



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Specialized Companies Division

No. NBFCD/MF/Circular/2009/648

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Circular No. 20

Requirements for Approval of Merger of Open End Schemes

Regulation 58(1)(m) of the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (the “Regulations”) provides that no NBFC shall, *inter alia*, merge Collective Investment Schemes without prior approval of the Securities and Exchange Commission of Pakistan (the “Commission”). Accordingly, the Commission deems it expedient to provide for a regulatory process for carrying out mergers of Open End Schemes (the “schemes”).

Therefore, in exercise of the powers conferred under section 282B(3) of the Companies Ordinance, 1984 read with Regulation 58(1)(m) of the Regulations, the Commission hereby directs Asset Management Companies (AMCs) to complete the requirements as provided herein for merger of Open End Schemes.

1. Application to the Commission under Regulation 58(1)(m)

The application for considering the approval of Scheme of Merger of the schemes shall be submitted by the concerned AMC, or jointly signed by both AMCs in case of merger of the schemes of different AMCs, to the Commission under Regulation 58(1) (m) along with the following documents/information:

- (i) Certified copy of the resolution passed by the board of directors of concerned AMC approving the Scheme of Merger;
- (ii) NOC to the Scheme of Merger by the respective trustee of the schemes;
- (iii) Approval from other concerned authorities, as may be required;
- (iv) Details of assets (including portfolio detail) and liabilities of the respective schemes along with details of the provisioning held if any, as of the date immediately preceding the date of application;
- (v) Copy of the notice published in the newspapers for calling the meeting of the unit holders indicating time, place and objective of the meeting;
- (vi) An undertaking by the AMC that it has disclosed all material facts regarding Scheme of Merger to its unit holders and the trustee;

- (vii) Certified copy of the minutes of the meeting of unit holders of each scheme called for the approval of the Scheme of Merger. The said minutes shall be signed by concerned AMC as well as trustee of the schemes;
- (viii) Copy of a complete set of the information/documents as placed before the unit holders of the concerned schemes in their respective meeting;
- (ix) Confirmation from the AMC that the requirements as laid down herein have been duly complied with and no other law has been violated; and
- (x) any information/document as may be required by the Commission to consider the application for approval of Scheme of Merger.

2. Requirements for holding the meeting of unit holders for approval of the proposed Scheme of Merger

The following requirements shall be observed for holding the meeting of the unit holders:

- (i) Notice of the meeting for considering the proposed Scheme of Merger of schemes indicating time, place and objective of the meeting shall be given to every unit holder of each of the scheme and shall also be published in one daily newspaper of wide circulation across Pakistan.
- (ii) Meeting of unit holders of each of the scheme for considering the proposed Scheme of Merger shall be held within five working days from the close of register for determining eligibility of unit holders for participation in the meeting.
- (iii) Proposed Scheme of Merger, statement of material facts and other pertinent information/documents shall be made available to the unit holders.
- (iv) Trustee of the concerned scheme shall attend the meeting of unit holders.
- (v) Proposed Scheme of Merger shall be placed, in the meeting, before the unit holders of each scheme separately along with the following:
 - a) Net Asset Value per unit (NAV) along with the details of assets (including portfolio detail) and liabilities of all the schemes being considered for merger as of the date immediately preceding the date of the meeting;

- b) Provisioning policies of the schemes being considered for merger and the details of provisioning held, if any, for all the schemes as of the date immediately preceding the date of meeting;
 - c) Swap Ratio calculated on the basis of the NAV of the schemes as of the date immediately preceding the date of meeting;
 - d) Date for calculating the actual Swap Ratio (based on NAV of the concerned schemes) to be used for merger of the schemes;
 - e) Present asset allocation of all the schemes being considered for merger i.e. before the merger and effect of merger on the asset allocation of the surviving scheme i.e. post merger asset allocation;
 - f) Constitutive Documents of the surviving scheme; and
 - g) Statement of material facts including, investment policy and objective of surviving scheme, type of units to be issued, any restrictions on unit holders, post merger management fee, applicable front-end and back-end load, treatment of un-amortized cost, other charges etc.
- (vi) Scheme of merger shall be approved by a resolution passed by a majority of unit holders representing three fourth in value of the total outstanding units of the concerned scheme at a meeting called for the purpose.

3. Other requirements

The following other requirements shall need to be observed:

- (i) The schemes to be merged shall neither redeem nor issue units after the close of register for determining eligibility of unit holders for participating in the meeting for considering the proposed Scheme of Merger. Subsequently, if approval by the requisite majority of the unit holders of each scheme has been granted to the proposed Scheme of Merger, issuance and redemption of units shall remain suspended till the effective date of merger. In case the proposed Scheme of Merger has not been approved by the requisite majority of unit holders of any concerned scheme, the issuance and redemption of units shall be resumed.
- (ii) In case, NAV of the schemes for which merger has been approved by the unit-holders, fluctuates and affects the Swap Ratio by 15% or more prior to the effective date of merger when compared to Swap Ratio as of the date immediately preceding the date of meeting of unit holders, the Scheme of Merger based on the latest NAVs shall again be placed before the unit holders of the concerned schemes.

- (iii) No fee and expenses relating to the merger shall be charged to any scheme.
- (iv) Where the merger has been approved by the Commission, the AMC on behalf of the surviving scheme shall submit a report on the status of such scheme along with the following:
 - a) Details of assets (including portfolio detail) and liabilities of the surviving scheme along with statement of unit holders' fund as of the effective date of merger;
 - b) Post merger asset allocation of the surviving scheme; and
 - c) Certificate from the auditors of the respective scheme that NAV considered for calculating Swap Ratio for merger has been determined in line with the requirements of Constitutive Documents of the concerned schemes and the Non- Banking Finance Companies (Establishment & Regulation) Rules, 2003 and the Regulations.

This Circular shall come into effect immediately.

Sd/-
(Salman Ali Shaikh)
Commissioner (SCD)