



30<sup>th</sup> May 2013

Mr. Tahir Mahmood,  
Acting Chairman,  
Security Exchange Commission of Pakistan,,  
Government of Pakistan,  
Islamabad.

Sub: Allegations of Inside Trading in Azgard Nine limited shares trade by JS Global Capital  
Ltd in 2007/2008 and in JSCL by awarding Fee of US \$ 4.2 million to a Director in 2013  
Ref: SECP Reply dated 28 May 2013

Dear Sir,

Transparency International Pakistan refers to your reply dated 28<sup>th</sup> May, 2013, on the following allegation made by complainant and sent to SECP on 18 May 2013, and the Supreme Court of Pakistan:

1. Inform National Accountability Bureau to take action under NAO 1999 against the 38 companies and individuals, and Chairman & Commissioners of SECP from 2009 to 2013 for their wilful failure to prevent the grant, or rendition of any undue benefit and favour which they were required to prevent by exercising their authority.
2. Confirm from Evacuee Trust the allegation that TFC of Agritec Azgard valued at approx. Rs. 1 Billion were sold by the JS Group to Evacuee Trust after April 2008, at four times the market price.
3. Action taken on the loss NICL suffered due to its imprudent investment of Rs. 2.00 billion in JS Principal Fund - Rs. 255.243 million on 13 March 2009, immediately after Mr. Muhammad Ayyaz Niazi was appointed as Chairman NICL on February 12, 2009. [ AGP Audit Report of NICL submitted in the Supreme Court in the Suo Moto Case 18 of 2010 ].
4. Action against those responsible as Public has suffered losses of billions of rupees due to insider trading in Azgard Nine Ltd shares, and payment of \$ 4.3 million in one case to the son of Jahangir Siddiqui, Mr Ali Jahangir, Chief of brokerage house
5. Action taken against the 38 companies and individuals guilty of inside trading, under Section 15 (A) (4) and Section 15 (E), SECP Ordinance 1969 for recovery at 3 times the gains made by them, and imprisonment for a term which may extend to three years.
6. When it was recommended in SECP's own report that the Bank Julius Baer & Co. Ltd Switzerland be asked to provide the rational of heavy investment in the scrip of PICT and on whose behalf the Bank bought shares of PICT, why SECP has failed to do so, and who is stopping SECP?.

The reply of SECP is being examined by a team of experts as it appears to be full of manipulations to protect the guilty companies/individuals. TIP views of the five issues will be sent separately.



*3. Action taken on the loss NICL suffered due to its imprudent investment of Rs. 2.00 billion in JS Principal Fund - Rs. 255.243 million on 13 March 2009, immediately after Mr. Muhammad Ayyaz Niazi was appointed as Chairman NICL on February 12, 2009. [ AGP Audit Report of NICL submitted in the Supreme Court in the Suo Moto Case 18 of 2010 ].*

On the NICL recover case, TIP detailed comments are given through this letter, and are also being sent to the Supreme Court of Pakistan, for including the TIP reply in the Suo Moto Case 18 of 2008 of corruption in NICL.

The Auditor General Pakistan was directed by the Supreme Court of Pakistan in the Suo Moto Case 18 of 2010 to conduct special audit of NICL for 2009-2010. The special audit report, submitted by the AGP in the Supreme Court of Pakistan on Monday 21<sup>st</sup> March, 2011 contained the following report on the illegal acts of NICL in depositing of Rs 2 Billion with JS Principal Fund, ( according to SECP Investigation Report on insider trading of Azgard share, dated 15<sup>th</sup> April 2009, JS Principal Fund is also one of the involved 32 companies/individuals).

The Auditor General Pakistan has stated in its report to Supreme Court that vide MoF GoP instructions No.F.4(1)/2002-BR.II dated 2 July 2003, besides imposing other restrictions on the investment limits, NICL was not allowed to invest in any debt instrument of a company do not exceed 10% of size of issue or 10% of total size of funds managed by the public sector entity, whichever is lower." **Annex-A**,

SECP reply is an effort to justify NICL's investment in JS Principal Fund, and on the other hand is shying away from its responsibility of monitoring investment of NICL under Ministry of Finance instructions No.F.4(1)/2002-BR. II dated 2 July 2003, by wrongly stating that the Insurance Ordinance, 2000 does not require the SECP to interface in investment-related business decisions of insurance companies, and on the other hand SECP is supporting JS Principal Fund alleged illegal deal with NICL of taking Rs 2 billion in its funds from NICL as investment.

