

WTM/AB/MRD/DoSROA_I/21425/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

Under Sections 11(1), 11(4), and 11B (1) of the Securities and Exchange Board of India Act, 1992 and Section 12A(1) of Securities Contracts (Regulations) Act, 1956.

Noticee No.	Name of Noticees	PAN
1.	Shri. Uday Kumar	AAJPK0195K

In the matter of Metropolitan Stock Exchange of India.

1. The present proceeding emanates from a show cause notice dated December 16, 2021 (hereinafter referred to as “**SCN**”) which was issued to Shri Uday Kumar (hereinafter referred to as “**Noticee**”) by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) asking him to show cause as to why proceedings under Section 12A of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) and Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) should not be issued against him for the violations as alleged in the SCN.
2. The SCN states that SEBI had conducted a special purpose inspection (hereinafter referred to as “**inspection**”) of Metropolitan Stock Exchange of India (hereinafter referred to as “**MSEI**” / “**the Exchange**”) during February, 2018. The focus of the said inspection was mainly the following:
 - a) Unauthorized utilization of exchange fund for market making in Currency Derivatives (CD) segment during the financial year 2016-17 and 2017-18;
 - b) Non adherence to Standard Operating Procedure (SOP) while making payments;

- c) Irregularities in making payment to Vermillion Capital and Macro Corporate Services for raising capital;
- d) Various malpractices in the rights issue of the exchange; and
- e) Various non-disclosures, like details of whistleblower complaint, deviation and non-disclosure of earmarked investments in the annual report for financial year 2016-17.

3. Based on the observations of the inspection, the following violations were observed:

Nature of Charge	Violations
Market making in Currency Derivatives segment without seeking approval from SEBI	SEBI Circular No. SEBI/CIR/MRD/DP/14/2014 dated April 23, 2014. Clause IV (a), (b), and (d) and Clause V (a), (b), (e) and (h) of Part A of Schedule II for Code of Conduct as stipulated under Regulation 26(1) of Securities Contracts (Regulation) (Stock Exchanges And Clearing Corporations) Regulations, 2012 (hereinafter referred to as " SECC Regulations, 2012 ") Clause (I) and (III) (b), (c) and (d) and Clause V (a), (b), (e) of Part B of Schedule II for Code of Ethics as stipulated under Regulation 26(2) of SECC Regulations, 2012
Siphoning off exchange funds by making payments against fictitious bills	SEBI Circular No. SEBI/CIR/MRD/DP/14/2014 dated April 23, 2014. Clause IV (a), (b), and (d) and Clause V (a), (b), (e) and (h) of Part A of Schedule II for Code of Conduct as stipulated under Regulation 26(1) of SECC Regulations, 2012. Clause (I) and (III) (b), (c) and (d) and Clause V (a), (b), (e) of Part B of Schedule II for Code of Ethics as stipulated under Regulation 26(2) of SECC Regulations, 2012
Though the governing board has advised to recover the amount paid to Vermillion but no steps have been taken to recover the same	Clause IV (a), (b), and (d) and Clause V (a), (b), (e) and (h) of Part A of Schedule II for Code of Conduct as stipulated under Regulation 26(1) of SECC Regulations, 2012. Clause (I) and (III) (b), (c) and (d) and Clause V (a), (b), (e) of Part B of Schedule II for Code of Ethics as stipulated under Regulation 26(2) of SECC Regulations, 2012
Non-adherence to SOP while making payment against fictitious bills /market making	SEBI Circular No. SEBI/CIR/MRD/DP/14/2014 dated April 23, 2014.

	Clause IV (a), (b), and (d) and Clause V (a), (b), (e) and (h) of Part A of Schedule II for Code of Conduct as stipulated under Regulation 26(1) of SECC Regulations, 2012. Clause (I) and (III) (b), (c) and (d) and Clause V (a), (b), (e) of Part B of Schedule II for Code of Ethics as stipulated under Regulation 26(2) of SECC Regulations, 2012
Non-disclosure in annual report for the financial year 2016-17	Clause 2 of Part B and Clause 10(c) of Part C of Schedule V as stipulated under Regulation 34(2) of Securities and Exchange Board of India (Listing and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as " LODR Regulations, 2015 ") read with Regulation 35 of SECC Regulations, 2012.
False announcement was made that GMEX is going to acquire equity stake in the exchange	Regulation 4(2) (k) and (r) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations, 2003") read with Regulation 35 of SECC Regulations, 2012.
Trading members accepted funds through direct/ indirect mode from MSEI for market making in Currency Derivatives segment, even though Liquidity Enhancement scheme in Currency Derivatives segment is not permitted.	SEBI Circular No. SEBI/CIR/MRD/DP/14/2014 dated April 23, 2014.

4. Since the Noticee was the MD and CEO of the MSEI during the relevant period he was directed to show cause as to why proceedings under Section 12A of SCRA, 1956 and Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 should not be issued against him for the violations as alleged in the SCN.
5. The following annexures were provided with the SCN:

Annexure no.	Particulars
Annexure 1	MSEI's internal approval note dated 05/06/2017
Annexure 2	Approval note for payment to Symphony Fintech Solutions P Ltd. and Ledger Account details for FY 16-17 for Symphony. Relevant Observations the Forensic Audit and the Executive Summary of the Forensic Audit Report of E&Y.
Annexure 3	Annual Report 2016-17
Annexure 4	Copy of reports and payment note to GRD. Internal Auditor Report: detailing non adherence to SOP in case of GRD Securities, Estee Advisors P Ltd., Vedika Vanijya Pvt Ltd. Small and Medium Business Development Chamber of India, Macro Corporate Services P Ltd., Marlabs Software P Ltd.,

	Viewmore Marketing P Ltd., Vermillion Finalytics P Ltd., RSB Industries Ltd., Symphony. MSEI Technology Scheme and clearing fee reimbursement circulars and vendor payment notes, invoices, approvals etc. for Market Times TV P Ltd., Symphony Fintech, Vedika Vijaya P Ltd., GRD Securities, Estee Advisors P Ltd.; Vermillion Finalytics, Macro Corporate Services P Ltd., Marlabs Software, Viewmore Marketing P Ltd., RSB Industries, MSEI ledgers for 2016-17 and 2017-18, SOP (Finance and Accounts)
Annexure 5	Emails between Abhijeet Chakraborty and Rocky Chopra
Annexure 6	Email from Mr. Abhijeet Chakraborty.
Annexure 7	Extracts of minutes of MSEI Board meeting held on Aug 06, 2016.
Annexure 8	Agreement dated July 14, 2016 and approval note for Payment to Marlabs dated June 13, 2016
Annexure 9	Invoices of Symphony Fintech and ledger entry of payment to Symphony fintech on Nov 08, 2016 i.e. payment made before the invoice dates. Observations in Executive Summary of the Forensic Audit Report of E&Y.
Annexure 10	Clause 1 and Clause 8 of the stated objectives under Master Collaboration Agreement between MSEI and GMEX

6. In response to the SCN, the Noticee vide his email dated January 18, 2022 sought an extension of time for filing reply. Meanwhile the file was placed before me on January 24, 2022 for granting a date of hearing and a hearing was granted to the Noticee on April 18, 2022. Thereafter, the Noticee, vide his letter dated April 06, 2022 sought an inspection of documents and on April 08, 2022 the Authorized Representatives (hereinafter referred to as “**ARs**”) of the Noticee undertook inspection of documents and in continuation of the same, vide email dated April 12, 2022, a copy of the Special Purpose Inspection Report of MSEI by SEBI was provided to the Noticee. Vide his email dated April 10, 2022, the Noticee sought additional time to file a reply to the SCN and also sought an adjournment of the hearing. A fresh date of hearing, i.e. June 01, 2022, was granted to the Noticee. The Noticee submitted a detailed reply to the SCN on May 26, 2022. On the scheduled date of hearing on June 01, 2022, the Noticee, along with the ARs appeared in person and made submissions. The Noticee filed written submission vide letter dated June 13, 2022.

Consideration of submissions and findings:

7. I have considered the SCN, replies received, submissions made by the Noticee during the personal hearing granted to him and written submissions filed by the Noticee. The SCN alleges the violation of the following provisions of law by the Noticees:

Extracts of relevant provisions of SECC Regulations, 2012:

Regulation 35 of SECC Regulations, 2012:

“Disclosure and corporate governance norms.

35. The disclosure requirements and corporate governance norms as specified for listed companies shall mutatis mutandis apply to a recognised stock exchange and a recognised clearing corporation.”

....

Part A of Schedule II for Code of Conduct as stipulated under Regulation 26(1) of SECC Regulations, 2012:

“ ...

iv. Regulatory compliances.

Every director of the recognised stock exchange and recognised clearing corporation shall—

- a) endeavour to ensure that the recognised stock exchange or recognised clearing corporation abides by all the provisions of the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, rules and regulations framed thereunder and the circulars, directions issued by the Board from time to time;
- b) endeavour compliance at all levels so that the regulatory system does not suffer any breaches;

.....

d) not support any decision in the meeting of the governing board which may adversely affect the interest of investors and shall report forthwith any such decision to the Board.

v. General responsibility.

Every director of the recognised stock exchange and recognised clearing corporation shall:

a) place priority for redressing investor grievances and encouraging fair trade practice so that the recognised stock exchange or recognised clearing corporation becomes an engine for the growth of the securities market;

b) endeavour to analyse and administer the recognised stock exchange or recognised clearing corporation issues with professional competence, fairness, impartiality, efficiency and effectiveness;

...

e) maintain the highest standards of personal integrity, truthfulness, honesty and fortitude in discharge of their duties in order to inspire public confidence and shall not engage in acts discreditable to their responsibilities;

....

h) not engage in any act involving moral turpitude, dishonesty, fraud, deceit, or misrepresentation or any other act prejudicial to the administration of the recognised stock exchange or recognised clearing corporation.”

Part B of Schedule II of Code of Conduct as stipulated under Regulation 26(2) of SCR (SECC) Regulations, 2012:

“

i. Objectives and underlying principles.

The Code of Ethics for directors and key management personnel of the recognised stock exchange or recognised clearing corporation seeks to establish a minimum level of business/ professional ethics to be followed by these directors and key management personnel, towards establishing a fair and transparent marketplace. The Code of Ethics is based on the following fundamental principles:

- Fairness and transparency in dealing with matters relating to the stock exchange or clearing corporation and the investors.
- Compliance with all laws/ rules/ regulations laid down by regulatory agencies/ recognised stock exchange/ recognised clearing corporation.
- Exercising due diligence in the performance of duties.
- Avoidance of conflict of interest between self-interest of directors/ key management personnel and interests of recognised stock exchange or recognised clearing corporation and investors.

