#### **PART II**

## **Statutory Notifications (S. R. O.)**

#### **GOVERNMENT OF PAKISTAN**

#### SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

#### **NOTIFICATION**

Islamabad, the 19th May, 2022

S.R.O.603(I)/2022.- The following draft amendments to the Non-Banking Finance Companies and Notified Entities Regulations, 2008, proposed to be made by the Securities and Exchange Commission of Pakistan, in exercise of the powers conferred by sub-section (2) of section 282B of the Companies Ordinance, 1984 (XLVII) of 1984, are hereby published for information of all persons likely to be affected thereby and notice is hereby given that comments, if any, received by the Commission within fourteen days of the date of publication of this notification will be taken into consideration, namely:-

#### **DRAFT AMENDMENTS**

In the aforesaid Regulations,

(1) in regulation 2, in sub-regulation (1), for clause (xiii), the following shall be substituted, namely;

"(xiii): "Eligible Investor" means a person who has net assets of at least Rs. 5 million excluding the value of personal residence who furnishes an undertaking to the NBFC that he understands the risks involved in the management of portfolio on discretionary or non-discretionary basis:

Provided that in the case of an entity such undertaking shall be made by the board of directors or trustees as the case may be;"

- (2) in regulation 10,-
  - (a) in clause (aa) for the words "ten days" the words "fourteen days" shall be substituted;
  - (b) in clause (b), for the words "10 days" the words "45 days" shall be substituted;
  - (c) in clause (ba), in the proviso, for the words "seven days" the words "fourteen days" shall be substituted;
  - (d) for clause (d) for the words "issue of the letter by the Commission informing the NBFC of the deficiency or shortcoming" the words "communication of such deficiencies or short comings to the NBFCs by the Commission" shall be substituted;
- in regulation 25, in sub-regulation (1), in the proviso, for the full stop a colon shall be substituted and thereafter the following new proviso shall be inserted, namely:-
  - "Provided further that in case of nano-loans i.e. loans of up to Rs. 500,000, not secured by any tangible collateral and for a tenure of less than six months, the classification criteria specified for Micro Finance portfolio in Schedule X shall apply;";
- (4) in regulation 28, after clause (c), the following new clause (ca) shall be inserted, namely:-
  - "(ca) Notwithstanding anything contained in clauses "a" to "c", a newly licensed lending NBFC shall ensure compliance with above applicable investment limits within one year from the date of grant of license;"
- in regulation 28, after clause (d), the following new clause (da) shall be inserted, namely:-
  - "(da) Lending NBFCs shall comply with such requirements as may be specified by the Commission through circular, for all or a specific class of Lending NBFCs, including but not limited to the following, -

- (a) Digital Lending;
- (b) Fair treatment of consumers / borrowers including devising appropriate pricing policies and its disclosures;
- (c) adequate and accurate disclosures including but not limited to the offered products, services and applicable terms and conditions, to borrowers, customers and other stakeholders;
- (d) minimum disclosure requirements for digital applications, websites and any other platform used by the NBFCs for the licensed activity; and
- (e) Information technology, systems and information security measures;

Explanation: - for the purposes of this regulations the expression "Digital Lending" means providing finance through digital, technology-based or internet-based channels or tools, with limited or no human interaction for loan application, approval, disbursement and repayment of loan.";

- (6) in regulation 38, in sub-regulation (2),-
  - (a) for clause (s), the following shall be substituted, namely:-

"(s) send an investment account statement to each unit or certificate holder on the registered postal address and/ or registered email ID provided by the unit or certificate holder at least twice a year and instantly after each activity in the investment account. The investment account statement of a Non-Resident Pakistani shall be emailed on his registered email ID on semi-annual basis:

Provided that an Asset Management Company may send account statement at the registered email address of the resident unit or certificate holder only after obtaining consent in writing from the unit or certificate holder for sending electronic account statement: Provided further that an Asset Management Company shall provide the account statement to the investors within seven working days from the receipt of such request;"

- (b) clause (ab) shall be renumbered as (a1);
- (c) after clause (aa), the following new clause shall be inserted, namely:-

"(ab) send a stamped and dated receipt for all transactions and change in their investment accounts with AMCs to each unit or certificate holder on the registered postal address and/ or registered email ID provided by the unit or certificate holder within fifteen (15) days of such transaction and change;"

