

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 29th January, 2018

S. R. O. 78 (I)/2018.- The following draft amendments to the Securities and Futures Advisers (Licensing and Operations) Regulations, 2017 proposed to be made by the Securities and Exchange Commission of Pakistan in exercise of powers conferred by section 169 of the Securities Act, 2015 (III of 2015) read with section 114 of the Futures Market Act, 2016 (XIV of 2016) are hereby published for the information of all persons likely to be affected thereby and, as required by sub-section (4) of the said section 169 and sub-section (4) of said section 114, notice is hereby given that objections or suggestions thereon, if any, may be sent to the Commission within fourteen days of placement of draft amendments on the website of the Commission , namely:-

DRAFT AMENDMENTS

In the aforesaid Regulations,-

(1) In regulation 2,-

(a) in sub-regulation (1),after clause (f), the following new clauses shall be inserted, namely:-

“(g) “Companies Act” means the Companies Act, 2017 (XIX of 2017);

(h) “Securities Broker” for the purposes of these regulations means a broker licensed to undertake securities broker activity under the Securities Act, 2015 and permitted to undertake futures broker activity for futures contract based on securities and financial instruments in terms of section 46 read with section 47 of the Futures Act;

(i) “Futures Contract” shall have the same meaning as defined in Futures Act;

(j) “Futures Adviser” means a person, who-

(a) gives investment advice on whether, which, the time at which or the terms or conditions of which, futures contracts are to be entered into; or

(b) issues analysis or reports, for the purposes of facilitating the recipients of the analysis or reports to make decisions on whether, which, the time at which, or the terms or conditions on which, futures contracts are to be entered into,

but does not include-

- (A) a person who gives such advice or issues such analysis or reports, including
 - (i) in a newspaper, magazine, book or other publication which is made generally available to the public, and which does not have as its principal or only object the provision of advice or the issue of analysis or reports, concerning securities; or
 - (ii) in television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise; and
 - (B) any other person excluded to such extent as may be notified by the Commission; and
- (k) “Securities Adviser” means a person, who-
 - (a) gives investment advice on whether, which, the time at which or the terms or conditions on which, securities may be bought, sold, exchanged or subscribed for;
 - (b) issues analyses or reports, for the purposes of facilitating the recipients of the analyses or reports to make decisions on whether or the time at which or the terms or conditions on which, specific securities may be bought, sold, exchanged or subscribed for; or
 - (c) advises on the management of a portfolio of securities for another person-
 - (i) without holding property of the other person; and
 - (ii) on terms that preclude him from doing so,

but does not include-

- (I) a bank;
- (II) a person who gives such advice or issues such analyses or reports-
 - (A) in a newspaper, magazine, book or other publication which is made generally available to the public, and which does not have as its principal or only object the provision of advice or the issue of analyses or reports, concerning securities; or
 - (B) in television broadcast or radio broadcast for reception by the public, whether on subscription or otherwise; and
- (III) any other person excluded to the such extent as may be notified by the Commission.”;

(2) for regulation 3, the following shall be substituted, namely:-

“3. Prohibition.— No person shall act as or perform the functions of a securities adviser or futures adviser unless such person is licensed with the Commission as a securities adviser or futures adviser under the Securities Act or Futures Act and these regulations and a person performing distribution of Collective Investment Schemes (CIS) and/or Voluntary Pension Fund (VPF) units of multiple AMCs by entering into contracts with such AMCs shall also be required to obtain license as a securities adviser under these regulations, in order to perform functions of a distributor.

Provided that a securities broker duly licensed by the Commission and providing custodial services as integral part of brokerage business model, shall not be eligible to obtain license for securities adviser or futures adviser.

Provided further that in terms of section 2 (liii) (III) of the Securities Act and section 2 (23) (B) of the Futures Act, a securities broker duly licensed by the Commission to undertake securities broker activity may provide securities and future advisory to its brokerage customers being incidental to the conduct of his business as a securities broker without receiving any separate compensation thereof and may distribute CIS and/or VPF units of multiple AMCs by entering into contracts with such AMCs subject to:

- (a) maintaining membership of an association of securities advisers and/or futures advisers, as the case may be, or any other association or self-regulatory organization, which is approved by the Commission for the purpose, and abides by the code of conduct specified by such association at all times;
- (b) compliance with the regulatory requirements applicable on distribution of CISs and/or VPFs units of multiple AMCs; and
- (c) compliance with the regulatory requirements of Chapter III, Chapter IV and clause 24 of Chapter V of these Regulations;

Provided further that in terms of section 2 (23) (B) of the Futures Act, a futures broker duly licensed by the Commission to undertake future's broker activity for futures contract based on commodities and/or financial instruments may provide futures advisory to the extent of futures contract based on commodities and/or financial instruments to its customers being incidental to the conduct of his business as a futures broker without receiving any separate compensation thereof.

Provided further that in terms of section 2 (liii) (III) of the Securities Act, an NBFC duly licensed by the Commission for Investment Advisory Services under Part-VIIIA of the Companies Ordinance, 1984 (XLII of 1984) may undertake securities advisory and future advisory subject to:

- (a) maintaining membership of an association of securities advisers and/or futures advisers, as the case may be, or any other association or self-regulatory organization, which is approved by the Commission for the purpose, and abides by the code of conduct specified by such association at all times;
- (b) compliance with the regulatory requirements applicable on distribution of CISs and/or VPFs units of multiple AMCs; and
- (c) compliance with the regulatory requirements of Chapter III, Chapter IV and

clause 24 of Chapter V of these Regulations.

