BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-6/AO/PM/NK/026/2019-20]

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

In respect of:
Hariharan Vaidyalingam (PAN: AABPV4103E)

In the matter of Insider Trading in the Scrip of Multi Commodity Exchange of India Limited.

FACTS OF THE CASE

1 Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the trading activities in the scrip of Multi Commodity Exchange of India Limited ("MCX") for the period April 27, 2012–July 31, 2013 (hereinafter referred to as the "Investigation Period").

2 Investigation inter-alia observed that the Shri Hariharan Vaidyalingam (hereinafter referred to as the **Noticee**), being an insider, was prohibited from dealing in securities of a listed company when in possession of UPSI in terms of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992. However, he sold shares of MCX during the UPSI period while in possession of the UPSI.

3 The determination of Unpublished Price Sensitive Information hereinafter referred to as the UPSI (hereinafter referred to as the **UPSI**) by Investigation was based on a series of events such as; the issuance of Show Cause Notice dated April 27, 2012 by the Department of Consumer Affairs (hereinafter referred to as the **DCA)**, Ministry of Consumer Affairs,

Government of India) to NSEL which triggered a chain of events in respect of NSEL and its holding company i.e. Financial Technologies (India) Limited ("hereinafter referred to as the **FTIL**") and also MCX (a company promoted by FTIL), the discontinuation of irregularities in the functioning of National Spot Exchange Limited (hereinafter referred to as the **NSEL**) i.e. cessation of short selling by its Members, pairing of contracts and settlement of contracts beyond 11 days, was imminent and the discontinuation of irregularities would in turn result in impending payment defaults by Members of NSEL and lead to the loss of reputation of the Promoters/Management of FTIL.

4 The UPSI in respect of the shares of MCX was therefore, the implication of the SCN dated April 27, 2012, issued by the DCA to NSEL which lead to the suspension of aforesaid contracts and impending payment defaults by the members of NSEL and loss of reputation of Promoters and Management of MCX. The period of UPSI as per the investigation was observed to be from April 27, 2012 to July 31, 2013. The UPSI came into existence on April 27, 2012, upon the issuance of the SCN to NSEL, by the DCA. The UPSI ceased to exist when NSEL suspended trading in all contracts (except e-series contracts) and deferred settlement of all pending contracts on July 31, 2013.

5 Investigation observed that the Noticee was a non-executive non-independent Director (Nominated by FTIL) on the board of MCX during the period April 19, 2002 to June 28, 2012 and worked as an employee of FTIL from January 01, 2001 to June 20, 2011 and was also a non-executive non-independent Director (Nominated by FTIL) of NSEL from May 18, 2005 to December 20, 2011. The Noticee was, therefore, holding managerial position in MCX, FTIL and NSEL for a very long period of time and was associated with FTIL since January 2001. It was further observed that the Noticee was KMP (Key Management Personnel) of NSEL for the year 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 and was member of "Audit Committee" and "Membership Committee" of NSEL. It may be noted that, paired contracts were being run on NSEL since September 2009 and default had started in 2011–12 and the Noticee was a Director during the aforesaid period.

6 Investigation observed that FTIL being the holding company of NSEL with 99.99% stake, Directors and Officers of FTIL and NSEL were reasonably expected to have access to the UPSI which emanated from NSEL and thus an insider. Since Noticee was Director of NSEL during the relevant period, he was well aware of all irregularities at NSEL.

7 In view of the above, it was alleged that the Noticee, being an insider, before the outbreak of NSEL irregularities avoided losses by selling 5,41,482 shares of MCX when in possession of the UPSI and thereby violated provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

8 The undersigned was appointed as the Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under section 15G of the SEBI Act,1992 for the alleged violations of provisions of Regulation 3(i) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015 (hereinafter referred to as "SEBI (PIT) Regulations, 2015").

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9 A Show Cause Notice no. EAD/ADJ/PM/AA/OW/31601/2017 dated December 14, 2017 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of the SEBI Act, 1992 for the alleged violations specified in the SCN. The said SCN returned undelivered, therefore, a scanned copy of the SCN along with relevant Annexures was sent to the Noticee vide email to the email address available as per SEBI records.

10 It was alleged that, the Noticee sold shares of MCX during the UPSI period while in possession of the UPSI. It was also observed that he did not sell any share of MCX during Pre-UPSI period or Post UPSI period. The details of the shares sold by the Noticee is given below:

Date	No. of shares sold	Amount (In ₹)
At BSE		
03/07/2012	2,500	26,70,288
04/07/2012	2,347	24,92,953
05/07/2012	600	6,32,740
06/07/2012	1,255	13,17,756
19/07/2012	1,500	17,01,583
20/07/2012	17,500	1,93,35,004
23/07/2012	20,000	2,18,46,203
24/07/2012	26,491	2,86,75,175
25/07/2012	1,40,000	14,77,83,902
26/07/2012	12,009	1,28,54,513
27/07/2012	67,556	7,11,97,418
31/07/2012	3,640	37,63,307
01/08/2012	35,280	3,70,27,491
21/08/2012	23,114	2,69,61,594
22/08/2012	19,917	2,32,31,618
23/08/2012	20,893	2,44,32,918
24/08/2012	7,855	91,50,046
27/08/2012	27,181	3,08,72,672
28/08/2012	35,604	3,95,26,180
29/08/2012	37,436	4,14,62,339
30/08/2012	556	6,23,323
Total (BSE)	**5,03,234**	**54,75,59,023**
At NSE		
03.07.2012	12,500	1,33,59,816
04.07.2012	8,000	84,69,978
05.07.2012	1,400	14,78,876
06.07.2012	3,398	35,76,639
20.07.2012	12,500	1,37,64,136
28.08.2012	450	4,97,193
Total (NSE)	**38,248**	**4,11,46,638**
Total (NSE+BSE)	**5,41,482**	**58,87,05,661**

11 The details of loss avoided by Noticee by selling shares of MCX during the UPSI period are as follows:

S. No.	Name	No of shares sold (X)	Total sale value (in ₹) (Y)	Average Price (in ₹) (A)=(Y)/(X)	**Average Closing Price of scrip on August 01, 2013 (in ₹) (Z)	Notional sale value as on August 01, 2013 (in ₹) (B)=(X)*(Z)	Loss avoided (in ₹) (Y)-(B)
1	Hariharan Vaidyalingam	5,41,482	58,87,05,661	1087.21	511.30	27,68,59,747	31,18,45,914

*** As the scrip was trading both at NSE and BSE during the investigation period, average closing price on August 01, 2013 is taken for computation of Notional sale value on August 01, 2013. The closing price of scrip on August 01, 2013 at NSE was ₹510.55 and at BSE was ₹512.05. Therefore, the average closing price of scrip on August 01, 2013 was ₹511.30 {(510.55+512.05)/2}.*

12 In view of the above, it was alleged in the SCN that the Noticee violated the provisions of Regulation 3(i) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

13 Shri Hariharan Vaidyalingam filed his reply vide letter dated October 31, 2018, *inter alia*, submitting as under:

1. *The sole basis issuing notice is the allegation that the information about the Show Cause Notice dated April 27, 2012 ("**SCN**"), issued by the Department of Consumer Affairs, Ministry of Consumer Affairs, Government of India to NSEL, that allegedly culminated in the suspension of trading in contracts, and deferment of settlement on NSEL, is the unpublished price sensitive information ("**UPSI**") and that Noticee have sold MCX shares while in possession of the said UPSI. At the outset Noticee submits that the said information regarding the SCN to NSEL by MCA is not price sensitive to MCX. It is not unpublished either.*
2. *That the facts set out hereafter would demonstrate that Noticee was neither in a position to know nor was privy to the said Show Cause Notice until it was available in the public domain. That - a) Noticee ceased to be a Director on the board of NSEL on December 20, 2011, which is 4*

months prior to the issuance of the Show Cause Notice dated April 27, 2012; b) Noticee ceased to be a Director (Nominee of FTIL) in MCX since June 2011; and c) Noticee did not attend (from June 1, 2011 to June 28, 2012) any of the board meetings of MCX either when the said Show Cause Notice dated April 27, 2012 was issued or prior thereto. d) Noticee has been out of India, stationed in Singapore since May 2011 initially working for SMX and thereafter as consultant.

3. *That the SCN has been issued on the presumption that Noticee was in possession of the USPI, without any material to support it. In fact the Noticee ceased to be the Non-Executive Non-Independent Director (nominated by FTIL) of NSEL from December 20, 2011, the Noticee had resigned from the Directorship of MCX (refer to letter dated 31st June, 2011) on July 31, 2011 with immediate effect. That my employment with FTIL came to an end in June 2011. In view of these facts, it is inconceivable that Noticee could have been in possession of the purported UPSI, when Noticee was not a Director in either of these entities viz. FTIL, NSEL and MCX during the Investigation Period.*

4. *The said Order also alleges that Noticee has averted potential loss in the scrip of MCX amounting to Rs. 31,18,45,914/-. The Noticee submits that on perusal of the historical data pertaining to value of MCX scrip during the period April 2012 to December 2012 (Noticee sold shares during July – August 2012), available on the BSE and NSE website. It is evident that during the period May 2012 to September 2012, there was not much of movement in the price of the MCX scrip. The allegation of SEBI that mere issuance of SCN to NSEL is an UPSI as had such news broke out, the same would have had material impact on the MCX scrip stands belied by the fact that the average price of MCX scrip, which was Rs. 1260.78/- on October 3, 2012 increased to Rs. 1583.07/- on November 30, 2012 and remained much above the price at which Noticee sold the shares till December 2012. That contrary to SEBI's allegation, Noticee has made loss on sale of MCX shares. Noticee craves leave to refer to and rely upon the historical statement of MCX share price available on the BSE and NSE website.*

5. *Without prejudice to the contention that Noticee was not privy to the SCN until it was published, it is submitted that in the SCN it is alleged in para no. 2.14 that "FTIL being holding company of NSEL with 99.99% stake, Directors and Officer were reasonably expected of having access to the UPSI which emanated from NSEL and thus an insider. Sins Noticee was Director of NSEL when all these irregularities happing, he was well aware of all irregularities at NSEL". The Investigation Period determined by SEBI for its investigation in the present matter is from 'April 27, 2012 to July 31, 2013'. Admittedly, Noticee was not a Director either in FTIL or in NSEL during the Investigation Period. Therefore, the said SCN is factually and legally incorrect and deserves to be recalled.*

6. *Without prejudice to the aforesaid contentions, Noticee would like to place the relevant facts of the case, before proceeding to reply the said SCN on merits –*