....

iii. General standards.

b) Directors and key management personnel, in the conduct of their business shall observe high standards of commercial honour and just and equitable principles of trade.

c) The conduct of directors and key management personnel in business life should be exemplary which will set a standard for other members of the recognised stock exchange or recognised clearing corporation.

d) Directors and key management personnel shall not use their position to give/get favours to/from the executive or administrative staff of the stock exchange or clearing corporation, technology or service providers and vendors of the recognised stock exchange or clearing corporation, or any listed company at the recognised stock exchange.

e) Directors and key management personnel shall not commit any act which will put the reputation of the recognised stock exchange or recognised clearing corporation, in jeopardy.

v. Disclosure of dealings in securities by directors of the stock exchange or clearing corporation.

a) All transactions in securities by the directors and their family shall be disclosed to the governing board of the recognised stock exchange or recognised clearing corporation.

b) All directors shall also disclose the trading conducted by firms/corporate entities in which they hold twenty per cent. or more beneficial interest or hold a controlling interest, to the Ethics Committee.

c) Directors who are Govt. of India nominees or nominees of Govt. of India statutory bodies or financial institutions and are governed by their own codes shall be exempt from this requirement.

....”

Extracts of relevant provisions of LODR Regulations, 2015

Clause 2 of Part B of Schedule V as stipulated under Regulation 34(2) of LODR Regulations, 2015:

“

2. Disclosure of Accounting Treatment:

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction.”

Clause 10 (c) of Part C of Schedule V as stipulated under Regulation 34(2) of LODR Regulations, 2015:

“ ...

(10) Other Disclosures:

“(c) details of establishment of vigil mechanism whistle blower policy, and affirmation that no personnel has been denied access to the audit committee.

....”

Extract of relevant provisions of PFUTP Regulations, 2003:

“4. Prohibition of manipulative, fraudulent and unfair trade practices

(1)

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:

(k) disseminating information or advice through any media, whether physical or digital, which the disseminator knows to be false or misleading and which is designed or likely to influence the decision of investors dealing in securities;

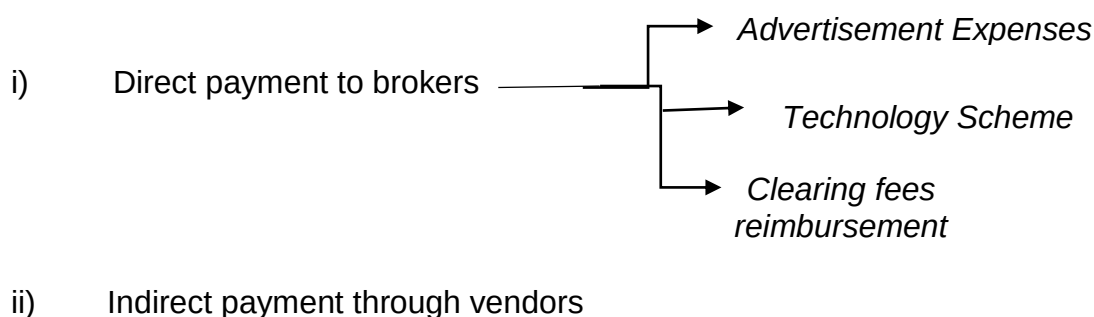
(r) knowingly planting false or misleading news which may induce sale or purchase of securities.

....”

8. At the outset the Noticee has made a preliminary submission related to non-joining of the main party, i.e. the Exchange. He has contended that the primary responsibility of alleged non-compliance lay with the Exchange and that he has not carried out any of the impugned transactions or activities without the requisite approval of the Board of MSEI. In this regard, I note that non-joining of MSEI in the present SCN does not affect the liability of the Noticee herein which emanates from Regulation 26 read with Schedule II of the SECC Regulations, 2012 by virtue of the Noticee being the MD and CEO of MSEI at the relevant time. Further, I note that acts alleged in the SCN could also render him personally liable by virtue of provisions of LODR Regulations, 2015, PFUTP Regulations, 2003, SEBI Act, 1992 and SCRA, 1956. Therefore, the contention of the Noticee that the recognized stock exchange should also have been arraigned in the SCN as a Noticee without which these proceedings cannot continue, is not tenable.

9. Various allegations made in the SCN have been divided into the following heads and sub-heads in the SCN:

A. Unauthorized utilization of exchange fund for market making in Currency Derivatives (CD) segment during the financial year 2016-17 and 2017-18



B. Non adherence to Standard Operating Procedure (SOP) while making payments.

C. Irregularities in making payment to Vermillion Capital and Macro Corporate Services for raising capital;

D. Various malpractices in the rights issue of the exchange;

E. Various non-disclosures, like details of whistleblower complaint, deviation and non-disclosure of earmarked investments in the annual report for financial year 2016-17.

The violations alleged against the Noticee for the period when he was the MD and CEO of MSEI are discussed below.

A. Unauthorized utilization of exchange fund for market making in CD segment during the financial year 2016-17 and 2017-18:

10. Before dealing with the allegation and its sub-heads, it is clarified that the SCN uses the term 'market making' in the sense of measures which were undertaken to bring in more liquidity in the Exchange and in his reply dated May 26, 2022 the Noticee has also stated that in the SCN the term has been used to refer to the activities related to generation of liquidity on the stock exchange platform.

The allegation of market making has been made in reference to Liquidity Enhancement Schemes (hereinafter referred to as “LES”), which are the subject matter of SEBI circulars dated June 2, 2011 and February 08, 2013 and April 23, 2014. In general, I have perused the allegations which are with respect to direct and indirect LES. The SCN alleges that there was an arrangement between MSEI and its members for direct/indirect payment by MSEI to its members for generating volumes in the currency derivatives segment, which is in violation of the requirements laid down in SEBI circulars. The SCN observes that SEBI, vide circulars dated June 2, 2011 and February 08, 2013 has permitted LES for illiquid securities in equity derivatives and equity cash segments to enhance liquidity in illiquid securities, which has been revised vide circular dated April 23, 2014. The SCN observes that the said Circular prescribed that prior approval of the Board of Stock Exchange for the LES had to be obtained and that its implementation and outcome shall be monitored by the Board at quarterly intervals and the scheme shall be objective, transparent, non-discretionary and non-discriminatory. The SCN also observes that the said circular was limited to LES for illiquid securities in equity derivatives and equity cash segments only and circulars do not prescribe LES for CD segment. The SCN alleges that the management of MSEI has adopted direct (Advertisement Expenses / Technology Scheme/ Clearing Fee Reimbursement) and indirect route (through various vendors) to make payment to its trading members for market making in CD segment, which amounted to LES and was not permitted. Further, based on the copy of emails available on record, the SCN alleges that the Noticee was actively involved in the said market making. The SCN also states that it was observed from the minutes of the Board Meeting of MSEI dated September 24, 2016 that, the proposal for LES in Equity Cash Segment was circulated to the Board of MSEI, whereas MSEI was running the LES for CD Segment. It was also mentioned in the said minutes that the Board also advised that approval from SEBI to be obtained and the Noticee, who is on the governing board of MSEI, has thereby misled the governing board.

11. In response to this allegation, the Noticee has submitted as follows:

Market making is a generally used term in securities markets which refers to the activities related to generation of liquidity on stock exchange platform. The

SEBI circulars dated 02.06.2011, 08.02.2013 as well as 23.04.2014 on the subject of Liquidity Enhancement Scheme (LES) in the Equity derivatives segment and Equity Cash segment, which seeks to regulate the manner in which a stock exchange would implement methods towards generation of liquidity only in these two segments. There are no specific rules/ regulations/ circulars issued by SEBI which prohibit or otherwise seek to regulate the manner in which a stock exchange would promote generation of liquidity in the CD segment. This can be seen as a measure to support and develop this market. From this, it may be inferred that pure business development exercise to generate and improve liquidity is not prohibited. That the other Exchanges have been doing it for business development activities since commencement of trading in currency Derivative segment in 2009-10, which doesn't require prior approval or post facto approval from SEBI. CD segment is largely dominated by Banks, corporates and importers- exporters. There is little participation by retail investors due to which this market lacks depth. Moreover, this is a relatively smaller market as compared to Equity and Equity derivatives segments. Hence, generation of liquidity in CD segment was essential for this market to function efficiently.

12. I note that at the outset, the Noticee has accepted that certain measures were taken by MSEI during the time when he was CEO of the exchange, to increase liquidity in the CD segment of the said exchange. I note that vide circulars dated June 2, 2011 and February 08, 2013 SEBI had permitted LES for illiquid securities in equity derivatives and equity cash segments and the framework for providing the LES had been revised vide circular dated April 23, 2014. I note that these circulars laid down specific procedure for introducing LES for exchanges in equity derivatives and equity cash segments and no such circular has been issued by SEBI with respect to the CD segment. On a reading of the said circulars I note that all three circulars use the word 'permit', giving an indication that LES of exchanges are otherwise not permitted, except in compliance with the said circulars. For example, circular No. CIR/MRD/DP/14/2014 dated April 23, 2014 states as follows:

"1. SEBI vide circular CIR/DNPD/5/2011 dated June 02, 2011 and circular CIR/MRD/DP/14/2010 dated February 08, 2013 permitted stock

exchanges to introduce liquidity enhancement schemes in the equity derivatives and equity cash segments to enhance liquidity in illiquid securities.

.....

3. Introduction of liquidity enhancement schemes-The stock exchange may introduce liquidity enhancement schemes in equity cash and equity derivatives segments....”

The 2014 circular also lays down certain conditions subject to which LES can be introduced by the stock exchange for equity cash and equity derivatives segments. The said conditions are as follows:

- “3.1. The scheme shall have the prior approval of the Stock Exchange’s Board and its implementation and outcome shall be monitored by the Board at quarterly intervals.
- 1.2. The scheme shall be objective, transparent, non-discretionary and non-discriminatory.
- 1.3. The scheme shall specify the incentives available to the market makers/ liquidity providers and such incentives may include discount in fees, adjustment in fees in other segments, cash payment or issue of shares, including options and warrants.
- 1.4. The scheme shall not compromise market integrity or risk management.
- 1.5. The effectiveness of the scheme shall be reviewed by the stock exchange every six months and the stock exchange shall submit half-yearly reports to SEBI.
- 1.6. The scheme, including any modification therein or its discontinuation, shall be disclosed to the market at least 15 days in advance.
- 1.7. Outcome of the scheme (incentives granted and volume achieved –market maker wise and security wise shall be disseminated monthly.
- 1.8. The scheme shall comply with all the relevant laws.”

From a reading of the SEBI circular dated April 23, 2014, I find that there appears to be no ambiguity that LES to be introduced by any exchange had to be in terms of circular dated April 23, 2014. This also means that only those measures mentioned in the SEBI circulars are permitted for carrying out liquidity enhancement schemes on any stock exchange and no other measures are allowed. So, liquidity enhancement measures have to be in consonance with the above-mentioned SEBI circulars.