- (7) for regulation 38B, the following shall be substituted, namely:-
  - "38B. Trading by Employees. (1) An Asset Management Company shall put in place, appropriate policies and procedures which govern trading or investment in securities by AMC employees, director(s), sponsor(s) their spouse and dependent children and also empowers AMC to take necessary enforcement action against such employee(s)/director(s)/sponsor(s). Such policies shall at the minimum cover following requirements/principles,-
    - (i) disclosure by an AMC employee, within 10 days of his appointment, of any securities held by him or her, his or her spouse and / or dependent children along with details of their broker accounts. Such reporting of information shall be done to the Compliance Function of the AMC;
    - (ii) Criteria for approving or rejecting an application seeking trading or investment in securities by AMC employees;
    - (iii) Periodic disclosure of securities held by the AMC employees, their spouses and dependent children, at least on a quarterly basis. However, reporting of actual transactions, including volume, date and price, on a same day basis;

- (iv) Restriction on AMC employees from deriving any benefit or personal advantage from information which is generally not available and which is obtained by reason of or in the course of their employment with AMC;
- (v) Prescribing minimum holding period and discourage trading for speculative purposes;
- (vi) Retention, for a period of at least three years, of complete record of all applications including the date of the request, the name of the applicant, details of the proposed transaction and whether the request was approved or denied and waivers given, if any, and its reasons;
- (vii) Restricting personnel involved in the investment decision making process from initiating trades in a security within twenty four hours of a pending buy or sell order in the same security by the AMC and until such order is executed or cancelled;
- (viii) Prescribe trading windows and blackout periods to restrict the misuse of confidential information. This includes explicitly prohibiting all such employees (including CEO), involved in investment decision making and its execution, from investing in the same securities as the CIS either directly or through the portfolio under their management at least three (3) days prior to or subsequent to the transaction by the CISs under management. This prohibition also extends to the portfolios of sponsors/ directors being managed by the AMC; and
- (ix) establish stringent requirements for those personals, whether AMC employee or director, who:
  - (a) in his or her regular function or duty makes or participates in investment decisions, or obtains information, prior to

buying or selling investments on behalf of a Collective Investment Scheme;

- (b) engages in making of any recommendations with respect to such buying or selling;
- (c) or any person over whom such persons exercise control and influence in terms of the investment decision making; and
- (d) Use of restricted lists and watch lists securities to detect unauthorized trades.
- (2) AMC employees, their spouse and dependent children, directors, sponsor shall commit an offence, for not complying or concealing or providing false information required in sub-regulation (1). All such cases and enforcement action taken, by the AMC shall be reported to the Board of Directors of AMC and the Commission on a regular basis;";
- (7) in regulation 39, for sub-regulation (1), for the expressions "Trust Act 1882(II of 1882)" the expressions "respective Provincial/ Federal Trust Act 2020" shall be substituted;
- (8) for regulation 41 the following shall be substituted, namely:-

## **"41. Obligations of trustee of the Open End Scheme or Closed End Scheme.-** (1) A trustee shall, -

- (t) establish an internal audit function or outsource this function and perform internal audit checks on its operations regularly;
- (u) have in place adequate mechanisms for the purpose of reviewing, monitoring and evaluating the trustee's controls, systems, procedures and safeguards;

- (v) have adequate internal controls to prevent any manipulation of records and documents including audits for securities and rights or entitlements rising from the securities held by it on behalf of its clients;
- (w) appoint a compliance officer who shall be responsible for monitoring the compliance of the trustee with the applicable NBFC regulatory framework;
- (x) ensure that its Board of Directors approve and oversee all key policies including those relating to risk management, internal controls and compliance and conflict of interest;
- (y) ensure that its external auditor are from category A of the panel of auditors circulated and maintained by the Commission;
- (z) obtain rating from credit rating agency registered with the Commission and such rating shall be updated at least once every financial year;
- (aa) be independent of AMC, RMC, PFM and PFMC etc. to avoid any potential or actual conflict of interest. For this purpose, the term "independent" means that there shall be no common directorship and common shareholding between the trustee and the AMC, RMC, PFM and PFMC etc.;
- (ab) maintain client confidentiality in respect of the client's affairs and ensure that sufficient checks and balances are in place for ensuring that there is no misuse of information or any undue advantage is taken on the basis of such client activity/information by its employees, directors, sponsors or major shareholders;

