BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AS/AK/2023-24/ 28013)

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
Fidelity Management & Research Company LLC
(FII No. INUSFA019994)

In the matter of Fidelity Investments Money Management Inc

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) received a letter/email dated August 09, 2021 from the Designated Depository Participant (hereinafter referred to as **'DDP'**) wherein it informed SEBI about delay in intimation of change in material information (i.e., Merger) of Fidelity Investments Money Management Inc. (hereinafter referred to as **'FIMM'**), which was registered as FPI, with its affiliate Fidelity Management & Research Company LLC (hereinafter referred to as **'FMRC'/Noticee**). Pursuant to receipt of the communication, SEBI conducted an examination regarding the delay in intimation of change in material information.

2. Based on the examination, it was observed that the merger of FIMM with FMRC resulted in cessation of FIMM, the entity which was registered as FPI. However, after merger, the surviving entity i.e., FMRC, which had not obtained FPI registration, operated in the Indian securities market under the name, accounts and FPI registration of FIMM. It was further observed that the FMRC continued

trading in securities market despite FIMM being merged into FMRC and being aware that FMRC did not had a valid FPI registration. In view of the same, SEBI initiated adjudication proceedings against the Noticee for violating the provisions of the following Regulations:

Noticee	Alleged violation	Adjudication under provisions
1. Fidelity Management & Research Company LLC	Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019	Section 15A of SEBI Act, 1992
	Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019	Section 15HB of the SEBI Act, 1992

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed the undersigned as the Adjudicating Officer, vide communiqué dated August 23, 2022, under Section 15-I (1) of the SEBI Act read with Rule 3 of **Adjudication Rules** to inquire into and adjudge under the provisions of Section 15A and 15HB of the SEBI Act, for the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing ref. no. SCN/SEBI/EAD8/AS/AK/49750/1/2022 dated September 23, 2022 (hereinafter referred to as '**SCN'**), was issued and served upon the Noticee, in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules 1995 read with section 15-I of SEBI Act requiring the Noticee to show cause as to why an inquiry should not be held against the

Noticee and why penalty, if any, should not be imposed upon it under section 15A and 15HB of the SEBI Act as for the following alleged violations:

Noticee	**Alleged violation**	**Adjudication under provisions**
1. Fidelity Management & Research Company	Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019	Section 15A of SEBI Act, 1992
	Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019	Section 15HB of the SEBI Act, 1992

5. The SCN issued to the Noticee inter alia mentioned/alleged the following:
   i. *During the FII regime, FIMM was registered with SEBI as a sub-account (SA Code 2004594) in 2004 under the erstwhile FII - FMRC with FII No. INUSFA019994. Pursuant to commencement of the FPI regime, FIMM transitioned as a deemed FPI and was converted to FPI on December 15, 2016. The registration was renewed for 3 years in December 2019 i.e. till December 22, 2022.*

   ii. *FMRC which is an affiliate of FIMM, transitioned as a deemed FPI in the FPI regime. However, its registration expired on December 22, 2016, which was not renewed. With effect from January 1, 2020, FMRC converted from a corporation to a limited liability company (LLC) and was renamed as FMRC LLC.*

   iii. *It was observed that, vide email dated October 15, 2019, FIMM, through its Global Custodian ('GC'), had informed the DDP (the Applicant) that FIMM, along with 3 other entities, were expected to be merged with FMRC* *on or about January 1, 2020. With the mergers not expected to result in any changes to the day-to-day management of the funds or their investment policies, the GC stated that it anticipated that it will need to process name change for FIMM once the merger is effective and had asked DDP to confirm if this was a notifiable event and if so, provide full details of the process.*

iv. *Thereafter, DDP vide email dated October 15, 2019, inter alia, asked the GC to confirm their understanding that FIMM will cease to exist as a legal entity in its individual capacity and therefore should surrender its FPI license after clearing all its cash/ security balances in India. DDP also stated that they were not clear how this event could be accepted as a case of name change if the entity does not exist as an independent entity.*

v. *Pursuant to DDP being informed by Citibank (that was processing change of DDP/ Custodian request from FIMM). DDP did independent verification on US SEC website in July 2021 and found that FIMM's registration status with SEC was terminated. Consequently, DDP vide letter dated July 19, 2021 blocked FIMM's account for fresh purchases with effect from July 20, 2021 and asked FIMM to submit details notifying the change in status along with complete supporting documents.*

vi. *FMRC vide letter dated July 28, 2021 sent to DDP has interalia submitted the following:*

a. *FIMM bearing SEBI registration Number INUSFP325416 registered as a category I FPI ("FPI Entity") has undergone a material change.*
b. *Effective January 2020, the FIMM merged into FMRC resulting into FPI Entity ceasing to exist. However, the merged entity assumed all the FPI Entity's rights and obligations pursuant to the merger.*
c. *FMRC initially believed that this internal restructuring would not be regarded as material information as all legal rights and obligations of the*