7. *Noticee is citizen of India. Noticee has earned his livelihood throughout his life span through lawful and peaceful means. Noticee has never come to the adverse notice of any law enforcement agency be it Central or State. Noticee do not have any criminal antecedents. Noticee hold M.Sc. degree in Agricultural Statistics from Kerala Agricultural University, Faculty of Basic Sciences, 1981 and B. Sc. Mathematical Statistics, from University of Calicut, Kerala, 1976-1979, and a University Gold Medallist. In addition to excellent track record with no criminal antecedents/criminal convictions, Noticee assessed under income tax and is regular in paying taxes. Noticee had worked with Indian Institute of Management (IIM-A) (1983-1986), Bombay Stock Exchange (1993-1996) and National Stock Exchange of India (1996-2000). Noticee never Bought or Sold shares during these years, as Noticee was handling critical trading systems both at BSE and NSE.*

8. *That Noticee was associated with Financial Technologies India Ltd. ("**FTIL**") as an employee from January 1, 2001 to June 20, 2011. During my tenure with FTIL, Noticee was appointed as "Chief Technology Officer" until March, 2005 and was assigned the role of technology product development, which includes within its scope the designing, development and implementation of various software products of FTIL. From April, 2005 onwards Noticee acted as the "Director – Strategy (non-Board)" of FTIL, wherein Noticee was involved in the strategies relating to design of next generation software products of FTIL. Further, during the course of my association with FTIL, from April 19, 2002 to June 28, 2012 Noticee was appointed as the Non-Executive Director (a Nominee of FTIL) on the board of Multi Commodity Exchange (hereinafter referred as **"MCX")**, an independent listed company, whose shares are listed on BSE and traded on both the NSE and BSE. During the investigation period referred to in the said SCN i.e. April 27, 2012 to July 31, 2013 ("**Investigation Period**"), FTIL held 26% of the total paid-up equity share capital of MCX and was the promoter of MCX.*

9. *That Noticee permanently shifted to Singapore from May 2011 onwards and Noticee is currently residing and working in Singapore. On June 21, 2011, Noticee was appointed as an interim CEO of Singapore Mercantile Exchange Pte Ltd. ("**SMX**"), a multi asset exchange, for a period of 6 months starting from June 21, 2011. The Employment pass was later renewed before expiry as "Personalised Employment Pass" on November 5, 2012 for a period of 5 years.*

10. *On December 21, 2011, Noticee was confirmed as the CEO of SMX. Additionally, Noticee was appointed as the CEO of SMX Clearing Corporation Pte Ltd. Noticee continued to act as the CEO of both SMX and SMX Clearing Corporation Pte Ltd. till February 03, 2014.*

11. *From February, 2014 to date, Noticee has been acting as an advisory to various Corporate Companies in Singapore and USA. During the Investigation Period, I was inter alia acting as the Non-Executive Director, (Nominee of FTIL) on the board of MCX. As the non-executive Director, Noticee did not play any role whatsoever in the day to day functioning of MCX and the*

same was being taken care of by the MCX Executives, team management headed by the MD and CEO. Further, Noticee used to attend MCX board meetings, when the same were held in Mumbai that too till December 2010 only.

12. *It is pertinent to note that Noticee has not attended any board meetings of MCX, since Noticee has shifted to Singapore i.e. from June 2011 onwards. It is pertinent to note that Noticee was not privy to the Show Cause Notice dated April 27, 2012, assuming that the Show Cause Notice was discussed at any of the board meeting of MCX, held during the period from January, 2011 to June 28, 2012. It is a fact that MCX is an independent listed company and issuance of a Show Cause Notice April 27, 2012 to a separate company viz. National Spot Exchange Ltd. ("**NSEL**") cannot be construed to be within the knowledge of the Board of MCX, merely for a reason that the promoter of NSEL and MCX were common. It also cannot be treated as price sensitive information relating to MCX or its securities. In any event, as stated above, Noticee did not attend any board meetings of MCX from June 2011. Therefore, assuming whilst denying for want of knowledge, that if at any point in time MCX Board had discussed the matter pertaining to SCN issued to NSEL, Noticee was not aware of the same.*

13. *In addition to the above, from May 18, 2005 to December 20, 2011, Noticee was appointed as a Non – Executive Director on the board of NSEL. Noticee ceased to a Director of NSEL from December 20, 2011. That the SCN by DCA to NSEL was issued 4 months after Noticee ceased to be a Director on the board of NSEL. Additionally, even after resigning from the Directorship of NSEL on December 20, 2011, Noticee was never associated with NSEL in any manner whatsoever namely as an employee, Director and/ or consultant. Therefore, Noticee is not an insider within the meaning of PIT Regulations. Noticee is neither a connected person or deemed to be connected person. Accordingly, Noticee could not have and was never privy to the said Show Cause Notice until it was published on October 3, 2012.*

14. *It is pertinent to state that MCX does not hold any shares in NSEL and accordingly, MCX did not have any Directors on the Board of NSEL.*

15. *It is pertinent to note that the shareholding of MCX was acquired by Noticee only from Employee Stock Option Plans ("**ESOPs**"). The particulars thereof are set out below:*

Date	*Employee Stock Options*	*Value of shares (INR)*	*Mode of transaction (Off-market/on-market)*
31/01/2007	*33,130 of Rs.5/- each*	*463,820*	*Allotted by MCX through ESOP Scheme 2006 (20%)*
16/01/2008	*49,695 of Rs.5/- each*	*695,730*	*Allotted by MCX through ESOP Scheme 2006 (30%)*
16/02/2009	*82,826 of Rs.5/- each*	*1,159,564*	*Allotted by MCX through ESOP Scheme 2006 (50%)*

27/07/2009	*210,000 of Rs.5/- each*	*18,900,000*	*Allotted by MCX through ESOP Scheme 2008 (30%)*
30/08/2010	*210,000 of Rs.5/- each*	*18,900,000*	*Allotted by MCX through ESOP Scheme 2008 (30%)*
14/03/2011	*Consolidation of 585,651 equity shares Face Value of RS.5/- to equity shares 292,826 of Rs10/- each*	*Consolidation*	*Consolidation of two Equity Shares of the face value of Rs. 5 per Equity Share to one Equity Share of the face value of Rs.10 per Equity Share*
15/03/2011	*Bonus shares 73,206 of Rs.10/- each*	*Bonus*	*Bonus issue in the ratio of 1 Equity share for every 4 Equity Shares held.*
22/07/2011	*175,000 of Rs.10/- each*	*25,200,000*	*Allotted by MCX through ESOP Scheme 2008 (40%)*
Total Holding	*541,032 of Rs.10/- each*		

16. *As on July 22, 2011, Noticee was holding a total of 5,41,032 shares of MCX and paid a total consideration of Rs.6,53,19,114/-, mobilized from Noticee's savings and finances availed. It is pertinent to note that on reconciliation of Noticee's trading account on August 28, 2012, Noticee noticed that his stock broker namely IFCI Financial Services Limited* ***(stock broker),*** *had made an error of accidentally purchasing 450 shares of MCX on August 28, 2012 at 14:53:54 (Trade Time) and 14:54:25 (Trade Time) and accordingly, on his instructions, his stock broker squared off the erroneous purchase transaction immediately between 15:07:32 (Trade Time) and 15:15:13 (Trade Time) on the same day. In view of what is stated by Noticee herein above it is observed that it is observed that it has been wrongly mentioned in the Tabular charts on Page 10 of the SCN that Noticee had sold 5,41,482 shares of MCX for Rs. 58,87,05,661/-.*

17. *As mentioned herein above, Noticee moved to Singapore on or about May 2011 and was appointed by SMX as its Interim CEO from June 21, 2011, for a period of 6 months and was later confirmed as CEO of SMX and CEO of SMX Clearing Corporation Pte Ltd. from December 21, 2011. Pursuant to the appointment as an Interim CEO of SMX, Noticee resigned from the boards of various companies in India on or about June 20, 2011. Noticee had also sent a letter dated July 31, 2011 to the Board of MCX, stating that Noticee was resigning as the Non-Executive Director (Nominee of FTIL) of MCX with immediate effect and ready to complete the required formalities. From enquiries made by Noticee with MCX after receipt of the SCN, Noticee was informed by MCX that his resignation as the Non-Executive Director (Nominee of FTIL) of MCX was accepted by the Board of MCX on June 28, 2012.*

18. *Since Noticee had shifted to Singapore Noticee was no longer interested to pursue any business association and/or commercial interest in India and decided to sell his shares in MCX and other entities. Accordingly, Noticee sold all 5,41,032 shares of MCX on the Bombay Stock Exchange Limited ("**BSE**") and the National Stock Exchange of India Limited ("**NSE**") from July 3, 2012 to August 30, 2012 on the following dates:*

Dates of Sale of MCX Shares at BSE	***Dates of Sale of MCX Shares at NSE***
03/07/2012	*03/07/2012*
04/07/2012	*04/07/2012*
05/07/2012	*05/07/2012*
06/07/2012	*06/07/2012*
19/07/2012	*20/07/2012*
20/07/2012	*28/08/2012*
23/07/2012	
24/07/2012	
25/07/2012	
26/07/2012	
27/07/2012	
31/07/2012	
01/08/2012	
21/08/2012	
22/08/2012	
23/08/2012	
24/08/2012	
27/08/2012	
28/08/2012	
29/08/2012	
30/08/2012	

19. *The sale proceeds received by Noticee from sale of the MCX shares was Rs.58,82,08,468/. After the payment of Brokerage and Securities Transaction Tax the net amount credited to his account was Rs. 58,68,74,087.49. The shares of MCX were sold by Noticee to reduce his outstanding liabilities, which he had incurred on account of financial assistance availed from different banks /financial institutions buying MCX ESOPs, Housing repairs, Educational loan and expenses of daughters education in USA etc. Noticee crave leave to refer to and rely upon the documents, including the bank statement evidencing utilization of sale proceeds of MCX shares, if required.*

20. *It is pertinent to note that after a period of more than 5 years from the date of the sale of shares of MCX by Noticee, SEBI vide email dated January 20, 2017 sent a letter of same date and sought*

certain information from Noticee in relation to (i) Noticee's association with MCX, FTIL and NSEL; (ii) the reasons why Noticee sold MCX shares; and (iii) the origin of shares sold by Noticee. The said email/letter was replied to by Noticee vide my email dated February 3, 2017 and the necessary information and particulars were provided.

