BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AN/PR/2022-23/24275]

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

In respect of:

Shubro Sankha Das Sarma
PAN: ADLPD4625J

In the matter of Inspection of BOI AXA Mutual fund

BRIEF BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted thematic inspection of BOI AXA Mutual Fund (hereinafter also referred to as "**BOI**") for the period August 01, 2018 to February 28, 2019 to verify the books of accounts, records and other documents pertaining to the mutual fund with respect to Inter Scheme Transfer (IST) and valuation of downgraded debt securities. The findings/observations of the Inspection were communicated to Bank of India Investment Managers Pvt. Ltd. (Previously BOI AXA Investment Managers Pvt. Ltd., hereinafter also referred to as **"BOI Investment Managers Pvt. Ltd."/ "AMC")** on June 16, 2020 and it furnished its reply vide letter dated July 16, 2020. Further, certain clarifications were sought from the Bank of India Investment Managers Pvt. Ltd vide emails dated August 25, 2020, November 12 & 19, 2020 to which it replied vide its emails dated August 26, 2020, November 12 & 19, 2020. During the post inspection analysis certain information was sought from the valuation agencies. Certain additional information was also sought from the AMC to which it replied vide its email dated December 15, 2020. Accordingly, SEBI initiated Adjudication Proceedings under following provisions of law in the

matter of inspection of BOI AXA Mutual Fund in respect of following Noticees for the alleged violations as given below:

1.1. Bank of India Investment Managers Pvt. Ltd (hereinafter also referred as "**Noticee-1**"): Adjudication proceedings initiated under Section 15D(b), 15E and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred as "**SEBI Act"**) read with Regulation 75A(b) and 76 of SEBI (Mutual Funds) Regulation, 1996 (hereinafter referred as "**MF Regulations"**), for the alleged violations of Clause 3(b) of the Seventh Schedule read with Regulation 44(1) of MF Regulations, Clause (a), (c), (g), (h) of Investment Valuation Norms as specified in the Eighth Schedule of MF Regulations read with Regulation 25(19), and 47 of MF Regulations, Clauses 1, 8 and 9 of the Fifth Schedule read with Regulation 25(16) of MF Regulations.

1.2. Mr. Rajesh Chawathe (hereinafter also referred as "**Noticee-2**"): Adjudication proceedings initiated under Section 15 HB of the SEBI Act for the alleged violations of Regulation 18 (4d) of MF Regulations.

1.3. Mr. Sandeep Dasgupta (hereinafter also referred as "**Noticee-3**"): Adjudication proceedings initiated under Section 15HA and 15HB of the SEBI Act for the alleged violations of Regulation 3(a), 4(1), 4(2)(q) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) 2003 (hereinafter referred as "**PFUTP Regulations"**) and Regulation 25(6A) of MF Regulations.

1.4. Ms. Jayati Dasgupta (hereinafter also referred as "**Noticee-4**"), Ms. Anurupa Dasgupta (hereinafter also referred as "**Noticee-5**"), Mr. Shubro Sankha Das Sarma (hereinafter also referred as "**Noticee-6**") and Mr. Alok Singh ("**Noticee-7**"): Adjudication proceedings initiated under Section 15HA of the SEBI Act for the alleged violations of Regulation 3(a), 4(1), 4(2)(q) of PFUTP Regulations.

*(Hereinafter, the aforesaid Noticees are also collectively referred to as "**Noticees**", unless the context specifies otherwise.)*

APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Maninder Cheema, Chief General Manager SEBI, was appointed as Adjudicating Officer ("AO") to inquire into and adjudge, under Section 15D (b), 15E, 15HB of SEBI Act, 1992 read with Regulation 75A (b) and 76 of MF Regulations and under Sections 15HA and 15HB of SEBI Act, 1992 and the aforesaid alleged violations against the Noticees vide Communique dated September 06, 2021. Pursuant to the transfer of Ms. Maninder Cheema, Dr. Anitha Anoop, Chief General Manager SEBI, was appointed as the AO in the instant matter vide Communique dated June 07, 2022. Pursuant to the transfer of Dr. Anitha Anoop, the undersigned was appointed as AO in the instant matter vide communique dated September 05, 2022.

SHOW CAUSE NOTICE, REPLY & HEARING

3. A common show cause notice bearing reference No. EAD-5/MC/RM/18651/2022 dated May 02, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees under the provisions of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred to as "**Adjudication Rules**"), to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, not be imposed on the Noticees under Sections 15D(b), 15E, 15HA, 15HB of the SEBI Act, 1992, Regulation 75A(b) and 76 of SEBI (Mutual Funds) Regulations, 1996 as respectively applicable and indicated therein. The SCN was duly served to the Noticees through digitally signed email dated May 02, 2022 and delivered through Speed Post Acknowledgment Due on May 05, 2022,

4. Vide letter and email dated May 18, 2022, the Authorised Representative ("AR") of the Noticees viz. Regstreet Law Advisors, wrote on behalf of Noticee 1 to 7 wherein they requested for inspection and copies of documents in relation to the SCN. Vide email dated June 08, 2022, the Regstreet Law Advisors were advised to submit duly signed authorisation letter from the Noticees appointing them as Authorised Representative ("AR). Accordingly, vide email dated June 08, 2022,

the AR submitted authorisation letters on behalf of the Noticees authorising Regstreet Law Advisors to act, appear and plead on behalf of the Noticees as their AR in the instant proceedings. Thereafter, vide letter and email dated June 09, 2022, inter-alia, the Noticees were granted an opportunity of inspection of documents on June 14, 2022. Accordingly, the AR carried out the inspection of documents on June 14, 2022.

5. Thereafter, vide email dated June 23, 2022, the AR made submissions as reply to the SCN in respect of Noticee 1 to 7.

6. Vide Hearing Notice dated June 30, 2022, an opportunity of hearing was granted to the Noticees on August 03, 2022. However, I note that the hearing was deferred due to administrative exigencies and vide email dated July 27, 2022, the Noticees were informed about the same.

7. Pursuant to appointment of the undersigned as the Adjudicating Officer in the matter, vide Hearing Notice dated October 21, 2022, an opportunity of hearing was granted to Noticee 1 to 7 on November 09, 2022 through video conferencing (Webex).

8. In response to the Hearing Notice, the AR on behalf of Noticee 1 to 5 and 7, vide email dated November 07, 2022, submitted authorisation letters wherein the aforesaid Noticees authorised the AR to inter-alia, act appear and plead in the instant proceedings. The hearing was conducted for Noticee 1 to 5 and 7 on November 09, 2022 wherein the aforesaid Noticees were collectively represented by a common AR. The AR of Noticee 1 to 5 and 7 appeared and reiterated their written submissions made through their email dated June 23, 2022. The AR submitted that settlement application had already been filed in the instant proceedings by the aforesaid Noticees and are at an advance stage. The AR requested for more time to make additional written submissions. Accordingly, time till November 25, 2022 was granted for additional submissions and the said hearing was concluded in respect of Noticee 1 to 5 and 7.The minutes of the hearing was shared with the AR vide email dated November 09, 2022 and the

same was acknowledged on the same day, by the AR on behalf of Noticee 1 to 5 and 7.

9. As regards Noticee-6, in response to the Hearing Notice, vide email dated November 02, 2022 and November 07, 2022, Noticee-6 submitted that he would like to file a revised response with regards to the adjudication proceedings and would like to present his case in an in-person hearing. Further, vide email dated November 15, 2022, Noticee-6 inter-alia, submitted that he was the only person among the seven Noticees who has not accepted the settlement process. He submitted that since he did not accept the settlement process, his case be moved to the adjudication process and requested to be allowed to file revised reply towards the adjudication proceedings and be granted an in-person hearing where he will appear himself. Vide email dated November 16, 2022, the Settlement Division of SEBI informed that the settlement application w.r.t Noticee-6 was disposed of as withdrawn. This was also informed by Noticee-6 vide his email dated November 16, 2022.

10. In view of the settlement mechanism opted by six Noticees viz. Noticee 1 to 5 and 7, vide settlement order dated December 28, 2022, the adjudication proceedings in this matter in respect of Noticee 1 to 5 and 7 already stands disposed of accordingly. As regards Noticee-6, considering that he had withdrawn from the settlement mechanism and as per this information, his Settlement Application stands disposed of as withdrawn, instant order deals with the violations alleged in the SCN dated May 02, 2022 in respect of Noticee-6.