- 13. Without prejudice to the above, the details of direct/ indirect arrangements between MSEI and its members for generating volumes in the CD segment as observed in the SCN are discussed below. I have discussed each sub-head in the allegation, along with the Noticee’s reply to the same, separately, below:

i) *Direct payment to brokers:*

14. The SCN alleges that during inspection, details of members who had more than 3% contribution to the total turnover of the Exchange during financial year 2016-17 & 2017-18 (upto Dec, 2017) and payment/reimbursement to these members were sought. The details provided by MSEI are as following:

Sr. no	Trading Members	% Contribution to total turnover during FY 2016-2017	Payment to member during FY 2016-2017 in Rs.	% Contribution to total turnover during FY 2017-2018 (upto Dec 2017)	Payment to member during FY 2017 - 2018 (upto Dec 2017) in Rs.
1.	GRD Securities Limited	22.00	98,45,620/-	23.95	74,30,608/-
2.	Estee Advisors Private Limited	14.92	88,08,000/-	2.35	-
3.	SMC Global Securities Ltd	10.50	28,500/-	7.97	17,37,500/-
4.	Shaastra Securities Trading Pvt Ltd	7.78	7,87,500/-	7.31	-
5.	Vedika Vanijya Pvt Ltd	7.46	73,62,625/-	9.96	39,55,000/-
6.	Edelweiss Securities Limited	6.11	-	5.74	-
7.	Bank of India	5.23	-	1.51	-
8.	Quadeye Securities Private Limited	4.25	-	5.15	-
9.	Globe Capital Market Ltd	2.10	-	5.41	-
10.	Modex International Securities Limited	-	-	4.42	-
	Total	80.35		73.76	

From the aforesaid information, it was observed that, large payments were made to GRD Securities Limited, Estee Advisors Private Limited and Vedika Vanijya Pvt. Ltd., who had high turnover on the Exchange during the period. During examination of details provided by MSEI for payments made to these three entities, it has been observed that these payments were broadly divided into categories viz. advertisement expenses including sale promotion expenses, technology scheme and clearing fee reimbursement. The SCN alleges that these payments amounted to unauthorized utilization of exchange funds for market making in CD segment during the financial year 2016-17 and 2017-18. Each of the heads under which payments were made is discussed separately below.

a. *Clearing fees reimbursement:*

- 14.1. MSEI vide Internal Approval Note dated 05 June, 2017 had approved the policy in which clearing fees of the members are reimbursed on traded volume at MSEI. Payments made to GRD Securities Limited, Estee Advisors Private Limited and Vedika Vanijya Pvt. Ltd. under Technology Scheme of MSEI and Reimbursement of Clearing Fees are tabulated below:

S.N.	Name of member	Payment to member during FY 2016-2017 in Rs.	Payment to member during FY 2017 - 2018 (upto Dec 2017) in Rs.
1.	GRD Securities Limited	15,75,000/- (under Technology scheme) for Sep, 2016 to Nov, 2016 and Dec, 2016 to Feb, 2017	16,20,000/- (under technology scheme) for March, 2017 to May, 2017 and June, 2017 to August, 2017. and 1,60,608/- (reimbursement of clearing fees).
2.	Estee Advisors Private Limited	7,87,500/- (under Technology Scheme)- for Aug, 2016 to Oct, 2016.	-
3.	Vedika Vanijya Pvt Ltd	7,87,500/- (under Technology Scheme) for Aug, 2016 to Oct, 2016.	-

It is alleged in the SCN that these payments, were made to members for generating volumes in the CD segment, contrary to the LES framework prescribed by SEBI.

- 14.2. The Noticee has responded to the above-mentioned allegation stating that:
- During his tenure as an MD and CEO, he faced lot of challenges and the biggest challenge which he faced was to increase the visibility/liquidity of the Exchange. The major turnover of the Exchange was through currency derivative segment, where it was difficult to find retail participation. The brokers and institutions wanted visibility/ liquidity in the market and to increase the liquidity in the currency derivatives segment, the Exchange came up with the Technology scheme & reimbursement of Clearing fees scheme, for the sole reason to increase the liquidity in the market, which in turn would increase the revenue of the Exchange. That, these schemes were not suo moto formulated and executed by him alone. These schemes were formulated by the then business head Mr. Abhijit Chakraborty and then upon collective discussion with the other Departmental Heads, the schemes were finalized and then circulars with regards to the same were issued. This can be easily established from the minutes of the Board meeting dated 19.03.2016 and 11.08.2017. It is equally and importantly pertinent to note that the Board was very well apprised with these schemes and only after necessary approvals from the Board, the schemes were made available. Further, it is only the Exchange who is the beneficiary of these schemes. Thus, the Technology Schemes & Clearing Fee reimbursement were collectively designed purely as Business development exercise. With regards to the Clearing Fee reimbursement scheme, the Noticee has submitted that scheme was designed to encourage trading members to*

increase participation in CD segment through MSEI. The internal approval note for clearing fee reimbursement scheme was approved by him in exercise of his powers delegated by the Board of Directors, vide agreement dated 17.02.2016. The Internal Approval Note dated 05.06.2017 was initiated by the then Business Head Mr. Ajit Singh, Authorized by Abhijit Chakraborty and then approved by him. The payments to the Trading member were also first approved by the Finance Department in consultation with the Metropolitan Clearing Corporation of India Ltd (MCCIL) and then would have been approved by the Accounts Department.

- 14.3. From the allegations against the Noticee mentioned above and the reply of the Noticee thereto, I note that at the outset, the Noticee has accepted that certain measures were taken by MSEI during the time when he was CEO of the exchange, to increase liquidity in the CD segment of the said exchange. I find that MSEI, vide Internal Approval Note dated June 05, 2017 had approved the policy in which clearing fees of the members are reimbursed based on their traded volume at MSEI in the CD segment. The scheme was effective from June 15, 2017 and the said scheme was approved by the Noticee in the capacity of MD and CEO of MSEI. I note that circulars dated June 2, 2011 and February 08, 2013 and April 23, 2014 laid down specific procedure for introducing LES for exchanges in equity derivatives and equity cash segments and no such circular has been issued by SEBI with respect to the CD segment. As discussed above in para 12, there appears to be no ambiguity that LES to be introduced by any exchange had to be in terms of circular dated April 23, 2014. I note that adjustment in fees is a method of LES specifically mentioned in the 2014 circular which permitted LES in equity derivatives and equity cash segments. Therefore, MSEI was following one of the methods prescribed in the circular dated April 23, 2014 albeit not for equity derivatives and equity cash segments but CD segment. I also note that the Noticee in his replies have not made a case that other conditions enumerated in the 2014 circular as mentioned above such as filing half yearly reports with SEBI were complied with by MSEI. Therefore, in my view, the policy for reimbursement of clearing fees approved vide Internal Approval Note dated June 05, 2017 aimed to reap benefit of a liquidity enhancement scheme but without following the checks and

balances of such a scheme as laid down in the SEBI circulars. I further note that the minutes of the Board Meeting of the Exchange on March 19, 2016 and August 11, 2017 mentioned by the Noticee in his reply does not mention approval for any LES. In fact, the only material available on record with respect to minutes of Board Meeting of the Exchange which mentions LES is the minutes of the meeting of the Board of the Exchange dated September 24, 2016 which mentions that Equity LES scheme has been submitted to SEBI and its approval is awaited. The said minutes do not mention LES in CD segment. Most importantly, the said fee reimbursement policy was an LES for the CD segment which had not been permitted for such LES by SEBI. Therefore, I find that the policy for reimbursement of clearing fees in the CD segment of MSEI approved vide Internal Approval Note dated 05 June, 2017 was in violation of the Circular No. CIR/MRD/DP/14/2014 dated April 23, 2014.

b. Advertisement Expenses:

- 14.4. During inspection period, certain payments were made by MSEI to GRD Securities Limited, Estee Advisors Private Limited and Vedika Vanijya Pvt Ltd for display of MSEI banner on their websites. Details of payments made to these entities during inspection period are as following:

S.N.	Name of member	Payment to member during FY 2016-2017 in Rs.	Payment to member during FY 2017 - 2018 (upto Dec 2017) in Rs.
1.	GRD Securities Limited (www.grdgroupz.com)	82,70,620/-	56,50,000/-
2.	Estee Advisors Private Limited (www.esteadvisors.com)	80,20,500/-	-
3.	Vedika Vanijya Pvt Ltd (www.synergydealcom.com)	65,75,125/-	39,55,000/-

The SCN alleges that while analyzing the copy of the approval notes for payments made to these members, it was observed that these payments were justified on records stating that similar advertisement on other financial websites was much higher and that the websites of these members are also followed by large numbers of brokers and investors. The SCN states that details of "Active" clients registered with these members as on March 31, 2016 and March 31, 2017 at MSEI were sought and the same provided by MSEI indicated that the websites were followed by miniscule number of investors, yet large

payments were made to them as indicated above. Therefore, the SCN alleges that this was a direct/ indirect arrangement between MSEI and its members for payment to its members *in lieu* of generating volumes in the CD segment on the Exchange.

14.5. In response to the same, the Noticee has submitted that:

Advertisement of the Exchange also played a pivotal role in increasing the visibility of the Exchange and to attract retail participation. That, even before and after his tenure, the Exchange have introduced and implemented various ways and methods of advertising. One such mode was to publish the Exchange's Banner on prominent websites of Brokers as well as on the websites of various companies related to Financial/ stock Market products like money control, Economic Times etc. The Quotation received from these prominent websites were too high than the quotations received from these three brokers. The Decision to advertise the Exchange banner on the website of these brokers was based on available market intelligence and perceived benefits. The Exchange also opted for other modes of advertising in print media (full page ads in leading business dailies), electronic media (display of Exchange logo on business channel), sponsorship of events organized by industry bodies, along with the displaying of the banner on the websites of brokers with highest turnover with the Exchange. It is also pertinent to note that the decision to select these brokers was also because the leading brokers Like Edelweiss, Motilal Oswal, ICICI Securities Ltd, were not even active members on the Exchange. Therefore, the Exchange would in all obvious reasons chose to advertise itself through brokers who were its active members, and therefore the agreements were signed with them.

14.6. With respect to the allegation regarding MSEI having indulged in carrying out liquidity schemes in the garb of advertisement fees to members for displaying the MSEI banner on their website, I note that:

a. As reproduced below, these websites had miniscule number of active clients. The details of 'Active' clients registered with these members as on March 31, 2016 and March 31, 2017 at MSEI are as following:

TM Name	Currency Derivatives		Equity Cash Market		Equity Derivatives	
	As on 31st March 2016	As on 31st March 2017	As on 31st March 2016	As on 31st March 2017	As on 31st March 2016	As on 31st March 2017
GRD Securities Limited	55	74	87	87	85	85
Vedika Vanijya Pvt Ltd	42	48	-	-	-	-
Estee Advisors Private Limited	2	2	-	-	1	1

In this regard, I am of the opinion that whether a decision was based on sound business judgment or not is beyond the scope of the present proceedings.