21. *Thereafter, SEBI vide its email dated March 8, 2017, sought certain additional information from Noticee in relation to his family members declared to MCX. The said email was replied to by Noticee vide his email of same date and the necessary particulars were provided.*

Without prejudice to the above, Noticee shall now deal with the SCN on merits

22. *With reference to Paragraph 1 of the said SCN, Noticee submit that the same are matter of record and do not require any comments.*

23. *With reference to paragraph 2 A and B (i) to (iv) of the said Order, Noticee repeat and reiterate that he was the non-executive Director on the board of NSEL from May 18, 2005 to December 20, 2011. As a Non-Executive Director, he was not involved in day-to-day affairs and management of NSEL and has not attended any board meetings during the relevant period. Noticee ceased to be a Director of NSEL from December 20, 2011. It is submitted that it is not in dispute that the SCN was issued 4 months after Noticee ceased to be a Director on the board of NSEL. Additionally, after resigning from the Directorship of NSEL on December 20, 2011, Noticee was never associated with NSEL in any manner whatsoever namely as an employee, Director and/ or consultant. Accordingly, Noticee could not have and was never privy to the said Show Cause Notice until it was published on October 3, 2012 and as Noticee was not aware of the issuance of the said Show Cause Notice, the issue of Noticee being in possession of the alleged UPSI does not arise. Admittedly and it is also the case of SEBI that an article was published in the Economic Times, Mumbai edition dated October 3, 2012, setting out issuance of the show cause notice, its contents and the response of Mr. Anjani Sinha, then MD & CEO of NSEL, and the same being in public domain, the sale of Noticee's shares of MCX cannot constitute a violation of insider trading norms. Noticee also understand that NSEL had published the Exchange Communication dated October 3, 2012 along with the Economic Times article dated October 3, 2012 on their website and was issued to all the Members, hence it was in the public domain. Therefore, on this count also there has been no violation of insider trading by Noticee as alleged by SEBI. Further, the alleged UPSI had already become public and had come in the public domain, the issue of alleged UPSI remaining unpublished cannot and does not arise. It is also denied that events pertaining to NSEL could have triggered a chain of events in MCX as alleged or otherwise. It may be noted that MCX and NSEL were and continue to be separate and independently run companies; neither of them hold shares in the other. The events at NSEL have no nexus with MCX and as such cannot trigger any event at MCX. Noticee reiterates that any*

information as to NSEL cannot price sensitive to the shares of MCX. The rest of the contents of paragraphs under reply are denied.

24. *With reference to paragraph B (v) and (vi) of the said Order, I say that the same are matter of record and do not require any comments.*

25. *With reference to paragraph B (vii) of the said SCN, I say that SEBI had clearly not mentioned his name in the finding titled 'connection between FTIL, NSEL and MCX', this clearly shows that Noticee was not a Director of NSEL and MCX during the Investigation Period, therefore SEBI cannot attribute any allegations against Noticee for violations of Insider Trading while in possession of UPSI.*

26. *With reference to paragraph C of the said SCN, it is pertinent to note that it is the own admission of SEBI at* ***page 8 of said SCN****, that the price of the scrip of MCX decreased substantially only after the announcement of suspension of trading by NSEL was made on July 31, 2013. Noticee submits that the reasons for fall in prices during the said period are many and it cannot be attributed solely to the alleged publication of UPSI. Noticee submits that there is no finding in the investigation report or allegation in SCN that the decision to suspend the contracts on 31st July, 2013 was made any time during the days Noticee sold the shares.*

27. *With reference to paragraph D, of the said Order, it is submitted that the same are matter of record and do not require any comments.*

28. *Noticee repeats and reiterates that shareholding of MCX was acquired by Noticee from ESOPs. As on July 22, 2011, Noticee was holding a total of 5,41,032 shares of MCX and paid a total consideration of Rs.6,53,19,114/-, mobilized from his savings and finances availed. With respect to sale of it is erroneously mentioned in Para 2.15, Page 10 of the SCN that Noticee sold 5,41,482 shares of MCX for Rs 58,87,05,661/-. Noticee repeats and reiterates what is stated above in relation thereto. Accordingly, it is submitted that Noticee sold 5,41,032 shares of MCX during the period from July 3, 2012 to August 30, 2012 for Rs. 58,82,084,468/- and not 5,41,482 shares for Rs. 58,87,05,661/-.*

29. *It is denied that the alleged UPSI came into existence on April 27, 2012 i.e. on the issuance of Show Cause Notice by DCA to NSEL as alleged or that the alleged UPSI remained unpublished till July 31, 2013 i.e. date of issuance of NSEL's Circular as alleged. It is denied that Noticee was an insider at the time of sale of shares. It is denied that Noticee sold shares when in possession of any UPSI. It is also denied that as an Insider Noticee was reasonably expected to have had access to the UPSI as alleged. It is also denied that Noticee was engaged in Insider trading, which is prohibited under the Insider Trading Regulations as alleged, for the reasons stated hereinabove.*

30. *In view of the above, it is submitted that:-*

A. The information is not price sensitive:

a. It is submitted that the information pertaining to NSEL, which is neither a subsidiary nor holding company of MCX, whose share the Appellant had sold, is not and cannot be treated as price sensitive information to the shares of MCX.

b. MCX had never informed its shareholders in any of the filings before the Exchanges or the Regulators that MCX has been the shareholder of NSEL. It is therefore farfetched to allege that the information relating to Show Cause Notice issued to NSEL is price sensitive to the securities of MCX.

c. As can be seen from the definition of price sensitive information, the information should "relate to a company", directly or indirectly. In addition to this direct or indirect relation, the information if published should be capable of materially affecting the price of securities of that company. It is submitted that that the ingredient that "the information should relate to company, directly or indirectly" is missing.

d. It is submitted that the information pertaining to NSEL is not even indirectly related to MCX in any manner. The relation between the information and the security cannot be inferred from circumstances. It has to be supported by facts. It is submitted that the information relating to Show Cause Notice issued to NSEL is not price sensitive to the securities of MCX.

B. The Noticee is not Insider:

a. that merely issuance of show cause notice dated April 27, 2012 to the NSEL by Department of Consumer Affairs it cannot be assumed as a matter of fact and law that the alleged knowledge of Noticee as an insider of MCX in relation to alleged Complaint. There is no such presumption in law. The Noticee was not privy to the show cause notice dated April 27, 2012 until it was widely published.

b. Noticee denies that he is guilty of insider trading by violating Regulation 3(1) (i) of SEBI PIT Regulations as erroneously alleged. Respondent, failed to consider that in order to bring home the charge of insider trading under 3(1)(i) of PIT Regulations, SEBI has to prove :

(i) that Noticee is connected person or deemed connected person as defined

(ii) If he is a 'connected person' he is reasonably expected to have an access to the UPSI

(iii) If he is a 'deemed to be connected person' he received information from a connected person and

(iv) *that Noticee had dealt in securities of MCX on his own behalf or on behalf of any other person while in possession of UPSI so received.*

c. *It is submitted "that in order to prove the charge of insider trading under regulation 3(i) one must establish that the (a) the person is an 'insider', (b) he is in possession of 'unpublished price sensitive information' and (c) he deals in securities of the company while in possession of 'unpublished price sensitive information' either on his own behalf or on behalf of any other person.*

d. *It is submitted that the Hon'ble Supreme Court in the matter of Chintalapati Srinivas Rao & Others v/s SeBI (2018) 7 SCC 444, held that "reasonably expected to have access cannot be a mere 'Ipsi dixit'. There must be material to shows that such person can reasonably so expected to have access to UPSI. The SCN by way of Ipsi dixit' concluded that the Noticee as an insider had access to unpublished price sensitive information.*

e. *Having held so in the SCN, SEBI failed to establish that Noticee is in possession of 'unpublished price sensitive information' at the relevant time. It was baldly held that shareholding in MCX was built up from allotment of shares by way of ESOPs, prior to listing of MCX. Noticee was only a non-executive Director and yet he was offered a large portion as ESOPs goes on to indicate that the incentives in the form of ESOPs were meant for compensating his significant role and functions in MCX and FTIL, and also for ensuring his role for protecting the interest and objectives of FTIL. This is an absurd claim by SEBI without any basis both in fact and law.*

f. *Noticee admittedly is not a "connected person" since he was not a Director in FTIL or in NSEL as defined in Regulation 2(c)*

g. *nor he occupies any position as an officer or an employee of FTIL or NSEL or hold any position involving a professional or business relationship with FTIL at the relevant time.*

h. *Noticee submits that to bring him under the definition of 'insider' it will also have to be shown that he received information from a 'connected person' which SEBI failed to bring home such accusation. SEBI ought to have considered that Noticee cannot be expected to have access to UPSI in respect of securities of MCX as he was not involved in management or affairs of FTIL/NSEL in any manner. That Noticee had not received the alleged unpublished price sensitive information from any one in order to be in possession.*

i. *In the circumstances, Noticee ought to have considered that he was not having any "price sensitive information" and moreover the alleged price sensitive information is not specifically covered in the explanation to definition of "price sensitive information" therefore the issue of violation of Regulation 3(i) cannot and does not arise.*

C. Noticee was not in possession of alleged unpublished price sensitive information.

a. Noticee re-iterates that he has not received or had access to the alleged UPSI so as to be in possession of UPSI.

b. It is submitted that this information is being wrongly classified by SEBI as UPSI. There is a difference between information that is kept secret and Price Sensitive Information which is unpublished.

c. This fact is clear from that Noticee was never privy to the said Show Cause Notice until it was published on October 3, 2012.

14 The Noticee was granted an opportunity of personal hearing before me on October 31, 2018 vide email dated October 16, 2018. The personal hearing was attended by the Authorised Representatives (Advocates) of the Noticee on his behalf. The Authorised Representatives submitted written replies to the SCN and requested 10 days to submit additional reply in the matter which was acceded to.

15 The Noticee filed the additional submission vide latter dated November 30, 2018. The Noticee's submissions are as under:

1. Noticee is not an "insider" or a "connected person" or a "deemed to be a connected person" as defined in Regulation 2(c), 2(e) or 2(h) of the Insider Trading Regulations, 1992.

1.1. *The factual matrix disclosed hereunder shows that the Noticee is not an "Insider" or a "Connected Person" or a "deemed to be a connected person". The same is detailed as under:*

(a) The investigation period covered by the aforesaid Show Cause Notice is 27th April, 2012 to 31St July, 2013. The Noticee was associated with FTIL as an employee from 1St January, 2001 to 20th June, 2011. During his tenure with FTIL, the Noticee was appointed as "Chief Technology Officer" of FTIL until 31st March, 2005 and was assigned the role of technology product development, which includes within its scope designing, development and implementation of various software products of FTIL. During the course of Noticee's association with FTIL, from 19th April. 2002 to 20th June, 2011, the Noticee was appointed as a Non-Executive Director (a Nominee of FTIL) on the Board of MCX, an independent listed company, whose shares are listed on BSE and traded on both BSE and NSE. During the period of investigation, FTIL held 26% of the total paid-up equity share Capital of MCX and was the Promoter of MCX.

(b) On 20th June, 2011, the Noticee was appointed as the interim chief executive officer (CEO) of Singapore Mercantile Exchange Pte Ltd. ("SMX") and thereafter on 12th December, 2011 was confirmed as the CEO of SMX till 3rd February, 2014. Additionally, the Noticee was appointed

as the CEO of SMX Clearing Corporation Pte Ltd. from 1St January, 2012 till 3rd February, 2014.