11. In view of the above, the relevant text of the SCN w.r.t Noticee-6 is reproduced below:

> *"………*
>
> *5. On the basis of the information received and the analysis done post inspection, following was observed:*
>
> *………………………..*
>
> *<u>Background in case of Kwality Limited NCD (Kwality):</u>*
>
> *6. Noticee-1's BOI AXA Credit Risk Scheme had exposure to Kwality Ltd. NCD, which defaulted on June 30, 2018. AMC invoked pledged shares of Kwality Ltd. and could realize only Rs.7,00,754 from sale proceeds (as per valuation committee minutes of*

*July 04, 2018 enclosed herewith as **Annexure 9**), which were inadequate to cover exposure.*

7. *Issuer vide email dated July 04, 2018 (enclosed herewith as **Annexure-9**) informed AMC that it would pay Rs. 4.75 Crore by July 05, 2018. However, no such amount was received by the AMC on 05 July, 2018. On July 27, 2018 the rating of the security was downgraded to BBB- from A- by rating agencies. The valuation committee of Notice-1 met on July 30, 2018. On July 30, 2018 AMC started per day provisioning towards the default.*

8. *The long term rating of Kwality Ltd. NCD was downgraded from BBB- to D (below investment grade) with effect from September 6th, 2018. Further, on September 21, 2018 Kwality Ltd. failed to raise funds through QIP. The valuation committee met on September 21st, 2018 (valuation committee meeting minutes enclosed herewith as **Annexure 9**). From Minutes of the meeting it is observed that during the meeting it was discussed that the shares, which were placed as collateral were continuously hitting the lower circuits in the exchanges. Also, as on September 21, 2018 the proposed QIP of the issuer had failed. Even after noting the deteriorating value of collaterals and failure of issuer to raise capital, instead of taking impact on valuation at one go to arrive at realizable value, AMC continued with the per day provisioning. AMC provided for first installment default of Rs.4.75 crore by September 24, 2018 i.e. almost after 3 months of default by doing per day provisioning.*

9. *On September 30, 2018 there was default of second installment by Kwality. The valuation committee of the AMC failed to meet immediately after default and met on October 08, 2018.*

10. *As per the Inter office memo dated October 29, 2018 one of the Investors "KKR" filed recovery proceeding against the issuer with NCLT and the company was admitted to NCLT on December 11, 2018. AMC continued with the practice of daily provisioning till June 12, 2019 and by that time value of the investment had become "Nil".*

<u>*Background in case of RKV Enterprises Ltd ZCB (RKV):*</u>

11. *RKV Enterprises defaulted for its Zero Coupon Bond on part installment (~20% of its total exposure as of December 2018) on December 31, 2018, while balance payment was due on December 2020.*

12. *RKV's management/promoter Mr. R.K.Verma vide their email dated January 2, 2019, assured Noticee-1 that it is in process of arranging funds through asset sale and loans and the payment would be made in next few days. RKV vide email dated January 4, 2019 sent a scanned copy of a cheque for Rs 18 crores dated 7th January assuring that same would be deposited to settle part of the outstanding dues. However, the amount was not credited to Noticee-1 account.*

13. *Consequent to non-fulfillment of the assurance by RKV and realizing it would not be able to meet its commitment, the Valuation Committee met on February 4, 2019 and decided to started provisioning for Rs 2 lacs per day against receivable amount (Rs 10.96 crores due as of December 31, 2018. On February 15, 2019 increased provisioning to Rs 5 lacs per day per day against receivable amount. On February*

19, 2019 provisioning increased to Rs 50 lacs per day from Rs.5 lacs per day against receivable amount.

14. *AMC neither stopped interest accrual nor took any impact on valuation for defaulted installment amount and on balance outstanding.*

……………

<u>Violations/Non-compliances by Noticee-6</u>

81. *Noticee 6, i.e. Mr. Shubro Sankha Das Sarma is Head Operations of Noticee-1. Being, part of local controls committee and valuation committee, Noticee-6 possessed all unpublished information regarding valuations of defaulted securities. During inspection from the account statements of Noticee-6 (enclosed herewith as **Annexure 2**), in respect to investment and redemption done by Noticee-6, following is noted:*

    i. *There were only purchase transactions in the Credit Risk Fund from February, 2015 till August 2017 which cumulatively costed approx. Rs.19 lakhs. The value of the holding on the date of first redemption i.e. February 02 2019 was approximately Rs.21.34 lakhs (prior to redemption on that day). The fund had not seen any default till August 2017 i.e. the date of last purchase.*

    ii. *However, during June, 2018 to December 2018, there were default of three securities viz. Kwality Limited, IL&FS Limited and RKV Limited. BOI MF has written off entire exposure to IL&FS. However, in case of Kwality Ltd and RKV Limited, Noticee-1 had been doing daily provisioning.*

    iii. *At the time when phased redemptions was started by Noticee 6 i.e. February 21, 2019, only provisioning of around 51% in case of Kwality Limited and around 10% in case of RKV Enterprise Private Limited was done.*

82. *Noticee 6 being part of valuation committee and local controls committee was privy to material unpublished information regarding per day provisioning, basis which Noticee-6 withdrew his entire holding to his advantage.*

83. *In view of the above, **Noticee-6 is alleged to have Regulation 3(a), 4(1), 4(2)(q) of PFUTP Regulations**.*

..................”

12. Vide email dated November 18, 2022, an opportunity of in-person hearing was granted to Noticee-6 on November 25, 2022 whereby Noticee-6 was advised to make his written submissions latest by November 20, 2022. Thereafter, Noticee-6 submitted his reply to the SCN, vide his email dated November 19, 2022.

13. The relevant text of Noticee-6's written submission dated November 19, 2022 is reproduced below:

"……………

I wish to record my response as under:

I. *I state that I have always been in the Operations department during my entire tenure. My area of work deals in Fund accounting, Custody, Banking and Registrar functions and those are my domains of expertise. My role in the Valuation Committee was to account the provision entries in the books based on decisions taken. I had no information on the status of securities and if chances of recoveries were there, as these were being handled by the Fund Management and the Risk teams. Also as the Head(Operations), I had no role in the decision making process as regards to informing investors with respect to the provisioning carried out or the amount of daily provisioning to be done as these were being decided only by CEO, Fund Manager and the Head(Sales & Marketing) and they were the sole authority in this regard.*

II. *I state that I had invested an approximate sum of Rs. 19 lakhs in BOI AXA Credit Risk fund in tranches from 2015 to 2017 and redeemed Rs 3,20,000 on 21st February 2019 and the balance Rs.17,68,097 on 5th March 2019 . Thus against an investment of approximately Rs 19 lakhs, my redemption amount was approximately Rs 20.88 lakhs. This is to accentuate the factual discrepancy in the captioned SCN against me. Further, the date of 1st redemption was 21st February 2019 and not 2nd February 2019 as mentioned in the first part of the notice involving me as Noticee No. 6.*

III. *I state that I had redeemed my units long after substantial provisioning had been made in the three defaulting securities, i.e. IL&FS Limited, Kwality Limited, and RKV Limited. By the time I redeemed the larger amount (Rs.17.68 lakhs) on 5th March 2019, substantial provision had been made prior to my redemption. The provisioning of these securities had commenced in July 2018 and my redemptions were in February 2019 and March 2019 i.e after 8 months from commencement of provisioning. If I had to take advantage of any classified information, I would have redeemed much earlier and not waited for so long. To the best of my belief, the entire provisioning for all these securities was completed by June 2019. The default in the securities substantially affected the Net Asset Value (NAV) of the Credit Risk Fund. It is reasonably understood that at the time when I redeemed my units, the NAV of the Fund had substantially dropped. It is also reasonably understood that the NAV of the Fund is an information available in the public domain, and even public investors, on account of the poor performance of the fund and diminishing NAV, may have redeemed their unit. My redemption of units as of 21st February 2019 and 5th March 2019 cannot by any stretch of imagination be attributed to any unpublished information as has been alleged in the captioned SCN, but because of publicly available information, viz. diminishing NAV of the fund and negative press reports in circulation regarding Credit Risk Funds at that time. This had resulted in large redemptions in BOI AXA Credit Risk Fund at that point of time.*

IV. *In this regard it is further pertinent to mention that during my tenure of employment with BOI AXA Investment Management Pvt. Ltd., there was no statutory or* *contractual embargo restraining me, as an employee from investing in the units of any fund of BOI AXA Mutual Funds. The only requirement during my tenure of employment was that I was required to make complete disclosure of all such purchases and redemption of units within 7 days of such transaction with regards to debt funds. Further, I also made quarterly disclosures of transactions of the relevant quarter ending 31.03.2019 as was required by my organisation's dealing policy. I have been in due compliance of the same, and my disclosures ought to be available in the records of the Noticee No. 1.*

V. *I further state that there was no freeze on redemption even for a single day in BOI AXA Credit Risk Fund and all investors were allowed to redeem their units of BOI AXA Credit Risk Fund as and when they chose to. Monthly portfolios were being made public through the BOI AXA AMC website for the investors so the public investors were aware that there were defaults in the scheme. There was no such restriction on redemption of units placed by my employer either. I reiterate that I had intimated to BOI AXA AMC about my redemption in BOI AXA Credit Risk Fund as required under SEBI regulations, which mentions that all transactions in debt funds needs to be reported within 7 days of execution of the transaction. Thus from my side I had completely fulfilled my obligation as required under the Regulations and not violated any norms.*

VI. *I place reliance on* ***SEBI Circular No. SEBI/HO//IMD/DF2/CIR/P/2016/24 dtd. November 17, 2016****, on Investment/trading in securities by employees of AMC(s) and Trustees of Mutual Funds (Employee Dealing policy), which was applicable to me at the time when I redeemed my units; i.e. 21st February, 2019 and 5th March, 2019. The regulation did not stipulate any restriction on employees of an AMC from dealing in schemes which had defaulted securities. This restriction was subsequently added vide* ***SEBI Circular No. SEBI/HO/IMD-I DOF5/P/CIR/2021/654 dtd. October 28, 2021****, i.e. long after my transactions in question under the captioned SCN, and the same cannot be applied retrospectively.*

VII. *I state that my investment as mentioned in the SCN under reply was Rs. 19 lakhs and when I redeemed in tranches on two dates as mentioned above, the redemption amount totalled to Rs. 20.88 lakhs. Having held the amount from 2015 initial investment and subsequent additional purchases, it was a sub-par return which is approximately as low as approximately 4% annualised. Thus, it is an apocryphal allegation that the redemption of my units, which at the point in time was in undeniable and absolute compliance of the governing laws in force was to my advantage.*

……………………………………….

