



SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN
Specialized Companies Division
SCD-Supervision Department (Enforcement Wing)

SCD-SD (Enf.)/KHI/DCML/2013/061

March 22, 2013

BEFORE THE EXECUTIVE DIRECTOR

IN THE MATTER OF M/S. DAWOOD CAPITAL MANAGEMENT LIMITED

In Respect of Show Cause Notice under Section 282J (1), Section 282J (2) read with Section 282D and Section 282M of the Companies Ordinance, 1984 for Violations of Regulation 38 (a) & Regulation 38(n) of the Non-Banking Finance Companies & Notified Entities Regulations 2008

No. and date of Show Cause Notice:	SCD-SD (Enf.)/DCML/2012/398 dated November 08, 2012
Dates of 1 st Hearing:	January 10, 2013 & January 11, 2013
In Attendance:	<ol style="list-style-type: none">1. Ms. Tara Uzra Dawood (Chief Executive Officer- CEO)2. Mr. Gul Nawaz (Director & Chairman, Audit Committee - AC)3. Mr. Masood Wahedna (Director & Member AC)4. Mr. S. Shabahat Hussain (Director & Member AC)5. Mr. S. Kabiruddin (Chief Financial Officer- CFO & Company Secretary)6. Mr. Nazimuddin Feroz (Director)7. Mr. Ashfaq Tola, FCA (Authorized representative of the Company)
Dates of 2 nd Hearing:	February 20, 2013 & February 21, 2013
In Attendance:	<ol style="list-style-type: none">1. Ms. Tara Uzra Dawood (CEO) (in personal capacity & on behalf of the Company)2. Ms. Shafqat Sultana (Chairperson of the Board)3. Mr. S. Kabiruddin (CFO & Company Secretary)
Date of 3 rd Hearing:	March 12, 2013
In Attendance:	<ol style="list-style-type: none">1. Ms. Tara Uzra Dawood, (in personal capacity & on behalf of the Company)2. Ms. Shafqat Sultana (Chairperson of the Board)3. Mr. S. Kabiruddin (CFO & Company Secretary)
Date of 4 th hearing:	March 15, 2013
In Attendance:	<ol style="list-style-type: none">1. Ms. Tara Uzra Dawood, CEO (in personal capacity & on behalf of the Company)2. Ms. Shafqat Sultana (Chairperson of the Board)



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ORDER

1. This order shall dispose of the proceedings initiated against M/s. Dawood Capital Management Limited (hereinafter referred as the **“Company”** or as **“DCML”**), and its Board of Directors (hereinafter referred as the **“BOD”**) and officers through a Show Cause Notice (**“SCN”**) dated November 08, 2012 issued under Section 282J(1), Section 282J(2) read with Section, 282D and Section 282M of the Companies Ordinance, 1984 for violations of Regulation 38 (a) & Regulation 38(n) of the Non-Banking Finance Companies & Notified Entities Regulations 2008.
2. The Company is licensed by the Securities and Exchange Commission of Pakistan (hereinafter referred as the **“Commission”** or as **“SECP”**) to undertake the businesses of asset management services and investment advisory services under the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (hereinafter referred as the **“NBFC Rules”**) and the Non-Banking Finance Companies and Notified Entities Regulations, 2008 (hereinafter referred as the **“NBFC Regulations”**) and is managing 03 Collective Investment Schemes (CIS) namely, Dawood Income Fund (hereinafter referred as **“DINF”**), Dawood Islamic Fund (hereinafter referred as **“DISF”**) and First Dawood Mutual Fund (hereinafter referred as **“FDMF”**).
3. The SCN was issued encompassing the following facts pertaining to above referred CISs under management of DCML:
 - (i) On April 28, 2012, the BOD of DCML in its 107th meeting approved full provisioning in the following non-performing debt securities in the investment portfolios of DINF, DISF and FDMF and the impact of provisioning was reflected in the daily Net Assets Value (NAV) of above referred respective CISs on April 30, 2012.