AGP findings on NICL investment of Rs 2 Billion in JS Principal Fund are a follows;

*Audit observed the following irregularities in above transaction;*

- 1. There was no evidence available about processing (no investment plan, portfolio management, forecasting, future value of cash flows etc) of the investments by F&A Division as required by NICL Office Order No. (6/2000) dated 15-09-2000 revised 05-06-2009, for placement of Mutual Funds. This is to note that JS Investments Limited offer was received on March 12, 2009, investment committee convened its meeting on the same day and Chairman's approval along with placement of fund was made on very next day i.e. March 13, 2009. This showed that the investment was made in haste without any due diligence.*
- 2. The management did not hire the services of professional fund managers at the time of placement of funds as required under the clause-6 of the Finance*



*Division OM referred above. Audit further observed from a review of a research report of BMA that the total fund size as of March 2010 was Rs2.7 billion out of which only NICL's investment was Rs2.3 billion (85% ownership stake), rest of the balance owned by the related parties of JS Group. This was clear violation of para-5(d) of the Finance Division OM referred above.*

3. *The previous return history of these units was not available as those funds were initial launch by JS Protected Funds. Hence record of last three year's performance/returns was not available to match with average T-bills rates. Further, NICL has not approached SECP to provide the formula for the calculation of the total return over units. This led non-compliance of clause 5 of the Finance Division OM referred above.*
4. *Investment was made with the approval of the Chairman. Whereas approval of the Board of Directors of the Company was not obtained. This is the violation of the clause-6 of the Finance Division OM referred above.*

*In view of the position given above, the investment was made in irregular manner and without due diligence resultantly, NICL sustained loss of Rs 255.243 million.*

*The matter was reported to the management through OM No. 39 on March 11, 2011, but no reply was received till issuance of this report.*

*Audit would, therefore, suggest to:*

1. *fix responsibility on the person(s) at fault.*
2. *recover the amount from the responsible officers, lost due to imprudent investment.*

TIP is quoting below what SECP has replied on this corrupt act of NICL, to negate the AGP report submitted in the Supreme Court, and also disregarding Ministry of Finance GoP instructions No.F.4(1)/2002-BR.II dated 2 July 2003, a copy of which was also sent to SECP by the Ministry of Finance in 2003. **Annex-B.**

*With regards to the point stated above, your attention is invited towards Section 196(2)(e) of the Companies Ordinance, 1984 which states:*

*"196. Powers of Directors.-*

*(2) The directors of a company shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely:*

*"to invest the funds of the company;"*

*Therefore, the Board of Directors of any Company, by virtue of the aforesaid Section of the Companies Ordinance, 1984, has the sole prerogative to invest the funds of a company, in such avenues which it deems. It is further passed that the decision of investment in a particular fund/security is purely a business decision and it is also*



*implied that gains and losses do arise in the wake of investment activities undertaken by companies.*

*Moreover, the insurance Ordinance, 2000 also does not require the SECP to interface in investment-related business decisions of insurance companies.*

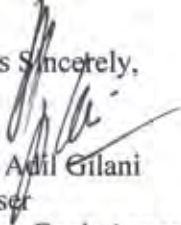
*However, in accordance with the solvency regime applicable on insurers, the SECP does monitor the investments to the extent of their admissibility under the applicable solvency regime.*

Transparency International Pakistan also encloses the news reports, **Annex-C**, and requests SECP to take action to implement AGP recommendations and Supreme Court orders in *Suo Moto* Case 18 of 2010, in accordance with the requirements of SECP Ordinance 1969,

1. **Fix responsibility on the person(s) at fault.**
2. **Recover the amount from the responsible officers, lost due to imprudent investment.**

TI Pakistan is striving to have transparency in procedures and Rule of Law in Pakistan, which is the only way to eliminate corruption and have good governance in country.