- b. Certain approval notes with respect to the payments made to entities mentioned in the SCN such as GRD Securities Limited, Estee Advisors Private Limited and Vedika Vanijya Pvt. Ltd. are available on record. The approval notes for payment of amount to Estee Advisors Pvt. Ltd. for the display of MSEI banner on their official website (dated March 15, 2016) and approved by the Noticee along with the then CFO of MSEI states that the quotation from other outlets for similar advertisement were Rs. 1.5 crore, Rs. 1.38 crore and Rs. 1.1 crore, respectively, while that given by Estee Advisors Pvt. Ltd. was Rs. 70 lakhs and thus, the offer was the least expensive. The approval note also encloses the copy of the quotes from the other outlets which were at higher rates than quoted by these entities. Therefore, the contention of the Noticee that these vendors were advertising the banner of MSEI at the cheapest rates, is correct.
- c. With respect to the approval notes for payment to Estee Advisors Private Limited, I note that in one instance of disbursement, the approval was obtained *post facto*. The approval appears to have been signed on May 20, 2016 while the disbursement was already made on May 17, 2016. This is not the case with the other two instances where due approvals have been taken for the payment.
- d. In view of this background, I find that the approvals of payment for advertisement to trading members (for display of MSEI logo on their websites) have been made following proper procedure. While I am not going into the question of whether such advertisements made good business sense, however, in absence of any other information connecting the so-called market making activities of these trading members to these payments made for advertisements, it is not possible to come to a

conclusion that this was a clandestine method of payment by MSEI to the trading members for market making activities. I also note one letter to SEBI from Shri Abhijit Chakraborty who was the CFO and thereafter, COO of MSEI during the impugned period (in the undated letter to SEBI Shri Chakraborty has stated that he was CFO from April 2016 to October 2016 and thereafter COO) is available amongst the material on record. In the said letter Shri Chakraborty accepts that certain market making activities were assigned to trading members by MSEI and payments for the same were made in the garb of Technology Fee Reimbursement. I note that even in the said letter no reference is made to the advertisements. Thus, the allegation in the SCN that direct payments were made by MSEI in the garb of advertisement expenses as part of an arrangement with its trading members for generating volumes in the CD segment, is not made out.

c. Technology Scheme:

14.7. MSEI vide circular dated August 17, 2016, October 21, 2016 and June 22, 2017 has announced Technology Scheme for its members. Under the said scheme, MSEI will reimburse the cost towards development/ customisation of Algo/DMA software to the members on quarterly basis on proportionate basis subject to minimum monthly aggregate trading volume of Rs. 4000 crore or more in CD and Interest Rate Futures segment. The SCN alleges that these payments were made to members for generating volumes in the CD segment, the details of which are available above at para 14.1, in violation of the LES circulars of SEBI.

14.8. In response the Noticee has stated as follows:

Technology schemes & Clearing Fee Reimbursement were collectively designed by the Business Heads in co-ordination and approval of the Board, as per market practice and purely as Business development exercise. Technology Schemes and Clearing fee reimbursement scheme were designed to attract market participants by reducing cost of trading on MSEI platform. This was intended to make MSEI platform more competitive as compared to other stock exchanges. These were volume driven schemes linking incentives to threshold volume to be achieved per month by the member. Technology Schemes were

devised to offer some benefits to the members like payment /reimbursement of technology cost incurred towards CTCUIBT/ALGO/DMA facilities. These schemes were reviewed by the Board in their meeting dated 24.09.2016. Further, the Exchange vide its circular dated 17.08.2016 and 21.10.2016 also notified about the said scheme to all the members. It is pertinent, to note that the said scheme was made available to all the members/ brokers of the Exchange. However, only the Brokers as mentioned in the SCN could achieve the said target of Rs. 4000 Cr of monthly turnover and above, hence they could avail the benefits. The business promotional activities were undertaken by the Exchange under directions and consent of Board, that too without engaging into any illegal activity. The business promotional activities have not accrued into any personnel gains for any persons/ office bearers of the exchange. Even by definitions and understanding of market making it cannot be held to be illegal but at the most may be termed as irregularity. The market share of the exchange, had also substantially increased to 8.42% in September 2016, thus increasing the revenue of the exchange. The same is also captured in the business update given in the Board meeting dated 24.09.2017, wherein the Board had noted the substantial rise of market share to 8.42%.

- 14.9. In this regard, I observe that in the SCN the term 'Unauthorized utilization of exchange fund for market making' has been used broadly to refer to the allegations related to purported irregular schemes floated by MSEI helmed by the Noticee which were aimed at increasing liquidity of the Exchange. I find that reimbursement of technology costs to members if the members bring certain amount of liquidity to the Exchange can be considered to be a 'Liquidity Enhancement Scheme'. I note that the SCN does not allege that the technology scheme floated by MSEI were favoring a handful of members or that such a scheme had been clandestinely introduced to benefit a few without the appropriate approvals. However, as discussed in para 12 above, I am of the view that any LES on the Exchange had to be introduced in line with circulars dated June 2, 2011, February 08, 2013 and April 23, 2014 of SEBI and LES in CD segment was not permitted at all and therefore I find that the

Technology Scheme of MSEI was in violation of the SEBI circular dated April 23, 2014.

ii) *Indirect payment through vendors:*

14.10. Payments made by MSEI to certain entities were scrutinized during the inspection. The details of services and their payment as submitted by the exchange to SEBI are as follows:

Name of entity	Amount paid during FY 2016-17 in Rs	Purpose	Amount paid during 2017-18
Viewmore Marketing Pvt Ltd (agreement date- 01.04.2016)	14,37,500/- on June 13, 2016	- Rs. 5.17 lacs for onetime overhauling, repairing and upgradation of 150 desktops. - Rs. 0.69 lacs for onetime overhauling, repairing and upgradation of 20 laptops. - Rs. 0.30 lacs for onetime overhauling, repairing and upgradation of 52 keyboards. - Rs. 8.21 lacs for onsite support for 476 man hours in April @ 1500 per hour.	Nil
RSB Industries Ltd (agreement date- 01.04.2016)	61,58,250/- on July 21, 2016	- Rs. 10 lacs + tax for onetime overhauling upgradation of hardware & related software. - Rs. 10 lacs + tax for network consultation fees - Rs. 24.30 lacs + tax for online support charges for April, 16 to June, 16, 1620 man hours @ Rs 1500/- per hour - Rs. 9.25 lacs + tax for AMC for 250 desktops, 250 keyboards & 100 mouses	Nil
Marlabs Software Pvt Ltd (agreement date- 14.07.2016)	41,11,250/- on June 13, 2016	- Rs. 10 lacs + tax for onetime overhauling, repairing and upgradation of 250 nos of desktops, keyboards and mouses - Rs. 10 lacs + tax for AMC of 250 nos of desktops, keyboards & mouses - Rs. 15.75 lacs + tax for onsite support charges- April-16 and May-16 1050 man hours @ Rs. 1500/- per hr	Nil

In this regard, details of total computers with MSEI were sought. The details provided by MSEI in this regard is as following:

Count of assets as on 31.03.2016	Sold in 2016-2017	Count of assets as on 31.03.2017	Remarks
513	87	426	45 computers sold on April 11, 2016 and 42 on December 28, 2016

14.11. The SCN alleges that contracts to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. were given without seeking competitive bidding from other vendors and payments to them released only based on their bills. From the Payments made to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. during June-July, 2016, it was observed that numbers of computers were less compared to number of

computers against which MSEI made the payments to these entities. Further, payments to Marlabs Software Pvt. Ltd. was made on June 13, 2016 whereas date of agreement between Marlabs Software Pvt. Ltd. and MSEI is July 14, 2016.

14.12. It was further observed that MSEI has made the following payments to Market Times TV Pvt. Ltd. for display of MSEI banner and logo on their app and website during inspection period:

Date	Amount (in Rs.)	Reason indicated in ledgers for making payment
22-11-2016	27,12,000/-	Logo Permanent Placement on Live Currency Screen of Mobile App for the Period from 01 November 2016 to 31 January 2017.
20-01-2017	29,86,293/-	MSEI Logo Permanent Placement on Live Currency Screen on Websites Campaign & Total Impression Served Qty = 49,14,991 x Unit Price 200/- for the Period from 21 November 2016 to 30 November 2016.
07-03-2017	13,83,884/-	MSEI Logo Permanent Placement on Live Currency Screen on Mobile App & Total Impression Served Qty = 16,89,364 x Unit Price 300/- for the Period from 20 December 2016 to 31 January 2017 & MSEI Logo Permanent Placement on Live Currency Screen on Websites Campaign & Total Impression Served Qty = 35,89,331 x Unit Price 200/- for the Period from 21 December 2016 to 31 January 2017.
24-08-2017	55,68,000/-	Charges for MSE Logo Banner Permanent Placement on Live Currency Screen on Mobile App & Websites Campaign for Rs.8,00,000/- per month for the period from 01 October 2017 to March 2018.
31-08-2017	54,09,600/-	Charges for MSE Logo Banner Permanent Placement on Live Currency Screen on Mobile App & Websites Campaign for Rs.8,00,000/- per month for the period from 01 April 2017 to 30 September 2017 & TDS 194C @ 2% of Amt Rs 1,10,400/- has been deducted on the Total Invoice Amounting to Rs. 55,20,000/-.
05-09-2017	29,68,820/-	MSEI Logo Permanent Placement on Live Currency Screen on Websites Campaign & Total Impression Served Qty No = 9,12,574 x Unit Price Rs 200/- for the period from 01 August 2017 to 20 August 2017. & TDS 194C @ 2% of Amt Rs 3650/- has been deducted on the Total Invoice Amounting to Rs. 1,82,514.80/-

14.13. Further, from the documents made available, it was observed that following payments have been made to Symphony Fintech Solutions Pvt. Ltd. which had provided facilities like Algo Trading Software, various trading strategies depending on various market dynamics and an Algo Test Lab where members can test their new developed strategies with live order feed during inspection period:

Date of Payment	Amount paid in Rs.	Reason indicated in ledger for payment
07-09-2016	1,72,50,000/-	Software Development Charges for Algo Test Lab for Currency Segment.
04-10-2016	2,03,55,000/-	Towards 100% Advance Payment for Software Development Charges towards LES Platform.*
08-11-2016	30,00,000/-	For AMC for Algo Test Lab for CDS
06-12-2016	44,75,000/-	Services Charges for AMC for Algo Test Lab for the Period Nov'16 to Oct'17 (Rs.51.75 Lacs) & Services Charges for Algo Test Lab for 80 ID @ 25000/-

		for Nov'16 (Rs.23 lacs) - Part pymt already released on 8th Nov'16 for Rs.30 lacs
04-01-2017	63,00,000/-	Services Charges for AMC of Advance Trading Platform for the period from 01 December 2016 to 30 November 2017
05-01-2017	68,25,000/-	Services Charges for Algo Test Lab for 100 ID @ 25000/- for Dec'16 and Services Charges for Advance Trading Platform License for 80 ID @ 50,000/- for Dec'16
28-02-2017	21,00,000/-	Software Development Charges for Advanced Trading Platform
09-05-2017	42,00,000/-	Services Charges for Advance Trading Platform License for 80 ID @ 50,000/- for April'17
09-05-2017	31,50,000/-	Services Charges for Algo Test Lab for 120 ID @ 25000/- for April'17
16-06-2017	51,24,600/-	Services Charges for Algo Test Lab License for 80 ID @ 25,000/- for May'17 and Services Charges for Advance Trading Platform License for 50 ID @ 50,000/- for May'17
06-10-2017	57,27,120/-	Services Charges for Strategy Development fee of Option 2 Strategy and Services Charges for Strategy Development fee of Calendar Spread Strategy.
04-12-2017	55,28,424/-	Services charges for Strategy Development fee of Cash Underline to Future Strategy For Development of Trading strategies on the existing Trading platform for BLITZ.
Total	8,40,35,144/-	-

* Approval note for releasing of payment indicates "software development charges for advanced trading platform as per the proposal" while ledger account for releasing of one payment on October 04, 2016 for this software indicates "Advance Payment for Software Development Charges towards LES platform".