In continuation to my aforesaid submissions on facts, I now address the alleged contraventions and violations against me in the captioned SCN. I have been called upon to show cause for alleged violation of Regulation 3(a), 4(1), 4(2q) of the PFUTP Regulations, 2003. For the sake of convenience, the same are reproduced below.

3. <u>Prohibition of certain dealings in securities</u>

No person shall directly or indirectly-

*(a) **buy, sell or otherwise deal in securities in a fraudulent manner;***

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. <u>Prohibition of manipulative, fraudulent and unfair trade practices</u>

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

*… **(q) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;***

Further, the term "fraud" and "fraudulent" as defined in Reg. 2 (1)(c) is set out hereunder:

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) deceptive behaviour by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.

(9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
And "fraudulent" shall be construed accordingly;

VIII. *I state, at the outset, that my act of dealing in units of BOI AXA Credit Risk Fund during the tenure of my employment with BOI AXA AMC, along with statutory and occupational disclosures regarding the same do not contain any element of fraud as defined hereinabove, or even otherwise as understood in common parlance. There was no direct or indirect inducement in any manner to any person, which appears to be a key ingredient in terms of the definition set out above.*

IX. *Further, in terms of the alleged violation of Regulation 3(a), I state that there was no fraudulent element to the buying and selling or otherwise dealing of the securities, viz. units of BOI AXA Credit Risk fund as alleged. They were bona fide transactions based on the NAV of the fund which is, and was at all times, a publicly available information. There was no embargo or restriction on me dealing in such units during the term of my employment, placed either by my erstwhile employer, the AMC, or the market regulators. I reiterate that I have been complete and timely disclosure of all such dealings in the units of the Fund in question.*

X. *In response to the alleged contravention of Regulation 4(1) and 4(2)(q), I state that my transactions cannot by any stretch of imagination be treated a dealing of securities in advance of a substantial impeding transaction. The provisioning for these securities had commenced much before my redemption transactions and so there was no possibility of any more impending transactions at that time. The decisions and information pertaining to future provisioning was beyond the scope of my knowledge, responsibility and employment. Irrespective of the state of provisioning, the steady decline in the NAV (which was publically available) led many investors including myself to redeem our investments. I state that my compliance with the employee dealing policy itself ought to be treated as my bona fide in the transactions in question, and does not merit my prosecution under the alleged contraventions.*

XI. *The SCN under reply further states that I may be penalised under Section 15HA which stipulates that "If any person indulges in fraudulent and Unfair Trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty five crores or three times the amount made out of such practice, whichever is higher." In the case of Mutual Fund, wrongful gains do not arise because since my redemption transactions were at the applicable NAV of that day, which does not affect the NAV of the scheme unlike share market transactions where the price of the share is directly linked with the volume of trade. I repeat and reiterate that all my dealings in the units of BOI AXA Credit Risk Fund, or any other fund managed by the AMC Noticee No. 1 during my tenure of employment were bona fide, and the provisions pertaining to such alleged violations do not apply. All transactions which have been duly disclosed by me were rational and informed invested decisions based on publically available information, inter alia the NAV of the Funds, and the SCN under reply* *has been addressed to me on the sole premise that I was employed with the Noticee No. 1 AMC.*

XII. The alleged contraventions are grave in nature, and I state that I am not responsible or liable for the same in light of the forgoing submissions recorded above.

Mutual Fund units are transacted based on a basket of securities within a scheme portfolio and NAV of the scheme is computed based on the valuation of all such securities. Valuation of individual securities have a lesser impact on the NAV of the scheme. Buying/ selling of securities at the applicable NAV which is applicable to all investors should not be construed a fraud if the valuation is being carried out according to SEBI regulations as well as AMC's own approved valuation policy.

Sir, the very fact that I have been accused of "Fraud" and allegation of having indulged in "Unfair Trade Practices" is extremely defamatory to me both from a professional and personal viewpoint. I had a career of nearly 28 years in the Mutual Fund industry before I left BOI AXA AMC in July 2020 and I have always worked during my entire career with 100% integrity and honesty.

Sir, in view of all the aforesaid facts mentioned above, with all sincerity I can say that I have not violated any provision of the PFUTP Regulations 2003, while redeeming my investment and also not committed any fraud thereon. In light of the aforesaid, I request you to take note of my substantiated reply, and absolve me from the charged alleged against me. It is my firm belief that you shall take into consideration my submissions, and take a judicious decision that shall not be irrationally prejudicial to a bona fide investor like myself.

…………….."

14. As regards hearing, Noticee-6 appeared in person for the hearing on November 25, 2022 wherein he submitted that in view of him having withdrawn from the settlement mechanism, the common submissions made through the AR vide letter dated June 22, 2022 may not be considered and submissions made by the Noticee vide email dated November 19, 2022 may be considered for the instant proceedings. During the hearing, Noticee-6 relied upon and reiterated his written submissions dated November 19, 2022. During this hearing, as regards the written submissions made by him vide email dated November 19, 2022, it was brought to his notice that he has not enclosed relevant documents in support of the facts and contentions/ assertions being made by him. Noticee-6 was advised to submit all the relevant documents supporting the facts and contentions/assertions made by him as part of his submissions in the instant proceedings. Noticee-6 requested for further time to submit relevant document in

support of facts and contentions/assertions made by him, for which time till December 09, 2022 was allowed.

15. Subsequently, vide email dated December 08, 2022, Noticee-6 submitted and reiterated that as he had withdrawn from the settlement process, the common submission made through the AR vide letter dated June 22, 2022 may not be considered and the submissions made through his email dated November 19, 2022 should be considered for the instant proceedings. Noticee-6 also submitted the following documents in support of his submission viz.

(i) Account statement of BOI AXA credit Risk Fund
(ii) Post transaction intimation to BOI AXA Mutual Fund for his redemptions done on 21st February 2019
(iii) Post transaction intimation to BOI AXA Mutual Fund for his redemptions done on 5th March 201
(iv) his quarterly transaction information to BOI AXA Mutual fund for the quarter ended 31st March 2019
(v) NAV of BOI AXA Credit Risk Fund from July 2018 to March 5, 2019
(vi) Uploaded portfolio on the website of BOI AXA AMC for the months of December 2018 to February 2019
(vii) XIRR return on his investment in BOI AXA Credit Risk Fund
(viii) BOI AXA Employees dealing policy effective August 2018
(ix) BOI AXA Employees dealing policy effective March 2019
(x) Monthly redemptions in BOI AXA Credit Risk Fund from September 2018 to February 2019
(xi) Provisioning pattern for the 3 securities Kwality Ltd, IL&FS Ltd and RKV Enterprises Pvt. Ltd.

16. Noticee-6, inter-alia, also submitted that there was a provision in the Employee Dealing Policy stating that "BAIM may, if deemed fit, at appropriate time advise the employees not to deal in certain schemes." However no such restriction had been put by BOI AXA Investment Managers restricting BOI AXA Credit Risk Fund from employee transactions during the provisioning period. Though this was not mentioned in his submission vide email dated 19th November 2022, he stated that he would like to place this information on record.

CONSIDERATION OF ISSUES AND FINDINGS

17. In view of the findings of Inspection/Post Inspection analysis, allegations contained in the SCN against Noticee-6, the written submissions of the Noticee-6 (hereinafter, also referred to as "Noticee" for brevity) in respect of the allegations made in the SCN and the material available on record, I hereby proceed to decide the matter on merits.

I find that the following issues require consideration in the instant proceedings:

Issue I: Whether the Noticee violated Regulations 3(a), 4(1) and 4(2)(q) of PFUTP Regulations?

Issue II: If yes, whether the Noticee is liable for imposition of monetary penalty under section 15HA of SEBI Act?

Issue III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act?

18. The relevant extract of the PFUTP Regulations are reproduced below for reference:

> *"……………*
> ***Definitions***
> ***2**. (1) In these regulations, unless the context otherwise requires,—*
> *………………..*
> *(b) "dealing in securities" includes:*
> *(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;*
> *(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and*
> *(iii) any act of providing assistance to carry out the aforementioned acts.*
>
> *(c) "fraud" <u>includes any act, expression, omission or concealment committed</u> whether in a deceitful manner or not <u>by a person</u> or by any other person with his connivance or by his agent while dealing insecurities <u>in order</u> <u>to induce another person</u> or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
> *…………..*

And “fraudulent” shall be construed accordingly;
…………..

3. Prohibition of certain dealings in securities
No person shall directly or indirectly—
(a) buy, sell or otherwise deal in securities in a fraudulent manner;
……………..

4. Prohibition of manipulative, fraudulent and unfair trade practices
(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves any of the following:—
…………………
(q) any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative;
……………..”

19. Before proceeding to consider the issues on merits, I would like to deal with Noticees submission regarding discrepancy in the date of redemption of units and the redemption amount mentioned in the SCN.

19.1. As regards date of redemption, the Noticee has submitted that his first redemption was on February 21, 2019 and not February 02, 2019 as stated in the SCN. In this regard, I note that the SCN apparently inadvertently mentions in one place that the first redemption by the Noticee was on February 02, 2019. However, it is noted that the SCN also mentioned the date of first redemption as February 21, 2022 at paragraph 81 (iii) page no. 29 of 34.

19.2. As regards the amount of redemption, the Noticee submitted that his redemption amount was approximately Rs. 20.88 Lakh and there was discrepancy in the SCN regarding it. In this regard, I note that there is no discrepancy regarding the amount of redemption. It is noted that the SCN only states the value of the total holdings of the Noticee on the day of redemption (i.e. approximately Rs 21.34 Lakhs) and not the total actual amount on redemption in a phased manner i.e. approximately Rs.20.88 Lakhs.

