset management company or investment adviser, as the case may be, shall be required to wind up the collective investment scheme and refund the proceeds to the unit or certificate holders in such manner and within such time as may be specified by the Commission.

Asset Management Services or Investment Advisory Services –

(D)

51. Advertisement and invitation to invest.- (1) Advertisements

and other invitations to the public to invest in a collective investment scheme, including public announcements, shall be submitted to the Commission for approval prior to their issue.

(2) The prospectus of a closed-end fund, in addition to

complying with the provisions of the Ordinance, shall contain the information set out in Schedule-III. The offering documents of an open-ended scheme shall contain the information set out in Schedule VI.

(3) Advertisements in respect of every collective investment scheme shall be in conformity with the guidelines on advertisement as may be specified by the Commission from time to time.

(4) Any advertisement or invitation submitted for approval, which concerns the trustee must be accompanied by his written consent.

(5) The approval so granted may be varied or withdrawn by the Commission after giving an opportunity of being heard to the asset management company or investment adviser, as the case may be.

(6) Approval of an advertisement or invitation shall be valid for a period of sixty days from the date of approval provided that there is no change in the collective investment scheme or the approval has not been extended.

52. Investment policy and diversification.- (1) The investment policy of a closed-end fund shall be clearly and concisely stated in its memorandum and articles of association or constitutive documents, as the case may be, and in the prospectus or offering document for the sale of its securities. Investment policy with respect to an open-ended scheme shall be clearly and concisely stated in public offering document for the sale of securities of such scheme.

(2) A collective investment scheme may be categorized as follows for the purpose of investment:

(a) equity fund, which shall invest not less than eighty percent of its total investment portfolio in equity securities; or

(b) balance fund, which shall invest up to forty percent in equity securities and sixty percent in debt securities or vice versa of its total investment portfolio; or

(c) income fund, which shall invest not less than eighty percent of its total investment portfolio in debt securities; or

(d) asset allocation fund, which may invest zero to hundred percent of its total investment portfolio in equities securities; or

(e) sector specific fund, which shall invest not less than ninety percent of its total investment portfolio in a particular sector or asset class.

(3) A collective investment scheme shall not invest in unlisted equity securities unless an application for listing of such securities has been made to a stock exchange.

(4) A collective investment scheme may invest in unlisted government securities and secured debt securities that have minimum investment grade rating subject to such conditions as the Commission may from time to time notify in the official Gazette.

(5) The investment of a collective investment scheme in any other company or security shall not, at any time, exceed an amount equal to ten per cent of total net asset value of the collective investment scheme or ten per cent of issued capital of that other company or issue, whichever is lower:

Provided that where investment of a collective investment scheme exceeds the limits so specified because of taking up rights or bonus issue, the excess investment shall be regularized within three months of the breach of limits unless the said period of three months is extended up to another three months by the Commission on an application by the asset management company or investment adviser,

as the case may be,.

(6) Cumulative investments by all collective investment schemes, managed by the same asset management company or investment adviser, as the case may be, in a single company shall not exceed twenty percent of issued capital of that company.

(7) No collective investment scheme, shall invest more than twenty five per cent of its total net asset value in securities of any one sector as per classification of the stock exchange; subject, however, that this limit shall not apply to collective investment schemes categorized as sector specific funds.

(8) (a) No collective investment scheme shall invest more than thirty five percent of its total net asset value in any single group or consortium.

(b) No collective investment scheme shall make any investment in its own group companies.

(9) The Commission may, on application by the asset management company or investment adviser, as the case may be, relax any or all of the conditions prescribed in this rule, in case a collective investment scheme has been established for a specific investment objective where the intention to that effect has been expressed in the prospectus or the offering document of the collective investment scheme.

53. Sale of securities and cost thereof.- (1) Securities representing the capital of a closed-end fund shall be offered to the public at par but no such offer shall be made,-

(a) until the investment adviser of the fund has made or has arranged to make an investment of the amount referred to in clause (f) of sub-rule (2) of rule 49; and

(b) unless the offer has been underwritten by an underwriter appointed by a closed-end fund with the prior approval in writing of the Commission.

(2) A closed-end fund shall not sell any securities for any consideration other than cash.

54. Pricing, issue and redemption of units.- (1) In case of an open-ended scheme, if an initial offer is made, no investment of subscription money shall be made until the conclusion of the first issue of units at the initial price.

