



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Specialized Companies Division
Supervision Department

No. SCD-SD (Enf)/2014/036

Before the Executive Director

In the Matter of Show Cause Notice under Section 282J read with Section 282D of the Companies Ordinance 1984 for Violation of Regulation 43 (1) of NBFCs and Notified Entities Regulations 2008 to Director of National Investment Trust Limited

Order

This Order shall dispose of the proceedings initiated under Section 282J read with Section 282D of the Companies Ordinance 1984 ("the Ordinance") by the Securities and Exchange Commission of Pakistan ("the Commission") through Show Cause Notice ("SCN") No. SCD-SD(Enf)/2014/011 of January 24, 2014 issued to Mr. Jamal Nasim (the "Respondent"), Director of National Investment Trust Limited.

2. Briefly, the facts of the matter leading to the aforesaid SCN are that on June 23, 2011 the Respondent was elected as director on the board of National Investment Trust Limited (NITL), an asset management company licensed to provide asset management services under Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003. Subsequently, in December 2011, the Respondent was elected as director of Central Depository Company ("CDC"), which is registered with the Commission as trustee of collective investment schemes managed by asset management companies.

3. Regulation 43 (1) of NBFCs and Notified Entities Regulations 2008 ("NBFC Regulations 2008"), as amended vide S.R.O. No. 814(I)/2011 dated September 05, 2011, stipulates that

"The trustee shall be independent of the Asset Management Company".

Further, the explanation note to the above regulation states that,

"For the purposes of Regulation 43(1) the term "independent" means that there shall be no cross-shareholding nor common directorship between the Asset Management Company and trustee".

In terms of the above regulation, the Respondent was not eligible to become director on the board of CDC (the trustee); since at that time he was a director on the board of NITL (Asset management company) and CDC was providing trusteeship services for several funds under management of NITL.

4. CDC noticed this diversion and raised this matter with the Respondent vide their letter dated May 24, 2013; however, the issue remained unresolved.



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5. The Commission also advised NITL vide letter dated June 4, 2013 that necessary action may be taken to ensure compliance with Regulation 43 (1) of NBFC Regulations 2008. However, compliance was not achieved.

6. The Commission took cognizance of this matter and issued SCN to the respondent under Section 282J read with Section 282D of the Companies Ordinance 1984, calling upon the Respondent to show cause in writing as to why the actions provided for under Section 282J of the Ordinance for violation of Regulation 43 (1) of NBFC Regulations 2008 may not be taken against the Respondent.

7. The Respondent vide letter dated February 3, 2014 clarified that he was not aware of this restriction at the time of contesting the election and that no fact was intentionally concealed by him at the time of election as director of CDC. The Respondent further stated that upon receiving the SCN from the Commission, he has tendered resignation as director from CDC to remove this objection. The respondent further requested that he may be absolved from the charges as this act was not deliberate and occurred due to ignorance of this restriction.

8. I have considered the aforesaid submissions made by the Respondent. The Respondent has requested to drop the proceedings with the plea that the Respondent acted to comply with the Regulation by tendering resignation from the board of CDC, as soon as the non-compliance was pointed out by the Commission through SCN. Furthermore, the Respondent contends that there was no intentional act on the part of the Respondent to conceal any information. In this regard, it is pointed out that ignorance of the law cannot be considered an excuse. It is expected that a person being elected as director on the board of a company would be aware of the applicable laws, rules and regulations. Furthermore, it is also imperative that information submitted in pursuance of the applicable regulatory framework at the time of election as director must be accurate and complete. However, since the Respondent has already tendered resignation in order to comply with the aforesaid Regulation, therefore, I am inclined to take a lenient view in the matter. Hence, request of the Respondent is accepted and no penalty under Section 282J of the Ordinance is imposed on the Respondent. However, the Respondent is warned to remain cautious in future and ensure strict compliance of applicable laws, rules and regulations.

9. This Order is being issued without prejudice to any action, which may be taken or warranted for the above said default under any other provisions of law.


Shahid Nasim
(Executive Director)

Announced: February 20, 2014
Karachi