- (ac) ensure that its conflict of interest policy is sufficient enough to identify, monitor, mitigate and manage existing or potential situations which may give rise to conflicts of interest and provide mechanisms for appropriately communicating disclosure of such existing or potential conflict of interest to its board of directors;
- (ad) take precautions necessary to ensure that continuity in record keeping is not lost or destroyed and that sufficient back up of records is available, in case where trust records are kept electronically;
- (ae) preserve all records and documents maintained for a minimum period of ten years;
- (af) take appropriate safekeeping measures to ensure that securities, assets or documents are protected from theft and natural hazard;
- (ag) ensure that all the policies, processes and procedures are continuously reviewed so that they remain relevant and effective, taking into consideration development in its business and operations; and
- (ah) not indulge in any activity not related to trustee services without prior approval of the Commission. Where the trustee company is engaged in carrying out any activity beside that of acting as trustee, it shall ensure that the activities relating to the trustee business are separate and segregated from all other activities and the employees engaged in providing trustee services shall not be engaged in any other activity carried on by the company.
- (2) where trustee uses innovative technology, it shall ensure that;
  - (a) it possesses the necessary infrastructure, adequate technological

- resources and appropriate risk management arrangements as well as the organizational competence to perform its role as a trustee;
- (b) has relevant human resource duly possessing necessary skills and experience of innovative technology solutions to comply with its obligations; and
- (c) the technological resources it possesses enable it to;
  - (i) perform all its duties and obligations under the prevalent regulatory framework;
  - (ii) maintain client records and data integrity;
  - (iii) protect confidential information and other information; and
  - (iv) meet its current and anticipated future operational needs;
- (d) have in place comprehensive cyber security policies (i.e. potential risks and system mitigation arrangements etc.) and procedures which commensurate with its risk profile and must include the following;
  - (i) Clear description of the risk tolerance in relation to cyber risk that is acceptable, occurrence and severity of cyber breaches, the maximum service downtime, recovery time objective, minimum level of system and service availability;
  - (ii) Strategy and measures to manage cyber risk encompassing prevention, detection and recovery from cyber breach;
  - (iii) Processes and procedures for the identification, detection, assessment, prioritization, containment, response to, and escalation of cyber breaches for decision-making; and
  - (iv) Communication procedures that will be activated by the entity in the event of a cyber breach, which include reporting procedures, information to be reported,

communication channels, list of internal and external stakeholders and communication timeline;

- (e) adopt preventive measures which may include the following;
  - (i) Deployment of anti-virus software and malware programme to detect and isolate malicious code;
  - (ii) Layering systems and systems components;
  - (iii) Build firewalls to reduce weak points through which attacker can gain access to a trustee's network;
  - (iv) Rigorous testing at software development stage to limit the number of vulnerabilities;
  - (v) Penetration testing of existing systems and networks; and
  - (vi) Use of authority matrix to limit privileged internal or external access rights to systems and data;
- (3) The trustee is encouraged to appoint an auditor who has not been the auditor of the open-end or closed-end scheme under its trusteeship during the previous two years; and
- (4) The trustee or any of its employees shall not render, directly or indirectly any investment advice about any security in the publicly accessible media.";
- (9) in regulation 45A, after sub-regulation (2), for the full stop a colon shall be substituted and thereafter the following new proviso shall be inserted, namely:-

"Provided that the trustee shall also send such notice at the registered postal address and/ or email such notice at the registered email ID of all unit holders including the Non-Resident investors;"

(10) regulation 46 along with heading, and regulations 47, 48, 49, 50, 51, 52, and 53

shall be omitted;

## (11) in regulation 57,-

- (a) in sub-regulation (9), after the words "usually published", occurring at the end, the words, "and also emailed at the registered email ID of all Non-Resident Pakistani unit holders" shall be inserted; and
- (b) in sub-regulation (16), after the words "all over Pakistan", occurring at the end, the words, "and also emailed at the registered email ID of all Non-Resident Pakistani unit holders" shall be inserted;
- (12) in regulation 58, in sub-regulation (1), in clause (h), in sub-clause (i) and (ii) the words "or Investment Company" wherever appearing, shall be omitted;
- (13) in regulation 58, in sub-regulation (1), clause (i) appearing after clause (h), shall be omitted:-
- (14) in regulation 60, in sub-regulation (3), clause (c) and (q) shall be omitted;
- (15) after regulation 60, the following new regulation shall be inserted, namely:-
  - **"60A. Board's Approved Policy to Align Interests of Key Employees and Unit Holders-** (1) The Board of Directors of an AMC shall formulate, approve and implement a comprehensive policy to align the interests of its Key Employees with those of the unit holders of the Collective Investment Schemes being managed by the AMC.
  - (2) The policy shall specify an appropriate percentage out of total compensation of Key Employees to be in the form of units of Collective Investment Schemes relevant to them, on a proportionate basis. The units issued shall not be redeemable before expiry of a period of five years from date of issue, or until the Collective Investment Schemes outperforms its

respective benchmarks for consecutive two years after issuance date, whichever is earlier.