(c) From February 2014 till date, the Noticee has been acting as an Advisory to various corporate companies in Singapore and the USA. Being a Non-Executive Director, the Noticee did not have any role to play in the day to day functioning of MCX. The Noticee attended the Board meetings of MCX only when they were held in Mumbai and that too till May, 2011. The Noticee has not attended any Board meeting of MCX from June, 2011 onwards i.e. when the Noticee shifted to Singapore. The Noticee was not privy to the Show Cause Notice dated 27th April, 2012 (SCN) issued by the DCA, Ministry of Consumer Affairs, Government of India to NSEL, assuming that the said SCN was discussed at any of the Board meetings of MCX, held during the period June, 2011 to 28th June, 2012. MCX is an independent listed company and issuance of the SCN to a separate company viz. NSEL cannot be construed to be within the knowledge of the Board of MCX, merely for a reason that the Promoters of NSEL and MCX were common. SEBI in its Investigation Report in the scrip of MCX whilst dropping the proceedings against the other Executive Directors and senior managerial staff of MCX (e.g. Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.), has held that "... was employee of MCX only during the UPSI period. MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with FTIL having 99.99% stake in NSEL and 26% stake in MCX. As mentioned above. .. was employed only in MCX during the UPSI period and was not having any position in FTIL or NSEL. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL. In view of above, no adverse inference is drawn for traded of ... . ". In view of the said finding of SEBI the same shall be applicable to the case of the Noticee in hand as the Noticee was not even employee of MCX and was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yard stick has to be applied and no adverse inference can be drawn against the Noticee as the Noticee was not an employee of FTIL or on the board of NSEL during the alleged UPSI period. Hence, the Noticee has adequately rebutted the prima facie presumption of the Noticee being an insider beyond all reasonable standard of proofs.

(d) Regulation 2(e) of the said Insider Trading Regulations, 1992 prescribes two fold conditions and both such conditions must be satisfied as they have to be fulfilled conjunctively. Mere presumption of expectation to have UPSI is not sufficient compliance of the requirement under Regulation 2(e)(i). Regulation 2(e)(ii) is based purely on fact viz. either information has been received or the person concerned has had access to such UPSI. In either case there must be some proof / evidence of the same which is not borne out by any document on record. The minutes of the Board meetings of NSEL have been scrutinized and do not contain any UPSI. There is no other evidence / statement of any other person to the effect that such information was

communicated to or accessed by the Noticee. Case law in support thereof SRSR Holdings Private Limited Vs SEBI ; Securities Appellate Tribunal, Mumbai -Majority View - Paragraph 11 (c) @ Page 27, Minority View- Paragraph 55, 56, 57 and 58 @ Page 71 and 72.

(e) In view of the aforesaid, the Noticee cannot be termed as an "insider" or a "connected person" or a "deemed to be connected person" as defined in Regulation 2(c), 2(e) or 2(h) of said Insider Trading Regulations, 1992.

2. Noticee was never in possession of any alleged UPSI:

2.1*. …*

2.2. *The Noticee alleges that the SCN issued by DCA to NSEL constitutes Price Sensitive Information. The Noticee had resigned from the board of MCX on 31" July 2011, however there is no acknowledgment to the resignation letter available with the Noticee. Without prejudice to the rights and contentions available under the law, if it is to be admitted that the resignation of the Noticee at MCX is to be treated with effect from 28th June, 2012, the Noticee would still not fall under the alleged offence of Insider Trading and that the Noticee had knowledge of UPSI as*

(a) The Noticee had resigned from the services as employee of FTIL and ceased to be employee of FTIL from 20th June, 2011;

(b) Noticee had resigned from the board of NSEL as Non-Executive Director with effect 20th December, 2011;

(c) SEBI in its Investigation Report in the scrip of MCX whilst dropping the proceedings against the other Executive Directors and senior managerial staff of MCX (e.g. Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.), has held that "... was employee of MCX only during the UPSI period. MCX did not have any stake in NSEL and NSEL also did not have any stake in MCX. The only connection of MCX with NSEL is, these were group companies, with FTIL having 99.99% stake in NSEL and 26% stake in MCX. As mentioned above. .. was employed only in MCX during the UPSI period and was not having any position in FTIL or NSEL. Further, in the absence of independent evidence, it is not reasonably expected that an entity who was employed only in MCX during the UPSI period would have access to UPSI which was emanated from NSEL. In view of above, no adverse inference is drawn for traded of …" The Noticee was not even an employee of MCX and was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yard stick has to be applied and no adverse inference can be drawn against Noticee qua (a) and (b) as the Noticee was not an employee of FTIL or on the board of NSEL during the alleged UPSI period.

(d) Further, Monetary Authority of Singapore (MAS), while granting approval to Singapore Mercantile Exchange Pte Ltd (SMX) as an approved exchange, vide its letter dated August 11, 2010, (said letter), set out the approval conditions under Annexure A in the said letter and as per condition No.6, the Chief Executive Officer (CEO) of SMX was to be ordinarily resident in Singapore. For ready reference Condition No.6 is reproduced herein-

"6. SAM shall ensure that its Chief Executive Officer is ordinarily resident in Singapore ".

The Noticee was appointed as CEO of SMX with effect from 12th December 2011. Since the Noticee had to comply with the said condition of MAS, the Noticee resigned from all the companies with effect 20"' June 2011.

The Noticee was a Director in a non-executive capacity of MCX, which is an independent company and which never had any occasion to discuss the said SCN on its Board as is apparent from the Board meetings of MCX. There is no evidence or suggestion that on account of the Noticee being on the Board of MCX, the Noticee was privy to any alleged UPSI.

2.3. *No independent evidence or proof is borne out from any document on record of SEBI to show that the Noticee was privy to any alleged UPSI. The relevant case laws in support of the aforesaid submissions are (i) Samir C. Arora Vs. SEBI; 2004 SCC Online SAT 90: [2004] SAT 89; Paragraph 56 @ Page-29 and (ii) Reliance Petroinvestments Ltd. Vs SEBI; 2015 SCC Online SAT 105; Paragraphs 3 and 4 @ Page 1.*

3. The alleged information is not Price Sensitive Information.

3.1. *Regulation 2(ha) of the Insider Trading Regulations, 1992 defines "price sensitive information" and gives seven explanations as to the factors which would be deemed to be Price Sensitive Information. The allegation contained in the said Show Cause Notice as well as the impugned Order do not fall within any of the seven explanations set out in Regulation 2(ha). The issuance of the Show Cause Notice dated 27th April, 2012 therefore, would not amount to "Price Sensitive Information".*

3.2. *A brief factual matrix set out herein below would show that the allegation that the issuance of the said SCN is price sensitive, is totally misconceived:*

(a) Between 27th April, 2012 and 3rd October, 2012 i.e. for a span of 6 months, there is no event set out in the said Show Cause Notice/Impugned Order;

(b) There are no events set out between 3rd October, 2012 and 12th July, 2013;

(c) The Order issued by the Director- Marketing, Government of Maharashtra on 26th December, 2012 also has no bearing at all in respect of functioning of NSEL;

(d) If that was so, the Exchange could not have functioned and would not have been allowed to function till July, 2013.

3.3. *It is a matter of record that NSEL issued a Press Release on 3rd October, 2012 (circular) which reiterates NSEL's position of there being no change in its policies, plans or operations. Hence, mere issuance of the SCN or the Press Release Article in The Economic Times on 3rd October, 2012 cannot be termed as Price Sensitive Information under Regulation 2(ha) of the Insider Trading Regulations, 1992.*

3.4. *Despite Forward Markets Commission (FMC's) Report/comments to DCA in April, 2012 and August 2012, neither FMC, nor DCA considered any imminent actions, much less cessation of business of NSEL which is reiterated in the impugned Order itself. Hence, the presumption that discontinuation of alleged irregularities of NSEL i.e. short selling, pairing of contracts and*

settlement of contracts beyond 11 days set out in the impugned Order is contradictory to the reiteration in the impugned Order that the authorities (FMC/DCA) did not consider imminent actions, would result in cessation of business of NSEL.

3.5. *If the authorities had concluded that there would be a cessation of business of NSEL, the authorities themselves would not have allowed the business of NSEL to continue after issuance of the Show Cause Notice dated 27th April, 2012.*

3.6. *Even after newspaper reports which refer to the aforesaid SCN issued by DCA to NSEL, the comments of NSEL and the factual controversy on legality/validity of contracts and the fact that the ministry/minister was to take a decision on further enquiry or not, there seems to be no impact on market or on trading members, in as much as, the trading volumes went up, and not down after the aforesaid events. Any potential risk of payments of defaults much less impending defaults was obviously not in contemplation of any of the concerned persons, including the exchange, promoters, trading members or their clients.*

3.7. *The conclusion in paragraph B (iii) of the impugned Order reflects that the conclusions are based on assumptions (implications) based on the SCN and further assumptions are without any basis or foundation.*

4. Alleged unpublished price sensitive information (UPSI) became published on 3rd October, 2012.

4.1. *As stated above, as a Non-Executive Director of NSEL, the Noticee was not involved in day-to-day affairs and management of NSEL. In the year May 2011. Noticee left for Singapore for good, therefore there was no opportunity for him to attend the board meetings of NSEL post May 2011. In any event, the alleged SCN is dated April 27, 2012 i.e. much after the Noticee left for Singapore and ceased to be a Director on the board of NSEL, therefore there is no reason that the alleged SCN could have ever been discussed during any Board Meeting till May 2011. The Noticee ceased to be a Director of NSEL from 20th December, 2011 and employee of FTIL from 20th June 2011. It is not in dispute that the SCN was issued 4 months after the Noticee ceased to be a Director on the board of NSEL.*

Additionally, after resigning from the Directorship of NSEL on December 20, 2011, the Noticee was never associated with NSEL in any manner whatsoever namely as an employee, Director and/ or consultant. Accordingly, the Noticee could not have and was never privy to the said SCN until it was published on October 3, 2012 and as the Noticee was not aware of the issuance of the said SCN, the issue of him being in possession of the alleged UPSI does not arise …

As stated hereinabove, the Noticee was not even employee of MCX and was merely a Non-Executive Director and applying the grounds of parity with the other Non-Executive Directors and Senior Managerial staff of MCX as set out above, the same yard stick has to be applied and no adverse inference can be drawn against the Noticee as the Noticee was not an employee of FTIL or on the board of NSEL during the alleged UPSI period. As stated herein above, the Noticee had left India in May 2011 and was no longer associated with either FTIL, NSEL or MCX. Hence, the

Noticee has adequately rebutted the prima facie presumption of the Noticee being an insider beyond all reasonable standard of proofs.

***4.2**. Without prejudice to the above contention that the Noticee at no point was privy to the fact of issuance of SCN to NSEL, it is submitted that the impugned Order itself refers to the Press Article appearing in "The Economic Times" on 3rd October, 2012 whereby the issuance of the SCN was made public. It is only at this juncture, the Noticee became aware of the SCN. Hence, after 3rd October 2012, the information (even if assumed to be price sensitive) was published and could not be termed as unpublished as is sought to be done in the impugned Order.*

***4.3.** The aforesaid News Article dated 3rd October, 2012 published in The Economic Times", (said news article) a national daily relating to business news, has wide circulation and the same is referred to in the impugned Order. The said news article contains the following statements of facts:*

(a) The issuance of the said Show Cause Notice dated 27th April, 2012 by the DCA to NSEL;

(b) Reports of FMC to DCA.