Yours Sincerely,

  
Syed Adil Gilani  
Adviser

Encl: Annex-A, B & C.

Copy forwarded for action to be taken under the rules regulations to;

1. Muhammad Nawaz Sharif, President, PML N, Lahore,
2. Mr. Imran Khan, Chairman, Pakistan Tehreek-e-Insaf, Lahore,
3. Chairman, NAB, Islamabad
4. Registrar, Supreme Court of Pakistan, Islamabad, for consideration under *Suo Moto* case 18 of 2010
5. Director General FIA, Islamabad,
6. Chairperson, CCP, Islamabad
7. Director, Sindh, FIA, Karachi

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**Procurement  
of Land and Properties**

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it requires setting up in-house professional treasury management functions to be manned by professional fund managers approved by SECP.

In National Insurance Company Limited (NICL) the management placed Rs. 100 million on November 24, 2008 with First Dawood Investment Bank Limited (FDIBL) as Certificates of Investment (COI) dated November 25, 2008 for Term Deposit for a period of six months @ 18.5% per annum.

The audit noted that proper evaluation of investment was not made by NICL. There was no portfolio maintained and investment plan was also not available. Further, there was no evidence available if this case was processed by the Real Estate Department/Secretary of NICL as required in its Office Order No. (6/2000) dated 15-09-2000, for placement of funds in TDR, TFCs etc. In fact, on November 19, 2008 five officers (not specified as the Investment Committee) discussed the offer of Atlas Bank and FDIBL and decided to place Rs. 100 million with Atlas Bank for 6 months @ 21.75% per annum and Rs. 100 million with First Dawood Investment Bank for six months @ 18.00% per annum. Bids from three independent banks were not obtained as required by above mentioned OM of Finance Division.

Audit observed that funds were placed with FDIBL despite the fact that the company had posted a loss before tax of Rs. 49.104 million and its Cash and Cash equivalent position was precarious. Consequently, the bank defaulted in encashment of said COI of Rs100 million along with mark up of Rs8,256,576 (net of tax), on maturity date i.e. May 25, 2009. On June 06, 2009 FDIBL offered options for settlement, comprising (a) settlement of entire outstanding against assets of FDIBL (b) rollover deposits over a period of five years as per term sheet of PPTFC (c) take combination of above two proposals. NICL at last via its letter dated December 30, 2009 to FDIBL communicated its approved settlement of COI for Rs100 million, with the result that the entire invested amount of Rs. 100 million was blocked. Details are given at **Annex 6**:

Audit was of view that, had NICL opted for settlement of entire outstanding amount against the assets of FDIBL as per FDIBL offer letter dated June 06, 2009, it may have settled its funds as the company had total assets of Rs. 5,136.416 million including short term investments of Rs. 921.261 million and cash and bank balances of Rs. 194.339 million. Since FDIBL was assigned a credit rating of 'D' by PACRA as on December 31, 2009 and there were remote chances of realization of the blocked amount.

The matter was reported to the management through OM No. 12 on March 07, 2011, but no reply was received till issuance of this report.

Audit would, therefore, suggest fixing of responsibility and recover the amount from the responsible officers

**18. Loss due to imprudent investment of Rs. 2.00 billion in JS Principal Fund - Rs. 255.243 million**

Government of Pakistan Finance Division issued instructions for investment of surplus funds of the public sector enterprises through its OM dated July 02, 2003.

The para-5(b) of this OM requires that "In Public units total return comprising the appreciation in value, which exceeds the average six months Treasury Bill rate for the last three years. The formula for the calculation of the total return would be provided by the SECP from time to time."

The para-5(d) of this OM requires that "Total investment in debt instrument of a company do not exceed 10% of size of issue or 10% of total size of funds managed by the public sector entity, whichever is lower."

The para-6 of said OM requires that "Before making any investment under this policy, it would be necessary for public sector entities to set up in-house professional treasury management functions. Specifically, they would need to have an Investment Committee (IC) with defined investment approval authority. Transaction above the approval authority of the IC will be subject to approval of Board of Directors or an equivalent forum. The investment committee should be assisted by an investment management unit employing qualified staff with at least three to five years of experience of managing investment in debt/equity instruments. However, it will be necessary for public sector enterprises to use the services of professional fund managers approved by SECP."