(2) Offer and redemption prices shall be calculated on the basis of the open-ended scheme's net asset value divided by the number of units issued and such prices may be adjusted by fees and charges, provided that the amount or method of calculating such fees and charges is clearly disclosed in the offering documents.

(3) There must be at least four regular dealing days per week.

(4) Any offer price, which the asset management company or the distribution company quotes or publishes, must be the maximum price payable on purchase and any redemption price must be the net price receivable on redemption.

(5) The maximum interval between the receipt of a properly documented request for redemption of units or certificates and the payment of the redemption money to the holder shall not exceed six working days unless redemption has been suspended.

(6) Where an open-ended scheme deals at a known price, and based on information available where the price exceeds or falls short of the current value of the underlying assets by more than five *per cent*, the asset management company shall defer dealing and calculate

a new price as soon as possible.

(7) A permanent change in the method of dealing shall be made after one month's notice to unit holders.

(8) A temporary change shall only be made,-

(a) in exceptional circumstances, having regard to the interests of unit holders;

(b) if the possibility of a change and the circumstances in which it can be made have been fully disclosed in the offering documents; and

(c) with the approval of the trustee.

(9) Suspension of dealings shall be provided for only in exceptional circumstances, having regard to the interests of unit holders.

(10) The asset management company shall immediately notify the Commission if dealing in units ceases or is suspended and the fact that dealing is suspended shall also be published immediately following such decision in the newspaper in which the scheme's prices are normally published.

(11) Where redemption requests on any one dealing day exceed ten percent of the total number of units in issue, redemption requests in excess of ten percent may be deferred to the next dealing day.

55. Limitations and Prohibitions.- (1) No closed-end fund shall,-

- (a) effect a short sale in a security whether listed or unlisted.;
- (b) purchase any security in a forward contract unless it is against a lien marked on its bank deposits;
- (c) purchase any security on margin;
- (d) apply any part of its assets to real estate, commodities or commodity contracts;
- (e) acquire any security of which another closed-end fund is the issuer but this clause shall not apply in case of floatation of a closed-end fund established with a specific investment objective of investing in other collective investment schemes;
- (f) invest into units of an open-ended scheme which is managed by the same asset management company or investment adviser as the closed-end fund but this clause shall not apply in case of a closed-end fund established with a specific investment objective of investing in other collective investment schemes;
- (g) issue at any time, without the prior approval of the Commission in writing, a senior security which is either stock or represents indebtedness;
- (h) apply for de-listing from stock exchange, unless it has obtained prior approval of the Commission in writing to the scheme of de-listing;
- (i) if it is an investment company, appoint fifty per cent or more directors who represent interest of investment

adviser;

(j) if it is an investment company, appoint or change its chief executive or any of its directors, excluding director(s) nominated by the Federal Government or Provincial Governments, without approval of the Commission; and

(k) enter on behalf of the scheme into underwriting or sub-underwriting contracts.

(2) No open-ended scheme shall –

(a) effect a short sale in a security whether listed or unlisted;

(b) invest in the certificates of a closed-end fund which is managed by the same asset management company or investment adviser as the open-ended scheme but this clause shall not apply in case of an open-ended scheme established with a specific investment objective of investing in other collective investment schemes;

(c) lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person.

Explanation: Investment in sale and repurchase transactions involving government securities or such listed securities which are regulated by the stock exchanges shall not be attracted by clause (c) provided risk management parameters are disclosed in the constitutive and offering documents of the scheme with the prior approval of the Commission; and

(d) borrow, except for meeting redemption request and such borrowing shall not exceed fifteen per cent of the total net asset value of an open-ended scheme at any time and shall be repayable within a period of ninety days.

56. Transactions with connected person.- (1) No collective investment scheme shall without the prior approval of the Commission in writing, purchase from, or sell to, any connected person or employee of the collective investment scheme or of the asset management company or investment adviser thereof or a person who beneficially owns ten *per cent* or more of the equity securities of the closed-end fund or of its investment adviser or asset management company, as the case may be.

(2) Transactions between collective investment schemes of the same investment adviser or asset management company, as the case may be, shall be notified to the Commission within two days of such transactions and shall be disclosed in quarterly and annual accounts of the collective investment schemes.

(3) In case cash forming part of the collective investment scheme's assets is deposited with the trustee or the custodian, which is a banking company or a NBFC, return shall be paid on the deposit by such trustee or custodian at a rate that is not lower than the rate offered by the said banking company or NBFC to its other depositors on deposits of similar amount and maturity.