(c) FMC's observations in relation to alleged short selling as also settlement of contracts beyond 11 days.

(d) The details of enquiry conducted so far.

(e) The minister/ministry considering whether to take the enquiry forward.

Hence, the information contained in the news reports had all the factual aspects, including the issuance of the said SCN and the stand taken by NSEL in its reply dated 29th May,2012 in response thereto. In view of the aforesaid, such information cannot be considered to be unpublished price sensitive information especially keeping in mind the explanation to Regulation 2(k) of the said Insider Trading Regulations, 1992.

***4.4**. In any event, by 3rd October 2012, the information alleged to be unpublished price sensitive information ceased to be unpublished.*

5. Sale of shares by Noticee cannot, in any event, be termed to be on the basis of alleged** unpublished **price sensitive information (UPSI).

***5.1.** The allegation contained in the said Show Cause Notice as well as the impugned Order shows that the Noticee has sold shares of MCX on the basis of alleged UPSI being the said Show Cause Notice dated 27th April, 2012 issued by DCA to NSEL. The Noticee has sold the 5,41,032 shares of MCX at Bombay Stock Exchange (BSE) from 3rd July, 2012 to 30th August, 2012 and at the National Stock Exchange of India Limited ("NSE") from 3rd July, 2012 to 28th August, 2012, to reduce various liabilities of the Noticee. It is pertinent to note that at the relevant time, the Noticee had already left for Singapore in May, 2011 and had nothing to do with MCX, also that the Noticee had ceased to be the employee of FTIL from 20th June, 2011 and also ceased to be a Non- Executive Director on the board of NSEL with effect from 20th December, 2011, hence the Noticee cannot be termed either as an insider or could not by any stretch of imagination be privy to any alleged UPSI.*

5.2. *As per the historical data pertaining to value of MCX scrip during the period April 2012 to December 2012 (the Noticee sold shares of MCX during July - August 2012), available on the NSE website, it is evident that during the period May 2012 to September 2012, there was not much of movement in the price of the MCX scrip and the average scrip price remained approximately Rs. 1,089/-. I say that the allegation of SEBI is that mere issuance of SCN to NSEL is the beginning point of UPSI and had the news of issuance of SCN to NSEL broke out, the same would have had material impact on the MCX scrip. Admittedly, the news of issuance of SCN broke out on October 3, 2012 in various newspapers and if SEBI's allegation above is accepted to be true, the price of MCX scrip ought to have fallen after 3rd October 2012. However, this allegation of SEBI stands belied by the fact that the average price of MCX scrip, which was Rs. 1260.78/- on October 3, 2012 increased to Rs. 1583.07/- on November 30, 2012, and till December 2012 it remained much above the average price of Rs. 1086.34/- at which the Noticee sold his MCX shares. Without prejudice to the contentions and without admitting any of the allegations of SEBI in the said Order, it is submitted that contrary to SEBI's allegation that the Noticee averted loss by dealing in MCX scrip while in possession of UPSI, the Noticee has made losses on sale of MCX shares, when compared with the Noticee's MCX share sale price to the price of the said shares even during the period under investigation.*

5.3. *The prohibition contained in Regulation 3 of the said Insider Trading Regulations, 1992 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. As stated above, the Noticee was never privy to the issuance of SCN to NSEL, until it was published on 3rd October 2012. No independent evidence is on record to show that Noticee had access to the alleged UPSI and basis such alleged UPSI, the Noticee has dealt with his MCX scrips.*

The relevant case laws in support thereof are enclosed - Mrs. Chandrakala Vs The Adjudicating Officer, SEBI; 2012 SCC Online SAT 21: [20121 SAT 21; Paragraph 6 and?@Pages 4&5.

6. Calculation of "averted losses" erroneous.

The said Impugned Order alleges that the Noticee has averted potential loss in the scrip of MCX amounting to Rs. 31,18,45,914/-. It is pertinent to note that MCX was listed on the stock exchanges on March 9, 2012 and that after receipt of the said Impugned Order. on analyzing the historical data pertaining to value of MCX scrip during the period April 2012 to December 2012 (the Noticee sold shares of MCX during July - August 2012), available on the NSE website, it is evident that during the period May 2012 to September 2012, there was not much of movement in the price of the MCX scrip and the average scrip price remained approximately Rs. 1,089/-. Hence the allegation of SEBI that mere issuance of SCN to NSEL is the beginning point of UPSI and had the news of issuance of SCN to NSEL broke out, the same would have had material impact on the MCX scrip. Admittedly, the news of issuance of SCN broke out on October 3, 2012 in various newspapers and

if SEBI's allegation above is accepted to be true, the price of MCX scrip ought to have fallen. However, this allegation of SEBI stands belied by the fact that the average price of MCX scrip, which was Rs. 1260.78/- on October 3, 2012 increased to Rs. 1583.07/- on November 30, 2012, and till December 2012 it remained much above the average price of Rs. 1086.34/- at which the Noticee sold the shares. It is pertinent to note that contrary to SEBI's allegation that the Noticee averted loss by dealing in MCX scrip while in possession of UPSI, the Noticee has made losses on sale of MCX shares, when compared with sale price of the Noticee's shares to the price of the said shares even during the period under investigation.

Period (2012)	***Average Price (Sale of MCX Shares)***
April	*1239.10*
May	*971.17*
June	*1022.08*
July	*1095.10*

7. It is therefore, prayed that no case is made out against the Noticee for being (i) an insider; (ii) in possession of alleged UPSI; (iii) dealt with or sold 5,41,032 shares of MCX from 3rd July 2012 to 30th August 2012, while in possession of such alleged UPSI.

16 Subsequently vide email dated June 17, 2019, the Noticee was given another opportunity to file additional submissions, if any by June 24, 2019. However, the Noticee did not respond to the above.

CONSIDERATION OF ISSUES AND FINDINGS

17 I have considered the SCN, oral and written replies/ submissions of the Noticee and other material available on record and, the following issues arise for consideration:

A. *Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information? If yes, whether the price sensitive information was unpublished and if so, when did it get published?*
B. *Whether the Noticee traded in the scrip of MCX during the period when the price sensitive information remained unpublished? And whether the Noticee traded*

when in possession of UPSI and thereby violated the provisions of Regulation 3(i) of SEBI (PIT) Regulations, 1992 read with Regulation 12 (2) of the SEBI (PIT) Regulations, 2015?

C. *Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15G of the SEBI Act, 1992?*

D. *If so, what would be the monetary penalty, duly considering the factors mentioned in Section 15J of SEBI Act read with Rule 5(2) of the AO Rules?*

18 Consideration of the issues in light of the facts and circumstances of the case and the arguments advanced by the Noticee is discussed in the subsequent paragraphs.

Issue A. Whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL, was price sensitive information? If yes, whether the price sensitive information was unpublished and if so, when did it get published?

19 The first question which arises for consideration is whether the implication of the SCN dated April 27, 2012, issued by DCA to NSEL was "price sensitive information" in respect of MCX. I note that the expression "price sensitive information" has been defined under regulation 2(ha) of the PIT Regulations, 1992, which reads as under:

(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price sensitive information :—

(i) periodical financial results of the company;

(ii) intended declaration of dividends (both interim and final);

(iii) issue of securities or buy-back of securities;

(iv) any major expansion plans or execution of new projects.

(v) amalgamation, mergers or takeovers;

(vi) disposal of the whole or substantial part of the undertaking;

(vii) and significant changes in policies, plans or operations of the company;

20 I note that vide Notification S. O. No. 906(E) dated June 5, 2007, the DCA had granted exemption to NSEL from the operation of the Forward Contracts (Regulation) Act, 1952 ("FCRA") for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform, subject to the following conditions –

a. No short sale by Members of the Exchange shall be allowed;

b. All outstanding positions of the trade at the end of the day shall result in delivery;

c. NSEL shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;

d. All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;

e. The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary, and

f. In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest.

21 The contents of the SCN dated April 27, 2012 are reproduced as under:

1. "National Spot Exchange Limited was given exemption from operation of the forward Contracts (Regulation) Act, 1952 for all forward contracts of one day duration for the sale and purchase of commodities traded on its platform in terms of the Department of Consumer Affairs Notification S.0. No. 906 (E) dated 5.6.2007 subject to the conditions mentioned therein. FMC (Forward Markets Commission) was declared as the `designated agency to call for data from the spot exchanges in accordance with the Department of Consumer Affairs Notification dated 6.02.2012. On the basis of data obtained from National Spot Exchange Limited, FMC has reported the following discrepancies:

(I) The NSEL has not made it mandatory for the seller to actually deposit goods in the warehouse before he takes a short position through a Member of the Exchange. The Exchange system has no stock check facility which validates the member position. The Exchange allows trading on the Exchange platform without verifying whether the seller member has the stocks with him or not. In this way, the Exchange has violated the conditions stipulated that no short sale for the members of the Exchange shall be allowed,

(II) FMC has also found that out of total contracts, 55 contracts offered for trade by NSEL have settlement period exceeding 11 days. NSEL has agreed that all the contracts traded on the Exchange platform for which settlement period exceed 11 days are N'TSD contracts. NSEL has, however, claimed that Government has granted exemption to the Exchange in respect of these contracts and therefore, trading in these contracts is not violation of the previsions of the FC(R) Act. The claim of NSEL, however, cannot be accepted as the Government has not granted any exemption to NSEL in respect of NT'SD contracts. Therefore, all contracts traded on NSEL with settlement period exceeding 11 days are violation of the provisions of the FC(R) Act.

2. National Spot Exchange Limited are, therefore, directed to explain as to why the action should not be initiated against them for violation of the conditions of the Notification dated 5.6.2007 within 15 days of the receipt of this letter failing which the Department would be compelled to withdraw the exemption granted thereunder without any further communication."

22 On a perusal of the above, I note that the possible outcome of the SCN was withdrawal of the exemption granted to NSEL. Thus, it would be reasonable to conclude that the possible outcome of the SCN would have had significant and serious implications on the functioning and operations of NSEL.