FPI entity continued to survive in the resulting Merged Entity and hence, such change was inadvertently not formally reported with the DDP and SEBI.

d. *However, upon discussion with DDP regarding this internal restructuring, FMRC was informed of the relevant provisions of the FPI regulations and Operational Guidelines for Foreign portfolio investors, designated Depository participants and Eligible Foreign investors, that require material changes to be formally notified to the DDP as well as SEBI within 6 months of occurrence of such material changes, failing which FMRC would have to surrender its registration and transfer its securities.*

vii. *In light of the above, FMRC requested the following:*

a. *Please take on record the change in material information in relation and pursuant to the merger and make appropriate reporting to SEBI as required under FPI Regulations read with operating guidelines.*

b. *Allow the merged entity to complete the process for obtaining registration as Category I FPI. Upon receipt of the registration in the name of Merged entity, FMRC undertakes to transfer all securities held in the name of the FPI Entity to the name of merged Entity and surrender the FPI license held by the FPI Entity.*

viii. *The documents provided earlier to DDP, were also enclosed along with an additional document i.e., Agreement and plan of merger dated January 1, 2020.*

ix. *The DDP vide letter dated August 06, 2021, interalia concluded that the surviving entity FMRC, is a separate legal entity registered with the US SEC and the current FPI license was granted to FIMM which has ceased to exist. Accordingly, the DDP, advised the FPI to liquidate its existing positions and surrender the license at the earliest. Further, as the* *information regarding merger was submitted after a delay of more than 6 months, the case was referred to SEBI by the DDP.*

x. *It is observed that, although FMRC has claimed that it has assumed all of the FPI's rights and obligations pursuant to the merger, the merger effectively resulted in cessation of existence of FIMM. However, FMRC continued to deal in the Indian securities market post the merger in the name of FIMM.*

xi. *The AUC of the demat account in the name of FIMM was 14.53 crores as on December 31, 2019 and 23.32 crores as on July 31, 2021. Pursuant to the advice by the DDP, all holdings in the account were liquidated by November 11, 2021.*

Observations with regard to Noticee

xii. *The formal reporting of the merger was reported to the DDP in July 2021, with a delay of more than 6 months. Since FIMM has merged with FMRC, the obligation to inform the DDP was with FMRC.*

xiii. *It was alleged that, FMRC has violated Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 ('the FPI Regulations') and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019.*

xiv. *FPI registration was granted to FIMM and since FIMM ceased to exist and FMRC LLC is a separate legal entity not currently registered as FPI and hence its compliance with the eligibility and other requirements are unchecked. Further, no such provision allows for transfer of FPI certificate/ registration from one entity to another.*

xv. *Further, the registration of the FPI granted to FIMM became invalid as a result of the merger, rendering FIMM ineligible to continue its registration as an FPI. However, FMRC, the surviving entity, operated in the Indian securities market from January 01, 2020 – November 11, 2021 despite not having obtained registration as FPI from any DDP. Using the name,* *accounts and FPI registration, of FIMM, FMRC purchased securities till July 20, 2021 (when the account was blocked for further purchase by its DDP), and sold securities till November 11, 2021 (when all holdings held in the name of FIMM were liquidated).*

xvi. *Section 12(1) of the SEBI Act, 1992 read with regulation 3 of the FPI Regulations, indicates that a person cannot deal in securities as a FPI unless a certificate of registration has been obtained by the said person in this regard, and further, any activity undertaken by FMRC, as FPI, without holding a certificate of registration may not be said to be in accordance with extant legal provisions.*

xvii. *In view of the above, it was alleged that FMRC acted as FPI without proper registration and thereby it is alleged to have violated Regulations 3 (1), 7 (5) and 22 (1) (a) of the FPI Regulations read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019.*

6. The SCN was duly served upon the Noticee through SPAD/Email and in response to this, Noticee vide letter/email dated October 05, 2022 acknowledged the receipt of SCN and vide letter/email dated October 17, 2022 *inter alia* submitted that :
"Pursuant to paragraph 23 of the SCN, we would like to settle the matter and for these purpose we will initiate the settlement process in accordance with SEBI (Settlement Proceedings) Regulations, 2018."