(3) The policy shall also provide for reversal or forfeiture (claw back) of compensation or incentives of its employees, including Key Employees, in case of fraud, gross negligence, mis-selling or deceptive conduct on part of the employees.

**Explanation:** For the purpose of this regulation, Key Employees include Chief Executive Officer and all employees involved in the oversight and decision-making process of the Collective Investment Schemes;"

- (16) in regulation 65,-
  - (a) for sub-regulation (1), following shall be substituted, namely:-
    - "(1) An Asset Management Company managing a Closed End Fund shall, upon expiry of five years from 21st November 2007 or the date of launch of the fund whichever is later, hold within one month of such period a meeting of the certificate holders in case of a Closed End Scheme to seek approval of the certificate holders to convert into an Open End Scheme or revoke the Closed End Scheme subject to applicable provisions of the Ordinance, the Rules and these Regulations;";
  - (b) for sub-regulations (2), the following shall be substituted, namely:-
    - "(2) The meeting of certificate holders shall decide on any one of the following:
      - (a) conversion of Closed End Fund into an Open End Scheme; or
      - (b) revocation of Closed End Scheme;"
  - (c) for sub-regulation (2a), following shall be substituted, namely:-

"(2a) In case of conversion of Closed End Scheme in to Open End Scheme or revocation of Closed End Scheme, by passing a resolution of certificate holders through simple majority by casting a vote through proxy, physical presence or in writing through post, and all such resolutions once passed shall be binding on the Asset Management Company;";

(d) for sub-regulation (2aaa), following shall be substituted, namely:-

"(2aaa) An Asset Management Company shall ensure publication and dissemination of the notice of the meeting of certificate holders of the Closed End Scheme along with the draft resolution at least seven days prior to the date of meeting and all such notices shall also specify all material facts, particularly the impact of conversion, revocation or winding up, as the case may be, on the certificate holders;"; and

- (e) for sub-regulation (3), following shall be substituted, namely: -
  - "(3) Not later than fifteen days from the date of meeting of the certificates holders, the Closed End Fund shall make an application to the Commission for conversion or revocation or winding up, as the case may be, accompanied with a copy of the relevant resolution;"
- (17) in regulation 66A, in clause (a), after the proviso, the following new second proviso shall be inserted, namely:-

"Provided further that the banking companies licensed and authorized by the State Bank of Pakistan to open Roshan Digital Accounts (RDA) and performing the function of distributing units of CIS and/ or Voluntary Pension Schemes (VPS) of multiple AMCs to their RDA holders only shall be exempted from the requirement of licensing/ registration provided they comply with all the other requirements prescribed under the applicable regulatory framework;";

(18) after regulation 66B, the following new regulation shall be inserted, namely:-

- **"66C. Digital Investment Advisors:** (1) Investment advisor that intends to offer digital investment advisory shall:
  - (i) inform the Commission before offering digital investment advisory services;
  - (ii) ensure that it possesses the infrastructure, and has in place adequate technological resources and risk management arrangements as well as organizational competence;
  - (iii) appoint at least one person who has a sound understanding of the technology and relevant experience of at least three (3) years (preferably digital financial services) of providing investment advice.
  - (iv) ensure that;
    - a. it executes a digital portfolio management agreement with the investor setting out the rights, liabilities and obligations of each party to the agreement;
    - b. there are in-built "knock-out" or threshold questions to effectively identify and eliminate unsuitable investor;
  - (v) advertise its digital investment advisory services in accordance with advertisement requirement specified by the Commission from time to time; and
  - (vi) fulfil such other requirements as may be specified by the Commission.

## (2) Investment Policy Statement: Digital investment advisor shall,-

- (i) prepare and submit Investment Policy Statement for review by the Commission, at least fifteen (15) days before offering any product to the investors on its platform;
- (ii) specify a suitable performance benchmark to be used on consistent basis, that is commensurate with investment parameters/risks along with frequency of performance review; and

- (iii) offer Investment Policy Statement to retail investors that comprises only CIS and Pension Funds under the Voluntary Pension System Rules, 2005.
- (3) Suitability Assessment of Investor: Investment Advisor offering digital investment advisory services is required to ensure that the recommendation takes into account an investors' investment objectives, financial situation and particular needs:
  - (i) the financial objectives of the investor along with size and nature of transactions that have been undertaken by the investor in the relevant financial markets and the extent to which the investor has relied on financial advice from digital investment services provider;
  - (ii) the risk tolerance of the investor i.e. both ability and willingness of investor to bear risk, return objective and a detailed statement of risks specific to investment policies and objectives;
  - (iii) the source of income including the employment status of the investor and amount of the investor's regular income;
  - (iv) the financial commitments of the investor including liquidity requirement, tax constraints and time horizon for investment in relation to specific security and overall portfolio;
  - (v) whether the amount to be invested is a substantial portion of the investor's assets; and
  - (vi) other unique circumstances, matter or aspects of the investor which the digital investment advisor considers relevant;
- (4) Digital Investment Advisor shall provide appropriate disclosures:
  - that the advice is fully-automated, with no human adviser interaction in the advisory process. Human interactions are limited to providing technical assistance to investors, such as assisting investor on ITrelated issues or clarifying with investors on their responses when inconsistencies are noted;

- (ii) that the risks of investments and historical returns of the investment products along with unique features, characteristics of investments and the nature of underlying assets (if any);
- (iii) of actual or potential conflict of interest that may arise from any connections to or association with any product provider including any material information or facts that may compromise their objectivity or independence;
- (iv) on the grievance redressal mechanism;
- (v) on the detailed breakup of all fees that will be charged to investor; and
- (vi) which enables the prospective investor to understand the investment process through illustration or simulations.
- **(5) Robo Advisory:** Digital investment advisor offering robo advisory shall ensure that:
  - (i) it accurately describes the investment advisory services it provides;
  - (ii) the information disclosed is easily comprehensible (i.e. through design features such as pop-up boxes or tooltips or other means or media);
  - (iii) proper mechanism to identify and seek to reconcile any inconsistencies in the information provided by the investor are in place; and
  - (iv) regular review of the advice is conducted.
- (6) **Requirements for using Algorithm:** Digital investment advisor may offer digital discretionary portfolio management services that are algorithm based and shall:
  - (a) maintain an oversight over the management of the investor-facing tool, such as designating appropriate personnel to approve changes to the algorithms, and having security arrangements to identify and prevent unauthorized access to the algorithms including maintaining of proper documentation on the design, development and subsequent

changes if any in the algorithms;

- (b) disclose and display prominently on its digital advisory platform all relevant information relating to algorithm including:
  - (i) assumptions and limitations of the algorithm; and
  - (ii) risk inherent in the use of technology.
- (c) have a documented test policy which explains the scope of testing that includes test plans, test cases, test results, defect resolution (if any) and final test results;
- (d) have in place controls and process to suspend the provision of advice if an error within an algorithm is tested and that error is likely to result in investor's loss and/or a breach of legal framework;
- (e) arrange for its annual system audit to ensure the authenticity of algorithms and controls in the system and provide the report of such audit to the Commission and the Investors, within three months of the close of the financial year of the Advisor;
- (f) notify the investor prior to each and every rebalancing transaction;
- (g) have mechanism for obtaining a one-time prior written authorization or consent digitally from the investor to periodically rebalance the constituent securities of the portfolio;
- (h) ensure at least annually to determine if the algorithm remains appropriate for the investor in light of investors changing investment preferences or circumstances in accordance with suitability assessment performed earlier;
- (i) provide a written disclosure to the investor on the following prior to obtaining the investors written authorization and as and when there

are any changes in any of the following;

- (i) the scope of rebalancing activities, including frequency and methodology of rebalancing;
- (ii) fees payable and any other material terms and conditions associated with periodic rebalancing;
- (iii) advance notice period that will be provided prior to carrying out any rebalancing activities
- (j) be responsible for any loss incurred to investor due malfunctioning of algorithm.

Explanation:- for the purposes of the regulation the expressions,-

- (i) "Digital Investment Advisor" means an NBFC licensed by the Commission to provide investment advisory services using automated, algorithm-based tools which are client-facing, with limited or no human adviser interaction in the advisory process;
- (ii) "Robo advice" means investment advice through digital platforms that provide automated, algorithm-driven advice in an online environment using innovative technology tools; and
- (iii) "Robo Advisor" means a person involved in providing Robo Advice.";
- (19) for Schedule IX, Fit and Proper Criteria, the following revised Schedule IX, Fit and Proper Criteria shall be substituted, namely:-

#### **Schedule IX**

### FIT AND PROPER CRITERIA

[see Rule 3 and Regulations 2(1)(xvii) and 10]

#### **DEFINITIONS**

"Key Executive" means key executives of the NBFC and includes, inter alia, the persons discharging the following functional responsibilities, -

- a. Any executive, officer acting as second to chief executive officer including chief operating officer or by whatever name called;
- b. any person responsible for heading any specific licensed form of business
- c. chief financial officer, head of accounts or head of finance;
- d. head of internal audit;
- e. head of information technology;
- f. head of credit or risk management;
- g. head of human resource;
- h. head of operations;
- i. head of marketing/sales;
- i. head of research;
- k. head of treasury;
- 1. chief investment officer;
- m. head of law, company secretary or compliance officer;
- n. fund manager; and
- o. any other functional responsibility which the Commission may include.

#### APPLICATION AND SCOPE

- (1) The Fit and Proper Criteria in relation to an NBFC is applicable to the following persons:
  - (i) promoters and major shareholders of the NBFC;
  - (ii) director of the NBFC;
  - (iii) chief executive of the NBFC;
  - (iv) Key Executives of the NBFC.
- (2) A proposed director or chief executive of the NBFC shall not assume the charge of office until their appointment has been approved by the Commission.
- (3) The application for seeking approval of the Commission under clause (2) shall be submitted by the NBFC along with the requisite information required under Annexure "A" and an Affidavit as specified in Annexure "B".
- (4) The appointment of Key Executives of an NBFC does not require the approval of the Commission; however an NBFC shall ensure at the time of appointing a Key Executive that such

person qualifies the Fit and Proper Criteria.

- (5) The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following:
  - (a) Integrity and track record of such person;
  - (b) Financial soundness of such a person;
  - (c) Competence and capability of the person; and
  - (d) Conflict of interest of such person with the business of the NBFC.

Provided that 5(c) and (d) may not be considered while assessing the fitness & propriety of promoters and major shareholder of the NBFC.

Provided further that in case the sponsor and major shareholder is a body corporate, in addition to the relevant/applicable clauses, corporate behavior of the said body corporate and integrity & track record of the sponsor and ultimate beneficial owners of such corporate body shall be duly considered.

Explanation: Ultimate beneficial owners for the purpose of this clause means natural person or individual who ultimately own 10% or more ownership or control the body corporate.

- (6) The Fit and Proper Criteria is perpetual in nature and an NBFC shall ensure compliance with the provisions of Fit and Proper Criteria.
- (8) All persons subject to Fit and Proper Criteria shall report any change with reference to their fitness and propriety to the respective NBFCs within three business days of such change taking effect and NBFCs shall within a period of seven business days from the date of receipt, report the same to the Commission.
- (9) NBFC shall monitor whether any change in the status of its chief executive, directors and key executives is contrary to the requirements of the Fit and Proper Criteria. In case of any change in status result in non-compliance with the Fit and Proper Criteria, the NBFC shall immediately stop the person from performing his assigned functions, informs the Commission and initiate the process for replacement of the individual with a fit and proper individual.
- (10) Any violations or circumvention of the Fit and Proper Criteria shall be dealt with under the provisions of the Ordinance.

#### ASSESSMENT OF FITNESS AND PROPRIETY

## (a) Integrity and Track Record

A person shall not be considered Fit and Proper if he:

- (i) has been convicted of an offence involving moral turpitude;
- (ii) has been involved in the mismanagement of investments, financial or business misconduct, fraud etcetera;
- (iii) has been the subject to adverse findings, after conducting an inquiry, by the Commission or any other regulatory or professional body or government agency;
- (iv) has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices

Provided that in case of non-executive nominee directors representing institutional interest and who otherwise do not have any personal interest, the Commission may, after seeking explanation and if satisfied, after reasons to be recorded in writing, relax this requirement on case to case basis subject to such conditions as it may deem fit.]

- (v) is ineligible, under the Ordinance or any other legislation or regulation, from acting as a director or serving in a managerial capacity of an NBFC or a company;
- (vi) has entered into a plea bargain arrangement with the National Accountability Bureau:
- (vii) in case of promoters or major shareholder of NBFC does not have the requisite disclosed and verifiable financial resources;

#### (b) Financial soundness

In determining a person's financial soundness, the following shall be considered:

- (i) whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
- (ii) whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution;
- (iii) whether any instance of overdue or past due payment to a financial institution,

irrespective of amount, is appearing in the overdue column of latest CIB report of the person and of the companies, firms, sole proprietorship etc. where the person is a chief executive, director (other than nominee director), owner or partner etc.

Provided that the Commission shall provide an opportunity of making representation to the person in case of overdue or past due payment;

Provided further that the following exceptions may be granted by the Commission for the purpose of this sub-clause in case where:-

- (a) Amount overdue is under litigation and the same is also appearing as amount under litigation in the CIB report; and
- (b) No overdue payment appearing in the overdue column in the subsequent latest CIB report;]
- (iv) whether the person has applied to be adjudicated as an insolvent and his application is pending;
- (v) whether the person is an un-discharged insolvent; and
- (vi) whether the person has been declared a defaulter by a stock exchange.

## (c) Competence and Capability

In determining a person's competence and capability the following shall be considered:

(i) the directors should be individuals having management or business experience of at least five years at a senior level;

Provided that this condition shall not apply in case of sponsor directors, however, conditions prescribed in Schedule I of the NBFC Rules, 2003 shall apply.]

(ii) the directors shall have experience and knowledge in any related profession such as banking, Collective Investment Scheme, accounting, law, internal audit or information technology etc.:

Provided that for Non-Bank Micro Finance Companies, the directors having experience and knowledge in professions such as economics, social sector, development sector, microfinance sector etc. shall also be considered;]

(iii) the chief executive should have a minimum experience of seven years in a senior

- management position, preferably in the regulated financial services sector;
- (iv) the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and
- (iva) where the Commission is not satisfied on sufficiency of the suitability criteria, it may conduct an interview of the chief executive to assess his/her suitability for the position.]
- (v) the key executives must be qualified professionals possessing relevant experience and certification relating to the job or assignment.

## (d) Conflict of interest

The directors or chief executive of NBFC shall not:

- (i) be a director in any other NBFC engaged in a similar business in Pakistan.
- (ii) be a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name or designation called) in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and
- (iii) be a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.

Provided that the condition given in point (ii) and (iii) above, shall not apply to the Non-deposit taking lending NBFCs.

In case of Key Executives, the NBFCs must ensure that no Key Executive shall head more than one functional area that give rise to conflict of interest within the organization. For example, the departments of audit and accounts shall not be headed by the same person. Further, a key executive shall not hold directorship in his or her personal capacity:

- (a) in a business concern which is also a client of the NBFC; and
- (b) in any other financial institution.

# (a) Information to be provided by promoters, major shareholders (other than a body corporate), proposed directors and proposed chief executive of the NBFC

| 1 | Personal and Professional Details                                                                                  |  |  |
|---|--------------------------------------------------------------------------------------------------------------------|--|--|
| a | Name: (former name if any):                                                                                        |  |  |
| b | Father's or Husband Name:                                                                                          |  |  |
| c | C.N.I.C # / Passport # (In case of foreign nationals) –(attach copy)                                               |  |  |
| d | Contact details:                                                                                                   |  |  |
|   | i) Residential address:                                                                                            |  |  |
|   | ii) Business address:                                                                                              |  |  |
|   | iii) Tel:                                                                                                          |  |  |
|   | iv) Mobile:                                                                                                        |  |  |
|   | v) E-mail:                                                                                                         |  |  |
| e | Present occupation:                                                                                                |  |  |
| f | Details of Academic and Professional Qualifications: (Attach Copy). Board of                                       |  |  |
|   | Directors of NBFC shall ensure: verification of credentials and degrees of the Chief                               |  |  |
|   | Executive                                                                                                          |  |  |
| g | Experience and Other Directorships:                                                                                |  |  |
|   | Position and other directorships held during the last ten years (along with name and                               |  |  |
|   | address of company/institution/ body where appointment/ directorship held, nature of                               |  |  |
|   | the company/institution/body and dates of appointment/ directorship).                                              |  |  |
| 2 | Status of directorship Shareholder   Nominee                                                                       |  |  |
|   | Name of the shareholders/ Group of shareholders he is representing                                                 |  |  |
|   | Nature of directorship Executive □ Non-executive □                                                                 |  |  |
|   | Independent □ Non-independent □                                                                                    |  |  |
|   | Number of shares subscribed or held                                                                                |  |  |
|   | Personal net worth (copy of wealth statement only for sponsors). However the names of                              |  |  |
|   |                                                                                                                    |  |  |
|   | all the sponsors, CEO and directors shall be appearing on Active Tax payer list (ATL)                              |  |  |
|   | all the sponsors, CEO and directors shall be appearing on Active Tax payer list (ATL) of Federal Board of Revenue. |  |  |
| 3 |                                                                                                                    |  |  |

|   | meeting of the board of directors. If the director is elected, then attach a copy of the |
|---|------------------------------------------------------------------------------------------|
|   | minutes of the general meeting of the company.)                                          |
| 4 | Names of persons on the board of the NBFC who are related to the applicant.              |

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- (b) Information to be provided by a body corporate as promoters and major shareholders of the NBFC:
- 1. Financial statements for the last three years;
- 2. Details of business places;
- 3. Shareholding details including details of ultimate beneficial owners;
- 4. Any substantial adverse verdicts against the Company from any Court of Law during the last ten years
- 5. Details of associated companies and subsidiaries;
- 6. Details of any inquiry, investigation conducted by the Commission or any other regulatory or professional body or government agency during the last five years; and
- 7. Any other information as may be required by the Commission.

"Annexure B

#### **Affidavit**

## Before the Securities and Exchange Commission of Pakistan

(On Stamp Paper of Appropriate Value)

| I,             | son/daughter/wife of | adult, resident of        |  |
|----------------|----------------------|---------------------------|--|
|                |                      | and                       |  |
| holding CNIC   | C/ Passport No.      | do hereby state on solemn |  |
| affirmation as | s under-             |                           |  |

<sup>\*</sup>use additional sheets if required

- 1. That I am eligible for the position of \_\_\_\_\_\_according to the Fit and Proper Criteria for the position of \_\_\_\_\_\_, annexed to the Non-Banking Finance Companies and Notified Entities Regulations, 2008;
- 2. That I hereby confirm that the statements made, undertakings provided and the information given by me including that required under Schedule IX is correct and that there are no facts which have been concealed;
- 3. That I have no objection if the Securities and Exchange Commission of Pakistan requests or obtains information about me from any third party;
- 4. That I undertake to bring to the attention of the Securities Exchange Commission of Pakistan any matter which may potentially affect my status for the position of \_\_\_\_\_ as per the Fit and Proper Criteria annexed to the Non-Banking Finance Companies and Notified Entities Regulations, 2008;
- 5. That all the documents provided to Securities Exchange Commission of Pakistan are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof;
- 6. That I have not availed any write off from any financial institution during the last five years;
- 7. That I have not defaulted against any Finance obtained from any financial institution during the last five years;
- 8. That I have not been placed on Exit Control List (ECL) during the last five years;
- 9. That I have not been convicted from any Court of Law or any plea bargain with National Accountability Bureau (NAB) during the last ten years;
- 10. That none of my related or affiliated person or by any company on whom I or anyone closely related to me had an interest as sponsor, major shareholder, director, chief executive, key executives, etc. during the last five years;
- 11. I hereby confirm that the companies, firms, sole proprietorship etc. where I am a chief executive, director (other than nominee director), owner or partner etc. has no overdue payment of any financial institution;
- 12. I have not been associated with any illegal banking business, deposit taking or financial dealings;
- 13. I and companies in which I am a director or major shareholder have no over-due loans or instalments outstanding towards banks or other financial institutions;

- 14. Neither I nor companies in which I am a director or major shareholder has defaulted in paying taxes as on the date of application;
- 15. I have not been a sponsor, director or chief executive of a defaulting cooperative finance society or finance company;
- 16. I have never been convicted of fraud or breach of trust or of an offence involving moral turpitude or removed from service for misconduct;
- 17. I have neither been adjudged an insolvent nor has defaulted in making payments, to my creditors;
- 18. My net-worth is not less than twice the amount to be subscribed by me personally (not applicable to a nominee director);
- 19. I do solemnly declare that no investigations have been initiated against me by any Law Enforcement Agencies (The fact must be disclosed, in case any investigation has been initiated. Further, the resolution of board of director along with reasons for retaining such CEO or director against whom investigation by LEAs has been initiated must be provided)

|                                                 | DEPONENT                     |
|-------------------------------------------------|------------------------------|
| The Deponent is identified by me                |                              |
|                                                 | Signature                    |
|                                                 | ADVOCATE                     |
|                                                 | (Name and Seal)              |
| Solemnly affirmed before me on this day of      | at by the                    |
| Deponent above named who is identified to me by | , Advocate, who is known     |
| to me personally.                               |                              |
| Signat                                          | ture                         |
| OATH COMMIS                                     | SSIONER FOR TAKING AFFIDAVIT |
|                                                 | (Name and Seal)".            |

[File No. SCD/NBFC/NBFCR/2022]

Secretary to the Commission