23 I note that MCX and NSEL were companies of the same holding company i.e. FTIL and any adverse impact on the business and operations of NSEL was reasonably and most likely expected to have a contagion, cascading and materially adverse impact directly on its holding company – FTIL and indirectly on its associate company - MCX. In my view, the possibility of serious challenges to be faced by an associate company (NSEL) under the same management, which is almost wholly owned by the holding company (FTIL) had the potential to materially affect the price of the securities of MCX when disclosed to public. Therefore, I am of the considered view that the information relating to the issuance of SCN by DCA to NSEL and its possible implications would have had an adverse impact on the business and operations of NSEL and was reasonably likely to have a contagion, cascading and materially adverse impact directly on the holding company – FTIL and indirectly on the associate company – MCX and the price of its securities. Further, I am also of the view that

the same would have led to a loss of reputation and credibility of the promoters and management of MCX. In view of the above, considering the nature, extent and timing of the information relating to issuance of SCN by DCA to NSEL and its possible implications, I am of the considered view that the said information was price sensitive information in respect of MCX.

24 I note the argument of the Noticee that the price sensitive information as defined under Regulation 2(ha) is information that pertains to the company in question and not of a group company. It has been contended on behalf of the Noticee that the alleged UPSI related to a separate company - NSEL and not to MCX, with regard to whose shares, the allegation of insider trading has been made in the interim order. In this context, I note that regulation 2(ha) defines *"price sensitive information"* as "*any information which relates* ***directly*** *or* ***indirectly*** *to a company and which if published is* ***likely to materially affect*** *the price of securities of company".* Thus, that the very definition of the expression "*price sensitive information*" provides that the information under consideration would be subjected to the test of likelihood of material effect on the price of the securities of a company even if it indirectly relates to the company, which in the present case is MCX. As discussed in the earlier paragraphs, any information having a material adverse impact on NSEL was likely to have an indirect adverse effect on MCX and the price of its securities, and therefore, for reasons discussed in above paragraphs, I am of the considered view that the information as alleged was price sensitive information in respect of MCX.

25 Further, the argument of the Noticee that the information alleged as "price sensitive information", is not specifically covered in the explanation to definition of "price sensitive information" under regulation 2(ha) of the SEBI (PIT) Regulations, 1992, and therefore, it does not qualify as price sensitive information. In this regard, I note that the explanation to regulation 2(ha) only provides for illustrative sets of information which would be deemed as "price sensitive information". For any information to be price sensitive, it has to only meet the essential ingredients of regulation 2(ha) and it need not necessarily fall under any of

the clauses provided under the explanation to regulation 2(ha). In view thereof, I do not find any merit in the arguments made by the Noticee in this regard.

26 I note the submission of the Noticee that as on April 27, 2012 when the SCN was issued by DCA, nobody could have visualized or imagined that such kind of direction would be issued by DCA more than 1 year down the line. The same was never in anybody's contemplation. It was also argued that the alleged UPSI was not price sensitive at all which was evidenced by the fact that when the article relating to the SCN dated April 27, 2012 was published in Economic Times on October 3, 2012, the price of the scrip of MCX went up and not down. In this regard, I note that the definition of "price sensitive information" under regulation 2(ha) requires that the information should be such which if published is *likely to* materially affect the price of securities of the company. The actual impact on the price of the securities is not essential to the definition under regulation 2(ha) rather the real test is the *likelihood* of the material effect on the price of the securities of the company. Accordingly, an information is price sensitive because it is *likely* to materially affect the price. It is not that the information *must* affect the price of the scrip. This is so because there are many factors which affect the price of the scrip and it is not always possible to decipher whether a particular information materially affected the price of the scrip. The legal requirement of only the likelihood of the material effect on the price of the securities of the company is in consonance with the objective of prevention of insider trading, as an insider is prevented from trading *while in possession of unpublished price sensitive information.* The regulatory objective of refraining from insider trading cannot be achieved if such insider is permitted to take advantage of the actual impact of price which happens only after the UPSI becomes public. I, therefore do not find any merit in the arguments in this regard and reject the same.

27 With reference to the observations of Hon'ble SAT in the matter of *Rajiv B. Gandhi & Others Vs. SEBI*, it has been submitted by the Noticee that *the reference to the same in the interim order is totally inapposite and shows non-application of mind. Further, it has been ignored that Regulation 2(k) of the PIT Regulations 1992 was amended on February 20, 2002. In*

the Rajiv B. Gandhi case, Hon'ble Tribunal had dealt with the un-amended Regulation 2(k), which is not applicable in the facts and circumstances of the case. In this context, I note that the reference to the order of Hon'ble SAT in the *Rajiv B. Gandhi* matter is in the specific context of explanation of the term "*unpublished price sensitive information",* which prior to the amendment in 2002 was defined under regulation 2(k) of SEBI (PIT) Regulations, 1992. Regulation 2(k) after the 2002 amendment defined the term "unpublished", but the reference to the *Rajiv B. Gandhi* order in the interim order does not appear to be in the context of discussion on the meaning of "unpublished". Thus, I do not find any infirmity in the reference to the said observations of Hon'ble SAT in the interim order.

28 In view of all of the above, I am of the considered view that the implication of the SCN dated April 27, 2012 issued by DCA to NSEL as alleged was "price sensitive information" in respect of MCX.

29 I also note from the submissions of the Noticee that proceedings under section 11 of the SEBI Act, 1992 was also initiated in respect of the Noticee for the same set of violations. The Noticee has contended that the period of UPSI was reduced by the SEBI Whole Time Member in its order. the Whole Time member observed "*I note that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information relating to the issuance of SCN dated April 27, 2012 to NSEL, a majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL's reply to the SCN. The article also covered the probable action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007*".

30 The Whole Time Member further observed *"I note that on a careful perusal of the newspaper article dated October 3, 2012, the publication of the said article made the following information public:*

- *DCA had issued a show cause notice dated April 27, 2012 to NSEL whereby it had found fault with certain types of contracts which were being traded on NSEL.*

- *There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.*
- *SCN also alleged that all contracts traded on NSEL with a settlement period exceeding 11 days were in violation of the provisions of FCRA.*
- *The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.*
- *NSEL had filed its reply to the SCN issued by DCA.*
- *In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication".*

31 The Whole Time Member also observed *"I am of the considered view that a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on the part of NSEL to provide a satisfactory explanation for the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, possible payment defaults in relation thereto and the consequential loss of reputation of the promoters / management of NSEL. Also, on the same day i.e. October 3, 2012, through an 'Exchange Communication', NSEL informed all its Members regarding SCN dated April 27, 2012, its reply to the SCN and also offered clarifications on the article in 'The Economic Times'. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October*

3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the UPSI existed was from the date of issuance of the SCN to the date of its publication in the newspaper i.e. from April 27, 2012 to October 3, 2012".

Issue B. Whether the Noticee traded in the scrip of MCX during the period when the price sensitive information remained unpublished? And whether the Noticee traded when in possession of UPSI and violated the provisions of Regulation 3(i) of SEBI (PIT) Regulations, 1992 read with Regulation 12 (2) of the SEBI (PIT) Regulations, 2015?

32 Having determined that the UPSI existed during the period April 27, 2012 to October 3, 2012, the next issue for consideration is whether the Noticee traded during the period April 27, 2012 to October 3, 2012 (the period of UPSI). I take note of the trades carried out by the Noticee during the period April 27, 2012 to October 3, 2012. The relevant details of the trades are mentioned in the table below:

DATE	NO. OF SHARES SOLD	AMOUNT (IN ₹)
AT BSE		
03/07/2012	2,500	26,70,288
04/07/2012	2,347	24,92,953
05/07/2012	600	6,32,740
06/07/2012	1,255	13,17,756
19/07/2012	1,500	17,01,583
20/07/2012	17,500	1,93,35,004
23/07/2012	20,000	2,18,46,203
24/07/2012	26,491	2,86,75,175
25/07/2012	1,40,000	14,77,83,902
26/07/2012	12,009	1,28,54,513
27/07/2012	67,556	7,11,97,418
31/07/2012	3,640	37,63,307
01/08/2012	35,280	3,70,27,491
21/08/2012	23,114	2,69,61,594
22/08/2012	19,917	2,32,31,618
23/08/2012	20,893	2,44,32,918
24/08/2012	7,855	91,50,046
27/08/2012	27,181	3,08,72,672
28/08/2012	35,604	3,95,26,180

DATE	NO. OF SHARES SOLD	AMOUNT (IN ₹)
AT BSE		
29/08/2012	37,436	4,14,62,339
30/08/2012	556	6,23,323
TOTAL (BSE)	**5,03,234**	**54,75,59,023**
		AT NSE
03.07.2012	12,500	1,33,59,816
04.07.2012	8,000	84,69,978
05.07.2012	1,400	14,78,876
06.07.2012	3,398	35,76,639
20.07.2012	12,500	1,37,64,136
28.08.2012	450	4,97,193
TOTAL (NSE)	**38,248**	**4,11,46,638**
TOTAL (NSE+BSE)	**5,41,482**	**58,87,05,661**

33 I note that the Noticee has submitted that on reconciliation of his trading account on August 28, 2012, he noticed that his stock broker namely IFCI Financial Services Limited, had made an error of accidentally purchasing 450 shares of MCX on August 28, 2012 at 14:53:54 (Trade Time) and 14:54:25 (Trade Time) and accordingly, on his instructions, his stock broker squared off the erroneous purchase transaction immediately between 15:07:32 (Trade Time) and 15:15:13 (Trade Time) on the same day. Accordingly, it is submitted by the Noticee that he had sold 5,41,032 shares of MCX during the period from July 3, 2012 to August 30, 2012 for Rs.58,82,08,468/- and not 5,41,482 shares of MCX during the aforesaid period for Rs.58,87,05,661/-. In this regard, I note from the material available on record that there was a purchase of 450 shares of MCX on August 28, 2012 in the account of the Noticee. In view thereof, I find that for the purpose of these proceedings, the number of shares sold by the Noticee stands corrected to 5,41,032.

34 I note that the Noticee, as mentioned above sold 5,41,032 shares of MCX during the period when the price sensitive information remained unpublished (i.e. April 27, 2012 to October 3, 2012). Now, the issue that needs examination is whether the Noticee by selling the shares of MCX, violated the provisions of Regulation 3(i) of the SEBI (PIT) Regulations, 1992 read with Regulation 12(2) of the SEBI (PIT) Regulations, 2015.

35 I note that the Noticee submitted that Regulation 2(e) of the SEBI (PIT) Regulations, 1992 prescribes two fold conditions and both such conditions must be satisfied as they have to be fulfilled conjunctively. Mere presumption of expectation to have UPSI is not sufficient compliance of the requirement under Regulation 2(e)(i). Regulation 2(e)(ii) is based purely on fact viz. either information has been received or the person concerned has had access to such UPSI. In either case there must be some proof / evidence of the same which is not borne out by any document on record. He also submitted that the minutes of the Board meetings of NSEL have been scrutinized and do not contain any UPSI. Further there is no other evidence / statement of any other person to the effect that such information was communicated to or accessed by the Noticee.

36 I find it relevant to quote the following Regulations of the SEBI (PIT) Regulations, 1992 in view of the above submissions of the Noticee,:

Regulation 2(e) *– "insider" means any person who,*

i. is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

ii. Has received or has had access to such unpublished price sensitive information.