7. However, vide letter/email dated November 21, 2022 the Noticee *inter alia* informed about the withdrawal from the settlement proceedings and requested for waiver from the personal hearing from the proceedings. The Noticee further submitted that:
"It was never the intention of FMRC to operate in the Indian securities market in violation of the existing law. We believed that the merger of Fidelity Investments Money Management Inc into FMRC only resulted in a name

change and not a material change as all the legal obligations and rights of FIMM were assumed by FMRC post merger and there was no change in control. Even our DDP at that point in time, did not clearly inform us that the merger of FIMM into FMRC constituted a material change, when we shared the merger documents with them, which was shared with DDP through an email dated March 19, 2020 within the prescribed timeline of 6 months. Upon DDP informing us of the relevant provisions of relevant regulations, we immediately informed DDP about the same through a letter dated July 28, 2021.

Moreover, upon being informed by DDP that FIMM's account had been blocked and the holdings should be liquidated on August 06, 2021, we immediately commenced the process of liquidation of FIMM's holdings. We would have liquidated FIMM's holdings earlier and stopped operating in the Indian Securities market, if we had been informed earlier by DDP that as a consequence of the merger, FMRC could not operate in the Indian Securities market, being a separate entity.

Therefore, the delay in communication of the merger of FIMM with FMRC and operating in the Indian securities market without a registration as a FPI by FMRC was merely an inadvertent oversight and was not done intentionally."

8. Thereafter a Supplementary Show Cause Notice ("SSCN) Vide No. SEBI/EAD-8/AS/AK/64746/1/2022 dated December 29, 2022 was issued in conjunction with the SCN issued earlier to the Noticee.

9. The SSCN was duly served upon the Noticee through SPAD and in response to this, the Noticee vide letter dated January 06, 2023, *inter alia* submitted that:

"Basis our review, we note that the emails attached are internal communication between teams of DDP, therefore, we have no additional submissions in relation to emails attached.

We would further request to waive the personal hearing in accordance with the proviso to rule 4(5) of the Adjudication Rules, 1995."

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticee in the SCN and the material / documents made available during the course of the proceeding, including the replies furnished by the Noticee. In order to evaluate the case on its merits, I will now proceed to deal with the following issues arising out of the present proceedings, one by one, as under:

    A. Whether the Noticee has violated the provisions of:

    a. Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019

    b. Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019

    B. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A and 15 HB of the SEBI Act, 1992?

    C. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions:

OPERATIONAL GUIDELINES FOR FOREIGN PORTFOLIO INVESTORS AND DESIGNATED DEPOSITORY PARTICIPANTS

PART A - FPI REGISTRATION RELATED ACTIVITIES

15.Change in Material Information

i. In terms of Regulation 22(1)(c), if there is any change in the material information previously furnished by the FPI to the DDP and/or SEBI, which has a bearing on the certificate granted by the DDP on behalf of the Board or relating to any direct or indirect change in its structure or ownership or control, change in regulatory status, merger, demerger or restructuring, change in category/ sub-category / structure/ jurisdiction/ name of FPI/ beneficial ownership etc, of the FPI, it shall forthwith inform the DDP and/or the Board in writing.

SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2019

CHAPTER II
REGISTRATION OF FOREIGN PORTFOLIO INVESTORS
Application for grant of certificate as a foreign portfolio investor.

***3.** (1) No person shall buy, sell or otherwise deal in securities as a foreign portfolio investor unless it has obtained a certificate granted by a designated depository participant on behalf of the Board.*
Explanation – An offshore fund floated by an asset management company that has received no-objection certificate in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, shall be required to obtain registration as a foreign portfolio investor, for investment in securities in India, within one hundred and eighty days from the date of notification of these regulations.

