



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Adjudication Department-I

Adjudication Division

Through Courier

Before the Executive Director (Adj-I)

Disposal of Show Cause Notice under Section 282J(1) read with Section 282M(1) of the Companies Ordinance, 1984 for Violation of Regulation 66A(c)(i), Regulation 66A(c)(iv), Regulation 66A(d) and Regulation 66A(f) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008

Date of hearing:

January 17, 2020

Present (on behalf of UBL Fund Managers Limited)

- i. Mr. Yasir Qadri, CEO
- ii. Mr. Umair Ahmed, CFO
- iii. Mr. Hadi Hassan Mukhi, Head of Compliance

ORDER

This Order shall dispose of the proceedings against **UBL Fund Managers Limited** ("UBL Funds", "the AMC" or "the Company"/The Respondent Company), which is an unlisted public limited company licensed to undertake the business of Asset Management and Investment Advisory Services initiated through Show Cause Notice (the "SCN") bearing No. **SCD/ADJ/UBLFML/51/2019/65** dated **November 08, 2019** under Section 282J(1) read with Section 282M(1) of the Companies Ordinance, 1984 (the "Ordinance").

2. Six different investors lodged complaints against UBL Funds through the complaint management system (SDMS) of the Securities and Exchange Commission of Pakistan (SECP or the Commission) vide Complaint Nos. **78361, 78355, 78175, 75980, 75670 and 74831**. The complaints were referred to Supervision and Enforcement Department, Specialized Companies Division (SCD-S&ED) of SECP for detailed scrutiny, after initial examination of the complaint by Policy, Regulation and Development Department of SCD. SCD-S&ED observed violations of Regulation#66A (c) (i), Regulation#66A (c) (iv), Regulation 66A(d), Regulation#66A (e), and Regulation#66A (f) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the NBFC Regulations) and referred the matter to the Adjudication Division for necessary enforcement action.

3. In all the instances, the AMC was found to be involved in the following non-compliances of the NBFC Regulations:

- i. Mis-selling of mutual funds/plans to the complainants, prima facie violating Regulation 66A(c) (i) of the NBFC Regulations.
- ii. The Company had not communicated to the complainants the risks factors associated with the said mutual funds/plans, thereby, prima facie failing to comply with the requirement of Regulation 66A(c)(iv) of the NBFC Regulations.





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- iii. UBL Funds also failed to assess the suitability of the offered investment plans to the complainants, resulting in violation of Regulation 66A (d) of the NBFC Regulations.
- iv. High returns on investment were guaranteed to the complainants through verbal assurances by AMC's representative without any appropriate and relevant explanation, which was in violation of Regulation 66A (e) of NBFC & NE Regulations, 2008.
- v. The Company prima facie also violated Regulation 66A (f) of the NBFC Regulations by sharing term sheet with the customers in which the risk level of the plans was declared as 'Moderate', contrary to the actual allocation of the plan.

The relevant text of the said NBFC Regulations mentioning the requirements is reproduced below:

Regulation 66A (c)(i):

'An Asset Management Company and distributor shall not involve either directly or indirectly in the mis-selling of Collective investment schemes'

Regulation 66A(c)(iv):

'An Asset Management Company and distributor shall not sell units of Collective Investment Scheme directly or indirectly by concealing the risk factors associated with the scheme'

Regulation 66A (d):

'An Asset Management Company or distributor shall take reasonable care to ensure suitability of the scheme to the investor'

Regulation 66A (e):

'An Asset Management Company or distributor shall ensure that any performance reporting/presentation is accompanied by all explanations, qualifications, limitations and other statements that are necessary to prevent such information from misleading investors'

Regulation 66A (f):

'An Asset Management Company or distributor shall ensure that promotional materials do not contain untrue statements or omit to state facts that are necessary in order to prevent the statements from being misleading, false or deceptive'

4. In view of the aforesaid, the Company was called upon to show cause in writing as to why penal action should not be taken against it under section 282J(1) read with Section 282M(1) of the Ordinance in violation of Regulation 66A(c)(i), Regulation 66A(c)(iv), Regulation 66A(d) and Regulation 66A(f) of the NBFC Regulations, since their conduct in case of the aforesaid complaint was, prima facie in violation of the above mentioned mandatory requirements.