Regulation 2(c) *– "connected person" means any person who –*

i. Is a Director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a Director of that company by virtue of sub-clause (10) of section 307 of that Act; or

ii. Occupies the position as an office or an employee of the company or holds a position involving a professional or business relationship between himself and the company (whether temporary or permanent) and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

[Explanation:—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;]

***Regulation 2(h)** – "person is deemed to be connected person" if such person –*

i. *is a company under the same management or group, or any subsidiary company thereof within the meaning of sub-section (1B) of section 370, or sub-section (11) of section 372, of the Companies Act, 1956 (1 of 1956) or sub-clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) as the case may be;*

ii. *is an intermediary as specified in section 12 of the Act, Investment company, Trustee Company, Asset Management Company or an employee or Director thereof or an official of a stock exchange or of clearing house or corporation;*

iii. *is a merchant banker, share transfer agent, registrar to an issue, debenture trustee, broker, portfolio manager, Investment Advisor, sub-broker, Investment Company or an employee thereof, or is member of the Board of Trustees of a mutual fund or a member of the Board of Directors of the Asset Management Company of a mutual fund or is an employee thereof who have a fiduciary relationship with the company;*

iv. *is a Member of the Board of Directors or an employee of a public financial institution as defined in section 4A of the Companies Act, 1956;*

v. *is an official or an employee of a Self-regulatory Organisation recognised or authorised by the Board of a regulatory body;*

vi. *is a relative of any of the aforementioned persons;*

vii. *is a banker of the company;*

viii. *relatives of the connected person; or*

ix. *is a concern, firm, trust, Hindu undivided family, company or association of persons wherein any of the connected persons mentioned in sub-clause (i) of clause (c), of this regulation or any of the persons mentioned in sub-clause (vi), (vii) or (viii) of this clause have more than 10 per cent of the holding or interest.*

37 I note that the Noticee was a Nominee Director on the board of MCX nominated by FTIL, for the period from April 19, 2002 to June 28, 2012 i.e. more than 10 years. However, the Noticee contended that he had tendered his resignation to MCX vide letter dated July 31, 2011. The Noticee was given an opportunity to provide evidence by way of any acknowledgement by MCX to prove the receipt of the said resignation letter by MCX. However, the Noticee did not provide any copy of acknowledgement or proof of delivery to MCX to the effect that his resignation was accepted and will take effect from July 31, 2011 as stated in his letter. Therefore, I find that the Noticee has not provided any material to contradict the MCA record which shows his date of resignation as June 28, 2012. In view of the aforesaid, I am of the considered view that the Noticee was a Nominee Director on the board of MCX, nominated by FTIL, for the period from April 19, 2002 to June 28, 2012. It would be apposite to point out the fact that the Noticee himself admitted that his resignation from MCX is to be treated with effect from June 28, 2012 without prejudice to rights and contentions available under the law.

38 The Noticee was an employee of FTIL from January 01, 2001 to June 20, 2011 i.e. for more than 10 years. He was appointed as "Chief Technology Officer" of FTIL until March, 2005. From April, 2005 onwards he acted as the "Director -Strategy (non-Board)" of FTIL. He was also the non-executive non-independent Director of NSEL since its inception from May 18, 2005 to December 20, 2011 (i.e. for more than 6.5 years). This indicates that the Noticee was holding a position of significant responsibility in all the three companies for a very long period. Further, from the FMC's order dated December 17, 2013, it was observed that the Noticee was a KMP (Key Management Personnel) of NSEL for the year 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10 and was member of "Audit Committee" and "Membership Committee" of NSEL. As per the Noticee's submission, he permanently shifted to Singapore from May 2011 onwards and is currently working in Singapore. Further, he was appointed as an interim CEO of SMX on June 21, 2011. It is relevant to mention here that SMX was an entity promoted by FTIL itself and Shri Jignesh Shah was its Vice-Chairman. It is noted from the annual report of FTIL for 2011 that it held 100% stake in SMX. Therefore, it can be safely concluded that SMX was another

group company/company under the same management of FTIL and that the Noticee's association with the FTIL group continued even after his employment with FTIL, NSEL and MCX.

39 I note that the Noticee had a decade long association with the FTIL group and he had held significant positions in MCX, FTIL and NSEL. He was also a KMP of NSEL for several years and a member of its audit committee and membership committee. It is noteworthy that the Noticee was one of the biggest recipients of ESOPs given by MCX in its schemes in 2006 and 2008 which are indicative of his importance and functioning in the various management role and authority in the MCX or FTIL or NSEL. I further note that even after he resigned form NSEL and FTIL, he was made the CEO of SMX (a global exchange set up by the FTIL group) in Singapore. I note that the abovementioned facts are sufficient enough for any layman also to conclude that the Noticee was and continued to be a core member of the FTIL group at all times during the period under consideration.

40 I find that during the period when the price sensitive information remained unpublished (i.e. April 27, 2012 to October 3, 2012), the Noticee was on the board of MCX. In this context, the following observations of Hon'ble SAT are noteworthy;

Shri E. Sudhir Reddy v. Securities and Exchange Board of India (SAT order dated December 16, 2011):

> *"… we find that the appellant being one of the Directors of the company, was a connected person with the company and falls within the definition of 'insider' contained in regulation 2(e) of the Insider Trading Regulations."*

Appeal No. 451 of 2015 [*Chintalapati Srinivasa Raju v. Securities and Exchange Board of India]* and other connected appeals (majority opinion of Hon'ble SAT in order dated August 11, 2017):

> *"c) Expression 'insider' is defined under regulation 2(e) of the PIT Regulations to mean any person who is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to UPSI or a person who has actually received or has had access to such UPSI. Expression*

'connected person' is defined under regulation 2(c) to mean (one) any person who is a Director or deemed Director under Section 2(13) and Section 307 (10) of the Companies Act, 1956 or (two) an officer/ an employee or any person who holds a position involving a professional or business relationship between himself and the company and who may be reasonably expected to have access to UPSI. It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director constitute part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director. Thus, reading regulation 2(e) with regulation 2(c) & 2(h) of the PIT Regulations, it is evident that the expression 'insider' under regulation 2(e) covers the following persons.

i) Director/ deemed Director who is or was connected with the company.

ii) Officer/employee of the company or any person who on account of professional or business relationship with the company is reasonably expected to have access to UPSI.

iii) Deemed to be connected persons who are reasonably expected to have access to UPSI.

iv) Any person who has actually received or has had access to UPSI.

In the present case, admittedly, CSR was a Director of Satyam till 23.01.2003 and therefore, being responsible for all the acts/ deeds of Satyam, the WTM of SEBI was justified in holding that CSR was an insider under the PIT Regulations."

41 In view of the above observations of Hon'ble SAT, I am of the view that Director of a company is a connected person and therefore in such a case, there is no requirement that the said Director be reasonably expected to have access to the UPSI in terms of Regulation 2(e) of the SEBI (PIT) Regulations, 1992 in order to identify him as an insider. Considering the above mentioned facts and the observations of Hon'ble SAT, I find that being a Director of MCX, the Noticee was a connected person with respect to MCX. Further, it is noted that significant positions were held by him in MCX, its promoter company (FITL) and FTIL's

majority held subsidiary (NSEL) and he had more than a decade long association with these companies as mentioned above. Further, the Noticee was a KMP of NSEL during the period when the trading in paired contracts had started on NSEL and continued as its KMP till FY 2009-2010. Later, he continued his association with NSEL as its Director till December 20, 2011 i.e. immediate few months prior to the issuance of SCN by DCA. I note that until December 20, 2011, the Noticee was performing in dual capacity i.e. as a Director in NSEL and also in MCX. Further, even after moving to Singapore, the Noticee worked as CEO of SMX (a wholly owned entity of FTIL). In view of the above facts, it can be reasonably inferred that the Noticee was a core member of the FTIL group and had access to the UPSI (noted above). Considering the above, I find that as a connected person having access to UPSI, the Noticee was an "insider" within the definition of the term provided in regulation 2(e) of PIT Regulations, 1992.

42 Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992 which reads as under:-

SEBI (PIT) Regulations, 1992

"Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. *No insider shall—*

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or"

SEBI (PIT) Regulations, 2015

Repeal and Savings.

12. (2) Notwithstanding such repeal, —

(a) *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment*

incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

43 I find that the Noticee was an "insider" within the meaning of the term under regulation 2(e) of the SEBI (PIT) Regulations 1992 as discussed in the above Paragraphs and during the period April 27, 2012 to October 3, 2012, he sold 5,41,032 shares of MCX. I note that for determining whether the Noticee violated the provisions of Regulation 3(i) of the SEBI (PIT) Regulations, 1992 read with Regulations 12(2) of the SEBI (PIT) Regulations, 2015 while selling 5,41,032 shares of MCX, it needs to be ascertained whether the Noticee sold the said shares "*when in possession of*" UPSI as required under regulation 3(i).

44 I find it relevant here to refer to the order of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Hon'ble SAT's order dated May 9, 2008) wherein the Hon'ble SAT observed the following:

"We are of the considered opinion that if an insider trades or deals in securities of a listed company, ***it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary****. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible*

explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established."

45 I note that the principle of presumption of possession of information by insiders indicated in the case of *Rajiv B. Gandhi and Ors. v. SEBI* by Hon'ble SAT was also recognized later by Hon'ble SAT in another order in the matter of *Reliance Petro Investments Limited v. SEBI* (Hon'ble SAT's order dated December 7, 2015) in the following words:

"On perusal of para 9 and 10 of the impugned order it is seen that apart from denying that the Appellant was an insider, Appellant had placed on record various documents to rebut the presumption of being in possession of UPSI at the time of purchasing shares and the Appellant had also made submission to the effect that the price sensitive information itself came into existence after the shares were purchased by the Appellant."

46 I find, as discussed in the earlier Paragraphs, that the Noticee was an "insider" having access to UPSI under regulation 2(e) of the SEBI (PIT) Regulations, 1992. Therefore, in view of the aforesaid observations of the Hon'ble SAT, it is presumed that he traded *when in possession of* the unpublished price sensitive information. Consequently, it becomes necessary to decide whether the Noticee has submitted adequate material to refute the said presumption.