19.3. It is noted from the statement of account of the CRF scheme of the Noticee, as submitted by him, that he had redeemed his entire holding of Rs. 20.88 Lakhs on two dates i.e. a total of Rs. 3,20,000/- on February 21, 2019 [redemption amount of Rs. 190000 (online switch out to Bank of India Liquid Fund) and Rs. 1,30,000/- (online redemption directly credited to his bank account)] and a total of Rs.1768097.30 on March 05, 2019 (online redemption directly credited to his bank account).

Issue I: Whether the Noticee violated Regulations 3(a), 4(1) and 4(2)(q) of PFUTP Regulations?

20. It would be relevant to draw the background which gave rise to the instant proceedings. I note from the material available on record that BOI AXA Mutual Fund had launched a Mutual Fund scheme called BOI AXA Credit Risk Fund (hereinafter referred to as "**CRF scheme**") in February 2015 with a view to generate capital appreciation over the long term by investing in corporate debt securities across a wide spectrum. The CRF scheme had exposure to inter-alia, three debt securities viz. IL&FS commercial paper ("**IL&FS**"), Kwality, non-convertible debentures ("**Kwality**") and RKV Enterprises Pvt. Ltd, zero coupon bond ("**RKV**").The said underlying securities defaulted on their payment to the AMC during June 2018 to December 2018.

21. In the instant matter, as regards the AMC viz. Noticee-1, the following was inter alia observed and alleged in the SCN:

21.1. Noticee-1 was carrying out inter scheme transfers resulting into transfer of high risk securities to schemes categorised as low/medium risk, which did not confirm to their investment objectives.

21.2. Noticee-1 failed to value securities of Kwality and RKV in accordance with overarching principles of fair valuations and failed to follow its own approved valuation policy by arbitrarily deciding figure of per day provisioning and continued with per day provisioning ignoring material events and major developments regarding filing of recovery proceeding against the issuer with

NCLT etc. Further, the Valuation Committee ("**VC**") met after delay /failed to meet immediately to review /discuss related developments.

22. Further, as regards Noticee-6, it was inter alia observed and alleged in the SCN that during the relevant period relating to alleged violations, Noticee-6 was the Head of Operations of Noticee-1. Being part of the Local Controls Committee ("**LCC**") and VC of Noticee-1, he possessed all unpublished information regarding valuations of defaulted securities. It was noted from the account statements of Noticee that there were only purchase transactions in the CRF scheme from February, 2015 till August 2017 which cumulatively costed approx. Rs. 19 Lakhs. The fund had not seen any default till August 2017 i.e. the last date of purchase by Noticee. However, during June 2018 to December 2018, there were default of three securities viz. Kwality, IL&FS and RKV. Entire exposure to IL&FS was written off. However, in case of Kwality and RKV, Noticee-1 had been doing daily provisioning. At the time when phased redemptions were started by the Noticee i.e. February 21, 2019, only provisioning of around 51% in case of Kwality and around 10% in case of RKV was done. Noticee-6, being part of the VC and LCC, was privy to material unpublished information regarding per day provisioning, basis which he withdrew his entire holding to his advantage. In view of the above, Noticee-6 was alleged to have violated Regulations 3(a), 4(1), 4(2)(q) of PFUTP Regulations.

23. In view of the allegations, the broad parameters to be ascertained would be whether the Noticee was privy to and in possession of the material unpublished information regarding per day provisioning? If yes, then, whether he withdrew his entire holding in the CRF scheme based on the material unpublished information?

Whether the Noticee was privy to and in possession of the material unpublished information regarding per day provisioning?

24. In this regard, the SCN alleges that being part of the VC and LCC of the AMC, Noticee possessed all unpublished information regarding valuations of defaulted securities and was privy to material unpublished information regarding per day provisioning.

25. The Noticee has contended that his role in the VC was to account the provision entries in the books based on the decisions taken. He had no information on the status of securities and if chances of recoveries were there, as these were being handled by the Fund management and the Risk teams. As the head of operations, he had no role in the decision making process as regards to informing investors with respect to the provisioning carried out or the amount of daily provisioning to be done as these were being decided only by CEO, fund manager and Head (Sales and Marketing) and they were the sole authority in this regard.

26. In this regard, it is noted from the submission of the Noticee and from the SCN that Noticee was a member of the VC of the AMC. It is noted from the copies of the minutes of various meetings of the VC (as stated below) that, *firstly,* the Noticee being a member of the VC had attended all these meetings and had also signed the respective minutes of VC. In these meetings, the VC had inter alia provided for per day provisioning in respect of Kwality and RKV wherein pursuant to the default, instead of taking haircut at one go for the entire amount of respective defaults, per day provisioning was undertaken. Further, the amount of per day provisioning was revised either upwards or downwards based on inter alia the developments in respective securities (Kwality & RKV) (relevant extracts of the minutes of the referred VC meetings are reproduced below). *Secondly,* it is noted from the copies of the inter-office memos (as stated below) which dealt with the provisioning in respect of Kwality and RKV, that the Noticee himself had put up these inter-office memos for approval inter alia to Sandeep Dasgupta (then CEO), Alok Singh (then fund manager of CRF scheme) and Rajesh Chawathe (then Compliance Officer). The details of the referred copy of the minutes of meetings of VC and copies of inter-office memo(s) are as given below:

(i) **Copy of the Minutes of the VC meeting dated July 04, 2018:** regarding Valuation of Kwality- started daily provisioning of Rs. 4 Lakhs. The relevant extracts of the same are reproduced below:

"……………

The first quarterly amortization started on March'18 quarter end and BOI AXA Credit Risk Fund received the amortization payment accordingly, However, the second amortization instalment of approx.. Rs. 4.75 cr due on June 30, 2018 has not been received so far.

…………….

The committee also had a call with officials of CRISIL and disussed the entire matter. <u>CRISIL confirmed that that according to them, the security was not "Below investment grade".</u> In view of this, they will not provide the valuation of this security until they carry out an internal assessment of the issuer prior to arriving at any conclusion. <u>It is therefore left to the AMC to value the security based on its internal policies.</u>

…………..

In light of this, the committee decided the following course of action:-

…………..

Effective July 4, 2018, we will stop all income accruals on this security and also make a daily provision of Rs. 4 lakhs by reducing the price of the security in the books.

………….."

(ii) **Copy of the Inter Office memo dated December 03, 2018 submitted for approval from the desk of Noticee:** regarding Kwality-decrease of per day provisioning from Rs. 25 Lakhs per day to Rs. 5 Lakhs per day in Kwality. The relevant extracts of the same are reproduced below:

"*…………..*

Given the default committed by Kwality in repaying the payment obligation due on 30th June 2018 and the rating downgrade, we decided to provide for the following amounts in the books of BOI AXA Credit Risk Fund since 4th July 2018:-

Dates	*No. of days*	*Amount provided per day (Rs.)*	*Total amount (Rs.) provided for till 2nd December 2018*
4th July 2018-29th July 2018	*26*	*4,00,000*	*1,04,00,000*
30th July 2018-20th September 2018	*53*	*6,00,000*	*3,18,00,000*
21st September 2018-8th October 2018	*18*	*15,00,000*	*2,70,00,000*
9th October 2018-28th October 2018	*20*	*50,00,000*	*10,00,00,000*
29th October 2018-2nd December 2018	*35*	*25,00,000*	*8,75,00,000*
Total			*25,67,00,000*

…………..

<u>However, as the matter is still under NCLT, uncertainty remains as to the time period of the resolution and recovery proceedings</u>. Hence it is proposed to continue with the daily provisioning but reduce the daily provisioning amount from Rs. 25 lakhs to Rs. 5 lakhs.

…………..

In view of the above, the committee decided to decrease the provision to Rs. 5 lakhs on a daily basis with effect from 3rd December 2018.

……….."

(iii) **Copy of the minutes of the VC meeting dated February 04, 2019:** regarding Valuation of bonds of RKV-daily provisioning of Rs. 2 Lakhs per day started. The relevant extracts of the same are reproduced below:

"……….
As per the repayment schedule for the aforesaid bond, RKV was supposed to payRs 10.96 crores (including part of the principal and accrued interest) on 31st dec'18.
The Company failed to make its payment on the due date.
…………
We are expecting an early resolution, as promoter is exploring various alternative sources to repay due instalment. Promoter has approached Yes Bank for a loan facility (which is under consideration by Yes Bank).
There are also some discussions going on between ADIA and KKR on a possible refinance of the whole facility.

Based on the above, the Valuation committee discussed the entire matter. The same was discussed with the Asia Head of risk and the committee finally decided to make a provision of Rs 2 lakhs per day wef February 4, 2019 and review the same after the end of the month based on any developments on part/full payment of the outstanding amount.
………."

(iv) **Copy of the Inter Office memo dated February 04, 2019 submitted for approval from the desk of Noticee:** The relevant extracts of the same are reproduced below

"……….
Following the Valuation Committee Meeting held on 4th February 2019, we will be making a provision of Rs. 2 lakhs on a daily basis against the amount receivable from RKV Enterprises Pvt. Ltd as on 31st December 2018. Since the company is in the process of arranging for repayment of the amount, we will not be taking any valuation impact of this security.
…………."