(4) All transactions carried out by or on behalf of the collective investment scheme shall be made as provided in the constitutive documents, and shall be disclosed in the collective investment scheme's annual report.

57. Expenses Chargeable to Collective Investment Schemes.-

(1) All expenses incurred in connection with the incorporation and registration or establishment and authorization of a closed-end fund and the offer for sale of the securities of the fund and the distribution of such securities, including commission payable to the underwriter, shall be borne by the investment adviser and shall be reimbursable by the fund in equal amounts paid annually over a period of not less than five years. However, in case of specific period fund of less than five years, such expenses shall be reimbursable in equal amounts up to the maturity date of the fund:

Provided that an investment adviser of a closed-end fund, the capital of which has already been issued, subscribed and listed, shall not be entitled to reimbursement of any expense other than that incurred in connection with incorporation and registration or establishment and authorization of the fund.

(2) All expenses incurred in connection with the establishment and authorization of an open-ended scheme including execution and registration of the constitutive documents, issue, legal costs, printing, circulation and publication of the offering document, announcements describing the open-ended scheme and all expenses incurred during the initial period shall be borne by the asset management company and shall be reimbursable by the fund over a period of not less than five years. However, in case of specific period fund of less than five years, such expenses shall be reimbursable in equal amounts up to the maturity date of the fund.

(3) Notwithstanding the generality of sub-rule (1) and sub-rule (2), the following fees and charges shall be payable from the collective investment scheme:-

- (a) remuneration of the management company;

- (b) remuneration of the trustee or custodian as the case may be;
- (c) custodial charges, both local and international;
- (d) in case of an investment company, directors' fee and remuneration for attending meetings;
- (e) listing fee payable to the stock exchange(s) including renewals;
- (f) charges and levies of stock exchange(s), national clearing and settlement company and central depository company;
- (g) rating fee payable to approved rating agency;
- (h) auditors' fees and related expenses;
- (i) any fees payable to the Commission;
- (j) membership fee of any professional body if specifically required for the collective investment scheme;
- (k) formation cost not exceeding one percent of the pre-initial public offering capital in case of an open ended scheme and one percent of the paid-up capital in case of a closed-end fund;
- (l) brokerage and transaction costs related to investing and disinvesting of the assets of the collective investment schemes;
- (m) expenses incurred by trustee in effecting registration of all registerable assets in the name of the trustee;

(n) legal and related costs incurred in protecting or enhancing the interests of the unit or certificate holders of the collective investment scheme;

(o) bank charges and borrowing and financial costs;

(p) hedging costs including forward cover, forward purchase or option purchase costs;

(q) any printing costs and related expenses for issuing the collective investment scheme's quarterly, half yearly and annual reports etc.;

(r) taxes, fees, cess, duties and other charges applicable to the collective investment scheme on its income or its properties, including taxes, fees, cess, duties and other charges levied by foreign jurisdiction on investments outside Pakistan; and

(s) any other expense or charge as may be permitted by the Commission.

(4) The expenses referred to in sub-rule (1) and sub-rule (2) shall be reported to the Commission giving their break-up under separate heads, as soon as the distribution of the securities is completed.

58. Remuneration payable to asset management company or investment adviser.-

(1) A NBFC licensed by the Commission to operate as an asset management company or investment adviser, as the case may be, shall be entitled to be paid monthly in arrears, fifty percent of accrued remuneration, and annually, after the accounts of the collective investment scheme managed by it have been audited, the remainder of the remuneration due for the year during the first five years of collective investment scheme's

existence, of an amount not exceeding three percent of the average annual net assets of the collective investment scheme and thereafter of an amount equal to two percent of such assets or such other amount as may be specified by the Commission from time to time.

Explanation:- For the purposes of this rule, the word average means the average of net assets calculated on daily, weekly or monthly basis during the year for announcing the price of units.

59. Annual fee.- A collective investment scheme shall pay within four months of the close of its year of account, as annual fee to the Commission, an amount equal to one twentieth of one percent of its average annual net assets calculated in accordance with rule 58 or such other fee as may be specified by the Commission from time to time.

60. Amount distributable to shareholders.- A collective investment scheme shall distribute by way of dividend to its shareholders not less than ninety percent of its income received or derived from sources other than capital gains as reduced by such expenses as are chargeable to a collective investment scheme under these rules.

61. Publication of portfolio securities.- (1) Every closed-end fund shall cause to be published, in the Bulletin or other such publication of the stock exchange on which its securities are listed, the names and the value of its portfolio securities as at the end of each quarter.