47 I note that the Noticee has stated that *even assuming that the alleged information regarding implications of SCN was price sensitive and unpublished, he was not at all aware of the same. He submitted that he was a non- executive Director of MCX and had no role in its day to day affairs. He also submitted that no such information was made known to me directly or through the Board of Directors of MCX either in the form of a board note or by way of disclosure, discussion at the Board meeting or in any other way. Further, he had resigned as a non- executive Director of NSEL on December 20, 2011 and was not aware of issuance of SCN dated 27-04-12 to NSEL by DCA.* In this regard, I note from the material available on record that the allegation that Noticee sold shares in violation of Regulation 3(i) of the SEBI (PIT) Regulations, 1992 read with Regulations 12(2) of the SEBI (PIT)

Regulations, 2015 has been levelled on the basis of his prior long association and Directorship / employment with NSEL and FTIL, and also his Directorship in MCX. I note that the SEBI interim order dated August 2, 2017 in the matter states, *inter alia*, the following findings in relation to the allegations against the Noticee:

> *"c. ... As noted in the chronology of events, paired contracts were being run on NSEL since September 2009 and default had started in 2011–12. Shri Hariharan Vaidyalingam was a Director during the aforesaid period.*
>
> *d. Since, FTIL was the holding company of NSEL, it is reasonably expected that Directors, etc. of FTIL and NSEL had access to UPSI which was emanated from NSEL. It is therefore, reasonably expected that Shri Hariharan Vaidyalingam had access to the aforesaid UPSI."*

48 I note from the material available on record that the allegations in respect of the Noticee is not solely based on his Directorship with MCX. Rather, on the basis of his long association with FTIL and NSEL and the significant positions held by him in these companies, together with his Directorship in MCX. For the same reason, the investigation has distinguished the case of the Noticee from that of the other Directors / employees of MCX (Mr. Lambretus Rutten, Mr. P.K. Singhal, Dr. Raghavendra Prasad, etc.). Therefore, I find that the genesis of the allegation in respect of the Noticee lies in the fact that the Noticee was NSEL's Director since its inception till December 20, 2011, NSEL's KMP from FY 2005-06 to 2009-10, FTIL's Director (non-board) from 2005 to 2011 and was associated with FTIL and MCX for more than a decade. I find it relevant to mention here that the Noticee was acting as a Nominee Director of FTIL on the board of MCX. A Nominee Director is appointed on the Board of a company to protect the interest of the nominating institution and to generally see that the company is being run without affecting the interests of the nominating institution. The strategic decision making by the Nominee Director is therefore, to be done taking into account not only the inputs from the company to which he/she is nominated, but also the inputs from the company by which he/she has been nominated. Therefore, as a Nominee Director of FTIL on the Board of MCX, the Noticee was presumed to have taken inputs and

information from FTIL for discharge of his functions. It may be noted that FTIL was holding 99.90% in NSEL, and FTIL being its promoter had access to the information in respect of the SCN dated April 27, 2012 issued by DCA and its possible implications. Apart from this, the Noticee was also a non-executive Director of NSEL having information about all strategic policy decisions of NSEL. Though he resigned as a Director of NSEL in December 2011, he continued as a Nominee Director of FTIL on the Board of MCX. Therefore, by virtue of being a Nominee Director for such long years, and also at the time of issuance of SCN by DCA, the preponderance of probability is that the Noticee had access to the UPSI and was in possession of the same. Further, continuation of the Noticee with the FTIL group, by virtue of his appointment as CEO of SMX, strengthens the presumption that the Noticee had access to the UPSI and was in possession of the same. In view of the above, I find that the submissions of the Noticee in this regard, including that he was not aware of the issuance of SCN by DCA to NSEL cannot be accepted.

49 I also find it relevant to mention that as per the submission of the Noticee, his shareholding in MCX was built up from allotment of shares by way of ESOPs, prior to the listing of MCX. It is noteworthy that the Noticee was one of the biggest recipients of ESOPs given by MCX in its schemes in 2006 and 2008. Thus, while his designation in MCX might have been "Non-executive Director", he was a core member of the FTIL group and therefore, was performing very important, significant and valuable functions for MCX or FTIL or NSEL (since he was a Nominee Director of FTIL and was also a Director of NSEL) which resulted in him receiving substantially more ESOPs than any other recipients. The fact that the Noticee being offered a large portion as ESOPs despite being a Non-executive Director indicates that the ESOPs were indirect compensation for his significant role and functions in MCX and FTIL, and also for ensuring his role for protecting the interest and objectives of FTIL.

50 I further note that the SEBI Whole Time Member observed "*The Noticee submitted that since he had shifted to Singapore he was no longer interested to pursue any business association and/or commercial interest in India, and decided to sell his shares in MCX and*

other entities. According to him, the shares of MCX were sold by him to reduce his outstanding liabilities, which he had incurred on account of financial assistance availed from different banks/financial institutions for buying MCX ESOPs, Housing repairs, Educational loan and expenses of his daughter's education in USA, etc. In this regard, during the personal hearing, the Noticee was asked to provide the quantified profits from sale of shares of MCX (considering his exercise price) and also the breakup of the loans that he repaid from the proceeds of the sale. In his response, the Noticee submitted that he had paid Rs. 6,53,19,114 towards the exercise of his ESOPs and the quantified profits from the sale of shares of MCX were Rs. 52,28,89,354. Regarding the repayment of loans from the said profits, the Noticee could provide utilization of only Rs. 19,33,06,662. No cogent explanation was provided by him as to why additional shares worth Rs.33 crore (approx.) were sold by him while as per his submission the sale was done to reduce the outstanding liabilities. The fact that the Noticee has not been able to provide any explanation as to why additional shares worth approximately Rs.33 crore was sold shows that the Noticee has not established his case that he has sold the shares to reduce the outstanding liabilities. The fact that the Noticee had shifted to Singapore cannot be accepted as a plausible explanation for liquidating the entire shareholding in MCX which fetched him more than Rs. 58 crore since there is no bar on continued holding of shares in such circumstances. Also, the Noticee did not sell shares of all the scrips he held during that period. As per Noticee's own submission he sold the shares of MCX and other entities during the period July 3, 2012 to August 30, 2012. However, it is noted from the holding statement of the Noticee as on August 31, 2012 that the Noticee in his portfolio had shares of FTIL, Indian Overseas Bank and Rural Electrification Corporation Ltd. The above facts belie the claim of the Noticee that he sold the shares of MCX for reducing his outstanding liabilities, and indicate that he had sold the shares because he was in possession of UPSI relating to the implications of the SCN issued to NSEL by DCA. The Noticee has not been able to refute the presumption of possession of UPSI. Further, the arguments advanced by the Noticee and the material submitted by him do not substantiate his claim that he sold the shares of MCX for specific

reasons which include reducing his outstanding liabilities, and not because he was in possession of UPSI".

51 The Whole Time Member, SEBI, also observed "*Insider trading is a serious violation and can cause severe damage to public confidence in the securities market. An act of insider trading, therefore, has to be viewed strictly irrespective of its ultimate outcome for the person indulging in the same. In the facts and circumstances of the present case discussed above, it becomes imperative that appropriate action in accordance with law is taken against the Noticee who indulged in insider trading, irrespective of the fact that he did not make any profit / avert loss on account of such insider trading*".

52 The SEBI Whole Time Member further observed "*I find that the Noticee being an insider sold the shares of MCX when in possession of UPSI and thereby violated the provisions of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A(d) of the SEBI Act."*. Considering the above, the SEBI Whole Time Member decided "*I, in exercise of the powers conferred upon me under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with section 19 thereof and regulation 11 of the PIT Regulations, 1992 read with regulation 12 of the PIT Regulations, 2015 hereby restrain the Noticee from accessing the securities market and further prohibit him from buying, selling or otherwise dealing in securities, either directly or indirectly, or being associated with the securities market in any manner whatsoever for a period of seven (7) years from the date of this order"*.

53 In view of the above discussion, I am of the considered view that the Noticee was an insider in possession of the UPSI (implication of the SCN dated April 27, 2012 issued by DCA to NSEL) and that he traded on the basis of the said UPSI when the price sensitive information remained unpublished and thereby violated the provisions of Regulation 3(i) of the SEBI (PIT) Regulations, 1992 read with Regulations 12(2) of the SEBI (PIT) Regulations, 2015.

Issue C. Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15G of the SEBI Act, 1992?

54 The aforesaid violations on the part of Noticee makes the Noticee liable for penalty under Sections 15 G of the SEBI Act 1992 which reads as follows:

"Penalty for insider trading.

15G. If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

Issue D. If so, what would be the monetary penalty, duly considering the factors mentioned in Section 15J of SEBI Act read with Rule 5(2) of the AO Rules?

55 Factors to be taken into account by the adjudicating officer:

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

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

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

(c) the repetitive nature of the default.

1 [Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c)

of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

56 I note from the discussions in the above Paragraphs, the price sensitive information remained unpublished during the period April 27, 2012 to October 03, 2012. I find that the computation of loss averted by the Noticee has been based on the assumption that the UPSI was published eventually on July 31, 2013. In view of the same I note that the profit made/ loss averted by the Noticee, if any, needs to be re-computed taking October 3, 2012 as the date of publication of the price sensitive information. I note that as on October 4, 2012 (i.e. the day after publication of the price sensitive information) the closing price of the scrip of MCX was Rs. 1,294.65 on BSE and Rs. 1,293.05 on NSE. I note from the material available on record that the average sale price of the Noticee for his sale transactions was considered to be Rs. 1087.21. In view of the above I note that the average sale price of the Noticee was less than the closing price of the scrip of MCX after the date of publication of the price sensitive information.

57 I note that it has been established in the present case that the Noticee being an insider sold the shares of MCX when in possession of the UPSI and violated the provisions of the SEBI (PIT) Regulations, 1992 and SEBI Act, 1992. The charge of insider trading, in my view, is independent of the final outcome of the transactions. The rationale lies in the fact that the person indulging in insider trading cannot always predict the possible impact of the publication of the price sensitive information, and also that he does not have the benefit of hindsight. Thus, it becomes irrelevant whether the person indulging in insider trading makes any profit / averts loss on account of his transactions or not.

58 I am of the view that Insider trading is a serious violation and can cause severe damage to public confidence in the securities market. An act of insider trading, therefore, has to be viewed strictly irrespective of its ultimate outcome for the person indulging in the same. In the facts and circumstances of the present case discussed in the foregoing paragraphs, it becomes imperative that appropriate action in accordance with law is taken against the

Noticee who indulged in insider trading, irrespective of the fact that he did not make any profit / avert loss on account of such insider trading.

ORDER

59 For the aforesaid reasons and after taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating factors as enumerated above, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a monetary penalty of Rs. 1,25,00,000/- (Rupees One Crore Twenty Five Lakh Only) on the Noticee, Shri Hariharan Vaidyalingam (PAN: AABPV4103E) under section 15G of SEBI Act, 1992 for the violation of the provisions of Regulation 3(i) of the SEBI (PIT) Regulations, 1992 read with Regulations 12(2) of the SEBI (PIT) Regulations, 2015 which will be commensurate with the violations committed by the Noticee.

60 The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	**State Bank of India**
Branch	**Bandra - Kurla Complex**
RTGS Code	**SBIN0004380**
Beneficiary Name	**SEBI – Penalties Remittable To Government of India**
Beneficiary A/c No	**31465271959**

61 The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, DRA- III, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement /recovery/ Settlement amount and legal charges along with order details)	
Penalty	

62 In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 28, 2019 **Prasanta Mahapatra**

Place: Mumbai **Adjudicating Officer**