



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

No. SCD/NBFC/MF-IMFL/533/2010

July 06, 2010

IN THE MATTER OF M/S INVESTEC MUTUAL FUND LIMITED

**IN RESPECT OF SHOW CAUSE NOTICE DATED FEBRUARY 04, 2010 UNDER
SECTION 309 (C) READ WITH SECTION 305 OF THE COMPANIES ORDINANCE, 1984**

ORDER

This order shall dispose of the proceedings initiated against M/s Investec Mutual Fund Limited (the "Company") through a Show Cause Notice ("SCN") dated February 04, 2010 under the provisions of Section 309 (c) read with Section 305 of the Companies Ordinance, 1984 (the "Ordinance").

1. The facts of the matter leading up to this order are as follows:

(i) The Company was registered on August 24, 1992 as an Investment Company under the Investment Companies and Investment Advisors Rules, 1971 (the "IC & IA Rules") with the erstwhile Corporate Law Authority to establish and manage a closed-end fund.

(ii) After the promulgation of Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003 (the "NBFC Rules"), that repealed the IC & IA Rules, 1971 the Securities & Exchange Commission of Pakistan (the "Commission") presently regulates investment companies.

(iii) The Commission had found the Company to be in violation of various provisions of the regulatory framework that appeared to be prejudice to the interests of the shareholders of the Company. This warranted an investigation to be conducted by the Commission into

the affairs of the Company. Accordingly, fulfilling the requirements of law, the Commission issued a Show Cause Notice against the Company, dated August 08, 2005 ("SCN dated August 08, 2005") under Section 265 of the Ordinance.

(iv) The SCN dated August 08, 2005 pointed out that the Company had failed to obtain registration under Rule 38 of the NBFC Rules. It had also failed to hold its Annual General Meeting (AGM) for the year 2004 as required by Section 158 of the Ordinance. The Company had also failed to prepare the annual accounts for the year ended June 30, 2004 and lay them before the AGM as required under Section 233 of the Ordinance. Furthermore, the Company had failed to appoint a custodian with prior written approval of the Commission in terms of Rule 40(1) of the NBFC Rules.

(v) Additionally, it was noted in the SCN dated August 08, 2005 financial position of the Company had been deteriorating. The paid-up capital of the Company amounted to Rs. 133.33 million and accumulated losses amounted to Rs. 97.66 million as per the latest available audited accounts of the Company as of June 30, 2003. The Company's equity as on June 30, 2003 stood at Rs. 35.67 million which was far below the minimum prescribed equity level of Rs. 100 million in terms of Rule 37(b) of the NBFC Rules.

(vi) The SCN dated August 08, 2005 was disposed of by an order dated October 18, 2006 passed by the then Director, Non-Banking Finance Companies Department (NBFCDD), the conclusions of which are reproduced in the following paragraphs:

(a) Failure to appoint a duly licensed Investment Advisor and a Custodian:

The Company continues to operate without a licensed Investment Advisor in contravention of Rule 39 of the NBFC Rules, 2003. The Company has also failed to appoint a custodian with the prior written approval of the Commission in contravention of Rule 40(1) of the NBFC Rules.

(b) Failure to register as an Investment Company under the Rules: The Company is, non-compliant with the requirement to register itself as an Investment Company under Rule 38 of the NBFC Rules as it could not meet the prescribed regulatory requirements.

(c) Failure to hold AGM and circulate periodic accounts: The Company has been in continuous default of mandatory provisions of sections 158 and 233 of the Ordinance for the financial years 2004, 2005 and 2006 regarding holding of AGM and circulation of annual accounts. Moreover, it has failed to comply with the requirements of Section 245 of the Ordinance for circulation of quarterly accounts since September 2003. The reasons attributed for such failure are the freezing of assets and restriction by National Accountability Bureau (NAB) on entering into any transaction, taking into custody of Mr. Noor Qadir by NAB and the consequent sense of insecurity and uncertainty among the directors and employees of the Company. These arguments are not tenable since initiation of legal proceedings against any of the group directors does not bar the CEO and directors of the Company from performing their statutory duties under sections 158, 233 and 245 of the Ordinance.

(d) Failure to meet Minimum Equity Requirement: The equity of the Company was Rs. 35.67 million as on June 30, 2003, which is far below the prescribed level of equity of Rs.100 million for investment companies. The present management took over the control of affairs of the Company in April 2001 but it could not come up with any viable plan to redress the financial situation of the Company. The Counsel has submitted that the management intended to merge the Company with Dominion Stocks Fund Limited but attributed the failure to do so to suspension of brokerage functions of Investec Securities Limited on October 09, 2003. Notwithstanding any adverse comments or regulatory issues that the Commission could have indicated on the proposed merger, the fact that between April 2003 and October 2003, the management of the Company could not pursue any serious revival efforts, speaks volume about the manner in which the affairs of the Company were being conducted.

(e) Financial Position: The accumulated losses of the Company amounted to Rs.97.66 million as on June 30, 2003. Its Net Asset Value per certificate was Rs. 2.27 as on September 30, 2004; far below the par value of Rs.10 per certificate. It is also important to consider that the statutory auditors of the Company in their report on the accounts for the year ended June 30, 2003 had indicated existence of

material uncertainty regarding the Company's ability to continue as a going concern. The Counsel has also submitted that the Company was not in operation. In these circumstances, the uncertainty that the Company would be able to continue as a going concern continues to prevail.

(f) Dividend Distribution: During the last five years, the Company has distributed only 2% dividend amounting to Rs. 2.66 million among its shareholders. This is in contravention of Rule 55 of the NBFC Rules, 2003 and condition no.08 of registration as an Investment Company. The shareholders' fund has eroded by Rs. 97.66 million up to June 30, 2003, which works out to be 73% of the paid-up capital.

(vii) In view of the forgoing conclusions drawn in the order, the Director (NBFC) determined that the affairs of the Company are not being managed prudently, certificate holders are being deprived of a reasonable return, and the financial position of the Company is such as to endanger its solvency. Therefore, in exercise of powers conferred by Section 265 of the Ordinance, the competent authority appointed M/s Anjum Asim Shahid Rahman, Chartered Accountants, to act as Investigators to investigate into the affairs of the Company. The main objective of the investigation was to determine the true and fair financial position of the Company for the period July 01, 2003 to June 30, 2006 as well as to ascertain whether the Company has the capacity to operate as a closed-end fund and whether the board of directors and the management have the professional and technical skills to manage the Company profitably and as a going concern.

(viii) The Investigators vide their letter dated November 07, 2006 informed the Commission that it is not possible for them to conduct investigation since the order has been challenged by the Company in the Appellate Bench of the Commission.

(ix) The Appellate Bench heard the matter and passed an order dated July 20, 2009 upholding the order of the Director (NBFC). However, the Bench modified the order to the extent that the investigation into the affairs of the Company shall be carried out by the Commission and the expenses, at first instance, shall be borne by it and subsequently such expenses shall be reimbursed by the Company on conclusion of the investigation.

(x) The investigation was accordingly carried out by officers of the Commission under section 265 of the Ordinance and a comprehensive investigation report dated September 14, 2009 was submitted to the Commission for further necessary action.

(xi) The investigation report concluded that the registered office of the Company was closed down by the Federal Investigation Authority (FIA) and the main sponsor of the Company, Mr. Noor Qadir, is in custody of FIA in respect of matter pertaining to Noori Textile Mills Limited. However, relying on the information available in the records of the Commission relating to the financial and management status of the Company, the Investigation Report concluded that the affairs of the Company were severely mismanaged, its management was guilty of misconduct and had carried out business of the Company in a manner oppressive to its members, and the financial position of the Company was such as to endanger its solvency.

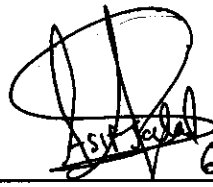
2. In view of the above facts, this office, in exercise of the powers of the Commission, issued the SCN on February 04, 2010 under section 309 (c) read with Section 305 of the Ordinance. However, the SCN was returned 'undelivered'. Subsequently, the SCN was dispatched to the residential address of the Chief Executive of the Company that the Commission had in its record at the time, but to no avail. Keeping in view the interests of justice and equity, this office, extended an additional opportunity to the Company and/or to any persons responsible for its affairs, by publishing a notice in two English and two Urdu daily newspapers on April 30, 2010 having wide circulation in Karachi (since the registered office of the Company is in Karachi and the Company was listed on the Karachi Stock Exchange) giving fourteen days' time to respond to the SCN from the date of publication of the notice ending on May 14, 2010.

3. The aforementioned time line has passed and no response has been received from the Company and/or from any persons responsible for its affairs despite a lapse of over a month to rebut the findings of the Commission as enunciated in the SCN despite the fact that sufficient opportunity has been provided to the Company to file a representation and of being heard.

4. In view of the facts mentioned in the preceding paragraphs there is no qualm in my mind that the Company is not only financially insolvent but also not a going concern and

has been violating Rules 38, 39 & 40(1) of the NBFC Rules, 2003 as well as provisions of Sections 158, 233 & 245 of the Ordinance since 2004 and, consequently, is jeopardizing and oppressing the interests of the members of the Company. Accordingly, the process is being initiated for winding up of the Company.

5. Therefore, in exercise of the powers under Section 309 of the Ordinance, conferred upon me, I, hereby authorize Joint Registrar, Company Registration Office, Karachi to present a petition for winding up of M/s Investec Mutual Fund Limited in the Honorable High Court of Sindh.



Asif Jalal 6/7/2010

Asif Jalal Bhatti
Executive Director
(Specialized Companies Division)

Announced: July 6, 2010
in Islamabad.