(2) Every closed-end fund shall furnish to the stock exchange, where the securities of the fund are listed, the Commission and any association of self-regulatory organization, or as directed by the Commission, within fourteen days of the last day of the preceding month, information, as on last date of the preceding month, about the net asset value of securities issued by it, the net assets having been

computed in the manner prescribed in clause (xxxiii) of sub-rule (1) of rule 2.

**Portfolio Management by Asset Management Companies or
Investment Advisers – (E)**

62. Managing discretionary accounts.- (1) A NBFC duly licensed by the Commission to operate as an asset management company or investment adviser may manage portfolios of stocks and shares, pension and provident funds, participation term certificates and other negotiable and debt instruments for both individual and institutional clients on a discretionary basis.

(2) An asset management company or investment adviser managing discretionary client accounts in terms of this rule shall manage such discretionary client accounts separately from other activities, particularly from any collective investment scheme(s) managed by it, and in accordance with the guidelines issued by the Commission from time to time.

(3) Each investment or disinvestment decision for portfolio management shall be taken independently on its own merit without consideration of any other potential or actual involvement of the NBFC and details of such portfolio shall be disclosed separately in its annual and quarterly accounts.

**Asset Management Services or Investment Advisory Services –
(F)**

63. Power of the Commission to ask for information.- (1) Every collective investment scheme shall, as and when required by the Commission by order in writing and within such time as may be

specified therein, furnish to the Commission the information regarding the sale price and the capital gain or loss in respect of each security purchased and sold.

(2) Every collective investment scheme shall furnish to the stock exchange, where the units or certificates of the scheme are listed, the Commission and any association of self regulatory organisation, or to any other person as directed by the Commission, such information as is specified by the Commission from time to time within such time as it may specify.

64. Special Audit.- (1) The Commission shall monitor the general financial condition of collective investment schemes, and, by recoding the reason in writing, may order special audit and appoint an auditor, who shall be a chartered accountant as defined in the Chartered Accountants Ordinance, 1961 (X of 1961) and who shall not be the external auditor of the collective investment scheme, or investigation by an inspector to be appointed under the provisions of the Ordinance or appoint both auditor and inspector to carry out detailed scrutiny of the affairs of a collective investment scheme, provided that the Commission may, during the course of the scrutiny, pass such interim orders and give directions as it may deem appropriate.

(2) On receipt of the report or the reports from the auditor or inspector, as the case may be, the Commission may direct the collective investment scheme to do or to abstain from doing certain acts and issue order for immediate compliance, which shall be complied forthwith, and may initiate further proceedings on the basis of the report or reports.

65. Inspection of a collective investment scheme, trustee and custodian.- (1) Notwithstanding anything to the contrary contained in these rules, the Commission may at any time by an order in writing and in exercise of any and all powers provided under Section 478 of the Ordinance,-

(a) inspect any collective investment scheme and its books of account; and

(b) inspect any trustee or custodian of a collective investment scheme and its systems, procedures, and books of account.

(2) The inspection shall be carried out by such officer of the Commission as the Commission may so appoint.

(3) It shall be the duty of every asset management company or investment adviser or investment company or its custodian or its trustee, and of every director, officer and employee thereof, or any other person relating to its business, to produce to any officer appointed under sub-rule (2) above (hereinafter referred to as the inspecting officer), all such books, accounts, records and other documents in its custody, power or control and to furnish him with such statements and information relating to the activities as a collective investment scheme, investment adviser, asset management company, custodian, trustee and within such time as the inspecting officer may require.

(4) Every person mentioned in sub-rule (3) above shall allow the inspecting officer to have reasonable access to the premises occupied by it or any other person on its behalf and also extend reasonable facility for examining any books, records, documents, and computer data in its possession and also provide copies of documents or other materials which in the opinion of the inspecting officer are relevant for the purpose of the inspection.

(5) The inspecting officer, in the course of the inspection shall be entitled to examine on oath any director or officer of the asset management company or investment company or investment adviser or its custodian, or its trustee, or any other person relating to the

business of the collective investment scheme and record the statements of any person mentioned in sub-rule (3) above.

(6) The inspecting officer shall, as soon as possible, on completion of the inspection submit a report to the Commission.

(7) The Commission may after the consideration of the inspection report:

(a) direct the asset management company, investment adviser, investment company, trustee or custodian to do or to abstain from doing certain acts and issue order for immediate compliance, which shall be complied forthwith; and

(b) initiate further proceedings on the basis of the report including taking such actions as the Commission may deem fit under the Ordinance or under these rules.