Certificate of registration

7 (5) The foreign portfolio investor needs to have a valid registration as long as it is holding securities or derivatives in India:

Provided that a foreign portfolio investor whose registration is not valid and who is holding securities or derivatives in India shall be allowed to sell such securities or wind up their open position in derivatives within one year from the date of publication of these regulations.

CHAPTER V
GENERAL OBLIGATIONS AND RESPONSIBILITIES OF FOREIGN PORTFOLIO INVESTORS
General obligations and responsibilities of foreign portfolio investors.
22. (1) The foreign portfolio investor shall –
(a) comply with the provisions of these regulations, as far as they may apply, circulars issued thereunder and any other terms and conditions specified by the Board from time to time;
…………..

(c) forthwith inform the Board and designated depository participant in writing, if there is any material change in the information including any direct or indirect change in its structure or ownership or control, previously furnished by him to the Board or designated depository participant;

Code of conduct.
***23.** A foreign portfolio investor shall, at all times, abide by the code of conduct as specified in the Third Schedule of these regulations.*

THIRD SCHEDULE
SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2019
CODE OF CONDUCT

5. A foreign portfolio investor shall maintain an appropriate level of knowledge and competency and abide by the provisions of the Act, regulations made thereunder and the circulars and guidelines, which may be applicable and relevant to the activities carried on by it. Every foreign portfolio investor shall also comply with award of the Ombudsman and decision of the Board under Securities and Exchange Board of India (Ombudsman) Regulations, 2003.

SECURITIES AND EXCHANGE BOARD OF INDIA (FOREIGN PORTFOLIO INVESTORS) REGULATIONS, 2019

Securities and Exchange Board of India Act, 1992

CHAPTER V
REGISTRATION CERTIFICATE
12. Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (1) No stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the [regulations] made under this Act: Provided that a person buying or selling securities or otherwise dealing with the securities market as a stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application: [Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration.

A. Whether the Noticee has violated the provisions of:

   a. Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019

   b. Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019

12. I note from the SCN and records that, FMRC transitioned as a deemed FPI in the FPI regime. However, its registration expired on December 22, 2016, which was not renewed. With effect from January 01, 2020, FMRC converted from a

corporation to a limited liability company (LLC) and was renamed as FMRC LLC.

13. I note that, FIMM, through its Global Custodian ('GC') vide email dated October 15, 2019, had informed the DDP that FIMM, along with 3 other entities, were expected to be merged with FMRC on or about January 1, 2020. In response to the same, DDP vide email dated October 15, 2019, inter alia, asked the GC to confirm their understanding that FIMM will cease to exist as a legal entity in its individual capacity and therefore should surrender its FPI license after clearing all its cash/ security balances in India. DDP further stated that they were not clear how this event could be accepted as a case of name change if the entity does not exist as an independent entity.

14. I note that, the GC did not respond to the queries of the DDP but shared certain merger related documents vide email dated March 19, 2020, and asked the DDP to review the same and advise them the action needed. In response to the same, the DDP reiterated vide email dated March 20, 2020, that FIMM/ GC needed to respond to the questions sent earlier, post which the DDP would review the merger. However, these queries remained unanswered.

15. I note that, thereafter upon receipt of query from Citibank, DDP did independent verification on US SEC website in July 2021 to find that FIMM's registration status with SEC was terminated. Consequently, DDP vide letter dated July 19, 2021 blocked FIMM's account for fresh purchases with effect from July 20, 2021. Consequently, FMRC vide letter dated July 28, 2021 to DDP submitted the documents provided earlier along with an additional document i.e., Agreement and plan of merger dated January 1, 2020. Vide the instant letter FMRC *inter alia* submitted the following:

i. FIMM bearing SEBI registration Number INUSFP325416 registered as a category I FPI ("FPI Entity") has undergone a material change. Effective

January 2020, the FIMM merged into FMRC resulting into FPI Entity ceasing to exist. However, the merged entity has assumed FPI entity's rights and obligations pursuant to merger. FMRC initially believed that this internal restructuring would not be regarded as material information as all legal rights and obligations of the FPI entity continued to survive in the resulting Merged Entity and hence, such change was inadvertently not formally reported with the DDP and SEBI.

