



Securities and Exchange Commission of Pakistan
Securities Market Division

No. SMD/CIW/Misc/12/2008

Islamabad, July 30, 2008

Circular No. of 2008

Subject: **Responsibility of Consultants/Advisors/Arrangers, Auditors, Accountants and Legal Advisers to public Issues**

The Securities & Exchange Commission of Pakistan (the Commission) has noticed that most of the Prospectuses for issue of shares and debentures of companies filed with the Commission for approval contain inappropriate information, ambiguous statements, poor language and contradictory statements which indicates that such prospectuses are not properly read by the Issuers/Offerers and their advisors/consultants/lead managers. It has also been observed that no due-diligence is carried out for the preparations of the Financial Projections of issuing companies and because of the unrealistic assumptions, projected figures do not match with the actual financials of the issuing companies. The poor quality of the Prospectuses causes delays in the regulatory approvals. In order to improve the quality of Prospectus and ensure that they contain all material disclosures and no false or misleading statements or material omissions have been made, the Commission has decided that the Consultants/Advisors/Lead Managers, Auditors and Legal Adviser to a public issue shall made the following declaration/undertaking with regard to the disclosures made in the Prospectus.

Consultants/Advisers & Arrangers:

“On the basis of the information provided to us by and the discussions held with the company, its directors and other officers, other agencies, independent verification of the statements concerning the disclosures made in the Prospectus and the documents furnished by the Company, we, [Name of the Company], in capacity of Consultants/Adviser /Arranger to the public issue of Shares/TFCs by [Name of Issuer], confirm/undertake/assure that:

- i) After having made all reasonable enquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in or material omission from, the information that is provided to the Commission in relation to the proposed issue;
- ii) The disclosures made in the prospectus are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue.

- iii) We are satisfied after having made all reasonable enquiries that the Prospectus contains all the information/disclosures as required under the Second Schedule to the Companies Ordinance, 1984 and other relevant Rules, Regulations and Guidelines and that the proposed issue is in full compliance with all the legal requirements connected with the said issue and also the laws, guidelines, instructions, etc. issued by the Commission, the Government of Pakistan and any other competent authority;
- iv) The prospectus submitted to the Commission is in conformity with the documents, materials and papers relevant to the issue;
- v) We shall provide to the Commission all such information as the Commission may require in relation to the proposed issue;
- vi) All the requirements of the Commission pertaining to the proposed issue will be met and we will remain responsible to respond to any query of the Commission on all matters in connection with the proposed issue;
- vii) The resources of the underwriters are sufficient to fulfill their underwriting commitments;
- viii) The 5-years Financial Projections of the Company are signed by the Chief Executive & Chief Financial Officer of the Issuing Company and Chief Executive/Chief Financial Officer of the Adviser/Consultant/Legal Adviser;
- ix) Necessary arrangements have been made to ensure that the moneys received pursuant to the issue are kept in a separate bank account as per the provisions of the Companies Ordinance, 1984 and that such moneys shall be released by the said bank only after permission is obtained from all the stock exchange(s) concerned. We further confirm that the agreement entered into between the bankers to the issue and the issuer specifically contains this condition;
- x) That pre-ballot scrutiny will be conducted and incomplete applications will be excluded from the ballot and that the applications submitted in violation of Section 18-A of the Securities & Exchange Ordinance, 1969 shall be reported to the Commission efficiently;

- xi) We shall remain associated with the issue till the subscribers have received the shares or debenture certificates or refund of excess application money;
- xii) That the complaints received in respect of the proposed issue shall be attended expeditiously and satisfactorily. Name, address, telephone & fax numbers and e-mail address of the coordinator(s) designated by us for the purpose to be contacted by the investors in case of any pre/post-issue related problems. This coordinator shall be the contact person till the refund process is completed and all shares have been allotted to the allottees.

Auditors:

We, [Name of the Company], in capacity of Auditors, confirm that:

- i) the Financial Statements disclosed in the Prospectus have been properly prepared in accordance with IAS/IFRS/GAAP & section 53(1) of the Companies Ordinance read with clause 28 of section 2 of Part-I of the Second Schedule to the Companies Ordinance, 1984;
- ii) the Financial Statements disclosed in the Prospectus give a true and fair view of the state of the Company's affairs as at [Date of the Company's Accounts] and of its profit & Loss position for the year ended on [Date of the Company's Accounts];
- iii) the Financial Statements disclosed in the Prospectus are free from material misstatement, whether caused by fraud or other irregularity or error. In forming our opinion we also evaluated the overall adequacy of the presentation of information in the financial statements.

Legal Adviser:

We, [Name of Company], in capacity of Legal Advisor to the public issue of Shares/TFCs by [Name of Issuer], hereby confirm that:

- i) All the legal documents, agreements, contracts, security documents, title deed relating to the proposed issue are properly executed, valid and correct;

- ii) The issuer has obtained necessary regulatory or contractual approvals/consents for the subject public issue;
- iii) We have given our independent opinion on the likely outcome of litigations in which issuing company is a party.

(This confirmation shall be provided in cases where the issuing company is party to legal proceedings other than ordinary routine litigations incidental to the business of the issuing company).

Please note that whoever fails to fulfill the commitments made in the undertakings will be liable for legal action under the law.

Amir M. Khan Afridi
Director (Capital Issues)

Distribution:

- i) All the three Stock Exchanges for circulation amongst their members
- ii) All scheduled banks, DFIs and investment banks acting as consultants/advisors to the public issues
- iii) Audit Firms & Chartered Accountants
- iv) Legal Firms acting as Legal Advisers to the public issues
- v) Official website of SECP for information