In National Insurance Company Limited (NICL), the management invested Rs. 2,000.000 million on March 13, 2009 through Pre-Initial Public Offer (IPO) commitment in JS Principal Secure Fund-I for the minimum period of 03 years and 06 weeks under the recommendations of first meeting of Investment Committee of NICL held on March 12, 2009 which was approved by the Chairman on March 13, 2009. The product structure was of a three year open ended fund. According to the terms of investment, the Payout at maturity was any capital gain to distribute along with initial capital at maturity.

Subsequently, it was decided in the 69<sup>th</sup> meeting of the Board of Directors held on April 30, 2010 that the market intelligence reports are not in favour of the above mentioned investment and the funds must be disinvested. Accordingly, the investment of Rs. 2,000 million was disinvested on July 20, 2010 while the investment was at a pre-mature stage. The details of disinvestment are given in Table - A at **Annex 7**:

It was observed from the report of an Investment Research House, M/s. Invest Cap dated July 16, 2010 that the JS Protected Funds Series remained under performance during the year 2010 whereas returns on other Income Fund performance during first and second quarters of 2010 were ranging about 11 to 14%. If concluded on an average return of 12% of other funds, the NICL sustained a loss of Rs.255.242 million as detailed in Table - B at **Annex 7**:

Further, audit was of the view that redeeming with a back-end load of 5% was not an attractive option i.e. back-end load (penalty of 5% over pre-mature redemption) was high enough that is even exceeding the front-end load (return of 3.5% over investment).

Audit observed the following irregularities in above transaction;

1. There was no evidence available about processing (no investment plan, portfolio management, forecasting, future value of cash flows etc) of the investments by F&A Division as required by NICL Office Order No. (6/2000) dated 15-09-2000 revised 05-

06-2009, for placement of Mutual Funds. This is to note that JS Investments Limited offer was received on March 12, 2009, investment committee convened its meeting on the same day and Chairman's approval along with placement of fund was made on very next day i.e March 13, 2009. This showed that the investment was made in haste without any due diligence.

2. The management did not hire the services of professional fund managers at the time of placement of funds as required under the clause-6 of the Finance Division OM referred above. Audit further observed from a review of a research report of BMA that the total fund size as of March 2010 was Rs2.7 billion out of which only NICL's investment was Rs2.3 billion (85% ownership stake), rest of the balance owned by the related parties of JS Group. This was clear violation of para-5(d) of the Finance Division OM referred above.
3. The previous return history of these units was not available as those funds were initial launch by JS Protected Funds. Hence record of last three year's performance/returns was not available to match with average T-bills rates. Further, NICL has not approached SECP to provide the formula for the calculation of the total return over units. This led non-compliance of clause 5 of the Finance Division OM referred above.
4. Investment was made with the approval of the Chairman. Whereas approval of the Board of Directors of the Company was not obtained. This is the violation of the clause-6 of the Finance Division OM referred above.

In view of the position given above, the investment was made in irregular manner and without due diligence resultantly, NICL sustained loss of Rs 255.243 million.

The matter was reported to the management through OM No. 39 on March 11, 2011, but no reply was received till issuance of this report.

Audit would, therefore, suggest to:

1. fix responsibility on the person(s) at fault.
2. recover the amount from the responsible officers, lost due to imprudent investment.



Government of Pakistan  
Finance Division  
(Budget Wing)

No.F.4(1)/2002-BR.II

Islamabad, the 2<sup>nd</sup> July, 2003

**OFFICE MEMORANDUM**

Subject:- **DEPOSIT OF WORKING BALANCES AND INVESTMENT OF SURPLUS FUNDS BELONGING TO PUBLIC SECTOR ENTERPRISES AND LOCAL/AUTONOMOUS BODIES UNDER FEDERAL GOVERNMENT:**

The undersigned is directed to issue the following consolidated instructions for depositing working balances as well investment of surplus funds of the public sector enterprises and local/autonomous bodies. These instructions supersede all previous instructions issued from time to time in this regard.