ii. *However, upon discussion with DDP regarding this internal restructuring, FMRC was informed of the relevant provisions of the FPI regulations and Operational Guidelines for Foreign portfolio investors, designated Depository participants and Eligible Foreign investors ("Operating Guidelines") that require material changes to be formally notified to the DDP as well as SEBI within 6 months of occurrence of such material changes, failing which FMRC would have to surrender its registration and transfer its securities.*

iii. *The FPI entity has generally been compliant with all its obligations required to be fulfilled under the FPI regulations and the operating guidelines. However, FMRC recognizes and sincerely regrets the inordinate delay in being able to satisfy this reporting obligation and FMRC is putting in controls to avoid reoccurrence of such events in future.*

iv. *In light of the above, FMRC requested the following:*

   a. *Please take on record the change in material information in relation and pursuant to the merger and make appropriate reporting to SEBI as required under FPI Regulations read with operating guidelines.*

   b. *Allow the merged entity to complete the process for obtaining registration as Category I FPI. Upon receipt of the registration in the name of Merged entity, FMRC undertakes to transfer all securities held in the name of the FPI Entity to the name of merged Entity and surrender the FPI license held by the FPI Entity.*

16. It is noted that, the DDP vide letter dated August 06, 2021, *inter alia* concluded that the surviving entity FMRC, is a separate legal entity registered with the US SEC and the current FPI license was granted to FIMM which has ceased to exist. Accordingly, the DDP, advised the FPI to liquidate its existing positions and surrender the license at the earliest.

17. It is noted from the SCN and records that, the AUC of the demat account in the name of FIMM was 14.53 crores as on December 31, 2019 and 23.32 crores as on July 31, 2021. Pursuant to the advice by the DDP, all holdings in the account were liquidated by November 11, 2021.

18. In terms of Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019, FMRC being the surviving entity was required to forthwith inform the DDP and/or SEBI in writing any change in the material information. However, it is noted that, FMRC despite being aware of the change in material information failed to provide the same to the DDP and/or SEBI.

19. It is noted based on the records and reply submitted by Noticee that, Noticee was well aware of the event of merger and failed to reply to specific queries raised by DDP and also failed to inform about the material change to DDP or to SEBI.

20. It is noted that, Noticee has contended that, "*Even our DDP at that point in time, did not clearly inform us that the merger of FIMM into FMRC constituted a material change, when we shared the merger documents with them, which was shared with DDP through an email dated March 19, 2020 within the prescribed timeline of 6 months.*" In this regard it is pertinent to note that, DDP upon receiving the information vide email dated October 15, 2019 from FIMM, vide email dated October 15, 2019 raised specific queries which remained

unanswered. The queries were again reiterated by DDP vide email dated March 20, 2020, but the same remained unanswered.

21. According to the applicable provision, the FPI is not only required to report to the DDP but may also report to SEBI in case there is any material change in information. In light of the above, the primary obligation to disclose information with regards change in material information rests with the FPI. Therefore, in the absence of any information by the FPIs, it is noted that the responsibility to assess such information and disclose the said information cannot be shifted to the DDP.

22. It is noted that, around July 2021, upon receipt of query from Citibank, DDP did an independent verification on US SEC website in July 2021 to find that FIMM's registration status with SEC was terminated. Consequently, DDP vide letter dated July 19, 2021 blocked FIMM's account for fresh purchases with effect from July 20, 2021 and asked FIMM to submit details notifying the change in status along with complete supporting documents.

23. It is noted that, the information regarding change in material information was not sent on Noticee's own volition but was done pursuant to the blocking of account by DDP. Upon blocking of the account for further purchases by DPP, FMRC vide letter dated July 28, 2021, informed that FIMM has undergone a material change, as FIMM merged into FMRC resulting into FPI Entity ceasing to exist.

24. I place reliance on Hon'ble SAT's judgement dated October 14, 2014 in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014), in which Hon'ble SAT observed that "………. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to

make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."

The present case squarely falls into similar requirement to adhere to timelines for informing material changes.

25. The contention of the Noticee does not hold any ground, as Noticee failed in its duty to inform the relevant details within the requisite timeline to the DDP or to SEBI as required under extant SEBI (FPI) Regulations, 2019, which shows the lackadaisical approach of Noticee in providing relevant information on time. Further, the same was not done on Noticee's own accord but was a forced measure done as a reaction to the blocking of the account for further purchase by DDP. That shows that the Noticee purposefully delayed in informing about the material change for about 1 year 6 Months and 20 Days from the date of merger. i.e., January 01, 2020 to date of Blocking of Accounts by DDP i.e., July 20, 2021. In fact the information from the Noticee came later on July 28, 2021.

