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PART II

Statutory Notifications (S.R.O.)

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

NOTIFICATION

Islamabad, the 25th February, 2022

S. R. O. (1)/2022.—The following draft amendments to the Non-Banking Finance Companies and Notified Entities Regulations, 2008, proposed to be made by the Securities and Exchange Commission of Pakistan, in exercise of the powers conferred by sub-section (2) of section 282B of the Companies Ordinance, 1984 (XLVII) of 1984, are hereby published for information of all persons likely to be affected thereby and notice is hereby given that comments, if any, received within fourteen days of the date of this notification will be taken into consideration, namely:-

DRAFT AMENDMENTS

In the aforesaid Regulations,

1. In regulation 2, -

615(1—13)

Price: Rs. 20. 00

[7453(2022) Ex. Gaz.]

- (a) after sub clause (xi), the following new clause shall be added, namely:
- (xiaa) “Data processing”** shall mean any operation or set of operations which is performed upon the User’s data, whether or not by automatic means, such as collection, recording, organization, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, aligning or combining, blocking, erasing or destroying of data;
- (b) after sub clause (xxv) , the following new clause shall be added, namely:
- (xxva) “Lender”** in relation to P2P Lending means a person or entity extending a loan to a borrower through the Platform for the Price and on the terms and conditions determined by the P2P Service Provider and where context permits, a lender shall also include the P2P Service Provider;
- (c) after sub clause (xxxiva) , the following new clauses shall be added, namely:
- (i) **(xxxivb) “P2P Service Provider”** shall means and include a Lending NBFC providing P2P Services;
- (ii) **(xxxivc) “P2P Services”** shall mean the services provided by a Lending NBFC permitted under these Regulations for facilitating P2P Lending transactions through the P2P Lending Platform and shall include the provision of the Platform and activities provided in these Regulations for P2P Lending;
- (iii) **(xxxivd) “Participant”** in relation to P2P Lending means a person who has entered into an arrangement/agreement with a P2P Lending Platform to lend or borrow through a P2P Lending Platform;
- (iv) **(xxxive) “Peer to Peer Lending”** or "P2P Lending" shall mean the extension of loans by the lender to the borrower through the P2P Lending Platform;
- (v) **(xxxive) “Peer to Peer Lending Platform”** or "P2P Lending Platform" shall mean an intermediary providing P2P services through online medium or otherwise to the participants who have entered into an arrangement with that platform to lend or to borrow money;
- (vi) **(xxxivf) “Price”** means the amount determined by the P2P Service Provider for each transaction and includes the principal amount plus the profit/rate of return determined based on the factors prescribed in these Regulations;”;

(d) after sub clause (xlvi), the following new clause shall be added, namely:

(xlix) *“User(s)” shall mean any person or entity using the P2P Lending Platform for the transaction and shall include the borrowers and lenders;*

2. After **“PART III A”** the following new Part shall be added, namely:

“PART III 8

Requirements for Peer to Peer Lending

35A. ***Eligibility Requirements of P2P Service Provider.***- (1) *Except as provided under these regulations, no company shall provide P2P Services or undertake business as a P2P Service Provider.*

(2) *A Lending NBFC, having valid license, may apply to the Commission for permission to operate as P2P Service Provider, subject to the following requirements, -*

- (i) *It shall have a minimum additional equity of Rs.20 million or such higher amount as the Commission may notify, over and above the minimum equity requirement as specified under schedule I of Non-Banking Finance Companies and Notified Entities Regulations, 2008.*
- (ii) *It shall have the necessary demonstrable technological, entrepreneurial and managerial resources to offer such services to the participants.*
- (iii) *It shall have a viable business plan for conducting the business as P2P Service Provider.*
- (iv) *It shall submit a plan for implementation of a robust and secure Information Technology system.*
- (v) *It shall comply with any other condition as may be required by the Commission.*

35B. ***Application for Permission to work as P2P Service Provider.***– (1) *A Lending NBFC desirous of operating as P2P Service Provider, shall apply to the Commission on the form specified in Schedule XVI to these Regulations along with the information specified in regulation 35A and Annexure to Schedule XVI.*

(2) *Before granting permission as a P2P Service Provider under these regulations, the Commission may, among others, require the Chief Executive Officer to provide an undertaking regarding,*

- i. *the systems readiness;*
- ii. *availability of sufficient human, financial and other resources to carry out operations;*
- iii. *availability of adequate security measures, systems capacity, business continuity plan and procedures, risk management, data integrity and confidentiality, record keeping and audit trail, for daily operations and to meet emergencies; and*
- iv. *availability of sufficient IT and technical support arrangements.*

35C. **Grant of Permission of P2P Lending Platform.**—(1) *The Commission shall, after making necessary inquiries and after obtaining such further information, as it may consider necessary, and after being satisfied that the conditions specified under regulation 35A and 35B are fulfilled, grant permission on the format specified in Schedule-XVII to operate as P2P Service Provider, subject to such conditions that it may consider fit to impose.*

(2) *Permission granted shall be valid on perpetual basis until it is cancelled, suspended or the license of the P2P Service Provider as a Lending NBFC is cancelled, suspended or revoked.*

(3) *The applicant shall ensure that during the validity of permission as a P2P Service Provider, if there are any material deviations from the representations made at the time of submission of application, the same are brought to the attention of the Commission immediately.*

(4) *Before offering services as a P2P Service Provider, the company shall put in place the technology platform, enter into all other legal documentations required and submit a report duly certified by the auditor on position of compliance with the conditions of permission granted by the Commission.*

35D. **Scope of Activities of P2P Service Provider.**— (1) *A P2P Service Provider shall, -*

- (a) *act as an intermediary providing an online marketplace or platform to the participants for direct lending and borrowing;*
- (b) *contribute at least fifteen percent or such higher percentage as it may agree with the lenders in each loan disbursed through the platform provided that the agreed loan contribution shall stand at par in rights, terms of recovery and repayment to lenders;*
- (c) *store and process all data relating to its activities and participants on hardware, within Pakistan or as permitted by the Commission;*

- (d) *undertake due diligence of the Participants;*
- (e) *undertake credit assessment and risk profiling of the borrowers, disclose it to the lenders and provide advice relating to P2P Services on the credibility of borrowers, determining the credit worthiness of the borrowers, extending loan to borrowers and determining the Price of transactions for Users on its Platform;*
- (f) *lend money to borrowers/participate in the transaction and facilitate disbursement and repayment of loan amount;*
- (g) *determine the terms of finance including its extension, renewal etc.;*
- (h) *require prior and explicit consent of the Participant to access its credit information; and*
- (i) *establish systems and controls for maintaining accurate and up-to-date records of investors' monies held, disbursed, recovered, income and expenses charged etc.*
- (2) *A P2P Service Provider through the P2P Lending Platform shall not, -*
 - a. *raise deposits as defined under Section 84 of the Companies Act, 2017 or involve in any illegal activity;*
 - b. *lend on its own through the P2P Lending Platform in any other way, except as otherwise provided in sub-regulation (1) above;*
 - c. *facilitate or permit any secured lending linked to its platform;*
 - d. *permit direct international flow of funds; and*
 - e. *undertake any activity in relation to P2P Lending, other than those specifically stated in relation to P2P Lending under these Regulations.*

35E. **Prudential Norms.**—(1) *A P2P Service Provider shall inter-alia comply with the following requirement, namely,*

- (a) *the aggregate loans taken by a borrower at any point of time, across all P2P Lending Platforms, shall be subject to a cap of Rs.1,000,000/-;*
- (b) *the exposure of a single lender to the same borrower, across all P2P Lending Platforms, shall not exceed Rs. 500,000/-;*
- (c) *maximum limit for a single lender on all P2P Lending Platforms, shall be as under:*

- (i) *for an individual, sole proprietor, provident/gratuity fund, trust, charitable institution and section 42 company: Rs.1,000,000; and*
- (ii) *other Lenders: Rs. 10,000,000.*
- (d) *the maturity of the loans shall not exceed 12 months;*
- (e) *lenders shall be high net worth persons having net worth of at least Rs.15 million excluding personal residence;*
- (f) *eligibility for borrower shall be assessed on factors including but not limited to purchase history with distributors/suppliers, satisfactory-good repayment history (Credit Bureau Services), Satisfactory-Good market reputation and business operating history of one year; and*
- (g) *prices for the transactions shall be determined based on categories, characteristics, credit scoring of each borrower etc. and shall be provided to the lenders for decision making.*
- (2) *The following entities /persons shall not be allowed as borrowers on a P2P Lending Platform,*
 - (a) *commercially or financially complex structures (i.e. investment fund companies or financial institutions);*
 - (b) *public-listed companies and their subsidiaries;*
 - (c) *companies with no specific business plan or the companies whose business plan is to merge or acquire an unidentified entity (i.e. blind pool);*
 - (d) *associated persons, companies and undertaking of P2P Service Provider; and*
 - (e) *any other type of entity / person that is specified by the P2P Service Provider, in line with its own risk management policy.*
- (3) *The P2P Lending Platform shall obtain explicit declaration from the Lenders stating that they have understood all the risks associated with the lending transactions and that there exists a likelihood of loss of principal and interest in case of default by a borrower.*
- (4) *No loan shall be disbursed unless the individual lender(s) have approved the individual recipient(s) of the loan and have agreed to the applicable terms and conditions.*

(5) *The P2P Lending Platform shall verify or obtain an undertaking from the borrower or lender, as applicable, that the limits specified under the regulations are being adhered to.*

(6) *The specified conditions and limits applicable for P2P Lending may be changed by the Commission while granting permission or at any stage, based on the valid reasons to be recorded in writing, on a case to case basis.*

35F. Revocation and suspension of Permission.—(1) *The Commission may suspend or revoke the permission of any P2P Service Provider where it has determined that the P2P Service Provider,*

- (a) has not provided correct information at the time of submission of the application;*
- (b) has committed breach of the requirements specified under these Regulations;*
- (c) has lost the capacity to provide the P2P Services; or*
- (d) where in the opinion of the Commission, it is in the interest of the public to do so.*

(2) *The permission to provide P2P Services shall automatically stand cancelled with immediate effect, if the NBFC becomes non-compliant with any of the following conditions, -*

- (a) equity of Lending NBFC falls below the minimum equity requirement as specified under Schedule I of these Regulations; or*
- (b) license of Lending NBFC is suspended or cancelled under applicable regulatory framework.*

The decision for revocation of permission shall be taken after providing the NBFC an opportunity of being heard.

(3) *In case the permission granted is revoked or suspended, the P2P Service Provider shall immediately suspend disbursement of loans on the platform while it shall continue to recover the outstanding loans and pay off to the lenders accordingly as and when those become due. In this regard, the Commission may issue necessary directions, if considered appropriate, including but not limited to the following, -*

- a. Transferring of the existing loan portfolio of P2P Lending Platform to another P2P Service Provider; and*
- b. Any other directions for protection of Participants and Users.*

35G. **Operational Requirements for P2P Services.**—(1) P2P Service Provider shall have a Board's approved policy in place for,

- (a) setting out the eligibility criteria and limits for Participants;
- (b) setting out the rules for matching Lenders with borrowers in an equitable and non-discriminatory manner;
- (c) determining the pricing of services provided by it;
- (d) managing defaults and ensuring recovery of outstanding amounts to pay off the Lenders;
- (e) comprehensive risk management including credit, operational and market risks and determining risk tolerance limits;
- (f) policy on privacy and confidentiality of information pertaining to the Participant; and
- (g) outsourcing policy.

(2) P2P Service Provider shall ensure that promotional materials do not contain untrue statements or omit to state facts that are necessary in order to prevent the statements from being misleading, false or deceptive.

35H. **Submission to and usage of data of Credit Information Bureau.**—(1) A P2P Service Provider shall comply with all requirements specified in these regulations relating to coordination, facilitation, usage of Credit Information Bureau (CIB) reports, submission and updating of data.

- (2) P2P Service Provider shall,
 - (a) take all such steps which may be necessary to ensure that the credit information furnished by P2P Lending Platform is up to date, accurate and complete; and
 - (b) include necessary consents in the agreement(s) with the participants for providing the required credit information.

35I. **Transparency and Disclosure Requirements.**—(1) A P2P Service Provider shall disclose at its Platform, at minimum, the following, -

- (a) to the lender:
 - (i) details about the borrower(s) including personal identity, required amount, interest rate sought and credit score as calculated by the P2P Service Provider; and

- (ii) *details about all the terms and conditions of the loan, including likely return, fees and taxes;*
- (b) *to the borrower: details about the lender(s) including proposed amount, interest rate offered but excluding personal identity and contact details.*
- (2) *A P2P Service Provider shall publicly disclose and monthly update on its Platform the following, -*
 - i. *overview of credit assessment/score methodology and factors considered;*
 - ii. *disclosures on usage/protection of data;*
 - iii. *grievance redressal mechanism along with contact details including names, phone numbers, emails etc. of person(s) appointed for handling complaints;*
 - iv. *investor education materials and appropriate risk disclosure;*
 - v. *information on rights and obligations of Participants relating to participation in P2P Lending;*
 - vi. *fees, charges, penalty and any other expenses that it may charge to/impose on Participants;*
 - vii. *portfolio performance including share of non-performing assets on a monthly basis and segregation by age and gender;*
 - viii. *recovery process, actual default rates, profit sharing ratio with P2P Service Provider and Lenders and actions to be taken in case of default;*
 - ix. *its broad business models; and*
 - x. *Board's approved policies that are likely to affect Participants.*

35J. Managing conflict of interest.—(1) *A P2P Service Provider shall establish a framework which sets out policies and procedures to effectively and efficiently manage conflicts of interest including potential conflicts of interest, which may arise in the course of providing P2P Services.*

(2) *The P2P Service Provider shall be prohibited from providing any funding to issuers of securities or investing in any avenue, on or through its platform, except to the extent of its specified minimum loan contribution.*

(3) *Notwithstanding the clause 1 and 2 above, employees of the P2P operator are permitted to invest through P2P Lending Platform subject to compliance with processes and procedures to manage conflict of interest that are put in place by the P2P Service Provider with approval of the Board.*

(4) *Save as otherwise provided in regulation 35D, a P2P Service Provider shall not provide P2P Services to any party against which it has any credit exposure or commitment as a Lending NBFC.*

35K. Mechanism for Management and Transfer of Funds.—*(1) Fund transfer between the participants on the P2P Lending Platform shall be through escrow accounts mechanisms as per specified terms and conditions and the accounts shall be operated by a trustee that is at least an "A" rated bank. At least two escrow accounts, one for funds received from lenders and disbursal, and the other for collections from borrowers, shall be maintained. All fund transfers shall be through bank accounts and cash transactions shall be prohibited.*

(2) Funds cannot be withdrawn through cheque or any other means/instrument from the escrow accounts, other than in relation to and for the purpose of business of P2P Lending.

(3) P2P Service Provider shall have appropriate system in place to ensure that funds of each Participant are clearly identifiable and are only used for the intended purpose.

35L. Other Mechanisms and Systems to be Deployed.—*(1) P2P Service Provider shall devise and implement comprehensive framework(s) and mechanism(s) comprising effective systems, procedures and controls, duly approved by its Board for, -*

- (i) recovery of loans through adequately trained staff or third parties while avoiding harassment, use of coercion etc.;*
- (ii) grievance redressal of the Participants within the timeline set for the purpose;*
- (iii) ensuring adequacy of information systems, technology platform, protection of User's data and lawful Data Processing in line with permissions obtained from Users; and*
- (iv) business continuity and back up/recovery for safekeeping of information and documents and servicing of loans for full tenure in case of closure of platform or its dysfunctionality due to malicious attacks or any other reasons.*

(2) P2P Service Provider shall ensure that its P2P Platform, systems,

controls and procedures are audited and tested independently once in every two years, by an audit firm having expertise in the area. The audit report shall be provided as and when required by the Commission.

35M. **Reporting Requirements.**—P2P Service Provider shall submit such information including periodical statements, reports, statistics and data in such forms, time and manner as may be required by the Commission from time to time."

3. After Schedule XV, the following Schedules shall be added, namely;

"Schedule XVI

Application for Permission to provide P2P Services

(Clause 358 of these Regulations)

1. Name of Applicant: _____
2. Registration Number: _____
3. Date of Incorporation (in case of legal person) _____
4. Lending NBFC License Number: _____
5. Last License Renewal Date: _____
6. Details of Business:
 - a Head Office Address _____
 - b Registered Office Address _____
7. Person authorized to make the application:
 - a Name: _____
 - b Address: _____
 - c CNIC: _____
 - d Phone: _____
 - e Email: _____
8. Names, addresses etc. of Directors: [add list]
9. Bank Details:
 - a Bank Name _____
 - b Branch _____
 - c Bank Account No. _____
 - d Type of Bank Account _____

10. Any other information

11. Covering letter attached? Yes or No (circle correct answer)

12. We have attached all information/documents as required under clause 35A and 35B of these regulations.

For & on behalf of

[Name], [designation], [contact number] and [official seal]

Certificate:

I [add name] and [designation] the applicant certify that the contents of the above application are true and to the best of my knowledge and belief."

"Annexure to Schedule XVI

Information to be provided by P2P Service Provider with the Application

1. The applicant shall submit the following information and documents along with its application:
 - a. latest audited annual financial statements of the Lending NBFC;
 - b. certified copy of the corporate authorizations allowing the submission of the application;
 - c. names, CNICs, experiences and details of the personnel responsible for management and operations of P2P Lending Platform;
 - d. a statement including the procedures with respect to identification of Users;
 - e. a statement for the purpose and scope of services, technology, management, or operations to be outsourced;
 - f. original challan of non-refundable processing fee of Rs.250,000/-; and
2. The applicant shall prepare a detailed statement in a manner acceptable to the Commission which shall contain at least details of the following;
 - i. detail of infrastructure for the provision of services;
 - ii. transaction structure including spreads;
 - iii. details about the services;
 - iv. hardware and software used for the purposes of providing the services;
 - v. Mechanism for Customer Due Diligence and compliance with KYC Policy;
 - vi. terms of use for Users;
 - vii. policy for recovery;
 - viii. details about data protection, storage etc.
 - ix. details about the security policy, security protocols and testing results; and
 - x. financial projections for 3 years with requisite assumptions;

(Signature of the concerned official)

(Name, Designation and Contact Details)"

"Schedule XVII

PERMISSION TO WORK AS P2P SERVICE PROVIDER

(Clause 35C of the Regulations)

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

Islamabad, Dated, _____

Registration No. _____

PERMISSION TO CARRY OUT OR UNDERTAKE PEER TO PEER SERVICES AS LENDING NON-BANKING FINANCE COMPANY

The Securities and Exchange Commission of Pakistan having considered the application for grant of Permission under Regulations 35B of the Non-Banking Finance Companies and Notified Entities Regulations, 2008, by _____ and being satisfied that it is eligible for the permission, hereby grants, in exercise of the powers conferred by 35C of the Non-Banking Finance Companies and Notified Entities Regulations, 2008, permission to work as P2P Service Provider to * _____ subject to the conditions stated herein below or as may be prescribed or imposed hereafter.*

Signature of the Officer

(Official Seal and Stamp)

**Name of the Company,"*

[No. SCD/NBFC/NBFCR/2022.]

BILAL RASUL,
Secretary to the Commission.