66. Conversion of closed-end fund.- (1) A closed-end fund shall, upon expiry of five years from the date of launch of the fund, hold a meeting of the certificate holders, in case of a closed-end scheme, or shareholders, in case of an investment company to seek approval of the certificate holders or shareholders, as the case may be to continue as a closed-end fund or convert into an open-ended scheme or de-authorize the closed-end scheme or wind-up the investment company, subject to applicable provisions of these rules and the Ordinance.

Provided that this rule shall not apply to funds having specific maturity period.

(2) The meeting of certificate holders or shareholders, as the case may be, shall decide on continuation or conversion or de-authorization or winding up of the closed end fund with three fourth majority.

(3) Not later than 15 days from the date of meeting of the certificates holders or shareholders, as the case may be, the closed-end fund shall make an application to the Commission, accompanied with a copy of the resolution passed by three-fourth majority of certificate holders or shareholders and a plan allowing those existing certificate holders or shareholders, who are not in agreement with the continuation or conversion of the fund, to exit from the fund by selling their entire holding at a price which shall not be less than the net asset value of the fund to the investment adviser.

(4) In case of an application for continuation of the closed-end fund or conversion into an open-ended scheme the Commission, if satisfied with the plan, competence of the investment adviser and net assets of the fund, may require the applicant to redeem the shares or certificates from those who are not in agreement with the continuation or conversion of the fund and to fulfill such formalities as are necessary, including those prescribed by these rules, for an open-ended scheme and grant approval. In case of an application for de-authorization of the closed-end scheme, the Commission shall proceed with de-authorization forthwith. In case of an application for winding-up of the investment company, the provisions of the Ordinance regarding members' voluntary winding up shall apply.

67. Power of Commission to give directions.- The Commission may, if it is satisfied that it is necessary and expedient so to do in the public interest or in the interest of capital market in Pakistan, by an order in writing, give such directions to any investment company, investment adviser, asset management company, custodian or trustee, individually or collectively, which are essential to enforce the rules including but not limited to making arrangements for safe custody of assets of the collective investment scheme, submission of periodic or special reports, disclosure of information and to make such arrangements, within such time as may be specified in the order, to,-

(a) disinvest the whole or such part of the investment

portfolio as may be specified;

(b) refrain from investing or disinvesting such securities as may be specified; and

(c) co-opt one or more persons nominated by the Commission as members of the board of directors of the investment company or investment adviser or asset management company, as the case may be, with the same status, powers and rights as the other members of the board.

68. Cancellation or suspension of licence of a NBFC to operate as an asset management company or investment adviser.- (1)

Where the Commission is of the opinion that a NBFC licensed to operate as an asset management company or investment adviser, as the case may be, has contravened any provision, or has otherwise failed to comply with any requirement of the Ordinance or of any rule or direction made or given there under, or any order passed by the Commission or the conditions of the investment advisory contract or the terms of the custodian agreement or constitutive documents or has failed or neglected to carry out its duties to the satisfaction of the trustee, and the Commission considers that it would be in the interest of the unit or certificate holders so to do, it may, on its own motion or on the report of the trustee, by order in writing,-

(a) cancel or suspend the licence of NBFC to operate as an asset management company or investment adviser, as the case may be, provided, however, where joint licence is issued for investment advisory and asset management services, the Commission may allow the NBFC to continue providing the investment advisory services or asset management services, as applicable; or

(b) remove NBFC from the office of asset management company or investment adviser, as the case may be, of a

collective investment scheme; or

(c) issue cease and desist orders to NBFC; or

(d) order compensation to be paid to the unit/certificate holders; or

(e) ban defaulters to be employed within the security market temporarily or permanently; or

(f) impose fine; or

(g) take any combination of the above action.

Provided that no such order shall be made without giving the NBFC an opportunity of being heard.

(2) A NBFC removed from office under sub-rule (1), shall not be entitled to or be paid any compensation or damages for loss of termination of office.

(3) If the registration of an asset management company or investment adviser is cancelled under sub rule (1), the Commission shall appoint another asset management company or investment adviser to manage the collective investment scheme or schemes as the case may be:

Provided that in special circumstances the Commission may, by order in writing, appoint a person, hereinafter referred to as the Administrator, to manage the affairs of the collective investment scheme subject to such terms and conditions as may be specified in

the order.