26. In view of the above it is established that, Noticee was in violation of Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019.

27. The Noticee further contended that, the delay in communication of the merger of FIMM with FMRC and operating in the Indian securities market without a registration as a FPI by FMRC was merely an inadvertent oversight and was not done intentionally.

28. It is noted that, admittedly Noticee continued to operate in the Indian securities market under the name, accounts and FPI registration of FIMM without a

registration as a FPI of FMRC. FMRC's continuation to operate in the Indian securities market despite queries being raised by DDP with respect to existence and continuation of FIMM, cast serious aspersions on the intent of FMRC to adhere to the extant regulations.

29. It is noted from records that, the AUC of the demat account in the name of FIMM was 14.53 crores as on December 31, 2019 and 23.32 crores as on July 31, 2021. Pursuant to the blocking of account for further purchases by DDP w.e.f. July 20, 2021 and upon the advice by the DDP, all holdings in the account were liquidated by November 11, 2021. That shows that the Noticee continued to carry out FPI activities to the tune of about Rs. 8.79 Crores (was 14.53 crores as on December 31, 2019 and 23.32 crores as on July 31, 2021) for about 1 year 6 Months and 20 days from the date of merger. i.e., January 01, 2020 to date of Blocking of Accounts by DDP i.e., July 20, 2021.

30. It is noted that, although FMRC has claimed that it has assumed all of the FPI's rights and obligations pursuant to the merger, the merger effectively resulted in cessation of existence of FIMM. It is noted that, there are no provisions under the FPI Regulations for such a transfer of rights to trade as an FPI on Noticee's own whims and fancies. From the list of transactions undertaken by FMRC LLC in the name of FIMM during Jan 1, 2020- Nov 11, 2021, it has been noted that the Noticee made 183 Sell transactions and 344 purchase transactions during the period of January 1, 2020 to July 20, 2021.

31. The FPI regulations under Regulation 3(1) clearly provides that:

"No person shall buy, sell or otherwise deal in securities as a foreign portfolio investor unless it has obtained a certificate granted by a designated depository participant on behalf of the Board"

It is noted that, FMRC continued to deal in the Indian securities market post the merger in the name of FIMM. As a prudent institution, the Noticee should have stopped the trading at the very first instance where doubts regarding the validity of registration and existence of the FPI entity were raised by the DDP, and should have moved ahead only in accordance with the extant FPI regulations. It is noted that, despite of red flags being raised by DDP the Noticee continued to transact under the name, accounts and FPI registration of FIMM without holding a valid registration in contravention of Section 12(1) of SEBI Act & Regulation 3(1) of FPI Regulations.

32. In view of the above it is established that, Noticee was in violation of Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019.

33. It is relevant to note here that in order to protect the interest of stakeholders and to preserve the integrity of the securities market, the FPI Regulations provide various safeguards. One such safeguard provided under the FPI Regulations is that any person carrying out FPI activities has to obtain registration from SEBI as required under the FPI Regulations, which, inter alia, provides that, no person shall carry out FPI activities unless he has obtained a certificate of registration from SEBI and also has to conduct its activities in accordance with the provisions of FPI Regulations. Further, various crucial safeguards as provided under FPI Regulations include, timely information regarding any Material Change, which has a bearing on the certificate granted by the DDP on behalf of the Board or relating to any direct or indirect change in its structure or ownership or control, change in regulatory status, merger, demerger or restructuring, change in category/ sub-category / structure/ jurisdiction/ name of FPI/ beneficial ownership etc,

34. I note that, it is a cardinal principle of law that ignorance of the law is no excuse and the same cannot be taken as a defence in any proceedings to avoid liability in case of breach. Thus. I find that the Noticee cannot take shelter under the garb of lack of knowledge, as ignorance of law cannot be an excuse to evade liability arising under the law due to such non-compliance. “Ignorantia juris non excusat” is an established legal principle that translates into ignorance of law is not an excuse. If there is relaxation in the application of this principle, every accused would seek impunity on the ground that he did not know the law and the authorities would be involved in determining the cause of such ignorance which would render the administration of justice impracticable.