CIS/ Fund	Non performing Debt securities	Provision approved by BOD on April 28, 2012 (Amount in Rs.)
DINF	ICIBL-TFC	22,500,000
DINF	Pace Pak-TFC	8,389,920
	Sub Total	30,889,920
DISF	PEL – Sukuk	15,906,838
DISF	MLCF- Sukuk I	30,718,282
DISF	MLCF- Sukuk II	1,295,469
	Sub Total	47,920,589



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FDMF	Pace Pak – TFC	5,992,800
FDMF	Telecard – TFC	3,413,156
FDMF	MLCF - Sukuk I	37,901,004
FDMF	MLCF - Sukuk II	1,598,214
	Sub Total	48,905,174
	Total	127,715,683

(ii) The impact on the NAV of DINF, DISF and FDMF before & after recording of full provisioning of non-performing assets approved by the BOD of DCML is shown in the following table;

Date	DINF – NAV Amount (Rs.)	DISF – NAV Amount (Rs.)	FDMF – NAV Amount (Rs.)
April 27, 2012 (before full provision)	79.93	108.28	09.16
April 30, 2012 (after full provision)	74.04	90.117	08.34
Increase / (Decrease) in NAV (Rs.)	(5.89)	(18.163)	(0.82)
Increase / (Decrease) in NAV in percentage	(7.36%)	(16.77%)	(8.95%)

(iii) Prior to making full provisions in the nonperforming debt securities of DINF and DISF, the DCML and its related parties including connected persons, its CEO and her close relatives managed to get their investments redeemed and by doing so avoided imminent loss of Rs. 18.224 million to be incurred due to provisioning approved by DCML BOD in its meeting held on 28th April 2012. Since FDMF was a closed end scheme hence no redemptions were possible. The redemptions made from DINF and DISF and loss avoided are provided in the following table:

Date of Redemptions	Fund Name	Unit Holder	Relationship with DCML or its CEO	No. of Units Redeemed	Applied NAV on Redemption per Unit (Rs.)	Total Amount Redeemed (Rs.)	Loss avoided if Redemptions were made after recording full provisions on April 30, 2012 (Rs.)
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17-Apr-12	DINF	Tara Uzra Dawood	CEO of DCML	85,220	79.7837	6,799,167	489,214
26-Apr-12	DINF	Hamida Dawood	Close relative (mother) of CEO	94,795	79.9209	7,576,088	557,185
26-Apr-12	DINF	Ayaz Dawood	Close relative (brother) of CEO	14,230	79.9209	1,137,279	83,641
		Sub Total				15,512,534	1,130,040
6-Apr-12	DISF	First Dawood Invest. Bank Ltd Employees Contributory Provident Fund	FDIBL owns 2.24 million shares of DCML (major shareholder) & DCML owns 2.38 million shares of FDIBL	79,977	108.33	8,663,675	1,456,510
6-Apr-12	DISF	Hamida Dawood	Close relative (mother) of CEO	14,655	108.33	1,587,538	266,892
9-Apr-12	DISF	B.R.R. Guardian Modaraba –	Directorship on the BOD of DCML	276,778	108.49	30,028,564	5,085,149
9-Apr-12	DISF	Dawood Capital Management Ltd –	CISs Management Company	92,259	108.49	10,009,521	1,695,050
13-Apr-12	DISF	Dawood Family Takaful Ltd –DFTL	DCML owns 2.72 million shares in DFTL	470,423	108.38	50,982,120	8,590,520
		Sub Total				101,271,418	17,094,120
		Total				116,783,952	18,224,160

(iv) In view of the above stated facts, it appears that the management of DCML failed to safeguard the interest of the unit holders of DINF and DISF and did not discharge its fiduciary responsibility of managing assets of its CISs in good faith and gained undue advantage for itself, its related parties including connected persons and its officer by facilitating redemptions by using privileged information for the benefit of its own, its related parties including connected persons and its CEO in DINF and DISF before making full provisions in the debt securities of ICIBL, Pace



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Pak, MLCF & PEL, and thereby averting imminent loss of Rs.18.224 million to such persons.