5. A written reply was received vide letter dated November 18, 2019 from the Company. The following arguments were provided in the reply:

- (i) *Regulations 66A(c)(i) and 66A(d) of the NBFC Regulations requires not to mis-sell to unitholders and perform need assessment of unitholders. UBL Funds had devised its own format and made it part of the Account Opening Form to be filled mandatorily by every*



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unitholder. The format was kept basic so that an average unitholder could understand it. The Commission promulgated amendments in NBFC Regulations wherein under Regulation 66A(d) an explanation has been inserted which requires the AMC to ensure proper acknowledgment from investors on risk profiling and recommend Collective Investment Scheme as per risk profiling and in case an investor selects a high-risk product on its own choice. AMC shall also ensure proper acknowledgment from investor of his such selection. The existing need assessment section, which has been part of account opening form since 2016, adequately covers both the requirements. The format adequately communicates the categories of fund/plan that is suitable to each investor and at the same time, it allows the investor to make his/her own decision to invest in the fund or plan of his/her choosing.

- (ii) Following are excerpts from the qualification and limitation, which are part of the account opening and investment forms for the knowledge of the investor. Further, excerpts from the risk disclaimer which are mentioned in the Debit Authority Form which each unit holders (which is referred by the bank) signs, are also reproduced here.

"All investments in Mutual Funds are subject to market risks. The value of the units may go up or down based on market conditions. Past performance is not necessarily an indicator of future results and there are no fixed or guaranteed returns. I have read, understood and accepted the terms and conditions given in relevant Trust Deed and Offering Document of the Fund/Plan."

Excerpts from the Risk Disclaimer in Bank's Debit Authority and Basic Fact Sheet:

"The Mutual Fund in which I have invested is not a Bank Savings or Term Deposit. Mutual Funds are subject to investment risk and possible loss of your Principal amount."

- (iii) We have additional controls for investments referred by UBL Bank, which constitute an additional undertaking to be signed by every unitholder. The undertaking contains explicit statement with respect to high equity participation along with confirmation of other features such as front end and back end load and other charges only to avoid or mitigate the mis-selling risk.
- (iv) UBL Funds has initiated a practice of doing a welcome call to new investors, wherein every new customer is contacted and is asked standard questions to ascertain whether complete and accurate information was provided to the customer. UBL Funds has adequate process to follow the requirement of NBFC Regulations and has controls in addition to the requirement i.e. Undertaking and Welcome Calls to cater to these risks.
- (v) UBL Funds is strictly against the notion of providing any kind of guarantee either verbal or written. The additional controls as mentioned above are the proof that any guarantee would be in conflict of the disclaimers and qualification inbuilt in these controls.





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6. The hearing in the matter took place on **January 17, 2020** wherein **Mr. Yasir Qadri, CEO, Mr. Umair Ahmed, CFO, and Mr. Hadi Hassan Mukhi, Head of Compliance** appeared on behalf of the Company. They reiterated the facts stated in the written reply.

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

- i. The available evidence indicated that according to company's own assessment of all the respective complainants, their investment knowledge was basic since most of them were not even much educated and they had no experience of investment in the capital market. The Complainants not being not conversant with investment avenues, could not have been expected to understand, without adequate guidance from the AMC's representative, the dynamics of mutual funds/plans or to reasonably understand the risk level attached to the said plan, which had potential for high equity exposure. Selling mutual funds/plans as an investment product which guarantees profit and protection of the principal amount tantamount to mis-selling in contravention of Regulation 66A(c)(i) of the NBFC Regulations.
- ii. It is a generally understood fact that for an investor it is challenging to understand the dynamics of mutual funds without adequate support and guidance from the seller. This is adequately demonstrated by the statutory provisions making it incumbent on the AMC to take due care in their selling practices. It is, therefore, the responsibility of the AMC that members of its sales team have the capacity to evaluate the level of awareness of the customers with the dynamics of the mutual funds/capital market and the associated risks. However, as informed by all the complainants, the AMC's representative did not discuss with them the risks associated with the respective plans and did not adequately inform them about the probability of loss which could emanate from the said plans. Instead, the complainants had been given verbal assurances of profit on their investment on the basis of the historical trends/past performance of other mutual funds/plans at the time of account opening. The fact that all the complainants were oblivious to investment in mutual funds warranted that best possible efforts were made by the sales representative to explain the dynamics of mutual funds/plans along with the risks that these products entailed. However, it is apparent that the risk factors associated with the scheme were intentionally concealed so as to persuade the complainant to invest; prime objective of the sales representative being to profit from the commission on the investment, thereby contravening Regulation 66 A(c)(iv) of the NBFC Regulations
- iii. Suitability of the plan offered to the complainants had not been assessed appropriately. The risk appetite column in the needs assessment form of UBL Funds had not been allocated a correct score. Keeping in view other considerations/criteria given in the form and scoring given against them, prudence demanded that risk appetite column to be scored as low rather than moderate. Due to an unconsidered appraisal of the risk appetite