35. This view is also supported by the decision of Hon’ble SAT in Madanchand Prasan Chand Chordia vs. SEBI(Appeal No. 134 of 2014), in the matter of Mind tree Ltd. dated June 16, 2014, wherein it held that: “*The main contention of the appellant, who has appeared in person before us, is that he was not aware about the requirement of law in making disclosure as a part of SAST Regulations, 2011 and PIT Regulations, 1992. We note that ignorance of law is not an excuse.*”

B. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A and 15 HB of the SEBI Act, 1992?

36. It has been established in the foregoing paragraphs that Noticee has violated provisions of:
   a. Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019, and
   b. Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of

Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019

37. In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006] 5 SCC 361} –*wherein the Hon'ble Supreme Court of India inter alia held 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..............".*

38. I am of the view that it warrants imposition of monetary penalty under Section 15 A and 15 HB of the SEBI Act on the Noticee which read as under:

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same [or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations [or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [a penalty [which shall not be less than one lakh rupees but which

may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]].

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.*

C. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

39. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, which reads as under: -

15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, 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 investor/+s as a result of the default;

(c) the repetitive nature of the default.

Explanation-

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H *and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

40. It is relevant to mention that under section 15I of the SEBI Act, imposition of penalty is left to the discretion of the Adjudicating Officer who *"may impose such penalty"* in view of the guidelines provided by the legislature in section 15J of the SEBI Act. Having regard to the factors listed in section 15J, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the stakeholder as a result of the non adherence to the FPI regulations in this case cannot be computed. I note that no quantifiable figures are available on record for the aforesaid violation. I also note that the Noticee have given reasoning that the violations are inadvertent and due to lack of clarity. The FPI regulations casts obligation on the Noticee to be prompt in reporting to DDP or to SEBI where such reporting is called for. I note that the Noticee has shown a lackadaisical approach in providing relevant information on time, the relevant information regarding material change was delayed by about 1 year 6 months and 20 days, and Noticee continued in carrying out FPI activities unabated to the tune of about Rs. 8.79 Crores for a period of about 1 year 6 Months and 20 days from the date the FIMM has ceased to exist and resultantly FPI status became a nullity. Therefore, any investment activity undertaken in the name of FIMM post undergoing the said changes (in January 2020), was ultra vires. This has serious implications on the stakeholders and also upon integrity of Securities Market.

41. It was noted that the Noticee made 183 Sell transactions and 344 purchase transactions during the period of January 1, 2020 to July 20, 2021. Further, the information regarding change in material information was not sent on Noticee's own volition but was done vide letter dated July 28, 2021 pursuant to the blocking of account by DDP on July 20, 2021. In view of the above it is noted

that, Noticee failed to observe high standards of professionalism and competence by failing to provide change in material information and continuing to trade without any valid FPI registration, and failed to abide by provisions of the FPI Regulations and operational guidelines and hence was in non-compliance of relevant provisions of extant law. However, since the violations are corollary to each other and are entwined together, I find that a penalty of Rs.1,00,00,000/- (Rupees One Crore only) combined under Section 15A and 15HB of the SEBI Act to be paid by the Noticee will be commensurate with the violations committed by the Noticee.

ORDER

42. Having considered all the facts and circumstances of the case, the material available on record and 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, hereby impose the penalty under Section 15 A and 15 HB of the SEBI Act, 1992 as given in the following table:

Details of Penalty imposed.

Name of the Noticee	**Penalty (in Rs.)**	**Violations**
Fidelity Management & Research Company LLC (Noticee)	Rs. 1,00,00,000 (Rs. One Crore Only) (Under Section 15 A and Section 15 HB)	Para 15 (i) of Part A of the OG read with Regulations 22 (1) (a) and 22 (1) (c) of the SEBI (FPI) Regulations, 2019 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019 Regulations 3 (1), 7 (5) and 22 (1) (a) of the SEBI (FPI) Regulations, 2019 read with Section 12 (1) of the SEBI Act, 1992 and Clause 5 of Third Schedule read with Regulation 23 of the SEBI (FPI) Regulations, 2019

I am of the view that the said penalty is commensurate with the default committed by the Noticee.

43. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR 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

44. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

45. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

46. In terms of rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee viz. **Fidelity Management & Research Company LLC** and also to Securities and Exchange Board of India.

Place: Mumbai **ASHA SHETTY**

Date: July 07, 2023 **ADJUDICATING OFFICER**