(v) **Copy of the Minutes of the VC meeting dated February 15, 2019**: regarding Valuation of bonds of Kwality and RKV, as regards Kwality-increased daily provisioning of Rs. 5 Lakhs per day to 10 Lakhs per day and as regards RKV- increased daily provisioning from Rs. 2 Lakhs per day to Rs. 5 Lakhs per day. The relevant extracts of the same are reproduced below:

"………….

Kwality Ltd.
……………

The amount of write offs carried out till date is as follows:-

Dates	*No. of days*	*Amount provided per day (Rs.)*	*Total amount (Rs.) provided for till 2nd December 2018*
4th July 2018-29th July 2018	*26*	*4,00,000*	*1,04,00,000*
30th July 2018-20th September 2018	*53*	*6,00,000*	*3,18,00,000*
21st September 2018-8th October 2018	*18*	*15,00,000*	*2,70,00,000*
9th October 2018-28th October 2018	*20*	*50,00,000*	*10,00,00,000*

Dates	*No. of days*	*Amount provided per day (Rs.)*	*Total amount (Rs.) provided for till 2nd December 2018*
29th October 2018-2nd December 2018	*35*	*25,00,000*	*8,75,00,000*
3rd December 2018-14th February 2019	*74*	*5,00,000*	*3,70,00,000*
Total			*29,37,00,000*

Till 14th Feb'2019, we have a made provision of Rs. 29.37 crores which is approximately 47% of the outstanding amount as on 3rd July 2018of Rs. 62.52 crs.

Kwality was admitted to NCLT, CoC was formed and bidding process is soon expected to start. Based on initial feedback received from Resolution Professional, realizable value from the process is expected to be lower than expected.
In light of the above information and feedback, Valuation committee decided to increase the provision from Rs 5 lacs per day to Rs 10 lacs per day as a conservative measure.

RKV Enterprises Pvt. Ltd.

…..........

Fund Management Team has been in constant touch with Promoter (RK Verma), and based on the discussion with Promoter, it is looking unlikely that Promoter would be able to make payment of our due amount (Rs 10.96cr) by 31 Mar'19 (90 days past due).
Based on the above discussion Valuation committee has decided to increase the provision from Rs 2 lacs per day to Rs 5 lacs per day.
…………."

(vi) **Copy of the inter office memo dated February 15, 2019 submitted for approval from the desk of Noticee:** The relevant extracts of the same are reproduced below:

"…………
Following the Valuation Committee Meeting held on 15th February, 2019, we will be increasing the daily provision for Kwality Ltd from Rs. Lakhs to Rs. 10 lakhs and for RKV Enterprises from Rs. 2 lakhs to Rs. 5 Lakhs. The changes are effective from 15th February 2019.
…………."

(vii) **Copy of the Minutes of VC meeting dated February 19, 2019:** regarding Valuation of bonds of RKV-increasing per day provisioning from Rs. 5 Lakh per day to Rs. 50 Lakh per day. The relevant extracts of the same are reproduced below:

"…………
RKV Enterprises Pvt. Ltd.
…………...
Based on interaction of Fund Management Team with the Promoter (RK Verma), Promoter had promised to make the part payment against the outstanding by 18th Feb 2019. Considering that we have not received the part payment by 18th Feb and looking at his liquidity position and current market scenario, it is looking highly unlikely that Promoter would be able to make any payment in near future, we propose to increase the provision from Rs 5 lacs per day to Rs 50 lacs per day……

…………..”

(viii) **Copy of the Minutes of the VC meeting dated March 20, 2019:** regarding Kwality- decided to increase the provision from Rs 10 lacs per day to Rs 20 lacs per day. The relevant extracts of the same are reproduced below:

"…………..

<u>Kwality Ltd.</u>

Kwality was admitted to NCLT in Dec'18, CoC was formed in Jan'19 and bidding process is soon expected to start. Based on initial feedback from Resolution Professional, realizable value from the process is expected to be lower than expected.

………….

However based on further feedbacks in this matter, it is felt that the resolution process is going to take substantially longer than was anticipated earlier. In view of this, the Committee decided to increase the write off for Kwality Ltd. to Rs. 20 lakhs per day with effect from 20th March 2019.

…………..”

(ix) **Copy of the Minutes of VC meeting dated June 13, 2019**: regarding bond valuation of Kwality-decided to provide for balance outstanding amount in books and which would result in 100% provisioning. The relevant extracts of the same are reproduced below:

"…………

<u>Kwality Ltd.</u>

we have already provided for ~75% of the outstanding amount as on 3rd July 2018 of Rs 62.52 cr.

This case is currently in NCLT and resolution process was expected to be completed in 180 days. However, it has been extended by further 90 days……if case is not resolved within 270 days, company will go into liquidation mode, which will result in significant low recoverable value. Thus, valuation committee decided to provide for balance outstanding amount in our books i.e. Rs 15, 85,11,298.10 as of 12th June 2019. It will result in 100% provisioning.

………….”

27. As regards Noticee's contention that he had no information about the status of securities and if chances of recoveries were there, it is noted that the Noticee has neither denied nor disputed that he attended the cited meetings of the VC or that he put up the inter office memos for approval. Further, it is noted from the relevant extracts of cited meetings of the VC, as reproduced under para 26 above, that firstly, having attended the cited meetings and having signed the minutes of the cited meetings, and secondly, having put up the inter office memos himself for approval (to the approving authorities) the Noticee was aware of and was in possession of information such as the default and the amount of default in Kwality

and RKV, the beginning of per day provisioning and the amount of per day provisioning to be carried out in respective securities, the revision(increase or decrease) in the amount of per day provisioning subsequently, the uncertainty regarding recovery proceedings, unlikelihood of receipt of payment from the promoters, expectations regarding realizable value of security being less than expected etc. From the above, it is evident that Noticee had information about the status of securities and if chances of recoveries and therefore his contention in this regard cannot be accepted.

28. As regards Noticee's contention that his role in VC was to account the provision entries in the books based on the decision taken and that he had no role in the decision making process as regards to informing investors with respect to the provisioning carried out or the amount of daily provisioning to be done, it is noted that firstly, Noticee's contention is out of context and misplaced as the question to be ascertained is not regarding his decision taking role, rather regarding his possession of material unpublished information and the same has already been brought out above as to how the Noticee was indeed privy to and in possession of such material unpublished information. Secondly, it is noted that the Noticee has failed to demonstrate as to how he was not privy to or in possession of such material unpublished information due to his role of accounting the provision entries in the books. It is unclear as to how such role isolated him from the material unpublished information considering that he had been a member of the VC and had attended the cited meetings of VC which dealt with the default and provisioning regarding Kwality and RKV. In view of this, it is logical to construe that even by virtue of accounting the provision entries in the books based on the decisions taken, the Noticee would still be in possession of information regarding the default amount and regarding the per day provisioning such as the amount of per day provisioning, its revision (increase or decrease) and the then valuation of securities (Kwality and RKV). Therefore, Noticee's contention in this regard is out of context and cannot be accepted.

29. From the above, considering that the Noticee being member of the VC had attended and signed all the above mentioned meetings and had also put up inter-office memos which dealt with material unpublished information regarding per

day provisioning in the defaulted securities viz., Kwality and RKV, it is evident and established that the Noticee was privy to and in possession of the material unpublished information regarding per day provisioning.

Whether the Noticee withdrew his entire holding in the CRF scheme based on the material unpublished information?

30. In this regard, the SCN alleges that the Noticee withdrew his entire holding in CRF scheme based on such material unpublished information. It is noted that the Noticee redeemed his entire holding in the CRF Scheme on two dates i.e. a total of Rs. 3,20,000/- on February 21, 2019 and a total of Rs.1768097.30 on March 05, 2019 (as also mentioned under para 19.3).

31. The Noticee has contended that he had redeemed his units long after substantial provisioning had been made in the three defaulting securities viz., IL&FS, Kwality and RKV. The provisioning of the securities had commenced from July 2018 and his redemptions were in February 2019 and March 2019 i.e. after 8 months from commencement of provisioning. If he had to take advantage of any classified information, he would have redeemed much earlier and not awaited for so long.

32. In this regard, it is relevant to refer to, *firstly*, the events that took place near the time of redemption by the Noticee in the CRF Scheme, in particular, the VC meeting dated February 15, 2019 regarding Kwality and the VC meetings dated February 15, 2019 and February 19, 2019 regarding RKV. *Secondly*, the details of the material unpublished information which the Noticee possessed at the time of his redemptions in respect of the securities (Kwality and RKV).

33. As regards Kwality, the Noticee had attended the VC meeting dated February 15, 2019 and was privy to inter alia the following information as reproduced below from the copy of the minutes of VC meeting dated February 15, 2019:

"…………..

Kwality Ltd.

……………

The amount of write offs carried out till date is as follows:-

Dates	*No. of days*	*Amount provided per day (Rs.)*	*Total amount (Rs.) provided for till 2nd December 2018*
4th July 2018-29th July 2018	*26*	*4,00,000*	*1,04,00,000*
30th July 2018-20th September 2018	*53*	*6,00,000*	*3,18,00,000*
21st September 2018-8th October 2018	*18*	*15,00,000*	*2,70,00,000*
9th October 2018-28th October 2018	*20*	*50,00,000*	*10,00,00,000*
29th October 2018-2nd December 2018	*35*	*25,00,000*	*8,75,00,000*
3rd December 2018-14th February 2019	*74*	*5,00,000*	*3,70,00,000*
Total			*29,37,00,000*

Till 14th Feb'2019, we have a made provision of Rs. 29.37 crores which is approximately 47% of the outstanding amount as on 3rd July 2018of Rs. 62.52 crs.