14.14. Details of Algo Test Lab IDs and Advance Trading Platform IDs were sought from MSEI and following has been submitted by them:

S.N.	Name of the Member	No. of Algo test Lab Ids	No. of Advanced trading Platform Ids	Period
1	Bonanza Portfolio Limited	-	5	Oct-17 to Sept-18
2	Vedika Vanijya Private Ltd.	-	130	August, 2017-September 2017
3	Exchange Transferable	-	500	September 01, 2017 to August 31, 2018
4	Exchange Transferable	-	500	October 01, 2016 to September 30, 2017
5	Exchange Transferable	-	500	October 01, 2016 to September 30, 2017
6	Crosseas Capital Services Pvt. Ltd.	-	24	August, 2017-September 2017
7	SW Capital Private Ltd.	-	29	October, 2017-November 2017
8	Exchange Transferable	-	3	June 07, 2017 to June 06, 2018
9	GRD Group Companies	-	80	Jan-17
10	GRD Group Companies	120	80	April, 2017 - May 2017
11	GRD Group Companies	100	-	Nov 2016 - Dec 2016

Further it was observed in the SCN that monthly AMC charges of Rs. 25,000/- per ID of AMC of Algo Test Lab were paid to Symphony Fintech Solutions Pvt. Ltd. From the details made available, it was observed that Algo Test IDs (100 during Nov-Dec, 2016 and 120 during April-May, 2017) had been allotted to GRD Securities Limited only. No other member have been allotted these IDs. Monthly AMC charges of Rs. 50,000/- per ID for advance Trading Platform License were paid to Symphony Fintech Solutions Pvt. Ltd. From the details

made available, it was observed that few members as indicated above and Exchange Transferable IDs appear in Advance Trading Platform IDs list. Further, maximum numbers of IDs appear against the names of Vedika Vanijya Pvt. Ltd. (130 during Aug-Sep, 2017) and GRD Securities Ltd. (80 during April-May, 2017). It was observed that, a bill of Rs. 51.75 lacs for AMC for Algo Test Lab was issued by Symphony Fintech Solutions Pvt. Ltd. on November 29, 2016. However, part payment of Rs. 30 lacs were released to Symphony Fintech Solutions Pvt. Ltd. on November 08, 2016, before the bill date. From the details of utilization of services of Algo Test Labs and Advanced Trading Platforms, it is inferred that there is insignificant utilization in relation to the development and AMC charges paid to Symphony Fintech Solutions Pvt. Ltd.

14.15. Further, it was also observed from the Forensic Audit Report that payments made to certain vendors for software development and related services were in turn transferred to other parties participating in market making / LES. One such instance in respect of Symphony Fintech Solutions Ltd. is detailed below:

Particulars	FY 2016-17	FY 2017-18	FY 2018-19	Total
Receipts from MSEIL	6,38,55,000	2,45,88,400	0	8,84,43,400
Payments:				
GRD Securities Ltd. and other associated entities:				
2. GRD Securities Ltd.	56,35,000	0	59,00,000	1,15,35,000
3. RSB Industries Ltd.	1,36,67,750	16,25,000	0	1,52,92,750
4. Mphinite Solutions Pvt. Ltd.	0	1,50,45,000	29,50,000	1,79,95,000
Vedika Vanijya Pvt. Ltd.:				
1. Vedika Vanijya Pvt. Ltd.	51,98,000	0	0	51,98,000
2. Synergy Dealcom Pvt. Ltd.	97,52,000	0	0	97,52,000
Estee Advisors Pvt. Ltd.	1,31,33,000	0	0	1,31,33,000
Total	4,73,85,750	1,66,70,000	88,50,000	7,29,05,750
Balance retained by Symphony for services provided to MSEIL				1,55,37,650

The Forensic Audit Report also discusses the instances of the payments transferred by the vendors (Marlabs Software Limited, Viewmore Marketing Limited, RSB Industries Limited) to the other entities participating in LES.

14.16. To sum up, with respect to the allegation that indirect payments were also made by MSEI to trading members who undertook market making activities on the Exchange, I note that it is alleged in the SCN that:

- i) Contracts to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. were given without seeking competitive bidding from other vendors and payments to them released only based on their bills, without verification.
- ii) From the Payments made to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. during June-July, 2016, it was observed that numbers of computers were less compared to number of computers against which MSEI made the payments to these entities.
- iii) Payments to Marlabs Software Pvt. Ltd. was made on June 13, 2016 whereas date of agreement between Marlabs Software Pvt. Ltd. and MSEI is July 14, 2016.
- iv) Payments were made to Symphony Fintech Solutions Pvt. Ltd. which had provided facilities like Algo Trading Software, various trading strategies depending on various market dynamics and an Algo Test Lab where members can test their new developed strategies with live order feed. There was insignificant utilization in relation to the development and AMC charges were paid to Symphony Fintech Solutions Pvt. Ltd. which is detailed in para 14.14 above.
- v) Further, it was also observed from the Forensic Audit Report that payments made to certain vendors for software development and related services were in turn transferred to other parties participating in market making / LES.

14.17. In reply the Noticee has submitted as follows:

Not all the vendors mentioned in the said SCN, were appointed during his tenure. Many of the vendors like Dion Global Solutions (Vendor for ODIN), Symphony, Greek Software Technology, Geojit Technologies Pvt. Ltd, VDA Infosolutions Pvt. Ltd, Cubix Micro Systems India Pvt. Ltd, Pentagon System and Services Pvt. Ltd, Lauren Information Technologies Pvt. Ltd, Wipro Limited being important players in their segment and their position in the

market were appointed before his tenure and he only continued the exchange's existing relationship with these vendors. As per the standard operating system, the required department would send the requirement to the procurement department, whose job was to identify the existing and competent vendors for the purpose, in the market. Although there was no bidding process for the selection of these vendors, the Exchange did follow the process for obtaining the quotes from the vendors. Further, the vendors were selected based on their expertise, experience and quotation obtained from them. It was a collective decision and process, to appoint these vendors and the only beneficiary was the exchange. With regards to payments made to View more marketing Pvt. Ltd, RSB industries Pvt. Ltd & Marlabs Software Pvt. Ltd, these vendors were appointed by the procurement team, in coordination with the IT team for the maintenance of Computers. It is pertinent to note that, these charges are linked to operational costs, or rather cost involved in day to day operations, which was not a subject of prime importance for him. He was appointed as a CEO and MD of the Exchange, and his focus was on subjects of strategic importance, rather than day to day operations. In order to promote exchange business and increase member participation, MSEI has to provide off-the-shelf software developed by specialized vendors used by other stock exchanges and in order to assist brokers in specialized matter of use of technology, MSEI was required to develop an ecosystem comprising of vendors familiar with exchange's technology who would readily provide such services and that Symphony was the leading software vendor for Algorithmic trading. The Noticee has stated that Symphony provided Algo Test lab IDs and Advanced Trading platform IDs only to those brokers who wanted to use it. They were also responsible for maintenance of these software. MSEI maintained inventory of these IDs (referred as Exchange transferrable IDs) by investing necessary amounts upfront as a part of its forward looking business strategy. The Noticee has submitted that payments made to the entities viz. Viewmore Marketing Pvt. Ltd. (agreement dated 01.04.2016), RSB Industries Ltd., (agreement dated 01.04.2016) and to Marlabs Software Pvt. Ltd., (agreement dated 14.07.2016) were all towards the amounts incurred as per their respective agreements and he was informed by the IT head, about these

old computer systems at MSEI received from MCX, erstwhile group company, needed not only appropriate servicing and overhauling but also upgradations so also onsite support. The Noticee has stated that he did not have any knowledge that the number of computers were less compared to number of computers against which MSEI made the payments during June-July 2016 to these entities. The Noticee has submitted it was the responsibility of the IT team to verify the scope of work as per agreed terms with these vendors, before releasing the payments. Moreover, according to the Noticee, at time the conduct of the agreement viz. scope to be executed by the vendors would start in good faith and the process of signing the documents would take some time and it was under these circumstances that the date of agreement with Marlabs Softward Pvt. Ltd. could have been dated later though the execution of scope of services would have begun prior to that. The Noticee has submitted that that the payments made to Market Times TV Pvt. Ltd., was as per the confirmations of the Head of Business Development Department, Head of Communications Department and the directions of the Board and he was not the introducer or the one who recommended the payments to this entity. He has also stated that the AMC charges were duly approved and apportioned by the IT head and Market Operations department head with direct approval of the Board, neither did he make any note of approval nor had made any recommendations to that effect. From what he was given to understand, the AMC by Symphony Fintech Pvt. Ltd., began prior to the date of billing in good faith and an ongoing vendor client relationship. The Noticee has stated that he had not been provided with the entire copy of Forensic Audit Report and hence he is incapacitated to provide the correct interpretations of the same, however, he is not aware about the flow of funds from the third party i.e. Symphony Fintech Solutions Ltd., to any other entities (viz GRD Securities Ltd, RSB Industries Ltd. etc.) as alleged.

14.18. With regard to the allegation of indirect payment to trading members, I note as follows:

- i) The copy of the Forensic Audit Report has not been supplied to the Noticee (In this regard, it may be noted that the Committee of Public Interest Directors of MSEI had appointed the said forensic auditor for

the carrying our forensic audit of the activities of the Exchange upon receipt of certain whistle blower complaints and the Forensic Audit Report had been submitted by Ernst and Young to the Board of MSEI).

- ii) With respect to the payments made to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. during June-July, 2016 wherein the numbers of computers were less compared to number of computers against which MSEI made the payments, it is not clear from the SCN as to how it has been alleged that the Noticee being the MD and CEO of the Exchange would have been in a position to be aware of the exact number of computers procured and how many were originally requisitioned for.
- iii) I also note the following from the Standard Operating Procedure for the Finance and Accounts Department (Version 1.0.0.8) as available on record:

“ N. Accounting for Fixed Assets

....

Physical Verification of Fixed Assets

....