2. As a part of its programme for further development of the financial sector, the Government is pursuing actively a policy of privatizing public sector banks and creating an even playing field for public and private sector financial institutions. In view of this, it has been decided to revise the policy on banking facilities for public sector enterprises and local/autonomous bodies.

**Working Balances:**

3. Under the new policy, public sector enterprises and local/autonomous bodies can deposit their working balances required for their operations with any public or private bank subject to the following requirements:

- (a) For the sake of the safety and security of deposits, the bank/financial institutions taking a deposit should have a minimum "A" rating (long-term) as appearing on the web-site of the State Bank of Pakistan. This "A" rating refers to the rating scale used by Pakistan Credit Rating Agency and JCR-VIS Credit Rating Company for banks incorporated in Pakistan and Moody's, Fitch's and Standard & Poor's rating for foreign banks operating in Pakistan. Rating scales of other agencies acceptable to the State Bank should be equivalent to the rating of the above mentioned companies. Information and clarification on this matter may be obtained from Banking Policy Department of the State Bank of Pakistan;
- (b) The process of selection of bank/(s) should be transparent. Therefore, prior to placing deposits with a bank under this new policy, and in case the total working balances exceed Rs.10 million, the selection of the bank/(s) as well as the terms of

deposits will be approved by the concerned Board of Directors/Governing Body on the basis of competitive bids from at least three independent banks;

- (c) The risk associated with keeping deposits should be diversified. Therefore, in cases where total working balance of an enterprise exceeds Rs.10 million, not more than 50% of such balance shall be kept with one bank;
- (d) In case the rating of the deposit taking bank drops below "A", the concerned enterprise/local/autonomous body will shift new deposits within a period of one month and old deposits within a period of two months to a bank/(s) with at least "A" rating;
- (e) The working balance limit of each organization should be determined with the approval of the administrative ministry in consultation with Finance Division. The account of this working balance may be maintained in a current or savings bank account.

#### **Surplus Funds:**

4. It has been decided to allow the public sector entities to invest their surplus funds in the non-government securities/TFCs/shares also, upto a maximum of 20% of the total funds under management. This relaxation will not be available to public sector enterprises/autonomous bodies that have statutory restrictions on their investing in non-government securities. Corporate entities, which receive support from the current budget, are also excluded from the policy. Public sector entities, which are holding trust funds such as pension funds, benevolent funds or insurance funds, will devise their investment policies through their own Boards.

5. Eligibility criteria of non-government investment instruments will be as follows:

- (a) Non-government debt instruments should have a major rating category of A and above;
- (b) Public listed shares/units should have a total return comprising the dividend paid and appreciation in value, which exceeds the average six months Treasury Bill rate for the last three years. The formula for the calculation of the total return would be provided by the Securities and Exchange Commission of Pakistan (SECP) from time to time;
- (c) Initial Public Offerings (IPOs) of shares of existing companies should have a track record of three year profitability at least equal to the average of twenty best performing companies on Karachi Stock Exchange;

- (d) Total investment in debt instrument of a company not to exceed 10% of size of the issue or 10% of the total size of funds managed by the public sector entity, whichever is lower;
- (e) Total investment in the shares of a company not to exceed 5% of the paid up capital of that company or 5% of the total funds managed by the public sector entity, whichever is lower; and
- (f) Investment in shares of Greenfield projects/companies will not be eligible.

6. Before making any investment under this policy, it would be necessary for public sector entities to set up in-house professional treasury management functions. Specifically, they would need to have an Investment Committee (IC) with defined investment approval authority. Transactions above the approval authority of the IC will be subject to approval of the Board of Directors or an equivalent forum. The IC should be assisted by an Investment Management Unit employing qualified staff with at least 3-5 years of experience of managing investment in debt/equity instruments. However, it will be necessary for public sector enterprises to use the services of professional fund managers approved by SECP.

7. The Principal Accounting Officer of the ministry concerned will be responsible for the implementation of the above instructions regarding the PSEs/local/autonomous bodies under his control. The Chief Executive of PSE/Local/Autonomous body will be required to issue a certificate on annually basis that the above instructions are being followed in respect of the working balance and surplus funds of the organization.

8. All the PSEs/local/autonomous bodies under your administrative control may please be directed to keep their working balances and invest their surplus funds in accordance with the above mentioned policy instructions.

9. This issues with the approval of the Finance Secretary.

( SAMIULLAH )  
Asstt. Economic Adviser (BR.II)  
Phone: 9209243

**All Secretaries of the Federal Government:**

Copy forwarded to:

1. Auditor General of Pakistan, Constitution Avenue, Islamabad.
2. Controller General Accounts, Federal Bank for Cooperative's Building, Islamabad.
3. Chairman, Securities and Exchange Commission of Pakistan, Islamabad.
4. Director of Accounts, State Bank of Pakistan, Central Directorate, I.I. Chundrigar Road, Karachi.
5. All Joint Secretaries, Finance Division, Islamabad.
6. All Financial Advisers/Deputy Financial Advisers attached to administrative Divisions of the Federal Government.
7. Finance Secretaries, Governments of Punjab, Sindh, NWFP, and Balochistan, with the request that similar action be taken in respect of autonomous organizations under their administrative control.
8. Prime Minister's Secretariat (Internal), Islamabad.

( SAMIULLAH )

## Annex C

### Investment in JS Fund: NICL lost Rs 255.243 million.

Business Recorder

| March 25, 2011 | [Copyright](#)

Byline: RECORDER REPORT

National Insurance Company Limited (NICL) sustained a loss of Rs 255.243 million as a result of investment made in irregular manner and without due diligence in JS Principal Fund, according to Auditor General's report submitted in the Supreme Court of Pakistan on Monday, March 21.

Dealing with the investment in JS Principal Fund, the audit report said:

Government of Pakistan Finance Division issued instructions for investment of surplus funds of the public sector enterprises through its OM dated July 02, 2003. The para-5(b) of this OM requires that "in Public units total return comprising the appreciation in value, which exceeds the average six months Treasury Bill rate for the last three years. The formula for the calculation of the total return would be provided by the SECP from time to time."

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Subsequently, it was decided in the 69th meeting of the Board of Directors held on April 30, 2010 that the market intelligence reports are not in favour of the above mentioned investment and the funds must be

disinvested. Accordingly, the investment of Rs 2,000 million was disinvested on July 20, 2010 while the investment was at a pre-mature stage.

It was observed from the report of an Investment Research House, M/s. Invest Cap dated July 16, 2010 that the JS Protected Funds Series remained under performance during the year 2010 whereas returns on other Income Fund performance during first and second quarters of 2010 were ranging about 11 to 14%. If concluded on an average return of 12% of other funds, the NICL sustained a loss of Rs 255.242 million.

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2. Recover the amount from the responsible officers, lost due to imprudent investment.

Copyright 2011 Business Recorder

Monday, January 24, 2011

Jang Group/GEO TV Promote Culture of not bringing influential to justice.



ISLAMABAD: Chief Justice Iftikhar Muhammad Chaudhary, during the hearing of National Insurance Corporation Limited (NICL) scandal case, remarked that the culture of not bringing the influential persons to justice should be ended, Geo News reported on Monday. The three-member bench of the SC heading by Chief Justice was hearing the NICL scandal case. The Chief Justice further stated that corruption would not be tolerated, adding that public money had been looted that should be ended now. CJ Iftikhar Chaudhary was angered over transfer of investigation officers and directed the FIA to bring them back otherwise the court would cancel their transfer orders. The court also summoned secretary commerce with NICL audit report. Deputy director FIA informed that court that there was corruption of around Rs5 billion in NICL, adding that an accused has been arrested. The accused during interrogation has revealed that he had handed over Rs220 million to Moonis Elahi, he added. Over this Chief Justice remarked that there is Rs18 billion corruption in NICL. Meanwhile, Chief Justice also summoned secretary home and FIA investigation official. REFERENCE: Culture of not bringing influential to justice be ended: CJ Updated at 1255 PST Monday, January 24, 2011