Kwality was admitted to NCLT, CoC was formed and bidding process is soon expected to start. Based on initial feedback received from Resolution Professional, realizable value from the process is expected to be lower than expected.
In light of the above information and feedback, Valuation committee decided to increase the provision from Rs 5 lacs per day to Rs 10 lacs per day as a conservative measure.
…………"

34. Further, as regards RKV, the Noticee had attended the VC meeting dated February 15, 2019 and was privy to inter alia the following information as reproduced below from the copy of the minutes of VC meeting dated February 15, 2019 and February 19, 2019 respectively :

"…………..

RKV Enterprises Pvt. Ltd.

…..........
Based on discussion on 4th feb 2019, the valuation committee decided to make a provision of Rs 2 lakhs per day wef 4th Deb'19 and was expected to review the same on a periodic basis based on any developments regarding part/full payment of the outstanding amount.
Fund Management Team has been in constant touch with Promoter (RK Verma), and based on the discussion with Promoter, it is looking unlikely that Promoter would be able to make payment of our due amount (Rs 10.96cr) by 31 Mar'19 (90 days past due).
Based on the above discussion Valuation committee has decided to increase the provision from Rs 2 lacs per day to Rs 5 lacs per day.
…………."

(Noted from copy of minutes of VC meeting dated February 15, 2019)

"…………

RKV Enterprises Pvt. Ltd.

…………..
Based on interaction of Fund Management Team with the Promoter (RK Verma), Promoter had promised to make the part payment against the outstanding by 18th Feb 2019. Considering that we have not received the part payment by 18th Feb and looking at his liquidity position and current market scenario, it is looking highly unlikely that Promoter would be able to make any payment in near future, we propose to increase the provision from Rs 5 lacs per day to Rs 50 lacs per day……

…………..”

(Noted from copy of minutes of VC meeting dated February 19, 2019)

35. As regards Kwality, it is noted from the above relevant extracts that until October 09, 2018 there was an increasing trend in the amount of per day provisioning to be carried out in Kwality i.e. the amount of per day provisioning in Kwality was gradually increased from Rs 4 lakhs per day to Rs 50 lakhs per day on October 09, 2018. Thereafter, the amount of per day provisioning was on a decrease and as can be seen, per day provisioning was substantially decreased by 1/10th i.e. from Rs. 50 Lakhs to Rs. 5 Lakhs per day on December 03, 2018. Thereafter, the amount of per day provisioning again began to rise upwards i.e. in the aforesaid meeting dated February 15, 2019 as the VC decided to increase the provisioning amount from Rs 5 lacs per day to Rs 10 lacs per day. In this regard, it is also relevant to add that the increasing trend continued, the amount of per day provisioning was further increased from Rs 10 lakhs per day to Rs 20 lakhs per day in the meeting of VC dated March 20, 2019 and the Noticee was part of this meeting as noted from the copy of the minutes of the VC meeting dated March 20, 2019. Further, it is noted that Kwality was admitted to NCLT and as per the feedback received from the Resolution Professional, realisable value of the securities was expected to be lower than expected which evidently was a hint towards impending default and/or significant impact.

36. As regards RKV, it is noted from the copy of minutes of VC meeting dated February 15, 2019 that pursuant to the default in RKV, the provisioning for the same was started on February 04, 2019 for Rs. 2 Lakhs per day, however, based on the discussion with the promoter of RKV, it was unlikely that RKV would be able to make payment of the due amount by March 31, 2019 and therefore, the provisioning was increased from Rs 2 Lakhs per day to Rs 5 Lakhs per day. Thereafter, as noted from the copy of the minutes of the VC meeting dated February 19, 2019, the promoter of RKV had promised to make the part payment against the outstanding by February 18, 2019. However, the same was not received. Looking at the liquidity position and the market scenario it was likely that the promoter would not be able to make any payment in near future and the

provisioning was increased from Rs. 5 Lakh per day to Rs. 50 Lakh per day. This was a substantial increase in the amount of per day provisioning.

37. Given the backdrop of developments as brought out above under para 30 to 36, generally speaking any common person with prudent mind would be able to logically infer the likelihood of impending increased provisioning and/or its impact on the valuation of the securities and on the CRF Scheme. In the instant matter, considering his profile that he had a career of nearly 28 years in the mutual fund industry before he left BOI AXA AMC, the Noticee is not just a common person, he can understandably be cogitated as a person with financial acumen and logically speaking, he could apprehend that the entire amount of default i.e. amount of Rs. 62.52 crore in respect of Kwality and Rs. 10. 96 cr in respect of RKV might have to be written off in the near future considering the trend in the increase in per day provisioning amount wherein the amount was increased substantially, coupled with other developments such as the expectations regarding the realisable value of the security due to the NCLT proceedings (for Kwality) and the failure on the part of promoter of RKV to make payments despite promises and assurances.

38. Therefore, as regards Noticee's contention that if he had to take advantage of any classified information then he would have redeemed much earlier and not waited for so long, it is observed that considering Noticee's background of having an experience of 28 years in the mutual fund industry and that at the time of his redemption he was privy to and in possession of material unpublished information regarding the per day provisioning as brought out in the paragraphs above, it is evident that the Noticee took advantage of the material unpublished information and basis such information he redeemed his entire holding in the CRF scheme not after eight months of being in possession of such information, rather based on all the developments in the securities, in particular the immediate developments in the VC meeting dated February 19, 2019 wherein the per day provisioning in RKV was increased from Rs. 5 lakhs per day to Rs 50 lakhs per day. It is observed that just after two days after the VC meeting dated February 19, 2019 the Noticee made his first redemption on February 21, 2019 (24200.62 units amounting to Rs. 320000/-) and the remaining on March 05, 2019 (i.e.

137249.669 units amounting to Rs.1768097.30/-). Therefore, the Noticee's contention in this regard cannot be accepted.

39. As regards Noticee's contention that substantial provisioning had been made in the three defaulting securities i.e., IL&FS, Kwality and RKV and by the time he redeemed the larger amount on March 05, 2019, substantial provision had been made prior to his redemption. In this regard, it is noted from the submissions of the Noticee that till February 28, 2019, 51.7% of the default amount was provisioned in respect of Kwality and 10.1% of default was provisioned in respect of RKV, even if it is considered that so much of provisioning had already been carried out in the respective securities, still it is unclear as to how the same negates the allegation that the Noticee redeemed his units in CRF scheme based on the material unpublished information. It is evident that full provisioning was still not carried out in the securities of Kwality and RKV and therefore, the impact of remaining default amount was still impending. Considering the backdrop of developments it was apprehensible that the remaining amount of default would also have to be provisioned. In view of the above, the Noticee's contention in this regard does not hold merit and therefore, cannot be accepted.

40. The Noticee has contended that the NAV of the Fund is an information available in the public domain, and even public investors, on account of the poor performance of the fund and diminishing NAV, may have redeemed their unit. His redemption of units cannot by any stretch of imagination be attributed to any unpublished information as has been alleged in the captioned SCN, but because of publicly available information, viz. diminishing NAV of the fund and negative press reports in circulation regarding Credit Risk Funds at that time. This had resulted in large redemptions in BOI AXA Credit Risk Fund at that point of time. Further, the Noticee has submitted that Monthly portfolios were being made public through the BOI AXA AMC website for the investors so the public investors were aware that there were defaults in the scheme.

41. As regards Noticee's contention that his redemption of units was because of publicly available information, viz. diminishing NAV of the fund and negative press reports in circulation regarding CRF scheme at that time, it is noted that, *firstly*,

the Noticee has himself admitted that the default in the securities had substantially affected the NAV of the scheme, this indicates that the Noticee was also aware that the impending provisioning which is yet to be carried out in the CRF Scheme would further affect the NAV. Therefore, it is logical to construe that the Noticee decision to redeem his units was not purely based on the trend in the NAV rather, his knowledge about the default in the securities (Kwality and RKV) including the knowledge about the provisioning in the securities as already discussed in the foregoing paragraphs. Secondly, instead of demonstrating his analysis of the NAV related charts and other methods that he generally uses and or in particular, used to arrive at such decision regarding redemption of his units, it is noted that the Noticee has merely made unsubstantiated statements in his submissions such as “it is reasonably understood that the NAV of the fund had substantially dropped.” It is noted that he is merely indicating a likelihood or inference about substantial drop in the NAV of the fund due to the default whereas if he had really redeemed his units based on the NAV, his submissions would not be general and vague. It is evident from the above that the stand of the Noticee that he redeemed his units based on the NAV of the fund is merely an afterthought to the allegations made out in the SCN and wasn’t the actual cause behind his redemption of units. The Noticee has failed to show any documents/analysis so as to indicate that the he made an independent decision to redeem his units solely by analysing the performance of the fund through its NAV like a general public investor, and that the possession of such material unpublished information regarding the defaulting securities had no impact on his decision to redeem. Considering that Noticee has failed to substantiate his claim that he redeemed his units based on publically available information such as diminishing NAV and negative press reports, and considering that the Noticee redeemed his units while being in possession of the material unpublished information as brought out in the foregoing paragraphs, it is difficult to hold that the Noticee had redeemed his units based on publically available information and his redemption is not attributable to any unpublished information. Therefore, the contention of the Noticee in this regard cannot be accepted.