- The verification of all assets belonging to a particular type shall be completed together.
- Results of fixed assets verification shall be reconciled with assets details as per fixed assets register.
- Any discrepancies found on reconciliation, shall be accounted for in Accounting Package after due approvals
- The report physical verification of assets shall be submitted to Audit Committee for review.”

I also note that ‘computer hardware’ is one of the assets that require to be physically verified as per this Standard Operating Procedure. From the fact that the number of computers with MSEI was not matching with the number of computers against which payments have been made, it is clear that no physical verification was made, in violation of the Standard Operating Procedure (SOP) of MSEI. In the said SOP the “process owner” has been defined as the CFO. Cambridge Dictionary defines “process owner” as “the person responsible for designing a particular process, for example, a business plan, and putting it into action so that it is successful.” Therefore, from the definition of ‘process owner’ I find that the CFO, who had been identified as the “process owner’ in the SOP, who had the primary responsibility to ensure compliance with the SOP.

- iv) Be that as it may, from the approval notes for these payments it is but obvious that since the ultimate approving authority was the Noticee, he would also have had the responsibility to check that such widespread discrepancies in numbers do not creep in. In view of the same, I find that the Noticee has to take responsibility, in the absence of specific supervisors, for the same.
- v) With regard to payment to Marlabs Softward Pvt. Ltd., I find that the Noticee has accepted that the certain payment was made earlier (June 13, 2016) than the date of agreement (July 14, 2016) and has tried to justify the same stating that these transactions had been carried out in good faith. In my view, the said submission is not acceptable keeping in mind that such transaction was not a one-off incident and has also been noted in para 14.6 c) above with respect to payment to Estee Advisors Private Limited.
- vi) With respect to the allegation of insignificant utilization in relation to the Algo Test Lab and AMC charges paid to Symphony Fintech Solutions Pvt. Ltd., I find that the Noticee or the Exchange cannot be alleged of wrong doing if the trading members do not adequately utilize a facility provided by the Exchange. The SCN does not establish any motive on the part of the Exchange or its management to the extent that MSEI/ management were aware of the lack of interest in Algo Trading and in spite of the same assigned the job of creating the Algo Test Lab to Symphony Fintech Solutions Pvt. Ltd. In the absence of any such charge, I do not agree with the SCN with respect to this allegation.
- vii) With respect to allegation that payments made to certain vendors by MSEI for software development and related services were ultimately transferred to other parties participating in market making / LES, I find that the details of the same are available in the Forensic Audit Report which has not been provided to the Noticee and therefore I will not delve into it. From a letter of Shri Abhijit Chakraborty who was the CFO of MSEI during the period under consideration, it is understood that 'market making' activity was being undertaken by the exchange and Shri Abhijit Chakraborty had provided a copy of an email sent by him to

one “Rocky Chopra” which Shri Abhijit Chakraborty states was a representative of GRD Securities Pvt. Ltd. (a trading member) and the said email discussed payment to GRD Securities Pvt. Ltd. through ‘RSB’ route, which may imply RSB Industries Limited (an IT vendor), i.e. this mail indicates routing of funds to GRD Securities Pvt. Ltd. through RSB Industries Limited. I note that one personal email id of the Noticee (banking.udai@gmail.com) is also a recipient of the mail. I note that the Noticee has denied the routing of fund to trading members via IT vendors of MSEI. I further note that *inter alia* a whistleblower complaint had been received by SEBI with respect to malpractices in MSEI during the period under consideration and the said complaint also mentioned this practice. I note that the Noticee has also submitted an extract of the Forensic Audit Report which mentions that no kickbacks had been received by any member of the management of MSEI, including the Noticee. I find that in the absence of the Forensic Audit Report it is not possible to come to a conclusion regarding this allegation and this allegation is not made out.

B. Allegation on non-adherence to Standard Operating Procedure (SOP) while making payments during the financial year 2016-17 and 2017-18:

15. The SCN alleges as follows:

15.1. From the SOP for 2016-17, it has been observed that Process Owner for Activities of Finance and Accounts Department is Head-Finance & Accounts. In SOP for 2017-18, the process owner for Activities of Finance and Accounts Department have been stated as CFO. However, it was observed that the payments made to the entities are in contravention with the SOP of the Exchange. Details of some contraventions are as follows:

- i) Contracts to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. were given without seeking competitive bidding from other vendors and payments to them were released only based on their bills.
- ii) From the Payments made to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. during June-July, 2016,

it has been observed that numbers of computers were less compared to number of computers against who MSEI made the payments to these entities.

- iii) Payments to Marlabs Software Pvt, Ltd was made on June 13, 2016 whereas date of agreement between Marlabs Software Pvt. Ltd. and MSEI is July 14, 2016
- iv) Bill of Rs. 51.75 lacs for AMC for Algo Test Lab was issued by Symphony Fintech Solutions Pvt Ltd on November 29, 2016. However, part payment of Rs. 30 lacs was released to Symphony Fintech Solutions Pvt. Ltd. on November 08, 2016, before the bill date.
- v) Internal auditor in quarterly audit report for period ending in March 31, 2017 recommended that MSEI should obtain supporting document/confirmation from the claimant relating to actual cost incurred towards development/customization of Algo/DMA software, either in-house or through empaneled vendor under technology scheme. It was observed that on September 05, 2017, payment of Rs. 16,20,000/- was made to GRD Securities Limited against the said technology scheme without supporting documents as recommended by internal auditor and no comments are available on records in internal audit report for period ending on September 30, 2017.
- vi) The approval notes have not been signed by the Head of the Department of Finance Department.
- vii) It was also observed that such bills are fictitious in nature. From the e-mail correspondence between Mr. Abhijit Chakraborty, COO of MSEI and GRD Securities Limited, it appears that management has facilitated market making in currency derivative segment through payment against such bills.

15.2. In response, the Noticee has stated that:

During his tenure of working with the Exchange, he had always followed the Standard Operating Procedures and the payments were made to the vendors according to the terms and conditions of the agreement between the Exchange and the vendors. This was as decided by and in knowledge of the Board and the Vendors were duly appointed by the procurement team, and the scope of

work was also analysed, formulated and checked by the corresponding Department and their Heads. He has stated that he was not involved into day to day functioning of each department wherein the respective heads had all authority and were in total control and in-charge of their respective departments. The Noticee has stated that the payments made to the entities Viewmore Marketing Pvt. Ltd., RSB Industries Ltd., and to Marlabs Software Pvt Ltd., were all towards the amounts incurred as per their respective agreements which were on approvals and research/comparison study by the respective Head of the Department and most importantly by Shri Abhijit Chakraborty, the then Chief Operating Officer (COO) of MSEI who was de facto handling and approving all business development schemes. The Noticee has submitted that the bills which are alleged to be fictitious in nature, were first initiated by the Head of the Department, authorized by the Business Head and then approved by him. He has further referred to the observation report of MSEI, dated December 11, 2018, submitted to SEBI incorporating comments of the MSEI Board and Action taken on the observations of the Forensic Audit Report, wherein it was stated that the report does not contain any findings about any monies being siphoned away by making payments towards fictitious bills.

- 15.3. I find that the fact that contracts to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. were given without seeking competitive bidding has been accepted by the Noticee. The issue relating to numbers of computers being less compared to number of computers against which MSEI made the payments to the vendors has been dealt with in para 14.18 wherein it has been found that the Noticee is responsible for the discrepancy, being the final approving authority for payment. Regarding payments to Marlabs Software Pvt. Ltd. being made before the date of agreement, I note that the same has also been dealt with in para 14.18 wherein irregularities of similar nature in other instances have also been found. I also note that bill of Rs. 51.75 lacs for AMC for Algo Test Lab was issued by Symphony Fintech Solutions Pvt. Ltd. on November 29, 2016 however, part payment of Rs. 30 lacs was released to Symphony Fintech Solutions Pvt. Ltd.

on November 08, 2016, before the bill date. The Noticee has not provided any explanation for this transaction in his reply. In my view, the sheer number of such instances cannot be accepted, and it appears that such kind of irregularities were rampant in the processes being followed by MSEI for payment to IT vendors during the period under consideration. I also note that the internal auditor of MSEI in quarterly audit report for period ending in March 31, 2017 recommended that MSEI should obtain supporting document/confirmation from the claimant relating to actual cost incurred towards development/customization of Algo/DMA software. I find that an invoice or bill is the basic document based on which a client pays a vendor, however, in these instances the client, i.e the Exchange had made payment to the vendors even without submission of bill, indicating lack of internal processes and controls for such transactions in the Exchange. In my view, being the MD and CEO of the Exchange during the period when such irregularities took place, the Noticee cannot escape liability for the same. I also note that certain allegations have been made regarding approval notes not being signed by the Head of the Department of Finance Department. I find that the approval notes available on record are all signed by *inter alia* the Noticee who was the MD and CEO of the Exchange. I find that all the approval notes are also signed by Shri Abhijit Chakraborty who was the CFO and consequently, head of finance of the Exchange till October 2016 and thereafter, COO. In the absence of the details of approving authority required for these kinds of approvals, which is not available on record, I find that it suffices that the head of the organisation was approving the transactions and therefore I do not find any fault with approval notes for this reason. I also find that the SCN mentions that from the e-mail correspondence between Mr. Abhijit Chakraborty, COO/CFO of MSEI and GRD Securities Limited, it appears that these payments were made for market making in currency derivative segment on the Exchange. These emails which are available on record has been discussed at para 14.18 above, however the Noticee's involvement in the same could not be conclusively established.

C. Irregularities in making payment to Vermillion Capital and Macro Corporate Services for raising capital:

16. The SCN alleges that

16.1. The following two payments have been made to two entities and the details provided with respect to these payments in the SCN are as follows:

Name of entity	Amount Paid in Rs.	Purpose
Macro Corporate Services Pvt Ltd	10,00,000/- on May 31, 2016	Advance towards the proposed equity fund Raising
Vermillion Finalytics Pvt Ltd	17,17,500/- on March 30, 2016	Professional Fees for facilitating Rs. 10 crores loan (Fees@1.50% of the loan amount)

Macro Corporate Services Pvt Ltd:

16.2. The SCN mentions that it was stated by MSEI that advance payment of Rs.10 lacs was made to Macro Corporate Services Pvt Ltd (MCSPL) on May 31, 2016 for Proposed Equity Fund Raising which was to be adjusted against the final fees payable to them. In case no funds mobilized by MCSPL, this advance fees were to be refunded by MCSPL. MCSPL failed to mobilize fund into equity of MSEI from investors, so they were supposed to refund the advance amount to MSEI. It was submitted by MSEI that they have recovered the amount of Rs. 4.90 lacs from MCSPL on March 31, 2017. However, an amount of Rs.5.10 lacs was still receivable from MCSPL as on date of the inspection.