4. On May 08, 2012 the trustee of DISF i.e. Central Depository Company of Pakistan (CDC) inquired from DCML on the provisioning made in the debt securities of DISF especially when group companies' unit holders redeemed their investment during the month of April 2012 i.e. prior to recording provisions. The management of DCML vide letter dated May 17, 2012 provided its justifications on this act. Thereafter CDC vide letter dated June 08, 2012 referred this matter to the SECP.
5. The matter of provisioning and redemptions in DISF was referred to the onsite inspection team of SECP which was already in process of conducting routine inspection of DCML. The inspection team not only highlighted the redemption and provisioning made in DISF but also presented details pertaining to provisioning in DINF and FDMF and redemptions in DINF. The inspection team issued its report on September 19, 2012.
6. The SCD-Supervision Department of SECP vide email dated September 28, 2012, addressed to the CFO & Company Secretary of DCML, required to provide copies of the minutes and notices containing the agenda items of BOD meetings held from January 01, 2012 till September 28, 2012. The CFO & Company Secretary of DCML provided copies of the minutes and notices containing agenda items of BOD meetings held from January 01, 2012 till September 28, 2012 through his letter dated October 04, 2012. Further, SCD-Supervision Department of SECP vide letter dated October 25, 2012 requested the CEO of DCML to provide certified true copies of the minutes of BOD meetings held during July 2011 till October 2012. The CFO & Company Secretary of DCML vide letter dated November 01, 2012 provided the certified true copies of the required documents. Similarly on January 21, 2013 after issuance of the SCN, the CEO of DCML was also asked to provide certified true copies of the draft minutes and notices containing agenda items of BOD meetings & Audit Committee meetings held during FY 2011-12 (i.e. from July 2011 till June 2012). The same were provided by the CEO on January 30, 2013. Upon review of the above documents i.e. the Draft & Final minutes and notices containing agenda items of BOD meetings & Audit Committee, it transpired that;
 - (i) Notice of the 107th BOD meeting provided by the CFO & Company Secretary of DCML on October 04, 2012 consisted of seven (7) agenda items and it was found to be different from the copy of the notice for the same BOD meeting provided by the CEO on January 30, 2013 which comprised of eight (8) agenda items. Further, the sixth agenda item on



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the copy of notice provided by CEO reads that "To consider provisioning for TFCs and Sukuks investments of all funds." Whereas, the sixth agenda item on the copy of notice provided by CFO & Company Secretary reads that "To review the applicability of sub regulation 65 of NBFC & NE Regulations, 2008".

- (ii) Vital information relating to the discussions on provisioning of TFC/Sukuks as available in the draft minutes of the 39th AC meeting held on February 21, 2012 was deleted from the final minutes of the 39th AC meeting. The matter pertaining to provisioning in TFCs/Sukuks of DINF, DISF & FDMF available in the draft minutes of 39th AC meeting is produced below for ease of reference;

"External Auditors (DINF, DISF & FDMF) said that reports of all funds are clear, he further said that they would suggest further provisioning in TFCs and Sukuks although management have provided all the provisions as required as per the rules and regulation but being prudent and as per industry practice further provision be provided in all doubt full scripts."

- (iii) The 39th AC meeting was attended by all the three member of AC i.e. Mr. Gul Nawaz (Chairman Audit Committee), Mr. S. Shabahat Hussain and Mr. Masood Wahedna. The draft minutes of 39th AC meeting were confirmed in the 40th AC meeting which was attended by Mr. Gul Nawaz and Mr. S. Shabahat Hussain. Both Mr. Gul Nawaz and Mr. S. Shabahat Hussain were requested to confirm; whether the matter of provisioning was discussed in the 39th AC meeting and whether AC in its 40th meeting held on April 28, 2012 decided to delete the matter of provisioning from the final minutes of 39th AC meeting. Both Mr. Gul Nawaz and Mr. S. Shabahat confirmed that the matter of provisioning was discussed in the 39th AC meeting and no such decision was taken for deletion of provisioning matter from the final minutes of 39th AC meeting.
- (iv) Important information pertaining to the discussion on provisioning of TFC/Sukuks as available in the draft minutes of the 106th BOD held on February 21, 2012 meeting was also deleted from the final minutes of the 106th BOD meeting. The matter of provisioning in TFC/Sukuk of DISF, DINF & FDMF as available in the draft minutes of 106th BOD meeting is produced below for ease of reference;



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“Board discussed the points highlighted by Chairman Audit Committee and advised CFO to present complete detail of all TFCs and Sukuks in next BOD meeting on which Auditors are recommending further provision so that after detail discussion a decision can be taken”

- (v) Similarly, 106th BOD meeting of DCML was attended by five members of BOD i.e. Ms. Tara Uzra Dawood (CEO and Acting Chairperson of BOD for 106th BOD meeting), Ms. Shafqat Sultana, Mr. Gul Nawaz, Mr. S. Shabahat Hussain and Mr. Masood Wahedna. The draft minutes of 106th BOD meeting were confirmed in the 107th BOD meeting which was attended Ms. Tara Uzra Dawood (CEO), Mr. Nazimuddin Feroz, Mr. Gul Nawaz & Mr. S. Shabahat Hussain. All the attendees of 107th BOD meeting except Ms. Tara Uzra Dawood were requested to confirm; whether BOD in its 107th meeting held on April 28, 2012 decided to delete the matter of provisioning from the final minutes of 106th BOD meeting. All of the above directors including Mr. Gul Nawaz, Mr. Nazimuddin Feroz and Mr. S. Shabahat in writing confirmed that no such decision was taken for deletion of provisioning matter from the final minutes of 106th BOD meeting.

7. DCML, its CEO, the CFO & Company Secretary initially submitted their response through their authorized representative on December 17, 2012. Later on they disengaged their authorized representative and also withdrew their submitted response on the SCN and provided their new response vide letter dated February 28, 2013 enlisting the following facts.

- (i) The Company and its officers have not acted in violation of any regulatory framework and had not extended any undue advantage to itself, its related parties, including connected persons and its officers. Whatever has happened was the fact but it was just a coincidence / chance event and nothing was done intentionally.
- (ii) Although provisioning of debt securities had been discussed by the BOD in its meeting held in February 2012 but it was never known to the management that decision would be taken in next meeting as normally till all the directors give their full support no decision was taken, even management had no idea on what scripts and how much further provision would be approved.



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- (iii) If the management and its officers had the anticipation of provisioning in upcoming BOD meeting then DCML would not have invested in DISF on April 06, 2012 and DCML would have redeemed its entire investment from DINF which is still there as of the submission of this reply.
 - (iv) If the management had the anticipation of provisioning the CEO would have redeemed all of her investment from the funds under management of DCML as more than fifty percent of her investment remained in the funds and other related/connected persons would have also redeemed their investment from the funds of DCML which was still there.
 - (v) Most of the Unit holders/investors referred in the SCN historically retained their investments in the funds even in the timings when high fluctuations/variations occurred in the NAV.
 - (vi) As far as redemptions of the corporate investors referred in the SCN are concerned they have their own BOD and Committees responsible for their own investments and disinvestments.
 - (vii) All the referred redemptions were made under the relevant laws and passed through Registrar and Trustee and there is no question of any facilitation in redemption process.
8. During the hearings, the CEO and the CFO & Company Secretary admitted that the matter of provisioning was discussed in 39th AC meeting and 106th BOD meeting and the BOD advised the CFO to present details/workings of provisioning in the 107th BOD wherein the decision of provisioning on non-performing debt securities in the of funds of DCML was to be taken. The CEO also stated that there were no mala-fide intention behind this event and whatever happened was merely a chance event or coincidence. The CFO & Company Secretary admitted providing tampered notice of 107th BOD meeting to SECP and stated that it was all just a mistake. He further added that the deletion of provisioning matter from the minutes of 39th AC meeting and 107th BOD meeting was not approved by the members of BOD & AC and the deletion in the final minutes was oversight on his part. The CEO also admitted that the deletion of provisioning from the minutes of 106th BOD minutes was not approved by BOD. Although as an acting Chairperson of the 106th and 107th BOD meeting, she signed the minutes of 106th BOD meeting in good faith but she did not know that the provisioning matter has been deleted as a mistake from the minutes. The CEO also confirmed that the CFO was not amongst the beneficiaries,



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who have redeemed their investment prior to the approval of provisioning. The CFO & Company Secretary did not avail the hearing opportunity on the date of last hearing. During the last hearing the CEO was not able to reply as to why the CFO & Company Secretary provided the forged notice to SECP and deleted the matter of provisioning from the final minutes of 39th AC meeting and from the final minutes of 106th BOD meeting, despite of the fact that he was not amongst the beneficiaries of the provisioning matter. The attention of CEO was also drawn to;

- (i) Copy of closed period notice annexed with the notice of 107th BOD meeting distributed to the directors of DCML informing about the "closed period" starting from April 21, 2012 to April 28, 2012 and requiring each director, CEO and other executives to restrain from dealing directly/indirectly in the units of the funds in any manner during the said period and
- (ii) Redemptions made by the close relatives of the CEO on April 26, 2012 during the said closed period.

In this context the CEO was asked as to how the redemptions of her close relatives were executed despite the closed period notice was served to her. In response she stated that, she was un-aware of such close period.

9. Ms. Shafqat Sultana vide her letter dated February 19, 2013 informed that she has disengaged herself from the DCML's appointed representative and have appointed new counsel in the matter. Her counsel submitted a detailed response on February 21, 2013 encompassing the following facts;

- (i) She was deeply concerned by the serious allegations raised against the Company and some of its unit holders in the SCN.
- (ii) The redemptions highlighted in the SCN occurred no more than four weeks prior to the 107th BOD meeting in which provisioning was approved. However, in the preceding BOD meeting the issue of provisioning had been explicitly discussed and thus the directors were aware that provisioning was imminent.
- (iii) In response to the concerns raised in the SCN, she had requested justifications from the unit holders whose redemptions had been highlighted in the SCN. Based on the justification received from the unit holders, she is of the view that redemptions made by such unit holders



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are justifiable though they appear to have been timed carelessly and it did not appear that they are motivated by any mala-fide intentions.

- (iv) She has not seen any evidence to suggest that the related parties and Dawood family members acted in collusion in a manner so as to avoid losses resulted from the debt provisioning.
- (v) She could not speak on behalf of DCML or its officers.

10. During the hearings, Ms. Shafqat Sultana informed that she did not attend the 107th BOD meeting wherein the matter of provisioning was decided. However, she attended the 106th BOD meeting in which the matter of provisioning was highlighted by the Chairman AC. She was also requested to submit copies of draft minutes of 106th, 107th and 108th BOD meeting, which she provided in due course. During the hearing she stated that, she had personally inquired the matter of redemptions from the unit holders that were referred to in the SCN and she was of the view that there was no mala-fide intentions behind the redemptions and it was all timed carelessly incident. During the hearing she was shown the forged notice of the 107th BOD meeting provided by the management to SECP, draft & final minutes of 39th AC meeting and draft & final minutes of 106th BOD meeting in which the deletions were made without the approval of the members of AC and BOD. In this context she informed that the remaining directors on the BOD of DCML have taken serious notice of this matter and the CFO & Company Secretary of DCML who have provided the forged notice of 107th BOD meeting and certified true copies of the draft & final minutes of AC and BOD has been suspended and departmental enquiry has initiated against him. However, Ms. Shafqat Sultana apprised that the CFO & Company Secretary was not amongst the beneficiaries of the redemptions made by DCML, its connected parties, its CEO and their close relatives and what he has done is a result of mistake on his part.

11. Mr. Gul Nawaz, (Chairman of the AC) provided a detailed response on the SCN vide his letter dated November 14, 2012 encompassing the following facts;

- (i) The matter of provisioning for non performing debt securities was discussed in the 39th AC meeting and subsequent 106th BOD meeting.
- (ii) He was completely unaware of this fact that DCML, its related parties, its CEO and close relatives of CEO redeemed their investment prior to recording / taking decision of provisions in DISF and DINF and avoided



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such huge loss of Rs 18.22 million at the cost of remaining unit holders of DINF and DISF.

- (iii) If he had prior knowledge of such sheer breach of fiduciary responsibility by the management of DCML and related parties, he would have immediately brought this to the knowledge of the other board members for appropriate action and subsequently to the regulators as well. He also provided the copies of draft minutes of AC and BOD meeting held during FY 2011-12.

12. Mr. Gul Nawaz also requested for separate hearing opportunity. During the hearing Mr. Gul Nawaz stated that he has resigned from the directorship of DCML and that is why he requested for separate opportunity of hearing. He added that he joined DCML board as an independent director because of his expertise in the field of asset management. He further stated that he had no financial stake whatsoever in DCML and he could not imagine such a failure of fiduciary responsibility on the part of management of DCML. He informed that the matter of provisioning of non-performing debt securities were initiated on the recommendation by the Auditors of DINF, DISF and FDMF, the matter was at length discussed in the 39th AC meeting and being the Chairman AC he discussed this issue at length in 106th BOD meeting, whereby the CFO & Company Secretary of DCML was advised to present details/workings in the next BOD meeting. The details/workings were presented by CFO & Company Secretary in 107th BOD meeting and decision of provisioning was taken accordingly.

13. Subsequent to the hearing, Mr. Gul Nawaz vide his email dated March 11, 2013 informed that agenda item No. 6 pertaining to provisioning matter was missing in the minutes of 107th BOD meeting, however discussion, deliberation and subsequent approval on the provisioning issue was recorded under Agenda item No. 7 under the caption "Other Items", despite of the fact that it was a regular agenda item in the notice that circulated to the BOD members. He also provided the copy of notice of 107th BOD meeting which was circulated to him and it contained 8 agenda items including provisioning matter listed at agenda item No. 6.

14. Mr. S. Shabahat Hussain provided his responses on the SCN through his letters dated January 29, 2013, February 13, 2013 & February 18, 2013 disclosing the following facts;

- (i) He has not availed the services of DCML's legal advisor in the matter of SCN.



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- (ii) As a non-executive director he was not involved in day to day affairs of DCML and the matters referred to in the SCN relates to the day to day affairs.
- (iii) Board unanimously decided the matter of provisioning purely on the basis of merit and facts/information provided by the management.
- (iv) Before receiving the SCN, he was completely un-aware of the situation that related parties of DCML including connected person, its CEO and her close relatives redeemed their investment after 106th BOD meeting or prior to 107th BOD meeting wherein the decision on provisioning was taken.
- (v) The matter of provisioning was discussed in the 39th AC meeting and thereafter in 106th BOD meeting as per agenda item No. 2, hence the management was aware of the provisioning matter and placed the same in 107th BOD meeting for approval.
- (vi) He also requested to exempt him from the hearings in the SCN.

15. Mr. Masood Wahedna submitted his detailed response on the SCN through his letter dated November 22, 2012 with the following facts;

- (i) The issue of provisioning for non performing debt securities was discussed in the 106th BOD meeting held on February 21, 2012. He apprised that the matter of provisioning was discussed even earlier and was also raised by the Auditors as they were of the view that the TFCs/Sukuks were not properly priced and further provisioning is required to reach at fair pricing.
- (ii) He was not present in 107th BOD meeting held on April 28, 2012 but on the same day CEO of DCML consulted him over mobile phone on the provisioning matter before the commencement of BOD meeting.
- (iii) He was completely unaware of this fact that DCML, its related parties, its CEO and close relatives of CEO redeemed their investment prior to recording / taking decision of provisions.



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- (iv) As nominee director of Bank of Khyber (BOK), their intent on the matter can be judged from the fact that despite suggesting and fully knowing the provisions will be made, no redemption was requested by BOK in DINF being the single largest investor in the fund.
16. Mr. Masood Wahedna also requested for separate hearing opportunity. During the hearing Mr. Masood Wahedna stated that BOK has around 15% shareholding in DCML and he was a nominee director of BOK on the board of DCML. He added that he was shocked to know that DCML, its connected parties, its CEO and her close relatives redeemed their investment before provisioning was approved by the board and due to this reason he resigned from the directorship of DCML, recently. He further added that the matter of provisioning was discussed in the 39th AC meeting. Subsequently, Chairman AC highlighted the issue of provisioning in the 106th BOD meeting and the CFO & Company Secretary was advised to present details in the next BOD meeting so the board can reach a decision on this issue. He stated that being a professional from capital market, he suggested the BOD to revisit the non performing debt portfolio in the funds of DCML and to make appropriate provisions accordingly. He also stated that BOK was the single largest investor in DINF and he being the nominee director of BOK had the complete knowledge about the prospective provisioning, still BOK's investment in DINF remained intact. During the hearing Mr. Masood Wahedna was requested to provide the copies of draft minutes of BOD and AC for the FY 2011-12, which he provided in due course.
17. Mr. Nazimuddin Feroze provided a detailed response on the SCN vide his letter dated January 09, 2013 with the following facts;
- (i) As a nominee director of BRR Guardian Modaraba on the board of DCML, it was not his direct responsibility to approve day to day transactions of the funds as he was not involved in any respect in the day to day management of funds by DCML
- (ii) He was not present in 106th BOD meeting held on February 21, 2012.
- (iii) He also requested for separate opportunity of hearing in the matter.
18. During the course of hearing Mr. Nazimuddin Feroz stated that he has resigned from the directorship of DCML and that is why he requested for a separate opportunity of hearing. He was a nominee director on the board of DCML and had no personal financial stake in DCML or its funds. Further, as he became aware of the facts stated in the SCN he immediately resigned from the directorship of DCML.



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He added that the matter of provisioning was not instantly approved by the board in its 107th BOD and a thorough discussion and deliberations were made on this agenda item. Further, it was not in his knowledge that DCML, its connected parties, CEO and their relatives have redeemed their investment prior to provisions were made in the funds of DCML. Mr. Nazimuddin Feroz stated that he was not present in the 106th BOD meeting. However, the minutes of 106th BOD meeting were confirmed in the 107th BOD meeting which he attended wherein the decision of provisioning was taken. He was requested to provide the draft minutes of BOD meetings held during FY 2011-12, which he provided in due course.

19. I have considered the submissions made by the Chairperson of BOD, Chairman of AC, Members of AC and BOD, the CEO and the CFO & Company Secretary in their personal capacity and the CEO on behalf of the Company, in light of the relevant provisions of the Ordinance and the NBFC Regulations. I have also gone through the record placed before me and have come to the conclusion that;
- i) CDC as Trustee of DISF took notice of the matter of redemption of DCML and its related parties prior to recording of provisions in the non-performing debt securities portfolio of fund and brought this matter into the knowledge of SECP.
 - ii) The SECP inspection team further probed the matter and also reported the redemptions made by CEO, close relatives of the CEO in DINF prior to recording of provisions in the non-performing debt securities portfolio of fund.
 - iii) Initially the management of DCML provided copy of notice of 107th BOD meeting in which the matter of provisioning was not mentioned in the agenda items in order to portray that the matter of provisioning was instantly discussed and decided in the 107th BOD meeting. Later on, it came into the notice of SECP that the matter of provisioning was earlier discussed in the 39th AC meeting and 106th BOD meeting and upon confirmation from the directors of DCML, the management was not left with any option but to provide a copy of notice of 107th BOD meeting wherein the matter of provisioning was mentioned in the agenda item.
 - iv) When query was raised to the management of DCML that why forged notice of 107th BOD meeting was provided to SECP, the management took cover by calling it a sheer mistake on the part of CFO & Company Secretary.



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- v) Similarly, the management of DCML deleted the matter of provisioning from the final minutes of 39th AC meeting and 106th BOD meeting without the authorization of AC and BOD members and the minutes were provided to SECP, in order to portray that the matter of provisioning was never discussed before 107th BOD meeting and it was only discussed and decided instantly in 107th BOD meeting. Later on, it was discovered that the matter of provisioning was earlier discussed in 39th AC meeting and 106th BOD meeting and its evidence is available in the draft minutes. The matter was further confirmed from the directors of DCML who also provided the draft minutes to SECP containing discussions on the provisioning matter.
- vi) When it was enquired from the management as to why the matter of provisioning was deleted from the minutes of 39th AC meeting and 106th BOD meeting, the management could not justify their action.
- vii) The management of DCML submitted that whatever happened was not intended and it was a chance event and was simply a co-incidence.
- viii) Ms. Shafqat Sultana admitted all the facts and submitted that she cannot speak on the part of DCML, its management and the unit holders who have redeemed their investments prior to provisioning was made and avoided losses but "this entire event was timed carelessly incident".
- ix) All the BOD members (excluding the CEO) admitted that they were unaware of the fact that the DCML, its connected parties, its CEO and their close relatives redeemed their investment prior to provisioning was decided and they also admitted that the management was aware of the fact that the matter of provisioning was to be decided in the upcoming 107th BOD meeting. Further, Mr. Gul Nawaz, Mr. Masood Wahedna and Mr. Nazimuddin Feroz immediately resigned from the directorship of DCML as soon as they came across the sheer breach of fiduciary responsibility by the management of DCML.
- x) It is evident and an undeniable fact that DCML, its related parties including connected persons, its CEO and the close relatives of the CEO, redeemed their investments prior to provisions made in the non-performing debt securities portfolio of DINF and DISF and avoided imminent loss of Rs. 18.224 million. Preparation of forged documents, deletion of material facts from the official documents without the approval of respective authorities and submission of the same to SECP, indicate that the entire chain of events was



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designed to cover up the undue benefit passed on to the CEO, her close relatives and the connected persons of DCML through redemption of DISF and DINF units before the approval of provisions.

20. In view of the record available and the contentions of the CEO, CFO & Company Secretary, the Company, the chairperson of the BOD and other directors on the board it has been established that the management of DCML failed to safeguard the interest of the unit holders of DINF and DISF and did not discharge its fiduciary responsibility of managing assets of CISs under its management, in good faith and willfully gained undue advantage for itself, its related parties including connected persons and its officer by willfully authorizing and permitting the redemptions of such persons in DINF and DISF before making full provisions in the debt securities of ICIBL, Pace Pak, MLCF & PEL, thereby avoiding imminent loss of Rs.18.224 million to the connected persons.
21. Additionally, the role of MCB Financial Services Limited (MCBFSL) as Trustee of DINF is found to be unsatisfactory, since it did not question the management of DCML for redemptions of the CEO and her close relatives in DINF before provisioning or highlight the matter to the regulator in order to safeguard the interest of DINF unit holders. MCBFSL is advised to perform its duties as stipulated in the NBFC Regulations.
22. The role of M/s. Riaz Ahmed & Co. Chartered Accountants, as the Internal Auditor of DCML is also found to be unsatisfactory, since it did not report the matter of redemptions of DCML, its related parties including connected persons, its CEO and her close relatives prior to provisions made in the non-performing debt securities portfolio of DINF and DISF to the Audit Committee of DCML and hence failed to perform its due role. In this context, M/s. Riaz Ahmed & Co. is hereby advised to be careful in future and to perform its duties as internal auditor as stipulated in the NBFC Rules and Regulations. However, since the subject of the present Order does not encompass the actions of the Internal Auditor or the Trustee of DINF therefore, the above and the contents of the preceding paragraph suffice for the matter.
23. On the basis of the above facts, it is established that the management of DCML willfully authorized and permitted the use of privileged information, provided forged documents and made unauthorized changes in the documents of the company to permit undue advantage to itself, its related parties including connected persons, its CEO and her close relatives for avoiding imminent loss, that was subsequently passed on to the remaining unit holders of DINF & DISF, which could have been equally shared otherwise. Therefore, this act of DCML is directly detrimental to the interest of the remaining unit holders and is against the fiduciary responsibilities

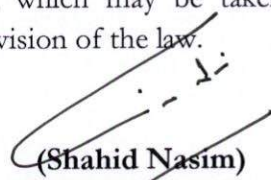




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stipulated in the Constitutive Documents of the CISs, thus failed to manage the assets of DINF and DISF in the interest of the unit holders. The default under Regulation 38(a) and Regulation 38(n) of the NBFC Regulations has been established which is punishable under Section 282J(1), Section 282J(2) read with Section 282M and Section 282D of the Ordinance. I, therefore cancel the licenses of DCML on the basis of above-stated facts, to undertake the businesses of Asset management services and Investment advisory services and impose a penalty amounting to Rs. 20,000,000 (Twenty Million Rupees) on the CEO, due to the fact that DCML, its related parties including connected persons, its CEO and her close relatives have avoided imminent loss of Rs. 18.224 million and I also impose a penalty Rs. 1,000,000 (One Million Rupees) on the CFO & Company Secretary, for the willful contraventions of Regulation 38(a) and Regulation 38(n) of the NBFC Regulations 2008. The CEO and the CFO & Company Secretary are hereby directed to deposit the penalty in the bank account of Securities and Exchange Commission of Pakistan with MCB Bank Limited within thirty days from the date of this Order and furnish original receipted challan to SECP. The amount of penalty shall not be charged to DINF or DISF or FDMF or DCML and shall be paid by the CEO and the CFO & Company Secretary of DCML from their own sources.

24. The certificate holders of FDMF at their meeting held on February 15, 2013, in compliance with the Regulation 65 of the NBFC Regulations 2008 have already opted in favor of conversion of FDMF into open ended scheme.
25. The Trustees of all three CISs under management of DCML, are hereby directed in terms of Regulation 45 A(1)(f) read with Regulation 45A(1)(c) of NBFC Regulations 2008, to extinguish/revoke DINF, DISF & FDMF in the interest of the unit / certificate holders of the respective CISs.
26. Based on the honest submissions made to the Commission and keeping in view the fact that none of the Directors except the CEO has attained any personal benefit from the redemptions, I find that no violations have been committed by the BOD of DCML other than the CEO.
27. This order is issued without prejudice to any action, which may be taken or warranted for the above said defaults under any other provision of the law.


(Shahid Nasim)
Executive Director

Announced: 22nd March, 2013
Karachi.