42. Further, as regards Noticee's submission that the general investors were aware that there were defaults in the scheme, it is noted from the copies of the Monthly Portfolio of CRF scheme from December 2018 to February 2019 as submitted by the Noticee, that there was no information provided in the monthly portfolios which mentions that these two securities viz. Kwality and RKV had defaulted in their payments to the AMC and provisioning for the same was being carried out by the AMC. Further, even if it is assumed that the general investors were aware of the default in the scheme, still the Noticee has failed to show that the general investors were aware about the day to day developments in the respective defaulted securities and were made aware about the amount of per day provisioning being carried out, the revision (increase or decrease) in the provisioning amount and the information indicating the likelihood of recovery of defaulted amount such as NCTL proceedings, talks with the promoter of RKV etc. Therefore, the submission of the Noticee in this regard, cannot be accepted.

43. The Noticee submitted that during his employment with the AMC, there was no statutory or contractual embargo restraining him as an employee from investing in the units. The only requirement in this regard was to make complete disclosure of all such purchase and redemption of units within 7 days of such transaction with regards to debt fund. The Noticee submitted that he had made quarterly disclosures as required, of the transactions of the relevant quarter ending March 31, 2019 as per the dealing policy of the organisation. There was no freeze on redemption even for a single day. There was no such restriction on redemption of units placed by his employer.

44. In this regard, I note that the submissions of the Noticee are out of context and do not require consideration as the present adjudication proceedings only requires determination of whether the Noticee redeemed his units of the CRF Scheme on the basis of the material unpublished information and whether that leads to violation of the alleged provisions. The submission of the Noticee are beyond the alleged violations, as the SCN does not allege that the Noticee did not comply with the employee dealing policy of the AMC or disregarded any restriction policies of the AMC. However, on a perusal of the employee dealing policy of the AMC as submitted by the Noticee, it is noted that there is a provision

regarding investment in the units of mutual fund by the employees of the AMC. The relevant extract of the same is reproduced below:

> "………………..
> ***<u>I. Investments in Mutual Fund Schemes managed by BOI AXA IM:</u>***
> *………….*
> *1. Access Persons and Key Personnel shall require <u>prior approval of the Compliance Officer for dealing in equity schemes managed by BOI AXA IM</u>………………………*
>
> *2. Notwithstanding the above,* ***<u>Employees shall not purchase / sell / tender for repurchase/redemption of units in any scheme, including debt mutual fund scheme managed by BOI AXA IM</u>*** *or under supervision of BATS in the following cases:*
> *………………..*
>
> > *d. there is a likelihood of a change in the accounting policy, or <u>a</u>* ***<u>significant change in the valuation of any asset, or class of assets, and the same has not been communicated to the investors;</u>***
> > *BOI AXA IM may, if deemed fit, at appropriate time advise the employees not to deal in certain schemes.*
>
> *…………………."*

45. From bare reading of the provisions laid down in the employee dealing policy as reproduced above, it is learnt that as per clause I(2), being a non-obstante clause, the employees of the AMC were prohibited from redemption/ selling of units in any scheme including debt mutual fund scheme in the event where there was inter-alia, a significant change in the valuation of any asset or class of asset and when the same was not communicated to the investors. In the present proceedings, considering the default in the securities and the per day provisioning being carried out in the respective securities with subsequent revision (increase or decrease) in the amount of per day provisioning, there was indeed significant change in the valuation of the assets (being defaulting securities here) and such changes regarding the valuation of the assets were not communicated to the investors of the scheme. From the above, it is learnt that in the view of significant change in the valuation of the defaulting securities of the CRF scheme, the Noticee was prohibited from redemption of the units considering that the same was not communicated to the investors. In view of this, I find it difficult to accept the contention of the Noticee in this regard. Since the same is out of context, it does not require any further discussion.

46. The Noticee has contended that at the time when he redeemed the units; i.e. 21st February, 2019 and 5th March, 2019, SEBI Circular No.

SEBI/HO//IMD/DF2/CIR/P/2016/24 dated November 17, 2016, on Investment/trading in securities by employees of AMC(s) and Trustees of Mutual Funds was applicable to him. Noticee submitted that the regulation did not stipulate any restriction on employees of an AMC from dealing in schemes which had defaulted securities. This restriction was subsequently added vide SEBI Circular No. SEBI/HO/IMD-I DOF5/P/CIR/2021/654 dated. October 28, 2021, i.e. long after his transactions in question under the captioned SCN, and the same cannot be applied retrospectively.

47. In this regard, I again reiterate that the contention of the Noticee are out of context as the SCN does not allege violation of either of the circulars i.e. the circular dated November 17, 2016 or October 28, 2021. Therefore, the question of retrospective application of the SEBI circular does arise and the contention of the Noticee in this regard does not hold any merit. As regards Noticee's contention that the same did not stipulate any restriction on employees of an AMC from dealing in the schemes which had defaulted securities, it is noted that the same is out of context and beyond the allegations made out in the SCN as the SCN does not allege that the Noticee redeemed his units in violation of the said SEBI circulars, rather the allegation is regarding the basis on which the Noticee redeemed his units i.e. on the basis of material unpublished information regarding the per day provisioning in the defaulting securities. On perusal of the SEBI circular dated November 17, 2016, it is noted that there is a provision regarding investment in the units of mutual fund. The relevant extract of the same is reproduced below:

Relevant text of SEBI Circular No. SEBI/HO//IMD/DF2/CIR/P/2016/24 dated November 17, 2016:

"…………………..

*E**. **__Investments in units of Mutual Fund Schemes__***

1. *Access persons as well as other employees do not require prior permission of the Compliance Officer for purchase or sale of units of Mutual Fund schemes. However, details of each such transaction, excluding transactions in Money Market Mutual Fund schemes and liquid schemes shall be reported by them to the Compliance Officer within 7 calendar days from the date of transaction.*

2. *In case of investments in SIP of any Mutual Fund scheme, the employees may report only at the time of making the first instalment of the SIP.*

3. *Notwithstanding anything mentioned earlier, in the following cases* ***employees of AMC & Trustees shall not purchase or sell /or repurchase or redeem units of any scheme****, including Money Market Mutual Fund scheme and liquid scheme of their Mutual Fund:*

   a. *There is a likelihood of a change in the investment objectives of the concerned Mutual Fund Scheme(s) and this has not been communicated to the investors;*
   b. *There is a likelihood of a rights and/or bonus issue in the concerned Mutual Fund Scheme(s) and this has not been communicated to the investors;*
   c. *The concerned Mutual Fund Scheme is contemplating to issue dividend to the unit holders and this has not been communicated to the investors;*
   d. *There is a likelihood of a change in the accounting policy, or a significant change in the valuation of any asset, or class of assets and the same has not been communicated to the investors;*
   e. *There is a likelihood of conversion of a close ended scheme to an open ended scheme and vice versa and this has not been communicated to the investors.*

   …………."

48. From bare reading of the relevant text as reproduced above, it is noted that clause E.3 is similar to the provision laid down in the employee dealing policy and the same is already dealt under para 44 and 45. It is learnt that there was a prohibition on the Noticee from redeeming his units considering that there was significant change in the valuation of the asset of the scheme and the same was not communicated to the investors. In view of this, I find it difficult to accept the contention of the Noticee in this regard that there was no stipulation regarding any restriction on employees of an AMC from dealing in schemes which had defaulted securities. Considering that this contention of the Noticee is out of context, it does not require any further discussion.

49. The Noticee has contended that his investment was of Rs. 19 Lakh and when redeemed in tranches on two dates, the redemption amount totalled to Rs. 20.88 Lakh. Having held the amount from 2015 initial investment and subsequent additional purchases, it was a sub-par return which was approximately as low as 4% annualised. He submitted that it was an apocryphal allegation that his redemption of units, which was in compliance of the governing laws in force, was to his advantage. Mutual fund units are transacted based on a basket of securities within a scheme portfolio and NAV of the scheme is computed based on the

valuation of all such securities. Valuation of individual securities have a lesser impact on the NAV of the scheme.

50. As regards Noticee's contention about the sub-par profits made pursuant to such redemption, it is noted that whether an act/conduct amounts to violation of the alleged PFUTP Regulations, is independent of the amount of profit gained. It is immaterial if the Noticee made any actual profit or loss or gained any advantage consequent to the redemption, in order to ascertain if the redemption of units by the Noticee amounts to violation of alleged PFUTP Regulations. Therefore, the contention of the Noticee in this regard cannot be accepted.

51. As regards Noticee's contention that valuation of individuals securities have lesser impact on the NAV of the scheme, it is noted that the Noticee is himself contradicting his earlier submissions wherein he himself has emphasised that the default in the scheme had substantially affected the NAV of the CRF scheme and that the NAV of the scheme had substantially dropped at the time of his redemption of units which subsequently became the reason for large redemptions by general investors and of the Noticee himself. Thus at one instance, when it suits the Noticee, he is relying on the interpretation that the defaults had substantial impact on the NAV of the fund, and on other instance, he is emphasising that individual securities have lesser impact. It is evident from the redemption pattern of the Noticee, that the defaults of the securities, indeed had a significant impact on the NAV of the fund, and the Noticee being an experience person in this industry, did not want to continue to hold the units of the fund which he started buying from February 2015 and continued to buy until August 2017 and held the units in the scheme until his first redemption on February 21, 2019 In light of this contradiction, the contention of the Noticee does not require any further consideration.