Vermillion Finalytics Pvt Ltd:

16.3. For the payment to Vermillion Finalytics Pvt. Ltd., exchange submitted that MSEI Board had approved raising debt for the Exchange in its Board Meeting held on February 13, 2016. Pursuant to which mandate were given to two arrangers- Cosmic Mandala and Vermillion. Vermillion arranged a line of credit from ICICI Bank under the Agreement and Terms & Conditions of LC / BG loans of ICICI Bank. MSEI didn't sign any hypothecation or lien deed with ICICI Bank against the said loan but was required to maintain a margin of Rs.1crore with the Bank against the sanctioned loan amount of Rs.10 crore. Hence, the actual drawing limit for the loan was Rs.9 crore. The Exchange intimated SEBI about the loan availed through a letter dated November 04, 2016, to which SEBI replied with direction to close such credit facility. The management informed the Board and subsequently the credit facility from ICICI Bank was closed on November 30, 2016. MSEI in its Board meeting dated August 6, 2016, decided that efforts should be made to recover the fees made to

Vermillon Finalytics Pvt. Ltd for getting overdraft facility against bank fixed deposits. It was also stated in the minutes of the Board meeting of MSEI that in case, it is not possible to recover the money, understanding should be reached with Vermillon to set off for the services which might be rendered by them, as the Board may decide, in the future. From the records, it was observed that, the fees have not been recovered. Further, no mandate has been given to Vermillon subsequent to OD facility. The management has not taken any steps to recover the same as on date of the inspection.

16.4. In response to the allegation, the Noticee has submitted that:

With regards to payment made to Macro Corporate Services Pvt. Ltd. (Macro), engagement letter was issued to raise funds through proposed equity route with arrangement fees as agreed and they were appointed as arrangers based on their connect with institutional investors. The Noticee has submitted that an advance sum of Rs. 10,00,000/- was agreed to be paid to Macro, with the understanding that it shall be adjusted against the final bill, after the services are rendered by them but, Macro failed to mobilize the funds through the proposed equity route and also did not refund the advance payment of Rs. 10,00,000/-. The Noticee has submitted that the Exchange was to recover an amount of Rs. 900,000/ (after deducting an amount of Rs. 1,00,000/- towards TDS), however in the meantime, the Exchange received an invoice of Rs. 20,00,000/- towards the sponsorship of SME Manufactures and Exporters Summit which was being organized by Small & Medium Development Chambers of India, a group company of Macro. The Noticee has submitted that the Exchange decided to adjust the amount payable by it to group company of Macro i.e. Small & Medium Business Development Chamber of India against the amount receivable amount from Macro, by issuing the debit and credit notes to respective parties and the final amount receivable from Macro is Rs. 5,10,000/- for which the Exchange had followed up with Macro. In or around, February 2016 the Exchange was facing a severe shortage of funds, to meet its operational expenses and cash flow requirements and the only immediate relief was to avail a loan for Rs. 10 crore to cover the shortage of funds in near future. For this purpose, the exchange appointed arrangers who would assist them in making necessary preparations and approaching the

bankers, in lieu of arrangement fees and Vermillion Finalytics Pvt. Ltd.(Vermillion) took the lead in debt fund raising and did significant amount of work by collating necessary Credit monitoring arrangement for the Exchange, but due to lack of collateral at the disposal of the Exchange and insufficient revenues of MSEI to meet the repayment obligations, most of the lenders and bankers denied granting loan to Exchange. The Noticee has submitted even availing overdraft facility against FDs was difficult, due to poor credit rating of the Exchange and under those circumstances, it was Vermillion, who convinced ICICI bank to extend the line of credit under the agreement and terms and conditions of LC/ BG loans with necessary margins and Vermillion was paid its engagement fees, in accordance with its agreement for its services offered. However, since the line of credit was in the nature of OD against FD, the Board of MSEI decided to recover the fees paid to them, in lieu of the services. The Noticee has submitted that the Audit Committee of MSEI vide its minutes of the meeting dated 02.07.2016 also acknowledged that in such commercial transactions, as services have been already rendered, it would be difficult to recover the fees and thus understanding should be reached with Vermillion to get the set off for services which might be rendered by them in future as the Board may decide. This was reaffirmed by the Board vide its minutes of the meeting dated 06.08.2016 and the Exchange made necessary efforts to reach such understanding with Vermillion. But, thereafter, MSEI did not undertake any debt fund raising because of its abovementioned limitations and thus, Vermillion who has specialization in Debt market fund raising did not have opportunity to give services to MSEI. The Noticee has submitted that the recoveries of any amounts are allotted to the respective departments and are controlled by the respective heads and he cannot be held responsible for such recoveries, which occurred in the normal business transactions.

- 16.5. In this regard, I note that the Noticee has not denied that MSEI has receivables from both Macro and Vermillion. Regarding the explanation provided by the Noticee about the transactions with Macro, I find that the Noticee has stated that the receivable from Macro was adjusted with that of its group company,

and Rs. 5,10,000/- still remains as receivable from Macro. I find the explanation provided by the Noticee acceptable. I also note that with respect to Vermillion the explanation provided by the Noticee can be accepted since it is almost impossible to recover fees from a Vendor which has been paid in anticipation for some service which could not be rendered due to extraneous circumstances.

D. Allegation related to Rights Issue:

17. The SCN alleges the following:

17.1. MSEI has made major allotments to following allottees against the unsubscribed portion of right issues during the period covered under inspection. Allotment details against unsubscribed portion v/s total issue size:

Entity name	Number of share allotted	Date of allotment	Total Size of right issue (A)	Total number of share allotted (B)	% of shares allotted vis a vis total right issue (B/A)
3A Financial Services Ltd	1,000,000	13-May-17	973,334,552	5,500,000	0.57%
	500,000	19-Jun-17			
	2,000,000	04-Jul-17			
	2,000,000	17-Jul-17			
	36,500,000	10-Nov-17	1,592,590,703	262,100,000	16.46%
	34,000,000	20-Nov-17			
	37,300,000	27-Nov-17			
	18,800,000	11-Dec-17			
	80,000,000	19-Dec-17			
	55,500,000	28-Dec-17			
Integrated Fincap Private Limited	5,000,000	24-Apr-17	973,334,552	49,500,000	5.09%
	5,000,000	13-May-17			
	5,000,000	04-Jun-17			
	15,000,000	19-Jun-17			
	7,500,000	04-Jul-17			
	12,000,000	17-Jul-17	1,592,590,703	7,100,000	0.45%
	7,100,000	06-Nov-17			
Jayant Share Broking Pvt Ltd	20,500,000	13-May-17	973,334,552	80,500,000	8.27%
	10,000,000	04-Jun-17			
	27,500,000	19-Jun-17			
	22,500,000	04-Jul-17			
	25,000,000	06-Nov-17	1,592,590,703	25,000,000	1.57%
Suprapti Finvest Pvt Ltd	50,000,000	04-Jul-17	973,334,552	110,000,000	11.30%
	60,000,000	17-Jul-17			
Vaishali Dhankani	47,538,461	08-Nov-17	1,592,590,703	322,538,459	20.25%
	73,076,923	20-Nov-17			
	38,461,538	27-Nov-17			
	26,923,076	11-Dec-17			
	88,461,538	28-Dec-17			
	48,076,923	19-Jan-18			

The SCN further alleges that said 5 entities account for 25.23% and 38.73% of total issue size of rights issue of August, 2016 and September 2017, respectively. Further, as submitted by the exchange, the details of shares allotted and disposed are as follows:

Name of entity	3A Financial Services Ltd	Integrated Fincap Private Limited	Jayant Share Broking Pvt Ltd	Suprapti Finvest Pvt Ltd	Vaishali Dhankani
Shares allotted during the right issues of 2016 & 2017 (a)	267,600,000	56,600,000	105,500,000	110,000,000	322,538,459
Shareholding as on December, 2017 (b)	9,990,345	2,072,489	100,000	15,000,000	-
Dispose during the period (a-b)	257,609,655	54,527,511	105,400,000	95,000,000	322,538,459

The SCN has observed from the above table that the aforesaid shareholders have majorly disposed their holdings via off market transfers during the inspection period. During inspection, the changes in shareholding capital and number of shareholders between March 2017 to December 2017 was analysed. The details of changes are tabulated below:

	Shareholding Capital	No. of shareholders
Shareholding in March 2017	2,464,533,914	1,317
Shareholding in June 2017	2,769,863,914	4,109
Shareholding in September 2017	3,185,181,273	15,378
Closing shareholding in December 2017	4,536,543,272	26,845

The SCN states that the number of shareholders of MSEI have increased from 1,317 to 26,845 from March 2017 to December 2017. Further, it may be noted that the major changes in the number of shareholders occurred during the quarter of June - December 2017 and the SCN has attributed the increase in number shareholders to the following: The exchange had entered into a Memorandum of Collaboration Agreement (MCA) with GMEX dated May 25, 2017 for having the option of getting an order matching system, clearing and settlement software and other related software as an alternative to the existing exchange trading and settlement software and an official press release has been issued on May 25, 2017 regarding the same. The SCN alleges that the press release issued by MSEI appears to have misled the investors and

contributed to the increase in number of shareholders. However, it was observed during inspection that no progress has been made on the said collaboration with GMEX.

17.2. In response to the above, the Noticee has submitted that:

The arrangers did try their best, to find suitable investors to the issue at the base price of Rs. 1.30 per share and should there be any allegations of any contraventions or violations, the said shareholders should have been made a party to the SCN and explanations should have been sought from them. The Noticee has submitted that the rights issue was in order as per the norms and under the relevant provisions appropriately followed and the increase in number of shareholders in the last quarter had absolutely no connection with the press release related to collaboration with GMEX. The Noticee has submitted that the number of shareholders having increased from 1317 to 26845 from March 2017 to December 2017 could have been because of the positive market sentiments for stock exchange shares generated after successful listing of BSE in first half of the year 2017 as well as the expected listing of NSE generated investors' interest in MSEI shares. These were the possible reasons that renunciation of rights issue entitlements was sold by the existing shareholders to new investors of their own accord without any indulgence of MSEI and these factors may have contributed to increased participation in the rights issue which led to increase in number of shareholders in second half of the year 2017. The Noticee has submitted that as far as the MCA entered with GMEX is concerned, it is an admitted fact that MSEI had executed such MCA to explore the alternative option for getting an order matching system, clearing and settlement software and other related software. At that time, the existing vendor for such software was having a monopoly and was charging exorbitantly for the softwares with no viable alternate options. On this count, MSEI was saddled with one sided technology agreements with existing vendor with exorbitant commercials. GMEX is a globally renowned brand for such software and with a competitive pricing. MSEI wanted to explore GMEX with a clear intent to cut down on the cost without compromising on the quality and benchmarks. It was in these circumstances that MSEI had started

exploring the option of GMEX and had made a press release on May 25, 2017 and the same was in consonance with the instructions of the Board. No progress on GMEX could be made further because exit from one sided technology agreements was made very difficult and also time consuming by the existing vendor. But, when existing vendor 63 Moons Technologies Ltd came to know about aggressive stance of MSEI towards changing the vendor and progress made with GMEX, they came to the negotiating table and reduced their commercials to minimum of 50% which resulted in savings to the MSEI.

