BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER No.: Order/KS/VC/2020-21/8265)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

Mr. B Renganathan

(PAN: AADPB8630N)

In the matter of

Edelweiss Financial Services Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), upon receipt of examination report from National Stock Exchange (**NSE**), conducted investigation in the dealings in the scrip of Edelweiss Financial Services Ltd. (hereinafter referred to as '**EFSL**'/'**Company**') to examine the violation, if any, of the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015**') for the period of January 25, 2017 to April 05, 2017 (hereinafter referred to as '**Investigation Period**'/'**IP**'). The Company is listed on NSE and Bombay Stock Exchange (**BSE**). It is observed that Mr. B Renganathan (hereinafter

referred to as '**Noticee**') was the compliance officer and Company Secretary of EFSL during IP.

2. During the course of investigation, it was observed by SEBI that Ecap Equities Limited (hereinafter referred to as '**Ecap**'), a wholly owned subsidiary of EFSL, had acquired Alternative Investment Market Advisors Private Limited (hereinafter referred to as '**AIMIN**'), a fintech company, on April 05, 2017 by entering into a share purchase agreement (**SPA**). The same was disclosed by EFSL to NSE and BSE on the same day. Further, a Term Sheet in respect of the said transaction was signed between Ecap and AIMIN on January 25, 2017.
3. Therefore, it was alleged that the acquisition of AIMIN by Ecap was a price sensitive information which had come into existence on January 25, 2017 upon signing of Term Sheet. Despite that, the Noticee, being the compliance officer of the company, failed to close the trading window during the period of January 25, 2017 to April 05, 2017. By his failure to close the trading window during this period, it is alleged that the Noticee has violated the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders mentioned in Schedule B read with Regulation 9(1) of PIT Regulations, 2015. In view of this, adjudication proceedings were initiated against the Noticee under the provisions of section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide Order dated March 16, 2020 under Section 19 read with Section 15-I(1) of the SEBI Act read

with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**), to inquire into and adjudge under the provisions of section 15HB of the SEBI Act, the alleged failure on the part of the Noticee to comply with the relevant provisions of PIT Regulations, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. A Show Cause Notice ref. SEBI/HO/EAD-8/KS/VC/10335/2020 dated April 20, 2020 (hereinafter referred to as '**SCN'**) was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provisions of section 15HB of the SEBI Act for alleged violation of the relevant provisions of PIT Regulations, 2015.
6. The details in respect of alleged violation by the Noticee are as given below:
   i. *SEBI, upon receipt of examination report from National Stock Exchange (NSE), conducted investigation in the dealings in the scrip of Edelweiss Financial Services Ltd. (hereinafter referred to as 'EFSL'/'Company') to examine the violation, if any, of the provisions of PIT Regulations, for the period of January 25, 2017 to April 05, 2017 (hereinafter referred to as 'Investigation Period'/'IP'). The Company is listed on NSE and Bombay Stock Exchange (BSE). It is observed that the Noticee was the compliance officer and Company Secretary of EFSL during IP.*
   ii. *It is observed that EFSL made announcement regarding acquisition of Alternative Market Advisors Private Limited (hereinafter referred to as 'AIMIN') on April 05, 2017. As per disclosure made by the company with NSE and BSE "AIMIN is a fintech company for fixed income analytics with innovative trade protocols that aids*

bond market with efficient price discovery. FinTech is playing a vital role in transforming the financial industry worldwide as well as in India. Edelweiss is actively looking to adopt innovative FinTech Solutions to aid in matters related to illiquidity, accessibility and seed to improve offering to customers. This acquisition will help grow Edelweiss fixed income advisory business. The proposed acquisition is not with the promoter /Promoter Group and also does not fall under the related party transaction."

iii. *It is observed that the aforesaid transaction resulted in the acquisition of AIMIN by Ecap Equities Limited (Ecap), a wholly owned subsidiary of EFSL. It is further observed that the said disclosure was made in terms of Regulation 30 of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015. Thus, in terms of PIT Regulations, the said announcement made by EFSL is the unpublished price sensitive information (UPSI) as per Regulation 2(1)(n)(iv) and 2(1)(n)(vi) of PIT Regulations, prior to the announcement dated April 05, 2017.*

iv. *EFSL vide email dated February 19, 2018 & letter dated January 29, 2019 and AIMIN vide email dated September 23, 2019 submitted the chronology of events in relation to the press release dated April 05, 2017. Consolidated chronology of events with respect to the aforesaid press release is as follows:*

Table 1: Chronology of Events

Date	***Particulars (Details of matter discussed; Conclusions)***	***Discussion (phone/ meetings/ approvals, etc.)***
September 16, 2016- October 19, 2016	*Evaluating the purchase of electronic platform for business*	*Through various modes including phone, meetings, emails etc.*
January 25, 2017	*Acquiring the shares of AIMIN from its Founders. Term Sheet was signed amongst Ecap Equities Ltd. (a subsidiary of*	

	EFSL) and AIMIN.	
Last week of March, 2017	*Finalization of Terms and Conditions of Share Purchase Agreement*	
April 05, 2017	*Execution of Share Purchase Agreement*	

Further, as per the letter dated January 29, 2019 of EFSL, the Noticee was one of the persons present in the discussions related to above-mentioned transaction and, therefore, was alleged to be an insider in terms of Regulation 2(1)(g) of PIT Regulations.

v. *From the chronology of events, as provided in Table 1 above, the announcement dated April 05, 2017 related to the acquisition of AIMIN had come into existence on January 25, 2017 as it was the day when EFSL decided to acquire the shares of AIMIN, instead of purchasing the software as envisaged initially and a Term Sheet was thereafter signed on January 25, 2017 amongst Ecap Equities Limited, a subsidiary of the Company and the Promoters of AIMIN. It may also be noted that as per Economic Times article dated September 16, 2017 "Term Sheet is the first and foremost document that outlines all the principal commercial, economic and governing terms and conditions of the proposed investment; which typically include the pre-money valuation of the company, the instrument of the transaction structure, investor's rights and obligations, board composition and management control rights, among others. It is entered between the parties to facilitate negotiations for the proposed transaction and is an expression of intention only". In view of the same, it is alleged that the UPSI came into existence on January 25, 2017 and the same was published on April 05, 2017. Therefore, the period of UPSI has been considered as January 25, 2017 to April 05, 2017.*

vi. *It is noted that Regulation 9 of PIT Regulations, casts a responsibility on the Company to frame its Code of Conduct to prevent Insider Trading. Further, in terms of Regulation 9(3) of PIT Regulations, the compliance officer of the Company is responsible for the administration of the said code of Conduct. In furtherance to that, as per Clause 4 of Model Code of Conduct under Schedule B to PIT Regulations, compliance officer of a listed entity is responsible for closing of the trading window when he determines that a designated person or class of designated persons can reasonably be expected to be in possession of unpublished price sensitive information. It is also directed in the said Clause that*

the Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

vii. *Therefore, in terms of the UPSI in the present matter, it is alleged that the Noticee was required to close the trading window on or before January 25, 2017 to April 05, 2017, during when the UPSI was in existence. In this regard, it is alleged that the Noticee had failed to close the trading window during this period. Therefore, it is alleged that the Noticee has violated the provisions of Clause 4 of Model Code of Conduct under Schedule B read with Regulation 9(1) of PIT Regulations.*

viii. *The above alleged violation of law, if proved, makes the Noticee liable for monetary penalty under the provisions of Section 15HB of the SEBI Act.*

7. I note that the Noticee, vide an Email dated May 08, 2020, submitted his reply to the SCN wherein the Noticee, *inter-alia*, made the following submissions:

a. *EFSL and the subsidiaries (i.e. the management of these entities) (collectively, "Edelweiss Group"), while actively exploring options to upgrade their technology in order to improve service to its customers, identified an electronic platform (software) developed by AIMIN, a fintech company as suited for the Edelweiss Group's business requirements. During the period from September 2016 to October 2016, certain officials of Edelweiss Group commenced preliminary discussions with the promoters of AIMIN in order to assess the software.*

b. *In the course of such evaluation, in December 2016, the Edelweiss Group decided that acquisition of the shares of AIMIN would be a more commercially viable option, and in the best interests of the group, instead of merely purchasing the software ("Proposed Acquisition"). It is critical to note at this juncture itself, that the intention for Proposed Acquisition was to have AIMIN as a captive service provider for servicing the Edelweiss Group. The underlying rationale behind the Proposed Acquisition was not to acquire AIMIN as a separate business or a revenue generating vertical in terms of which third parties would also be provided with these services by Edelweiss Group. In order to progress these discussions, a Term Sheet was signed*

between Ecap, AIMIN and the promoters of AIMIN on January 25, 2017 ("Term Sheet").

c. *Thereafter, several rounds of discussions took place with the promoters of AIMIN to finalise the terms and conditions of the Proposed Acquisition. During this period, parties were still in negotiations to agree on the terms of the Proposed Acquisition. Various critical processes such as reviewing findings from the due diligence report, fulfillment of conditions precedent, transfer of ownership servers and domain names and finalization of the necessary agreements, had to be undertaken before closing of the deal, and after signing of the Term Sheet.*

d. *It is pertinent to note that during the course of such negotiations, only a handful of people were aware of the Proposed Acquisition and adequate measures were implemented to ensure strictest confidentiality with respect to the same. Given that this share purchase was more akin to a business - technology upgradation, the Compliance Officer was not a party to these discussions. The Compliance Officer informed the stock exchanges upon execution of the SPA (as defined hereinafter). The Noticee, thus being the compliance officer of EFSL, was included in the list of people involved in the Proposed Acquisition shared with SEBI through EFSL's letter dated January 29, 2019 (Annexure 3 of the Notice).*

e. *Thereafter, a Share Purchase Agreement dated April 5, 2017 ("SPA") was signed between Ecap as the buyer, AIMIN as the target company and promoters of AIMIN as the selling shareholders, to acquire 100% shares of AIMIN for a purchase consideration of INR 4,00,00,000 (Rupees Four Crores Only). Pursuant to the SPA, AIMIN would become a wholly owned subsidiary of Ecap and indirect wholly owned subsidiary of EFSL. As evident, the purchase consideration for acquisition of AIMIN was de minimis and could not be considered material, when compared to the overall financial position of EFSL. To clarify, the gross income and net worth of EFSL, on a consolidated level for the financial years ended 2015, 2016 and 2017, was,*

respectively, INR 38,938.06 crores, INR 52,680.81 crores and INR 66,188.42 crores, and INR 3,287.1 crores, INR 4,143.83 crores and INR 6,093.06 crores.

f. *Therefore, as is evident from the facts set out above, there was no finality or certainty in respect of the Proposed Acquisition as the representatives of Ecap and AIMIN had not reached an agreement in relation to the commercial terms, before the signing of the SPA.*

g. *In accordance with Regulation 30 read with Part A(1)(ii) of Schedule III of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing Regulations"), prompt intimations were made by EFSL to the National Stock Exchange of India Limited ("NSE") and the BSE Limited ("BSE") on April 5, 2017, informing them of the SPA to consummate the Proposed Acquisition, as required under Schedule III of the Listing Regulations, without any application of guidelines for materiality.*

PRELIMINARY OBJECTIONS

h. *At the outset, the Noticee would like to place on record the following preliminary objections, which are without prejudice to the reply on merits. These preliminary objections strike at the root of the matter and as such the Notice is liable to be set aside on this ground itself.*

Reliance on an article by Economic Times

i. *The allegations framed in the Notice relating to the Proposed Acquisition, primarily rely on a newspaper article dated September 16, 2017 in Economic Times ("Article"), to determine when the alleged unpublished price sensitive information ("Alleged UPSI"), i.e., decision to acquire AIMIN by Ecap, came into existence. This goes to the root of the matter, as the Hon'ble Adjudicating Officer ("AO") has relied upon the definition of the term 'Term Sheet' in the Article to determine the period of UPSI to be the period from January 25, 2017 to April 5, 2017. It is respectfully submitted that in a quasi-judicial proceeding of this nature, a definition set out in a media report cannot*

hold any evidentiary value. As stated above and the detailed response set out below, the final decision to acquire AIMIN took place on the date of signing of the SPA and not the date of Term Sheet.

j. *In fact, the Hon'ble Supreme Court of India has, in the matter of B. Singh (Dr.) v. Union of India observed that:*

"It is too much to attribute authenticity or credibility to any information or fact merely because it found publication in a newspaper or journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence." (emphasis supplied)

k. *Further, it is pertinent to note that the Notice selectively relies on the said Article and ignores some crucial statements made therein. For instance, the article provides that 'A Term Sheet is a non-binding document which does not constitute an offer, an agreement, agreement in principle, agreement to agree or commitment to provide financing'. The Article further provides that signing of a Term Sheet is merely the first step in many steps before a transaction is consummated, i.e., due diligence, definitive agreements and closing. Therefore, the statements made in the Article shall be taken into consideration holistically and not in isolation. Thus, it is humbly submitted that the reliance on the Article to state that the Alleged UPSI came into existence at the time of signing of the Term Sheet is misplaced. It is a settled principle of law that adjudicating the validity of an initial agreement, which was subject to execution of a formal agreement depends on the special circumstances of each particular case and by relying on a media report of this nature, SEBI is ipso facto presuming the existence of price sensitive information. Such presumptions itself assail the fundamental basis of the allegations in Notice and render them vague and unreliable. Therefore, on this ground alone, the Notice stands vitiated and is liable to be set aside.*

<u>Reliance on the Investigation Report of NSE</u>

l. *The Noticee would also like to take this opportunity to highlight that only certain extracts of the investigation report by NSE dated January 28, 2020 ("Investigation Report") have been provided (excluding pages 2 and 14-32). As the Investigation Report is the backbone of the Notice and forms basis for all the factual statements made in the Notice, we request for access to the Investigation Report in toto. This is in line with the Noticee's right to have the opportunity to adequately defend himself and to prevent any prejudice or impairment in the present proceedings.*

m. *Without prejudice to the above, the Noticee is submitting this response on the basis that SEBI will be precluded from relying on any other sections of the Investigation Report, other than what has been annexed to the Notice.*

SPECIFIC RESPONSE TO THE ALLEGATION

n. *In this context, we respectfully submit that on a review of the Notice as well as the documents annexed to the Notice, it is apparent that no evidence whatsoever has been adduced to support the allegations made therein, which would be further demonstrated in the submissions below.*

o. *In order to adequately address the specific allegation itself, it would be relevant to consider the nature of the Alleged UPSI in question.*

p. *It is stated in paragraph 4 of the Notice that information relating to the Proposed Acquisition was 'unpublished price sensitive information' in terms of Regulation 2 (1)(n)(iv) and 2(1)(n)(vi) of the PIT Regulations. Further, in paragraph 6 of the Notice, it is stated that the period during which such UPSI was in existence was from January 25, 2017 to April 5, 2017 ("Alleged UPSI Period").*

Information on the Proposed Acquisition was not UPSI

q. *Regulation 2(1)(n) of the PIT Regulations defines "unpublished price sensitive information" as any information, relating to a company or its securities, directly or indirectly, which upon becoming generally available, is likely to materially affect the price of the securities".*

r. *The note to Regulation 2(1)(n) of the PIT Regulations also highlights the fact that such information should be likely to materially affect the price upon coming into public domain.*

s. *The term 'materially' has not been defined in the PIT Regulations and even the examples cited above are preceded by the term "ordinarily", thereby allowing parties to rebut any presumptions made about the price sensitivity. In this regard, it may be pertinent to refer to decision by Hon'ble SAT in the case of Mr. Anil Harish v. Securities and Exchange Board of India, wherein the Hon'ble SAT has observed that whether any information is price sensitive, and when it came into existence, is a mixed question of law and facts and will depend on background and circumstances of each case.*

t. *For instance, in the matter of Man Industries (India) Limited, the Hon'ble AO, while adjudicating if securing of a contract amounted to price sensitive information, observed that where the orders constituted a substantial percentage of the company's turnover and of such enormity and magnitude, then it would be reasonable to presume that it could have a material impact on price.*

u. *Global jurisprudence in this regard also holds a significant persuasive value. Under UK statutes, information is considered 'insider information' if it is likely to have a significant impact on the price of securities, and it is considered to have such an impact "if and only if it is information of a kind which a reasonable investor would be likely to use as part of the basis of his investment decisions"[1] The US Supreme Court has held that the question of materiality is a mixed question of fact and law, and held that a fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making his/ her investment decision.[2] Therefore, global standards on materiality of the non-public price sensitive information indicate*

[1] Section 118C of (UK) Financial Services and Markets Act, 2000.
[2] *TSC Industries* v. *Northway Inc.* (US Supreme Court, 1976); *Basic Inc.*, v. *Levinson* (US Supreme Court, 1988).

that information may be considered as likely to have a 'material' or 'significant' impact on price of securities, if it is likely to form the basis of a reasonable investor's investment decision.

v. *A reference may also be made to the discussion paper by SEBI on, inter alia, Clause 36 of the Equity Listing Agreement, where SEBI laid down certain tests to determine if certain information can be considered as price sensitive.*

   (i) *Price impact test: If any information which relates directly or indirectly to a listed entity and which, if published, is likely to materially affect the price of shares of the listed entity; and*

   (ii) *The reasonable investor test: If the information is likely to affect a reasonable investors' investment decision and therefore, likely to have a significant effect on the prices of shares of the listed entity. Information which may be relevant to a reasonable investor includes any information which affects (i) the assets and liabilities of the listed entity, (ii) the financial condition of the listed entity, (iii) major developments in the business of listed entity/industry, or (iv) any information previously disclosed to the market.*

w. *In the present case, the Proposed Acquisition was not likely to, by any tangible metric, materially affect the price of securities of EFSL as per the definition of UPSI under Regulation 2(1)(n) of the PIT Regulations. This is amply evident from the following facts:*

   i. *Edelweiss Group, in its normal course of business, continued to evaluate opportunities for adopting innovative fintech products and upgrade its technology, in order to better serve its customers. Financial services providers such as the Edelweiss Group continuously seek avenues to improve their systems and the adoption of new technologies such as purchase of the software, systems, etc. to improve their operational efficiencies.*

ii. *Instead of just purchasing the software from AIMIN (which would not have triggered any such disclosure under the Listing Regulations), the Edelweiss Group, over the course of discussions, decided to acquire AIMIN, which was determined to be in best interests of the Edelweiss Group.*

iii. *The proposed purchaser in this case was Ecap, at that time a wholly owned non-material subsidiary of EFSL. In terms of the Listing Regulations (as per the provisions applicable in 2016 and 2017), a material subsidiary was defined as a subsidiary whose income or net worth exceeded 20% of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. For the financial year ended 2017, total income and net profits of EFSL and Ecap were respectively, INR 66,188.42 crores and INR 6,093.06 crores, and INR 2,155.52 crores and INR 18.49 crores. For the financial year ended 2016, total income and net profits of EFSL and Ecap were respectively, INR 52,680.81 crores and INR 4,143.83 crores, and INR 6,251.24 crores and INR 498. 99 crores. From a bare perusal of this information, it is clear that for neither of the financial years, did the total income or the net profits of Ecap exceed 20% of the consolidated total income or net profits of EFSL.*

iv. *It is critical to note that AIMIN was not being acquired to foray into a new business line or materially alter/expand existing businesses of the Edelweiss Group. It was merely being brought within the fold as a captive service provider to improve operations of the Edelweiss Group itself.*

v. *The Proposed Acquisition was consummated for a purchase consideration of INR 4,00,00,000 (Four Crore Rupees). The inconsequentiality of this figure to EFSL's consolidated business would be further clear when compared against the total income and net profit of EFSL, which on a consolidated level for the financial years ended 2015, 2016 and 2017, was, respectively, INR 38,938.06 crores, INR*

52,680.81 crores and INR 66,188.42 crores, and INR 3,287.1 crores, INR 4,143.83 crores and INR 6,093.06 crores.

vi. *It is further pertinent to note that the net loss of AIMIN for the financial years ended 2015 and 2016 were INR 11,17,346 and INR 28,38,844 respectively, which was de minimus compared to the consolidated net income of EFSL. Therefore, it is evident that the Proposed Transaction did not have any material impact on the revenue and profitability of the Edelweiss Group.*

x. *From the above, it is evident that the Proposed Acquisition cannot be deemed to be 'price sensitive' as it neither materially affects the prices of securities nor impacts the investment decision of a reasonable investor.*

y. *Further, at the time of announcement of the Proposed Acquisition on April 5, 2017, the price of scrip of EFSL was INR 168.25. After the announcement, the price of the scrip moved to INR 171.65, INR 181.4 and INR 178.85 on April 6, 2017, April 7, 2017 and April 10, 2017 respectively. Such movement cannot be deemed to be unusual or extraordinary, especially given various other factors that were in existence concomitantly, including: -*

   i. *The Insurance Regulatory & Development Authority of India ("IRDAI") had accepted the registration application form IRDA/R2 of Edelweiss General Insurance Company, a wholly owned subsidiary of EFSL, for carrying on business as a general insurance company in India ("IRDAI Approval").*

   ii. *During the period from January 25, 2017 till April 5, 2017, quarterly results of EFSL were also announced, along with declaration of interim dividend which may have resulted in upward movement of prices of the securities. A copy of the announcement made on February 9, 2017 disclosing unaudited financial results for the third quarter and nine months period ended December 31, 2016 and declaration of interim dividend of Re. 1/-, made to BSE is enclosed as Annexure 6.*

z. *Whilst the Notice itself does not make any observations or place any evidence for an impact on the price of the scrip, it is clear from the above that price movement, if any, during this time period can be attributed to a variety of factors which prevailed during this period and cannot be singularly attributed to the Proposed Acquisition.*

aa. *Therefore, it is submitted that, on the basis of aforementioned details, information in connection with the Proposed Acquisition would not have had a material impact of the share price of EFSL and this is borne out by the share price data as well.*

bb. *A view similar to the above has also been set out in the N. K. Sodhi Committee's Report ("Sodhi Committee Report"). In its report, the committee has indicated that the question whether any information is likely to materially affect the price of shares is a mixed question of law and fact and the report sets out illustrations of price sensitive information (such as mergers, de-mergers, acquisitions etc.). However, it clarifies that every piece of information falling in the category of illustrations need not necessarily be regarded as price sensitive information. The committee has observed that the illustrative examples (such as acquisitions) could be of non-material nature such as when a very large company makes an inconsequential acquisition of a tiny business.*

cc. *Therefore, it is important for SEBI to interpret the language of Regulation 2(1)(n)(iv), i.e., it shall "ordinarily" include "mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions'", in an ejusdem generis manner and construe this in terms of the substance of the underlying transactions and not the form alone. Where the substance of the transaction is akin to a process performance improvement, the mere fact that it has been executed as an "acquisition" cannot in itself render the transaction material or price sensitive. Any interpretation otherwise would result in a situation where groups which embody a culture of continuous upgradation and invest time and effort in*

augmenting customer experiences would be subject to constant window closures and exchange intimations. Such a practice would not only increase the compliance cost of entities but also dilute the significance of such actions. Investors would be unable to distil for commercially relevant information and the same may also result in the development of a practice where listed companies merely implement closures mechanically to avoid liability, instead of focusing on the underlying substance and significance of the developments, which is core philosophy of the PIT Regulations. This is also the reason why this definition is prefixed by the term "ordinarily", so as to allow parties to adduce factual evidence to disprove and rebut the price sensitivity of certain corporate actions.

Materiality under Regulation 30 of the Listing Regulations

dd. *Regulation 2(1)(n)(vi) of the PIT Regulations, prior to its omission by the Amendment, provided that any material events in accordance with the listing agreement shall be considered UPSI. Regulation 30(2) of the Listing Regulations provides that any event specified in Para A of the Part A of Schedule III of the Listing Regulations shall be disclosed without any application of guidelines of materiality. Specifically, a disclosure is required to be made despite the materiality of a transaction if a company, directly or indirectly, acquires or agrees to acquire more than 5% shares of another company.*

ee. *In the present case, instead of merely purchasing the software (which may not have required any disclosure under the Listing Regulations), Edelweiss Group decided to acquire AIMIN as it was considered to be in best interests of the Edelweiss Group. It is critical to note in this case that the parties reached a final consensus with respect to the Proposed Acquisition only at the time of signing the SPA. Pursuant to the same, the Noticee made a disclosure to the stock exchanges of the Proposed Acquisition on April 5, 2017.*

ff. *It is pertinent to note that the Committee on Fair Market Conduct under the chairmanship of Shri T.K. Viswanathan ("T.K. Viswanathan Committee"), in its report, observed that all material transactions which are required to be disclosed under the Listing Regulations may not necessarily be considered UPSI under PIT Regulations. Based on the recommendations of the T.K. Viswanathan Committee report, SEBI decided to delete Clause (vi) from definition of UPSI under Regulation 2(1)(n) of the PIT Regulations through the Amendment. Any information in relation to the illustrative list under Regulation 2(1)(n) will not become UPSI per se unless the same materially affects the price of securities of the listed company.*

gg. *As such, it is submitted that the observation in paragraph 4 of the Notice that information relating to the Proposed Acquisition was UPSI in terms of Regulations 2(1)(n)(iv) & 2(1)(n)(vi) of the PIT Regulations is misplaced and incorrect.*

hh. *Based on the above, it is submitted that the allegations made against the Noticee in the Notice are without any basis on fact or law and moreover, are not supported by any evidence. As stated above, the Proposed Acquisition was not likely to materially affect the price of securities of EFSL, as the information was not price sensitive and hence, there was no requirement to close the trading window. As such, we humbly submit that SEBI must evaluate the substance of the Proposed Acquisition and not go by its form alone and accordingly, set aside the allegations made against the Noticee.*

<u>Date of Alleged UPSI coming into existence</u>

ii. *In the alternative, and without prejudice to any of the submissions made in this reply, even assuming that the Proposed Acquisition was UPSI in terms of PIT Regulations, it is submitted that the UPSI Period as stated in paragraph 6 of the Notice, (i.e., from January 25, 2017 to April 5, 2017), is completely incorrect and fallacious.*

jj. As already mentioned above, the Term Sheet was executed to further discussion with AIMIN and finalise the terms and conditions with respect to the Proposed Acquisition. In view of the above, the statement in paragraph 6 of the Notice that the UPSI came into existence on January 25, 2017 and existed up until April 5, 2017 is entirely without basis.

kk. As one of India's pre-eminent financial institutions, Edelweiss Group is constantly exploring avenues for overall growth of the organization, achieving better operational efficiencies and economies of scale, in order to better serve its clients. These activities are in normal course and cannot be deemed to be price sensitive information per se as the same do not have any impact on an industry level. Every discussion relating to such strategic corporate acquisitions does not itself become price sensitive information during the initial stages of discussion until there exists a certain degree of finality attached to it.

ll. In the instant case, the discussions/negotiations pertaining to the Proposed Acquisition were spread out over a period of several months from September, 2016 to April 2017, during which period the representatives of Edelweiss Group and AIMIN discussed the commercial terms for closing the deal to reach a definitive consensus.

mm. Therefore, in the absence of any final decision being arrived in connection with the Proposed Acquisition, it is submitted that no UPSI could be said to have been in existence since January 25, 2017 itself and consequently, there did not exist any obligation on the Noticee to close the trading window from January 25, 2017.

nn. In this regard, reference may be made to order of the Hon'ble Whole Time Member of SEBI ("WTM"), in the matter of Paired Technologies Limited, where the main question of law was that whether signing of a Non-Disclosure Agreement ("NDA") amounted to creation of UPSI. The Hon'ble WTM observed that though NDAs are binding, they merely facilitate

negotiations and due diligence for the transactions, and do not amount to closing of the deal.

"17. Non-Disclosure Agreements are for facilitating and conducting 'Due Diligence ' exercise ...In order to keep a level playing field, it is absolutely necessary for the party conducting Due Diligence to keep the information so received confidential and not to trade in the scrip using the said information. However, the signing of the NDA does not signify that the deal is clinched. In fact, in the instant case since NDA signified only the commencement of due diligence process, there was every possibility of the deal being scrapped anytime during the due diligence process. Therefore, in my view the stance taken in the SCN that the PSI emanated on September 18, 2012 is not correct." (emphasis supplied)

oo. *From the above, it is clear that any information in relation to a transaction takes form of UPSI, only when intention of the parties to enter into an agreement becomes clear and concrete and reaches a certain degree of finalization.*

pp. *In fact, in the present case, the closure of the trading window by the Noticee prior to any commercial agreement being reached between Ecap and AIMIN would have been counter-productive and may have adversely affected the interests of the investors, leading to creation of a false market and causing unnecessary speculation in the market.*

qq. *Further, the Principles of Fair Disclosure for fair disclosure of UPSI as provided in Schedule A of the PIT Regulations envisages "prompt public disclosure of unpublished price sensitive information that would impact price discovery no sooner than credible and concrete information comes into being in order to make such information generally available."*

rr. *This is supported by the recommendations of the Sodhi Committee Report which are as follows:*

"85. The Committee believes that it is necessary to statutorily lay down the principles that every such code should conform to such as the need for prompt disclosure of material information that could impact price discovery no sooner than credible and concrete information comes into existence. Speculative disclosures or selective disclosures that could in fact have an adverse impact on the market and the price discovery process should be avoided". (emphasis supplied)

ss. *Without prejudice to the above, it is further respectfully submitted that all negotiations, discussions, etc. in connection with the Proposed Acquisition were carried out in strictest confidence. Except for certain specific individuals (who were identified as being privy to the Proposed Acquisition vide emails dated February 19, 2018 and September 18, 2019, from EFSL to SEBI), no one else was aware of the Proposed Acquisition, at any time, prior to the execution of SPA and until public announcement on April 5, 2017.*

tt. *Therefore, given that information pertaining to the Proposed Acquisition was restricted to a very limited number of people, any pre-emptive and pre-mature closure of the trading window of EFSL prior to any agreement between Ecap and AIMIN may have also resulted in compromising the strictest standard of confidentiality which were maintained in connection with the Proposed Acquisition.*

uu. *Based on the above, it is humbly submitted that assuming, without admitting, that information in relation to Proposed Acquisition can be considered to be price sensitive, the same could not have come into existence at the signing of the Term Sheet on January 25, 2017. Therefore, there has been no violation of Regulation 9 (1) and Clause 4 of Model Code of the PIT Regulations, and notice should be set aside in entirety.*

<u>No Other Alleged Contraventions</u>

vv. *Notwithstanding any of the submissions made above, it is pertinent to note that it is not the SEBI's case that any trades took place during this period.*

The NSE Investigation Report (at paragraph II(c) of page 1 and paragraph 19(c) of page 34) also concludes that there were no adverse findings against any person privy to the Alleged UPSI or their immediate relatives.

ww. Furthermore, during the period January 25, 2017 to April 5, 2017, no pre-clearance requests were sought for or sanctioned, as per the existing Code of Conduct of EFSL at such time ("Code of Edelweiss"), for individuals who were identified as being privy to the Proposed Acquisition to trade in the scrip of EFSL.

xx. It is abundantly clear from the data above that strict confidentiality was accorded to the Proposed Transaction, by both EFSL and the Noticee. Therefore, Noticee has ensured compliance with the spirit and substance of the Code of Edelweiss and the PIT Regulations (including the Model Code) and ensured at all times that UPSI was preserved appropriately and there was no misuse of UPSI or any confidential information.

yy. In the instant case as well, there was no misuse of the Alleged UPSI by any of the relevant persons and the pith and substance of the law has been complied with.

<u>The facts of the case do not merit imposition of penalty</u>

zz. At the outset, since no contravention has been made out, there cannot be imposition of any penalty on the Noticee.

aaa. However, in the alternative and without conceding the Noticee's primary position as set out above, it is submitted that the allegation is only of a technical nature.

bbb. Based on the submissions set out above, it is our respectful submission that the allegation made against the Noticee does not warrant imposition of any penalty under Section 15HB of the SEBI Act read with Rule 5 of the Adjudication Rules.

<u>CONCLUSION</u>

ccc. In light of the submissions made above, it is manifestly evident that the Notice and the allegations made out therein are entirely without factual and legal basis or emanating from any underlying evidence.

ddd. To summarize:

i. The Notice primarily relies on the Article which forms the basis of when Alleged UPSI came into existence. The same cannot be treated to have any evidentiary value in the present proceedings. As the findings from the Article strike at the root this matter, the Notice should be set aside in entirety solely on this ground.

ii. Edelweiss Group was exploring various options to upgrade its technology and identified AIMIN, a small fintech company, in order to serve its customers better. Instead of just acquiring the AIMIN's software (which would not have resulted in disclosure in terms of the Listing Regulations), Ecap decided to acquire AIMIN, which was considered to be in the best interests of the Edelweiss Group from a commercial perspective. This was a business as usual endeavor, as an effort to upgrade quality of operations and service and was not intended to operate as a material change, alteration or growth of existing business lines or introduction of a new business vertical within the Edelweiss group.

iii. While this may have been a share purchase in form, the substance of the transaction was to introduce a captive service provider within the group only and not expansion of existing businesses. Therefore, the language in Regulation 2(1)(n) of the PIT Regulations has to be interpreted purposively and in line with ejusdem generis principles of statutory construction, so as to impute price sensitivity to the nature, purpose and potential impact of the transaction and not in a generic manner.

iv. *The consideration for acquisition of AIMIN was merely INR 4 crores, which was not a material transaction and de minimis when compared to total income and profits of EFSL. Hence, the Proposed Acquisition could not have materially affected price of securities of EFSL. Further, the same could not have impacted a reasonable investor's decision to invest in the securities of EFSL. Therefore, information in relation to the Proposed Acquisition could not be considered as price sensitive information.*

v. *SEBI's assertion in paragraph 4 of the Notice that the UPSI Period extended from January 25, 2017 to April 5, 2017, is without any basis on fact or law. At the time of signing of the Term Sheet, there was no finality in respect of the Proposed Acquisition as the representatives of Ecap and AIMIN were in the midst of negotiating the final commercial terms of the Proposed Acquisition.*

vi. *In the absence of any specific decision being arrived at in connection with the Proposed Acquisition, it is submitted that no UPSI could be said to have been in existence since January 25, 2017 itself.*

vii. *In any event, notwithstanding the fact that no announcement had been made of the closure of the trading window on account of the Proposed Acquisition, even as a practical matter, the persons who were privy to the Proposed Acquisition had not sought any pre-clearance for trading nor were any trades executed in the scrip of EFSL from January 25, 2017 to April 5, 2017.*

viii. *Without prejudice to all the submissions on behalf of the Noticee, it is respectfully submitted that the Noticee or any designated persons as per the Code of Edelweiss did not gain any unfair advantage or make any profit due to the alleged violations in the Notice.*

ix. Further, the investors/ shareholders of EFSL made no losses due to the alleged violation in the Notice and no complaint has been received from the investors in this regard till date.

x. The Noticee has complied with all SEBI laws at all times, including, in connection with the Proposed Acquisition.

eee. In light of the submissions contained herein, we urge the Hon'ble Adjudicating Officer to discharge the Notice in its entirety.

8. Thereafter, vide Email dated July 02, 2020, the Noticee was advised to submit a copy each of Term Sheet dated January 25, 2017 and Share Purchase Agreement (SPA) dated April 05, 2017 signed between AIMIN and Ecap. The Noticee, vide his Email dated July 07, 2020 submitted copies of both the documents.

9. Further, in the interest of natural justice, an opportunity of hearing was provided to the Noticee on July 01, 2020 vide letter dated June 22, 2020 which was postponed to July 09, 2020 upon request of the Noticee. It is observed that Mr. Sachin Khandelwal, Mr. Ganesh Umashankar, Ms. Shruti Rajan, Advocate, Mr. Rohan Banerjee, Advocate and Mr. Anurag Gupta, Advocate (hereinafter referred to as '**ARs**') appeared for the personal hearing along with the Noticee in person. The ARs reiterated the submissions made by the Noticee in his reply dated May 08, 2020. Further, certain queries were raised during the course of personal hearing and the Noticee was advised to reply to the said queries and to make additional submissions on or before July 13, 2020. The Noticee, vide Email dated July 13, 2020 submitted a detailed list of instances wherein he had closed the trading window. Subsequently, vide Email dated July 15, 2020, the

Noticee was advised to reply to certain additional queries. Accordingly, the Noticee, vide Email dated July 15, 2020 submitted his reply to the said queries.

CONSIDERATION OF ISSUES AND FINDINGS:

10. I have taken into consideration the facts and circumstances of the case, the material available on record and the submissions of the Noticee. I note that the allegation levelled against the Noticee is that, during the investigation period, he had failed to close the trading window during the existence of Unpublished Price Sensitive Information (**UPSI**), thus, violating Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B read with Regulation 9(1) of PIT Regulations, 2015. In view of the above, the issues for consideration before me are:-
    a. Whether the Noticee has violated the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B read with Regulation 9(1) of PIT Regulations, 2015?
    b. If yes, whether the Noticee is liable for penalty and what should be the quantum of penalty?
11. Before moving forward, the relevant extracts of the provision of the PIT Regulations, 2015, allegedly violated by the Noticee, are reproduced hereunder.

PIT Regulations, 2015

Code of Conduct.

9. (1) *The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving*

compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

SCHEDULE B

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

4. *Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.*

12. On a preliminary note, I find that the Noticee has contended that he was not provided with the complete investigation report. I note from records that the Noticee was supplied with the relevant portion of the investigation report along with the SCN. Thus, I find the argument of the Noticee to be factually incorrect. In this regard, I note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had made the following observations:

"*A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a*

reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.

An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied."

Thus, I note that all the documents, relied upon by me in the present matter have already been provided to the Noticee along with the SCN. Further, the examination report of NSE has not been relied upon while preparing the SCN or for the purpose of the present adjudication order.

a. Whether the Noticee has violated the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders mentioned in Schedule B read with Regulation 9(1) of PIT Regulations, 2015?

13. Now I proceed to deal with the first question stated as above. I note that in terms of the provisions of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B to PIT Regulations, 2015, the trading window is required to be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates.

Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

14. I note that the Noticee was the Company Secretary and Compliance Officer of EFSL during the investigation period. Therefore, in terms of Regulation 9(3) of PIT Regulations, 2015, it was the duty of the Noticee to administer the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders and other requirements under PIT Regulations, 2015. I find no dispute with respect to this factum.

15. Now I proceed to examine the allegations in light of the facts of the matter. I note that EFSL had made an announcement to BSE and NSE on April 05, 2017 regarding acquisition of AIMIN by its subsidiary in the following terms:

"*In accordance with Regulation 30 of the SEBI (Listing Obligations & Disclosure Requirements) Regulations 2015, this is to inform you that Ecap Equities Limited (ECap), a wholly owned subsidiary of the Company, has today entered into a Share Purchase Agreement ('Agreement') for purchase of 100% stake in Alternative Investment Market Advisors Private Limited (AIMIN) from its existing shareholders, subject to the terms of the Agreement AIMIN will become a wholly owned subsidiary of Ecap and in turn of the Company.*

AIMIN is a fintech company for fixed income analytics with innovative trade protocols that aids bond markets with efficient price discovery. FinTech is playing a vital role in transforming the financial industry worldwide as well as in India. Edelweiss is actively looking to adopt innovative FinTech solutions to aid in matters related to illiquidity, accessibility and seek to improve our offering to our customers. <u>This acquisition will help grow Edelweiss's Fixed income advisory business.</u> (emphasis supplied)

The proposed acquisition is not with the Promoter / Promoter Group and also does not fall under the related party transactions."

16. It is further alleged that there was no announcement of closure of trading window as available on the websites of NSE and BSE.

17. I find that the Noticee, in his reply dated May 08, 2020, while admitting that the trading window was not closed for the abovementioned transaction has contended that the said information was not a 'price sensitive' information and has further advanced the following arguments in favour of his contention(s):

    a) The gross income and net worth of EFSL, on a consolidated level for the financial years ended 2015, 2016 and 2017, was, respectively, Rs. 38,938.06 crores, Rs. 52,680.81 crores and Rs. 66,188.42 crores, and Rs. 3,287.1 crores, Rs. 4,143.83 crores and Rs. 6,093.06 crores. On the other hand, AIMIN was purchased by Ecap for a consideration of Rs. 4,00,00,000 (Rs. Four Crores only).

    b) SEBI has relied upon the definition given in a newspaper article. In a quasi-judicial proceeding of this nature, a definition set out in a media report cannot hold any evidentiary value.

    c) Ecap was a wholly owned non-material subsidiary of EFSL at the time of transaction. For the financial year ended 2017, total income and net profits of EFSL and Ecap were respectively, INR 66,188.42 crores and INR 6,093.06 crores, and INR 2,155.52 crores and INR 18.49 crores. For the financial year ended 2016, total income and net profits of EFSL and Ecap were respectively, INR 52,680.81 crores and INR 4,143.83 crores, and INR 6,251.24 crores and INR 498. 99 crores. From a bare perusal of this

information, it is clear that for neither of the financial years, did the total income or the net profits of Ecap exceed 20% of the consolidated total income or net profits of EFSL.

d) It is critical to note that AIMIN was not being acquired to foray into a new business line or materially alter/expand existing businesses of the Edelweiss Group. It was merely being brought within the fold as a captive service provider to improve operations of the Edelweiss Group itself.

e) The net loss of AIMIN for the financial years ended 2015 and 2016 were Rs. 11,17,346 and Rs. 28,38,844 respectively, which was *de minimus* compared to the consolidated net income of EFSL. Therefore, it is evident that the Proposed Transaction did not have any material impact on the revenue and profitability of the Edelweiss Group.

18. In light of the contention of the Noticee that the announcement in question is not UPSI, it becomes imperative on me to note the definition of UPSI, as prescribed in Regulation 2(1)(n) of PIT Regulations, 2015 which reads as below:

(n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel

(vi) material events in accordance with the listing agreement

***NOTE**: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

19. I note that the definition of 'unpublished price sensitive information' is broad enough to cover within its ambit any information which if published is likely to materially affect the price of securities of a company. In this regard, what is relevant to be seen is that:-

(i) whether the information directly or indirectly related to the company? and

(ii) whether the information, if published, is likely to materially affect the price of securities of a company?

If the answers to these two questions are in the affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of the information.

20. The Noticee has argued that the announcement was not UPSI citing factors such as gross income, net profit etc. of EFSL and Ecap. In this regard, I note from the disclosure under consideration dated April 05, 2017, as available on the website of BSE, that no disclosure has been made on parameters such as gross income, net profit etc. of either EFSL or of Ecap as has been argued in

the reply to the SCN, enabling investors to understand the announcement the way the Noticee has presently been arguing before me. Also, I note that the said announcement nowhere mentions anything regarding consideration paid for the said acquisition. Therefore, the aforesaid parameters were not forming part of the announcement made by EFSL. In light of the above, it cannot be reasonably expected that the market would have weighed the subject acquisition keeping the above parameters in mind. Therefore, the Noticee, now handling the allegation by using the said undisclosed parameters as a tool in his hands and arguing for the first time during the present proceedings is not correct.

21. The Noticee has further submitted that EFSL had started discussion with AIMIN for use of its electronic platform (software) to help its customers (bond investors) find liquidity in scrips that are traditionally inactive. Therefore, the reason behind acquisition of AIMIN over taking license of software was commercial viability of acquisition over licensing and not to enter into a new business line or to materially alter/expand existing business of the company. However, on the contrary, I note from the disclosure that EFSL had mentioned that '*This acquisition will help grow Edelweiss's Fixed income advisory business.*' (Emphasis supplied). This clearly suggests that the said acquisition would help Edelweiss to grow its fixed income advisory business; thus having direct impact on the revenue and profit of EFSL. Also, the corporate announcement nowhere indicates the quantum of addition to its revenue owing to the above acquisition; thus not leaving any scope for the market to even gauge the same or to ignore the announcement considering it to be a trivial business acquisition as has been

contended by the Noticee. Therefore, I am of the view that the corporate announcement in question, disseminated through the stock exchanges, in the view of any prudent investor, would stand out to be a 'price sensitive information'.

22. I also note from clause (vi) of Regulation 2(1)(n) of PIT Regulations, 2015, defining the term UPSI *(reproduced supra)* and as was applicable at the time of commission of the alleged violation(s), that any "*material events in accordance with the listing agreement*" was considered as UPSI. The said listing agreement was supplanted by SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR Regulations**') which was notified on September 02, 2015 and to be effective on the ninetieth day from the date of publication in the official gazette. In this regard, I note that the Noticee had announced to the stock exchanges the acquisition of AIMIN by Ecap on April 05, 2017. I note that the Noticee has admittedly replied stating that the above disclosure was made in pursuance to Regulation 30(2) read with Para A of Part A of Schedule III to the LODR Regulations. As a consequence of the said disclosure read with the Regulation 2(1)(n)(vi) referred above, the announcement is material and squarely fits in the definition of UPSI as per PIT Regulations, 2015. I further note that the Noticee has submitted that the said disclosure was made to stock exchanges in pursuance to the LODR Regulations irrespective of "materiality".

I note that in terms of Regulation 30(2) read with Explanation (ii)(a) of Clause 1 of para A of Part A of LODR Regulations, any event regarding a listed company

acquiring or agreeing to acquire shares or voting rights in, a company, whether directly or indirectly, such that the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company is deemed to be material events. In the present matter, I note that Ecap has acquired the entire shareholding in AIMIN, thus fulfilling the criteria of material event. Also, the announcement carries the information to the investors that the acquisition would help grown Edelweiss's Fixed Income advisory business. Therefore, the argument of the Noticee to the effect that it was a mandatory disclosure without testing for materiality is misconceived and therefore has no appreciable merits.

23. I also that the Noticee has argued that clause (vi) of Regulation 2(1)(n) of PIT Regulations, 2015 has been subsequently deleted. In this regard I note that the clauses (i) to (vi) as mentioned in 2(1)(n) are not exhaustive in nature. In view of the same it becomes necessary to depend upon the "Note" to the said provision which enshrines the principle(s) to be followed while determining UPSI. From the Note to the provision I note that the guiding principle while determining UPSI is *"if it is likely to materially affect the price upon coming into the public domain."* In this regard I note from the reply of the Noticee that EFSL had initially planned to acquire certain software but had altered its plans paving way for acquisition of shares of AIMIN itself. I also that the Noticee has argued that the acquisition was an effort to upgrade quality of operations / service. In this regard I note that the Noticee, for certain commercial reasons, had redesigned its plans to the extent of acquiring another business from a simple

plan of acquiring a software. Thus, I note that the announcement relates to a transaction of a greater magnitude surpassing the claim as a mere purchase of software. Therefore, I find no merit in the argument of the Noticee in oversimplifying and downplaying a “corporate acquisition”.

24. Further, I also take note of the price movement of the scrip of EFSL at the relevant point of time. I note that the corporate announcement was made on the platform of BSE at 18:56:48 hours on April 05, 2017 i.e. after the market had closed on the said day. The scrip of EFSL had closed at Rs. 167.90 on the said day. However, I note that the scrip had opened at Rs. 175.95 the next day. This shows that the price of the scrip of EFSL had registered a spike of 4.79% on April 06, 2017. I also note that EFSL had made another announcement on April 06, 2017 wherein it had informed BSE and NSE that the Insurance Regulatory & Development Authority of India (“**IRDAI**”) had accepted the registration application form IRDA/R2 of Edelweiss General Insurance Company, a wholly owned subsidiary of EFSL, for carrying on business as a general insurance company in India (“IRDAI Approval”). However, the said information was disseminated on BSE at 13:40:34 on April 06, 2017. Therefore, the said information cannot be said to have had a role in price spike observed at the time the market opened. In light of this, I am of the view that the acquisition of AIMIN by Ecap was not only a price sensitive information but also was effective in pulling up the price of the scrip of EFSL. From this angle also, I note that the announcement considered to be not UPSI is grossly misconceived.

25. Thus, I am of the view that both the questions mentioned in Para 19 of this Order are answered in the affirmative in the present matter. I also note that the said questions were raised in another adjudication order dated March 28, 2014 in the matter of Man Industries (India) Ltd. The said ratio was upheld by the Hon'ble SAT vide its order dated July 26, 2016.

26. I also note that the Noticee has argued to the effect that the acquisition was in the ordinary course of business thus not warranting any classification as UPSI as it had no impact at the industry level. In this regard, the Notice has argued that the acquisition did not have any impact at the "industry level". It does not stand to reason as to why an announcement, *per se,* has to be viewed from the industry point of view. The object is to see whether the announcement will have any impact on the security to which it relates to. The announcement may or may not have any impact at an industry level. Thus, the argument of the Noticee is not appreciable. Again, in the present matter, I note that acquisition of a company cannot be said to be an ordinary course of business.

27. In view of the above discussions it stands to reason that the announcement in question was material, both in law and in spirit, at the relevant point of time.

28. Apart from the above, the Noticee has also contended that the UPSI had not come into existence on January 25, 2017, being the date of singing of Term Sheet. In this regard, I note that the Term Sheet in respect of acquisition of AIMIN by Ecap was signed on January 25, 2017. I have perused the contents of the said Term Sheet which was supplied by the Noticee during the course of the present proceedings. From a perusal of the said Term Sheet, I note that the

major terms and conditions including consideration of the transactions were already given in the said Term Sheet. Further, the SPA refers to the escrow agreement dated March 02, 2017 also. While there is some change in the consideration, it has not undergone any major change. Further, the method, time and conditions of payment of consideration had also not undergone any major change. Also, I note from the email of the Noticee dated February 19, 2018, that EFSL had already commenced its due diligence (transaction) during the period from September 2016 to October 2016. I also note from Clause 11 of the term-sheet that it is binding in nature and cannot be terminated by parties in any manner whatsoever. This clearly shows that the intent and plans of acquisition by Ecap had concretised at the time of signing of Term Sheet itself. In view of the above I find the general argument that the Term Sheet, *prima facie,* is non-binding and revocable in nature factually incorrect and not acceptable.

29. In this regard I would like to rely on the observation of the Hon'ble SAT in the matter of Jubiliant Stock Holding Pvt Ltd Vs SEBI (dated: November 07, 2019) as follows:-

30. Upon hearing both sides, in our view, though the MOU when executed cannot be termed as a price sensitive information, the deeper scrutiny of the clauses of the MOU would show that it had become as price sensitive information definitely some time before February 28, 2014 when 1.25 lacs shares for Rs. 1.55 crores were purchased by appellant Jubilant Stock Holding of the appellant Jubilant Life Sciences. It is to be noted that the MOU was binding on the subsidiary of appellant Jubilant Life Sciences. As regards the ceiling on the price, there was a binding offer to that extent. The ultimate

agreement to transfer the hospital was to take effect after due diligence is carried by NGHP. When actual transfer was effected on March 2, 2014, it can easily be concluded that the due diligence was carried out some time before it and the decision regarding the transfer was taken between the parties…"

30. In view of the ratio as pronounced in the Hon'ble SAT order referred *supra,* I find that the term sheet has fructified and transformed into a final transaction by way of an SPA. Therefore, I hold it not incorrect to take the view that the UPSI had come into existence on the day of signing of Term Sheet itself. In spite of the above, I note that the allegation in the present matter is non–closure of trading window which admittedly had not been closed, therefore, it seldom matters when the UPSI had actually begun.

31. In light of the above discussions and based on the materials made available to me, I am of the view that there was certainly a duty cast upon the Noticee to close the trading window in view of the existence of UPSI which the Noticee had admittedly failed to comply with. Therefore, I hold that the Noticee has violated the provision of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders under Schedule B read with Regulation 9(1) of PIT Regulations, 2015.

b. Whether the Noticee is liable for penalty?

32. As established in the pre-paragraphs, the Noticee has violated the provision of Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders under Schedule B read with Regulation 9(1) of PIT Regulations, 2015.Therefore, the Noticee is liable for a penalty under Section

15HB of SEBI Act. The text of the said provision of law is being reproduced below:

SEBI Act

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

33. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

34. With regard to the above factors, it may be noted that the investigation report has not quantified the profit made or loss caused to general investors on account of the violation committed by the Noticee. It is further noted from the IR that no designated person had traded during the time the UPSI was in existence. I also note the submission of the Noticee that no pre-clearance was sought by any designated person.

35. I further note that repetition of violation is one of the mitigating factors that shall be considered by the adjudicating officer before deciding on the penalty. In this regard I note that the Noticee has argued the allegation to be a “technical violation” requesting non-imposition of any penalty, by citing the order of the

Hon'ble SAT dated May 15, 2019 in the matter of Piramal Enterprises Ltd. (hereinafter referred to as "**Piramal matter**"). In order only to assess gravity of the above arguments, the Noticee was advised to furnish certain details which were replied vide emails dated July 13 and 15, 2020.

36. In regard to the argument citing Piramal matter, I am of the view that the said order doesn't apply in the facts of the present matter for two different reasons. Firstly, the above said order of Hon'ble SAT was in respect of SEBI (Prohibition of Insider Trading) Regulations, 1992 wherein the responsibility of closing of trading window was on the company. On the other hand, under PIT Regulations, 2015, the said responsibility has been vested on the compliance officer of a listed company. Also, in Piramal matter Hon'ble SAT has noted that the proceedings against the compliance officer was settled through settlement mechanism. However, I find that is not the position in the present matter. Also, I find the present matter to be different in terms of the repetition of violation which is discussed in the ensuing paragraphs.

37. I note that the Noticee has relied upon the decision of the Hon'ble Supreme Court of India in the matter of Siddharth Chaturvedi vs SEBI in support of its contentions. The Noticee has relied upon the ratio of the Hon'ble Supreme Court as reproduced below:-

"*In fact, the facts of the present case would go to show that where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied by the appellants, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss has been*

caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed…"

In view of the contentions of the Noticee regarding "technical violation" and mitigating factors as prescribed in Section 15J of the SEBI Act, 1992, it became necessary to understand the repetition, if any, of the violation committed by the Noticee. To ascertain the same, the Noticee was advised to furnish information on past closure of trading window since the commencement of PIT Regulations, 2015 when the onus of compliance shifted to the Compliance Officer.

38. In reply to the above, the Noticee, vide email dated July 13, 2020, submitted his reply furnishing the details of closure of trading window as mentioned in the table below: -

Table

Sr No	Year	Event	Window closure date
1	**FY 2015-16**	Annual Financial Results & Dividend	01-May-15
2		Q1 Financial Results	01-Jul-15
3		Q2 Financial Results	01-Oct-15
4		Q3 Financial Results & Interim Dividend	01-Jan-16
5		Interim Dividend	04-Mar-16
1	**FY 2016-17**	Annual Financial Results	01-May-16
2		Q1 Financial Results	01-Aug-16
3		Q2 Financial Results	26-Oct-16
4		Q3 Financial Results & Interim Dividend	12-Dec-16
1	**FY 2017-18**	Annual Financial Results & Dividend	04-May-17
2		Q1 Financial Results	18-Jul-17
3		Issue of securities	21-Sep-17
4		Q2 Financial Results	17-Oct-17

5		Q3 Financial Results & Interim Dividend	08-Jan-18
1	**FY 2018-19**	Annual Financial Results & Dividend	18-Apr-18
2		Q1 Financial Results	12-Jul-18
3		Q2 Financial Results	11-Oct-18
4		Q3 Financial Results & Interim Dividend	09-Jan-19
1	**FY 2019-20**	Annual Financial Results & Dividend	15-Apr-19
2		Q1 Financial Results	01-Jul-19
3		Q2 Financial Results	01-Oct-19
4		Q3 Financial Results	01-Jan-20
1	**FY 2020-21**	Annual Financial Results	01-Apr-20

39. From the above I observe that the Noticee closes trading window only on occasions of declaration of financial results barring one instance for issuance of securities in September 2017 during the six financial years. However, on perusal of the corporate announcements made by EFSL to the Stock Exchange(s) and disseminated on the websites thereof which information / data is publicly available, I note that there were, apparently, many corporate announcements made by EFSL. The corporate announcements pertain to EFSL itself, or to its subsidiaries or Edelweiss Group. I find such disclosures are warranted in terms of Regulation 30 of LODR Regulations. Further upon perusal of the Code for Prohibition of Insider Trading of EFSL I note that the powers have been vested on the Compliance Officer to decide on the closure of trading window. Since the Noticee has confirmed closure of trading window only for occasions relating to declaration of financial results excluding other types of announcements, it became necessary to understand the practice followed by

the Noticee. Thus, in order to further obtain clarity on the practices followed by the Noticee on the charge of trading window closure, the Noticee was again advised to confirm whether trading window was closed for other announcements.

40. I note from the email reply dated July 15, 2020, that in cases of any event based/specific transactions only the relevant employees have been made cognizant of their responsibilities under the PIT Regulations and the EFSL Code of Conduct, including the requirement to maintain confidentiality of information and refrain from trading in securities.

41. Thus, I note from the written submissions of the Noticee that the Noticee, as a practice (emphasis supplied), closes trading window only on select occasions in exclusion of other price sensitive corporate announcements. In this regard I note that as per the then existing provisions of law every “material information” as per the LODR Regulations was a “price sensitive information” as per the PIT Regulations, 2015 also, consequently warranting a closure of trading window. The practice of merely making the relevant employees cognizant of their responsibilities does not tantamount to closure of trading window as has been expected in the law. If mere intimation of the people privy to the information is what is expected then the law would have been designed in such a fashion. Any short cut in the practices to a clearly laid down law is not acceptable. However, I find the law casts a responsibility on the compliance officer to take a call on “Closure of trading window” and to disseminate the same to the stock

exchanges. I incidentally note that the Noticee has admittedly begun intimating stock exchanges on trading window closure only from January 2019.

42. Thus, from the replies of the Noticee, I find non-compliance on the part of the Noticee by failing to close trading windows when necessary as per law. Therefore, there were repeated instances wherein the Noticee had failed to close the trading window. In view of the above the argument of the Noticee that there was no repetition of violation is not acceptable. I am of the considered view that a repetitive violation, in disregard to the applicable provisions of law, cannot be construed to be a technical violation.

43. I note that the compliance officers are expected to discharge a responsible role in the corporate functioning. The standards of good compliance aid and build up good corporate governance to add value and confidence to the market and its investors.

44. At this juncture, it is noteworthy to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shriram Mutual Fund [2006] 68 SCL 216(SC) that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant....*".

ORDER

45. After taking into consideration the facts and circumstances of the case, material/facts on record, the reply submitted by the Noticee and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred

upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

46. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Mr. B Renganathan and also to the Securities and Exchange Board of India.

Place: Mumbai **K SARAVANAN**

Date: July 16, 2020 **CHIEF GENERAL MANAGER &**

ADJUDICATING OFFICER