52. As regards the violation of provision of Regulation 3(a) of PFUTP Regulations, it is noted that the said provision imposes a prohibition on buying or selling or otherwise dealing in securities in a fraudulent manner. Considering that the definition of securities under section 2(h) of the Securities contracts (Regulation) Act, 1956, included units of Mutual Funds, therefore, dealing in securities would

include dealing in units of Mutual Funds i.e. redemption of units by the Noticee. However, in this regard it is also relevant to refer to the definition of fraud as has been defined under Regulation 2 (1)(c) of PFUTP Regulations which states as under:

> *"…………….*
> *(c) "fraud" <u>includes any act, expression, omission or concealment committed</u> whether in a deceitful manner or not <u>by a person</u> or by any other person with his connivance or by his agent <u>while dealing insecurities</u> <u>in order</u> <u>to induce another person</u> or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*
> *………….."*

53. In order to arrive at what are the essential ingredients of fraud, reference is drawn to the observations made by Hon'ble Supreme Court in SEBI vs. Kanaiyalal Baldevbhai Patel (Civil Appeal No. 2595 of 2013) which reads as under:

> *"………………*
> *50. The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce".*
> *…………..."*

54. From the above observation of Hon'ble Supreme Court, it is noted that the inducement is an important factor while determining whether an act can be considered "fraudulent". In this regard, it is noted that the material available on record does not bring out or indicate that the redemption of the units of CRF scheme by the Noticee was carried out in a fraudulent manner, in other words, the material does not bring out that the Noticee, while dealing in the securities, induced any other person to deal in securities. In the absence of any material available on record in this regard, I am constrained to give benefit of doubt to the Noticee. Therefore, I find that the violation of Regulations 3(a) of the PFUTP Regulations by the Noticee could not be established.

55. As regards the violation of provision of Regulation 4(2)(q) of PFUTP Regulations, I note that the said provision deems dealing in securities as fraudulent or unfair

trade practice if any order in securities is placed by a person while he is directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that securities, its underlying securities or its derivative. As regards, the interpretation of Regulation 4 (2)(q) of PFUTP and what will be considered as transaction, I would like to draw reference to Report of the committee on Fair Market Conduct ("FMCC Report") and the analysis by SEBI of the public comments on the FMCC Report basis which Regulation 4 (2)(q) of PFUTP Regulation was amended by SEBI. The relevant excerpts of the same are given below:

Relevant text of FMCC Report's observation (paragraph 13, page 28-29 of the FMCC Report): *Source: SEBI Website*

"……………..
13. The provision at Reg. 4(2) (q) <u>currently makes any trading by an intermediary in advance of a substantial client order as fraud</u>. In the wake of the judgment of Hon'ble Supreme Court in the matter of Kanaiyalal Patel v. SEBI, <u>wherein the ambit of front-running was increased from intermediary to any person</u>, the Committee is of the opinion that if the trading is done by any person based on direct or indirect knowledge about an impending transaction by any person it should be treated a fraud. Further, the provision would cover trading in the security or its derivative. However, considering the fact that some intermediaries are legitimately aware of such information in advance, it was decided that protection may be given to trading which is based on information which is publicly available. Further, the Committee was of the view that the provision should not be construed to bring in the concept of front running one's own trades.
…………………..."

Relevant text of Analysis by SEBI of the public comments on FMCC Report (Sr. no 2, page 11 of the Analysis report): *Source: SEBI Website*

Sr. No	Recommendation / Proposed Amendments	Name of the entity	Public Comments	SEBI comments
	Deeming Provision Regulation 4(2) **(q)** ~~an intermediary buying or selling securities in advance of a substantial client order or whereby a futures or option position is taken about an impending transaction in the same or related futures or options contract.~~ **Any order in securities placed by a person, while directly or indirectly in possession of information that is not publically available, regarding a substantial impending transaction in that security, its underlying security or its derivative**		Substantial impending transaction should be defined like potential mergers or acquisitions, change, y- o-y change in EBIDTA by +/- 15%, exit of key management person, etc. on the lines of 2 (n) given in page 76/77. And the gain for the person for any probe should be beyond a sum, say, Rs. 25 lakhs. This omnibus clause does not protect a genuine investor taking a position in market based on information available only in public domain and topping that with her/his bet on the course of events. Then without her/his knowledge a substantial impending transaction take place! This is too onerous for such a person to prove that she/he did not have any information on the 'impending' transaction if an	This provision deals with front running large transactions on the stock exchange which cause changes in price due to the size of transaction. The term transaction refers to trade in a security and not a merger or acquisition transaction.

56. From the above, I note that aforesaid provision of PFUTP is applicable on violations pertaining to front running and the term "transactions" refers to trade in a security and not any other transaction like a merger or acquisition transaction. In the instant proceedings, the material available on record does not identify/bring out any instance of the Noticee having information regarding a substantial impending transaction w.r.t trade in security basis which the Noticee placed an order in the units of the CRF Scheme. I note that in the absence of the same, I am constrained to give benefit of the doubt to the Noticee. Therefore, I find that the violation of Regulations 4(2)(q) of the PFUTP Regulations by the Noticee could not be established.

57. As regard alleged violation of Regulation 4 (1) of PRFUTP Regulations, I note that the said provision imposes a prohibition on indulging in a manipulative, fraudulent or an unfair trade practice. The term "unfair trade practice" is not defined under PFUTP Regulations, however in this regard, reference is drawn to observations of Hon'ble Supreme Court in Kanaiyalal (supra) as given below:

"……………

31. Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case-to-case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover, the concept of 'unfairnesses appears to be broader than and includes the concept of 'deception' or 'fraud'....

…………………

60. Coupled with the above, is the fact, the said conduct can also be construed to be an act of unfair trade practice, which though not a defined expression, has to be understood comprehensively to include any act beyond a fair conduct of business including the business in sale and purchase of securities.

……………..."

Hon'ble Supreme Court further observed that:

"………….

32. Regulation 4 prohibits manipulative, fraudulent and unfair trade practices. It is to be noted that the regulation 4 (1) starts with the phrase 'without prejudice to the provisions of regulation 3'. This phrase acquires significance as it portrays that the prohibitions covered under the regulation 3 do not bar the prosecution under regulation 4 (1). Therefore regulation 4 (1) has to be read to have its own ambit which adds to what is contained under regulation 3.

………."

58. From the above cited observations of the Hon'ble Supreme Court, it is noted that the scope of the term "unfair trade practice" is wider than that of the term "fraud" and the acts which do not satisy the parameters of "fraud" could independently be proceeded to be determined for violation of Regulation 4(1) of PFUTP Regulations.

59. In view of the foregoing paragraphs, in particular paragraphs from 24 to 51, I note that the Noticee being member of the VC was privy to and in possession of material unpublished information regarding valuation of defaulted securities (Kwality and RKV) and per day provisioning in the defaulted security particularly the information relating to delayed provisioning, low provisioning, revision in provisioning, impending default and/or significant impact in respect of Kwality and RKV, as already dealt in the foregoing paragraphs which was otherwise not available in public domain and that the Noticee while being privy to such specific

non-public information, withdrew his entire holdings in CRF scheme. Therefore, I find that the redemptions of entire holdings in the CRF scheme by the Noticee while being in possession of the specific material unpublished information is an "unfair trade practice" and thus, is in violation of Regulation 4(1) of PFUTP Regulations.

Issue II: If yes, whether the Noticee is liable for imposition of monetary penalty under section 15HA of SEBI Act, 1992?

60. It has been established in the preceding paragraphs that the Noticee has violated Regulation 4(1) of the PFUTP Regulations.

61. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......"*

62. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticee is liable for monetary penalty under section 15HA of the SEBI Act which provides as following: -

> ***"………***
> ***Penalty for fraudulent and unfair trade practices.***
> *15HA.If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*
> *……………."*

Issue III: If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act?

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

SEBI Act

"………..

Factors to be taken into account by the adjudicating officer.

15J. While adjudging quantum of penalty under 15-I, the adjudicating officer shall have due regard to the following factors, namely :—

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

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

c. the repetitive nature of the default.

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

…………..."

64. I note that, regarding the amount of loss caused to investor(s) and the repetitive nature of default, based on the material available on record, there is nothing to show whether the act of the Noticee of redeeming the units of Mutual fund while being in possession of information which was not available to the public, has caused loss to the investors, and the amount of such loss, if any. Moreover, there is nothing on record to show that the violations committed by the Noticee are repetitive in nature. As per material available on record, the ill-gotten gains of Noticee was Rs. 46,226/- approximately. However, I cannot ignore that the said gain of Rs. 46,226/- is despite Noticee having redeemed his investment prior to the full provisioning of the defaulted securities and also that the total redemption by the Noticee involved Rs. 20.88 Lakhs. I also cannot ignore that the Noticee being Head of Operations held an important position, that the Noticee was part of the Valuation Committee and that the act of Noticee as already established in the preceding paragraphs, of redeeming his holdings in the fund basis the non-public information which he possessed by virtue of his positioning in the AMC inter alia as a member of the Valuation Committee is a matter of serious concern. The Noticee has taken unfair advantage of the non-public material information regarding the developments and valuation of the defaulted securities of the fund to which he was privy by virtue of his position and role in the AMC and which was otherwise not available to the general investors. Undoubtedly the act of Noticee is reflective of the Noticee having compromised his position to his advantage. Such instances of misuse of ones position, if not dealt sternly may pose serious

risk to the functioning of the securities market and may have bearing on the trust and confidence of the investors.

ORDER

65. Considering all the facts and circumstances of the case, the material available on record and also the factors mentioned in Section 15J of the SEBI Act, 1992 as enumerated in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I, hereby impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakhs only) under the provisions of Section 15HA of SEBI Act, 1992 on the Noticee viz. Shubhro Sankha Das Sarma. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

66. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

67. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

February 28, 2023
Mumbai

Amar Navlani
Adjudicating Officer