- 17.3. In this regard, firstly, I find that it may be true that press release was made by the Exchange on May 25, 2017 regarding the MCA between the Exchange and GMEX, however, the SCN does not give any analysis of the impact of this press release on the price of the MSEI shares. Secondly, the SCN alleges that the purported price impact of this press release on May 25, 2017 lasted between June 01, 2017 till December 31, 2017, i.e. almost six months. In my view, without any other supporting information this conclusion cannot be arrived at. Thirdly, there is no material placed on record to support the allegation that this press release was made by the Exchange in order to lure common investors so that the allottees in rights issue get an exit. In the absence of any material to connect the allottees to the said press release it cannot be concluded that this press release was made for the benefit of the allottees. The Noticee has submitted that the number of shareholders having increased from 1317 to 26845 from March 2017 to December 2017 could have been because of the positive market sentiments for stock exchange shares generated after successful listing of BSE in first half of the year 2017 as well as the expected listing of NSE generated investors' interest in MSEI shares which seems to be acceptable explanation. Also, it is a fact that, the existing vendor offered reduction of 50% in the price which resulted in savings to MSEI and there was no need for the Exchange to go for the transaction with GMEX. In view of the same, I do not agree with the SCN in this regard.

E. Various non-disclosures like details of whistleblower complaint, deviation and non-disclosure of earmarked investments in the annual report for financial year 2016-17

F. Deviation and non-disclosure of earmarked investments in the annual report for FY 2016-17:

18. The SCN alleges the following:

18.1. The Annual Report of MSEI for FY 2016-17 under the heading 'Human resource and particulars of employees' states that the company has adopted a whistle blower policy for directors and employees to report their genuine concerns and grievances and the said policy is available on website of the company but the number of references received under Whistle Blower Policy during the year has not been disclosed in the Annual Report.

18.2. The SCN further alleges that from the perusal of Annual Report of MSEI for FY 2016-17 the following information with respect to investments is noted:

Investment	As on 31.03.2017
Current investment:- Mutual fund	2,61,79,400
Cash and bank balance:- Balance with Banks -In current accounts 3,96,27,853 Stamps in hand 2,39,780 Cash on hand 43,955 Other bank balances in Fixed deposits	3,99,11,588 41,24,00,000
other non-current assets :- Deposits with banks (with maturity more than 12 months)	14,56,52,184
Total	58,42,31,584

* Includes Rs 80, 52,184 earmarked toward the investor service fund.

The SCN states that MSEI during the course of inspection informed that current account balance amounting to Rs. 3,96,27,853 includes Rs. 29,61,051/- out of member's funds. However, upon analysis of financial statement vis-à-vis information provided during inspection, it was observed that the MSEI has not bifurcated the members deposit amount from its own fund in the financial statement. The SCN states that MSEI has made disclosure in respect of current investments (Mutual Funds), by way of a note stating that Rs. 2,61,79,400 (previous year Rs. 2,15,00,000) are towards making payments of

the deposits of members in future. The SCN further states that MSEI provided the details of fixed deposits (FDs) as on March 31, 2017 and it is noted from the said details that all the FDs were created out of Member's deposits. Therefore, it is alleged that MSEI has failed to make the disclosure that fixed deposits amounting to Rs.41,24,00,000 and deposits with banks (with maturity more than 12 months) for Rs. 14,56,52,184 are made out of member's fund lying with exchange. The SCN further alleges that MSEI provided the details of earmarked investments in respect of Investor Service Fund (ISF) of Rs. 80,52,184. It is noted from the said details that FD of Rs.10,00,000 was created for short term (365 days) whereas long term FDs (more than 365 days) were created for remaining amount i.e. Rs. 70,52,184/-. MSEI submitted that though breakup of investment is shown properly in the respective schedules, it has not bifurcated the details in the schedule relating to ISF fund. Therefore, MSEI, has accounted the said FDs as per tenure in financial statements, however, it failed to make the correct disclosure in financial statements by not bifurcating it as per tenure (long term/short term) in the schedule relating to ISF fund.

18.3. In response to the allegation above, the Noticee has submitted that:

The Exchange has fully complied with the disclosure requirements for whistleblower. As per section 177 of the Companies Act, 2013 read with Rule 7 of Companies (Meetings of Board and its powers), Rule, 2014, the Exchange has disclosed on its website as well as its Annual Report for FY 2016-17 about the setting up of vigil mechanism for directors and employees to report genuine concerns or grievances and whistleblower policy and affirmations that no personnel has been denied access to the Audit Committee. Apart from this, there is no requirement to list the complaints received under Whistleblower policy in the annual report. Needless to mention, the Audit reports and annual reports are duly signed and published by the Board. He has further stated that the information with respect to the investments and other amounts/categories as indicated in the paras under reply comes under the Audit committee and compliance and accounting heads. Therefore, it was not his discretion or choice to categorize the funds which has passed the scrutiny of all the above said and most importantly of the Board. The Noticee has submitted that there were no investments of own funds in fixed deposits, entire funds of

Rs.41,24,00,000 shown in Note no. 17 of standalone financial results of FY 2016-17 under “Other Bank Balances in Fixed Deposits” pertains to fixed deposits earmarked towards members' liability (out of which Rs. 80,52,184 earmarked towards the Investor Services Fund is disclosed as footnote). The remaining amount of Rs.14,56,52,184 of fixed deposits (with maturity of more than 12 months) earmarked towards members' liability is shown under note no. 20 under “Other Non-Current Assets”. The amount of Rs.29,61,051 out of members' funds as on the closing date of March 31, 2017 may have been kept in current account to meet immediate requirement of payment to those members who surrender membership.

18.4. With regard to the above, my findings are as follows:

- i) The Exchange has disclosed on its website as well as its Annual Report for FY 2016-17 about the setting up of vigil mechanism for directors and employees to report genuine concerns or grievances and whistleblower policy and affirmations that no personnel has been denied access to the Audit Committee in compliance with Regulation 35 of SECC Regulations, 2012. There is no requirement under the said regulations to disclose number of complaints or details. Therefore, I find no violation in this regard.
- ii) It is a fact that MSEI has failed to make the disclosure that fixed deposits amounting to Rs.41,24,00,000 and deposits with banks (with maturity more than 12 months) for Rs. 14,56,52,184 are made out of member's fund lying with exchange. I find that this may lead to confusion and a common person may assume that such amounts was the money owned by the Exchange. Therefore, I agree with the SCN in this regard.
- iii) I find that the Noticee has not provided any explanation for not bifurcating the investments in the schedules pertaining to ISF as per tenure (long term/short term). However, since breakup of investment is shown properly in the respective schedules, therefore, I find no violation in this regard.

19. In view of the discussion in para 14 to 18, it is concluded that during the tenure of the Noticee as the MD and CEO of the Exchange the following violations have been found:
- i. The policy for reimbursement of clearing fees in the CD segment of MSEI approved vide Internal Approval Note dated 05 June, 2017 was in violation of the Circular No. CIR/MRD/DP/14/2014 dated April 23, 2014.
 - ii. Technology Scheme of MSEI was in violation of the SEBI Circular No. CIR/MRD/DP/14/2014 dated April 23, 2014.
 - iii. Contracts to Viewmore Marketing Pvt. Ltd., RSB Industries Ltd. and Marlabs Software Pvt. Ltd. were given without seeking competitive bidding.
 - iv. Numbers of computers were less compared to number of computers against which MSEI made the payments to the vendors.
 - v. The Exchange had made payment to the certain vendors even without submission of bill.
 - vi. MSEI has failed to make the disclosure that fixed deposits amounting to Rs.41,24,00,000 and deposits with banks (with maturity more than 12 months) for Rs. 14,56,52,184 are made out of member's fund lying with exchange.

In view of the above, I find that the above mentioned non-compliances amount to violation of SEBI Circular No. SEBI/CIR/MRD/DP/14/2014 dated April 23, 2014 and Clause 2 of Part B of Schedule V as stipulated under Regulation 34(2) of LODR Regulations, 2015 and the Noticee, being a director of the Exchange also failed to comply with Clause IV (a) and Clause V (a) and (b), of Part A of Schedule II for Code of Conduct as stipulated under Regulation 26(1) of SECC Regulations, 2012 and Clause (I) and (III) (b), (c) and (d) Part B of Schedule II of Code of Conduct as stipulated under Regulation 26(2) of SECC Regulations, 2012. I find that the MD and CEO of a stock exchange has the overall responsibility to ensure that the entity functions in compliance with all applicable laws and regulations. I find that once non-compliances have been identified for which the Noticee is responsible, then it would not be appropriate for him to continue as MD and CEO of the Exchange. In this regard, I note that Regulations 25(5) and (6) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 provides as follows:

“Appointment of managing director. 25.

(5) The managing director shall be liable for removal or termination of services by the governing board of the recognized stock exchange or recognized clearing corporation with the prior approval of the Board for failure to give effect to the directions, guidelines and other orders issued by the Board, or the rules, the articles of association, bye-laws and regulations of the recognized stock exchange or the recognized clearing corporation.

(6) The Board may suo motu remove or terminate the appointment of the managing director if deemed fit in the interest of securities market:

Provided that no managing director shall be removed unless he has been given a reasonable opportunity of being heard.”

20. The Noticee in his reply has referred to an order dated April 20, 2010 with respect to proceedings which were initiated against BSE for undertaking market making scheme in the derivatives segment without the permission of SEBI and the Noticee has submitted that vide the said order the proceedings were disposed of without any directions. I note that the order dated April 20, 2010 was prior to the issuance of SEBI circulars dated June 2, 2011, February 08, 2013 and April 23, 2014. Moreover, in the said order also it was observed that SEBI approval for such schemes was desirable since *“SEBI has been and is at all times sensitive to the potential of any such activity or market making scheme jeopardizing the system and eroding the integrity of the securities market.”* In view of the same, I am of the view that the non-compliance on the part of the Noticee warrant directions under Section 11B of the SEBI Act, 1992. However, I am also taking note of the fact that the Noticee was advised to proceed on indefinite leave from the post of MD and CEO of MSEI from July 2018 onwards. The Noticee has submitted that he took over as the MD and CEO of MSEI in February 2016 and he was not allowed to complete his tenure and he is on indefinite leave since July 2018.

Directions:

21. In view of the aforesaid findings and having regard to the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), and 11B(1) of SEBI Act, 1992 and Section 12A(1)

of SCRA, 1956 read with Section 19 of SEBI Act, 1992 and Regulation 25 (6) of the SECC Regulations, 2012 direct as under:

The Noticee shall not be associated with any Market Infrastructure Institution or its associated entities directly or indirectly, in any manner, whatsoever, for a period of six (6) months, from the date of coming into force of this order.

22. This Order comes into force with immediate effect.
23. This Order shall be served on the Noticee and Recognized Stock Exchanges, Depositories to ensure necessary compliance.

Date: November 25, 2022

Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA