



**SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
SPECIALIZED COMPANIES DIVISION
NON BANKING FINANCE COMPANIES DEPARTMENT**

No. NBFCD/MF/CIRCULAR/934/2009

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CIRCULAR NO.32 OF 2009

**MINIMUM REQUIREMENTS FOR UNDERTAKING DISCRETIONARY AND
NON-DISCRETIONARY PORTFOLIO MANAGEMENT**

This Circular applies to the Non Banking Finance Companies licensed to provide Investment Advisory Services or Investment Finance Services (the “NBFCs”) under the Non Banking Finance Companies (Establishment & Regulations) Rules, 2003 (the “Rules”) and the Non Banking Finance Companies and Notified Entities Regulations, 2008 (the “Regulations”) for managing Discretionary Portfolios and Non-Discretionary Portfolios (“portfolio management”) for eligible investors as defined in the Regulations (herein after referred to as “investors”).

Portfolio management entails a fiduciary responsibility entrusted by the investors to the NBFCs and requires them to act in the best interest of the investors. Therefore, Securities and Exchange Commission of Pakistan (the “Commission”) in exercise of its powers conferred by section 282(B)(3) of the Companies Ordinance, 1984 read with Regulations 34 and 67 of the Regulations, deems it necessary to prescribe following minimum requirements for the NBFCs to undertake portfolio management and hereby directs the NBFCs to abide, in letter and spirit, with these requirements as applicable on Discretionary and Non-Discretionary Portfolios.

The NBFC shall only provide portfolio management services after it has ascertained and satisfied itself that the prospective client fulfills the prescribed eligible investor criteria and has furnished an undertaking as required under the Regulations.

(A) Portfolio Management Agreement & Investment Policy Statement

1. The NBFC shall execute a written Portfolio Management Agreement (the “Agreement”) with the investor. The said Agreement shall set out in sufficient detail the rights, liabilities and obligations of each party to the Agreement and shall cover, at minimum the aspects specified in the **Annexure**.

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2. The assets constituting or representing the underlying portfolio being managed by the NBFC shall be registered in the name of the concerned investor and NBFC shall neither directly or indirectly hold, nor provide custodial services for any such assets of the investors.
3. The NBFC shall after due consultation with the investor prepare a written Investment Policy Statement ("IPS"). The NBFC shall while devising the IPS, undertake risk and return assessment of the investor and thoroughly evaluate and understand the investor's investment objectives, investment constraints (including tolerance for risk, liquidity needs, time horizon, tax, financial, legal or regulatory constraints) and other unique needs and preferences. The IPS shall form an integral part of the agreement and shall cover at minimum the following aspects:
 - a) The investor's qualification, knowledge and understanding of the relevant financial markets, types of financial products or arrangements and the risks involved;
 - b) The length of time the investor has participated in relevant financial markets, the frequency of dealings and the extent to which the investor has relied on financial advice from investment service providers;
 - c) The size and nature of transactions that have been undertaken by the investor in relevant financial markets and the composition and size of the investor's existing investment portfolio, if any;
 - d) Investment objectives including types of securities in which investment would be made specifying proportion of exposure and restrictions, if any;
 - e) Investor's tolerance for risk i.e. both ability and willingness of client to bear risk, return objectives and a detailed statement of risks specific to investment policies and objectives;
 - f) Liquidity requirements, tax constraints and time horizon for investment in relation to specific security and overall portfolio; and
 - g) Other unique circumstances, matters or aspects of the investor which the NBFC considers relevant.
4. The NBFC shall discuss approved IPS with the investor at least annually to determine if the IPS remains appropriate for the investor in light of investor's changing investment preferences or circumstances. Change in IPS shall only be



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implemented after securing the investor's consent in writing. If the circumstances materially change in the interim and warrant an earlier assessment of the same shall be undertaken by the NBFC and discussed with the investor and appropriate action shall be taken.

5. The Agreement and IPS shall be signed by the NBFC or its authorized signatories and the investor or its authorized signatories and shall be maintained by the NBFC in its record for inspection purposes by auditors, officers of the Commission, or any other relevant agency/authority. The Commission may at any time demand a copy of the Agreement and IPS to be furnished.
6. The NBFC shall perform portfolio management for the investor in accordance with the agreement.

(B) Business Conduct

1. The NBFC shall, in the conduct of its business, observe high standards of integrity, fairness and diligence. It shall exercise independent professional judgment and ensure proper care in all its dealings with the investors without gaining any advantage for itself, related parties, connected persons or employees which causes detriment to the investors.
2. The NBFC shall manage portfolio of each investor independent from that of other investors and shall keep and maintain all relevant records, in support of every investment recommendation or transaction.
3. The NBFC shall establish, maintain and implement written policies and procedures to preserve confidentiality of information provided by the investors and ensure fair and equitable treatment to all investors while providing investment information, making investment recommendations or taking investment actions including fair allocation of trades.
4. The NBFC shall determine before providing an investment advice or taking investment action on behalf of an investor, whether the investment is suitable in light of the Agreement and approved IPS of the investor and after satisfying itself, recommend or effect an investment decision.
5. The NBFC shall ensure that all professional dealings are effected in a prompt, efficient and cost effective manner. It shall not derive any direct or indirect benefit



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out of the investor's funds or securities other than the fees agreed between the investor and the NBFC.

6. The NBFC shall establish and implement written policies and procedures to ensure that complaints from investors are handled in a timely and appropriate manner.
7. The NBFC, on termination of the Agreement with the investor, shall give a detailed statement of accounts to the investor and settle the account with the investor as per the Agreement.
8. The NBFC shall supply to the Commission, copies of all reports sent to the investor as and when required by the Commission.

These minimum requirements shall come into force with immediate effect. The NBFCs engaged in portfolio management services prior to coming into effect of this Circular shall ensure compliance with these requirements within 6 months of the date of this Circular.

The NBFCs, Mutual Funds Association of Pakistan and Investment Banks Association of Pakistan are advised to approach the Commission should they require any clarification in relation to this Circular.

(SALMAN ALI SHAIKH)
Commissioner (SCD)



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Annexure

MINIMUM CONTENTS OF PORTFOLIO MANAGEMENT AGREEMENT

The Portfolio Management Agreement shall, *inter alia*, cover the following aspects:

1. Name of the investor and the NBFC.
2. Scope of services to be provided by the NBFC including functions, obligations, duties and responsibilities (for Discretionary and Non-Discretionary management of portfolio to be given separately) with specific provisions regarding instructions for Non-Discretionary portfolio management.
3. Clear authorization from the investor in case of Discretionary portfolio management.
4. Term of the Agreement and provision for renewal, if any.
5. Conditions, under which Agreement may be altered, terminated and implications thereof, such as settlement of amounts invested and repayment obligations etc.
 - (a) Voluntary/mandatory termination by the NBFC;
 - (b) Voluntary/mandatory termination by the investor; and
 - (c) Mandatory termination in case of cancellation of license of the NBFC.
6. Initial quantum of funds to be managed.
7. Access to information i.e. provisions enabling investor to inspect and get copies of the books of accounts of the NBFC relating to his transactions.
8. The nature, quantum and manner of payment of fees and charges for each activity for which the NBFC renders services.
9. Method and basis of valuation of securities in the portfolio of investor, performance standards / benchmarks and frequency of performance review (quarterly, half-yearly, etc.) to the investor.
10. Details of the custodian arrangement.
11. Liability of the NBFC i.e. liability of NBFC in connection with the recommendations made, to cover errors of judgment, negligence, willful misfeasance in connection with discharge of duties, acts of other intermediaries, brokers, trustees etc.



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12. Liability of investor i.e. restricting the liability of the investor to the extent of investor's investment or disinvestment instructions received as per the written Agreement.
13. Governing law/jurisdiction, which governs the Agreement to be stated.
14. Mode and frequency of reporting to the investor (monthly, quarterly, semi-annually, annually or on such periodicity as may be decided) at least containing the following information:
 - a) Performance review;
 - b) Details and the composition of portfolio including the value & description of the portfolio, value of each security held in the portfolio and cash balance as on the date of report;
 - c) Details of benefits received during that period including interest, dividend, bonus shares and rights shares;
 - d) Transactions undertaken during the period including date of transaction and details of purchases and sales; and
 - e) Details of fee charged to the investor.

Any change in terms of Agreement shall only be incorporated through addendum to the initial Agreement and after obtaining written approval of the investor.