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of the complainants, asset allocation plans with moderate allocation towards equity securities were offered to the complainant. Realistically UBL Funds should have assessed the risk tolerance level of the complainant to be low. This clearly shows that the AMC failed to take reasonable care to ensure suitability of the plans for the complainants by taking in to account its actual asset allocation and hence ignored its fiduciary responsibility. Failure to assess the suitability of the offered investment plan to the complainant, prima facie resulted in violation of Regulation 66 A(d) of the NBFC Regulations.

- iv. It is the responsibility of the AMC's representatives to ensure that the customers are not misled by past performance of other mutual funds/plans. However, the company failed to provide any explanations to the complainants to enable them to make informed decisions. It was incumbent upon AMC's representative to discuss with the complainants about the risk level attached especially with respect to the asset allocation plans with aggressive allocation towards equity securities. I am of the view that UBL Funds could not demonstrate that as a usual course of business efforts are made by the sales teams to explain the products to the customers by giving out brochures/offering documents or explaining the terms and conditions or the disclaimers to the best satisfaction of the customers. Furthermore, since the distributor is also selling the products of the AMC, it is imperative to ensure that the sales representatives are fully equipped with complete information pertaining to all the products the AMC is offering. The sales representatives must be able to guide the investors regarding the suitability of the products being pitched, in line with the risk profile of that particular investor. The sales representatives in all the instances violated the requirement of Regulation 66A (e) of the NBFC Regulations.
- v. The risk level of AIAAP-VI, AIAAP-VIII and AIAAP-IX was declared as 'Moderate' in the term sheet although it remained invested in equity funds to the extent of 71.01%, 66.11% and 67.75% respectively at an average during their duration. In my view, the risk/need assessment form and term sheets lack transparency with respect to recommended solutions vis-à-vis risk tolerance levels. Although the term sheets indicate the minimum and maximum percentage allocations of the authorized investments, they do not specify the percentage allocation of equity segment as per conservative, moderate and high exposure to equities. Due to lack of clarity in the forms, customers are likely to make uninformed decisions while making investments. Lack of clarity in the forms/term sheets has rendered them to be misleading and deceptive, hence contravening Regulation 66A(f) of the NBFC Regulations.
- vi. It was also determined that as per the investment objective provided in the offering documents and term sheets of the plans, UBL Funds claims that the said plans will be 'actively managed' in different asset classes to achieve maximum profits for unitholders. However, the asset allocation of this plan was not actively managed with the intent to avoid losses to the investors, as plans assets remained heavily invested in equity funds.



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No attempt was made to bring about any significant change in the asset allocation of the plan despite increasing losses. It is hence concluded that UBL Funds failed to actively manage the asset allocation of the plans despite the dismal performance of equity market, thereby failing to ensure that investment decisions and actions were in accordance with the investment policy, objectives and restrictions including risk parameters, as stated in the Constitutive Documents.

