

**POLICY NOTE**

**CIRULAR NO.26/2008 REGARDING FIXING OF PERCENTAGES OF DISCOUNT RATES FOR DEBT SECURITIES BY SECP)**

Our attention has been drawn to Circular 26/2008 dated November 5, 2008 (the “Circular”) issued by the Securities and Exchange Commission of Pakistan (the “SECP”) wherein SECP has directed all asset management companies to value debt securities held by the collective investment schemes (mutual funds), after applying the percentage discount rates specified by SECP.

2. We have been approached by various stake holders who feel aggrieved by the action taken by SECP. They have complained that they have incurred heavy losses as a result of this Circular and faced difficulties in redeeming their securities. Stakeholders have also complained that SECP has acted beyond the powers given to it under the Companies Ordinance 1984, the Securities and Exchange Ordinance 1969, the Securities and Exchange Commission of Pakistan Act, 1997 (or any other law) and that, in exceeding its powers, it has violated the law.

3. It is not for the Competition Commission to delve into the questions raised in para 2 above. As to whether or not SECP is empowered under any law to issue such a directive is for SECP to consider and take an appropriate decision.

4. We would, however, like to point out that the Competition Commission of Pakistan (the “Commission”) has been established *inter alia* to provide for free competition in all spheres of commercial and economic activity to enhance economic efficiency and to protect consumers from anti competitive behavior.

5. Our duties include but are not limited to:

- (a) investigating into the conduct of undertakings and to penalize competition offenders; and
- (b) to promote competition norms through advocacy and persuade all economic agents, government agencies and regulators to act in accordance with the Competition Ordinance 2007.

We are writing this note to SECP in the spirit of the obligation we are expected to discharge as mentioned in 5(b) above.

6. In our considered view the Circular appears to be in contravention of Chapter II of the Competition Ordinance, 2007. It is obvious that by specifying the exact percentage of discount rates whereby debt securities are to be valued by mutual funds the Circular has substantively fixed the prices which money market mutual fund certificates are sold and redeemed. The Circular is adverse to competition. Markets function best if competition prevails and prices are determined by market forces of demand and supply. By dictating the arbitrary valuation of underlying debt securities, SECP has distorted the operation of the market and adversely affected the process of price discovery of mutual fund certificates.

7. We would also like to mention that to the best of our knowledge no securities regulatory agency has arrogated to itself the right to dictate the basis on which the price of debt securities is to be determined or intervened in price discovery in this manner, as has been done by SECP, through this Circular.

8. Keeping in view the above, it is strongly recommended that the Circular may please be withdrawn.

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