Provided further that a banking company shall be eligible for applying securities adviser license to the extent of distribution of units of CIS and/or VPS of multiple AMCs only.

Provided further that any other person performing the functions of a securities adviser or future adviser or is engaged in the distribution of CIS and/or VPF units of multiple AMCs immediately before coming into force of these regulations, shall be required to obtain a license under these regulations as a securities adviser or future adviser not later than June 30, 2018.”;

(3) for regulation 4, the following shall be substituted, namely:-

“4. Licensing conditions for securities adviser and futures adviser.- (1) A person may apply to the Commission for securities adviser and/or future adviser license under these Regulations if such person is:

- a) A company registered under the Companies Act for the purpose of providing advisory including distribution of CIS and/or VPF units of multiple AMCs by entering into contracts with such AMCs; or
- b) A banking company eligible for obtaining securities adviser license for distribution of units of CIS and/or VPS; or
- c) Such other company as may be notified by the Commission.

(2) A person referred in sub-regulation (1) may apply to the Commission for license as a securities adviser and/or futures adviser, subject to fulfillment of the following conditions:

- a) It has a place of business in Pakistan;
- b) Its memorandum and articles of association allow it to apply for grant of licence under the Act;
- c) It, its sponsors, directors and senior management officers shall fulfill the fit and proper criteria specified in Annexure A;
- d) The sponsors shall collectively hold not less than fifty one percent shares and not less than twenty five percent shares in the case of a listed company. The change in sponsors shall not be affected without the prior written approval of the Commission;
- e) The relevant employees of the company shall have the requisite qualification and/or experience and certification as specified in Annexure A;
- f) It meets the financial resource requirements as specified in these regulations, where applicable; and
- g) It maintains membership of an association of securities advisers and/or futures advisers, as the case may be, or any other association or self-regulatory organization, which is approved by the Commission for the purpose, and abides by the code of conduct specified by such association at all times:

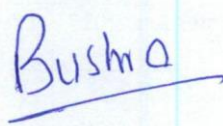
Provided that in case of a banking company, the conditions referred in sub-regulation (2) above shall not be applicable except clause (e) and (g).”;

- (4) in regulation 13,-
- (a) in sub-regulation (10),-
- (i) for the coma occurring after the word “senior management officers”, the word “and” shall be substituted; and
- (ii) the words “and accredited representatives” shall be omitted;
- (b) in sub-regulation (14), the words “or accredited representatives, where applicable,” shall be omitted; and
- (c) in sub-regulation (15), the words “and accredited representatives, as applicable” shall be omitted;
- (5) in regulation 14, in sub-regulation (4), the words “and accredited representatives” shall be omitted;
- (6) in regulation 17, the expression “unless it is specifically allowed to offer custodial services under the applicable laws” at the end, shall be omitted;
- (7) in regulation 18,-
- (a) in sub-regulation (1),-
- (i) clause p) shall be omitted;
- (ii) in clause s), after the semi colon at the end, the word “and” shall be omitted;
- (iii) after clause t), the following new clauses shall be inserted; namely:-
- “u) in case of distribution of CIS and/or VPF units maintain copies of contracts with the AMCs; and
- v) in case of distribution of CIS and/or VPF units not charge any advisory fee to its customers.”;
- (8) in regulation 19, after the words “thereunder”, the following new proviso shall be inserted; namely:-
- “Provided that in case of a banking company, the requirements of this chapter shall not be applicable except clause 24.”;
- (9) in regulation 20,-
- (a) in sub-regulation (2), after the clause (f), the following sentence shall be omitted;
- “A distributor engaged in distribution of CIS and/or VPF units shall maintain copies of contracts with the AMCs.”;

(10) in Annexure A,-

- (a) in second paragraph, under the heading “Application and Scope” after the word “adviser” appearing in the second line, the words and commas “, where applicable,” shall be omitted;
- (b) in third paragraph, under the heading “Application and Scope” the words “Companies Ordinance, 1984” shall be substituted with the words “ Companies Act”;
- (c) under the heading “Educational or other Qualification or Experience”,-
 - (i) in clause (1), before the words “its chief executive officer” the words and comma “the securities advisor, or where applicable,” shall be omitted;
 - (ii) in clause (2), before the words “its chief executive officer” the words and comma “the futures advisor, or where applicable,” shall be omitted;
 - (iii) in clause (3),-
 - (a) after the words “units” appearing in the first line, the words and comma “such person himself/herself, or in the case of a company” shall be omitted;
 - (b) after the words “units” appearing in the first line, the words and comma “of multiple AMCs,” shall be inserted;
- (d) in Note 2 appearing after the heading “Integrity, Honesty and Reputation”, the words “and on the relevant employees of such bank or NBFC to the extent of requisite qualification, experience and certification requirements” shall be omitted;
- (e) in Affidavit A attached to Annexure A, in clause 1, after the word “for” the words and dots “..... the licence of securities adviser/future adviser (OR)” shall be omitted.

[SMD/L&RAD/Mis./2018]



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Secretary to the Commission