- vii. I have also noted that the Company has established protocols over and above mandatory legal thresholds such as call back confirmation calls (CBC) or customer verification calls and additional explicit disclosures. However, it was only limited to calling up customers only, since neither control of management over monitoring of such reports existed nor any mechanism of alert generation to the management had been devised. Moreover, the conduct of the relationship manager as established by the Complainants narrative still raises many questions with respect to the manner of conducting business by the relationship manager.
- viii. It is a matter of concern that events narrated by the complainant and communicated to the Company has not evoked any reaction from the company vis-à-vis seeking an explanation from its sales representatives and reaching out to the complainants to ascertain the facts. I am of the view that UBL Funds could not demonstrate that as a usual course of business, efforts are made by the sales teams to explain the products to the customers by giving out brochures/offering documents or explaining the terms and conditions or the disclaimers to the best satisfaction of the customers. Furthermore, since the distributor is also selling the products of the AMC, it is imperative to ensure that the sales representatives are fully equipped with complete information and clarity pertaining to all the products the AMC is offering, instead of selling them as bank products. The sales representatives must be able to guide the investors regarding the suitability of the products being pitched, in line with the risk profile of that particular investor.
8. To conclude, it is important to take in account that the respective complainants were oblivious to the dynamics of the capital market and mutual funds/plans, and had invested their funds for the purpose of growth. In pursuance of instances referred above, I am of the considered view that UBL Funds is responsible for selling such products to the complainants, which were neither suitable nor in consonance with their risk assessment. UBL Funds has not acted in the best interest of the complainants and is hence responsible for the losses incurred to the complainants in violation of above-mentioned NBFC Regulations.
9. AMC needs to ensure that the investor understands the decision he/she is taking in choosing a high-risk product and to this effect, should take proper acknowledgment from investor for his/her selection. Fact of the matter is that investors only listen to what the sales representative is pitching and seldom read what is written on the forms. Question is what steps are taken by the AMC to actually make the investors understand what their investment decision entails and to ensure that they have fully understood the upside and downside of the investment along with the associated risks. The

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complainant's claim that the sales representative had guaranteed profit and preservation of capital cannot be completely overlooked. In order to lock in the sale, the practice of some sales agents to highlight the returns more without highlighting the associated risks and explaining potential downside of investing in mutual funds would be a case of mis-selling. Many instances have come to the knowledge of SECP with similar assertions against UBL Funds and warrants that UBL Funds makes extra efforts to curtail the instances of mis-selling. The AMCs should consider to modify and explicitly indicate risk levels of all the plans while placing asset allocation funds /plans in the moderate-risk category.

10. Investor confidence is the key for flourishing of the mutual fund industry. An AMC can inspire this confidence by being fair and transparent in its dealing with its customers and ensuring that the fairness and transparency is demonstrated through its conduct. It is the right of the investor who has entrusted his/her funds with an AMC that their grievances, if any, would be analysed with the open mind for not only its redressal but to identify weaknesses in the systems and process and improvement therein to avoid future misunderstandings. It is my considered opinion that redressal of investors' grievances is extremely important for the Regulator to regulate the capital market. If the grievances are not redressed amicably and within a reasonable time, it leads to frustration among the investors who may be demotivated and stop further investments in the capital market. Therefore, I hereby refer the matter to the **Supervision and Enforcement Department of SCD**, who may issue Direction to the AMC for making good the complainant's loss in exercise of powers conferred to them under Section 282D of the Companies Ordinance 1984.

11. In view of the foregoing, I hereby impose a fine of **Rs. 800,000/-** (Rupees Eight Hundred Thousand Only) on the Respondent Company who has been issued SCN under Section 282J(1) read with Section 282(M)(1) of the Companies Ordinance, 1984, for contravention of the Regulation 66A(c)(i), Regulation 66A(c)(iv), Regulation 66A(d) and Regulation 66A(f) of the NBFC Regulations.

12. UBL Funds is further directed to ensure comprehensive training for its distributor/sales staff and take disciplinary action against any officer involved in mis-selling etc. Moreover, UBL Funds must ensure strict compliance with the applicable regulatory framework in future.

13. This order is issued without prejudice to any other action that the Commission may initiate against the Company in accordance with the law on matter subsequently investigated or otherwise brought to the knowledge of the Commission.

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

(Ali Azeem Ikram)
Executive Director Adjudication-I



Announced on:
March 09, 2020 at Islamabad.