(4) A NBFC operating as asset management company or investment adviser, as the case may be, of a collective investment scheme, who is removed from office under sub-rule (1), shall not be appointed to such office of that company until after the expiration of a period of five years from the date of such removal.

(5) Where a NBFC operating as asset management company or investment adviser, as the case may be, of a collective investment scheme is removed from that office under sub-rule (1) no director or officer of the asset management company or investment adviser shall hold the office of director of the investment company or any other office connected with the conduct or management of the affairs of the collective investment scheme until after the expiration of a period of five years from the date of such removal.

(6) A NBFC licensed to operate as an asset management company or investment adviser may apply to the Commission for the cancellation of its licence as an asset management company or investment adviser if it has, with the prior approval of the Commission, transferred management of its scheme to another asset management company or investment adviser, as the case may be, or its scheme has been de-authorized under rule 50 or the NBFC no more intends to function as an asset management company or investment adviser.

(7) The Administrator appointed in the proviso to sub-rule (3) shall receive such remuneration from the collective investment scheme as the Commission may determine.

(8) The management of the affairs of the collective investment scheme shall, on and from the date of appointment of the Administrator, vest in him.

(9) If at any time it appears to the Commission that the purpose of

the order appointing the Administrator has been fulfilled, it may permit the investment company or trustee to appoint another person as asset management company or investment adviser, as the case may be, and on the appointment of such asset management company or investment adviser, the Administrator shall cease to hold office.

69. Penalty.- If an investment company refuses to comply with or contravenes any provisions of these rules or directions or orders passed by the Commission thereunder, every director of the investment company who is knowingly and willfully a party to the default shall be liable to a fine not exceeding five hundred thousand rupees and to a further fine not exceeding one thousand rupees for every day after the first during which the default continues.”.

CHAPTER – III

Miscellaneous

70. Relaxation of rules/directions.- If any difficulty arises in giving effect to any of the provisions of these rules in a particular case, or class of cases, or it would be in the interest of capital market so to do, the Commission may, for reasons to be recorded in writing, relax such requirements subject to such conditions as it may deem fit.

71. Transitional provisions.- Within six months from the coming into force of these rules, all NBFC shall alter their memorandum and articles of association or any existing contract or agreement and shall take such other actions as are necessary to bring the memorandum and articles of association and working procedures of the NBFC in conformity with the provisions of these rules:

Provided that, notwithstanding the fact that such actions have not been taken

or such changes have not been made, the NBFC shall comply with the provisions of these rules as if they are licensed or registered under these rules.

72. Repeal and savings.- (1) The Leasing Companies (Establishment & Regulation) Rules, 2000, Investment Companies and Investment Advisers Rules, 1971, Asset Management Companies Rules, 1995, Venture Capital Companies and Venture Capital Funds Rules, 2001 are hereby repealed and Finance Division's notifications No. S.R.O. 585(1)/87 dated the 13th July 1987 and S.R.O. 1356(1)/90 dated the 24th December 1990 are hereby rescinded.

(2) Save as otherwise specifically provided, nothing in these rules, or any repeal effected thereby, shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, appointment, conveyance, mortgage deed, document or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued, under or in pursuance of any rules or notifications repealed by these rules and any such thing, action, investigation, proceedings, order, appointment, conveyance, mortgage deed, document, agreement, fee, resolution, direction, proceedings or instrument shall if in force at the coming into force of these rules and not inconsistent with any of the provisions of these rules, continue to be in force, and have effect as if it were respectively done, taken, commenced, made, directed, passed, given, executed or issued under these rules:

Provided that,-

(a) subject to sub-rule (6) of rule 5 the repeal shall not affect the existing incorporation or registration or licence of a NBFC registered or licensed under any rules or notifications hereby repealed;

(b) any document referring to any repealed rules or notifications relating to NBFCs shall be construed as referring to the corresponding provision of these rules;

(c) all funds and accounts constituted or maintained under these rules shall be deemed to be in continuation of the corresponding funds and

accounts constituted or maintained under the repealed rules or notifications relating to NBFC; and

(d) where any offence has been committed under any former rules or notifications relating to NBFC, proceedings may be taken under these rules in respect of such offence after the coming into force of these rules, in the same manner as if the offence had been committed under the corresponding provision of these rules.

(3) The mention of particular matters in this rule or in any other rule of these rules shall not prejudice the general application of section 6 of the General Clauses Act, 1897 (X of 1897), with regard to the effect of the repeals.