

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**Sections 11, 11B of the SEBI Act, 1992, Section 12A of the Securities Contracts (Regulation) Act, 1956 read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003**

**In the case of Reliance Petroleum Ltd. (RPL) –**

**Noticees:**

- 1. Reliance Industries Ltd. (PAN No. AAACR5055K)**
  - 2. Gujarat Petcoke and Petro Product supply Pvt. Ltd. (PAN No. AABCG9773E)**
  - 3. Aarthik Commercials Pvt. Limited. (PAN No. AACCR0191A)**
  - 4. LPG Infrastructure India Pvt. Limited. PAN No. AAACL7928F)**
  - 5. Relpol Plastic Products Pvt. Limited. (PAN No. AAACN6007D)**
  - 6. Fine Tech Commercials Pvt. Limited. (PAN No. AAACF5232A)**
  - 7. Pipeline Infrastructure India Pvt. Limited. (PAN No. AABCD2718F, AABCD2719F)**
  - 8. Motech software Pvt. Limited. (PAN No. AACCM0039Q)**
  - 9. Darshan Securities Pvt. Limited. (PAN No. AAACD1408Q)**
  - 10. Relogistics (India) Pvt. Limited. (PAN No. AACCR3050J)**
  - 11. Relogistics (Rajasthan) Pvt. Limited. (PAN No. AAACZ1853B)**
  - 12. Vinamara Universal Traders Pvt. Limited. (PAN No. AACCV5090J)**
  - 13. Dharti Investment and Holdings Pvt. Limited. (PAN No. AACCD2509C)**
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**1. Circumstances leading to issue of Show-cause notice and charges.**

**1.1 Background:**

- 1.1.1 In March 2007, the Board of Directors of Noticee No.1 decided to raise resources by off-loading approximately 5% of its holdings of equity shares of the scrip Reliance Petroleum Limited (RPL). While Noticee No.1 undertook the transactions in the cash segment of RPL in

November 2007, it enlisted the services of Noticees No. 2 to 13 as agents to operate in its behalf in the futures segment of RPL. Between November 1, 2007 and November 6, 2007 the above-named Noticees (serial Nos. 2 to 13) took substantial positions in the November Futures contract of RPL. As a result, on November 06, 2007, the holding in derivatives contracts RPL reached 95% of the market-wide position limit (MWPL) thereby inviting upon it a restriction of no further increase in open interest (OI) position as per extant rules pertaining to trading in the derivative segment. This led to an investigation by SEBI into the matter. The price-volume trends in the cash market vis-a-vis the F&O segment were analysed, as part of the investigation, to ascertain violations of the provisions of the Securities and Exchange Board of India Act, 1992 (the SEBI Act), the Securities Contracts (Regulations) Act, 1956 (the SCRA) and the Rules and Regulations framed thereunder especially with respect to the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (hereinafter referred to as PFUTP) and the circulars on 'position limits' of SEBI and NSE relating to the derivatives trading. After the investigation, SEBI issued a Show cause notice dated 16/12/2010 (hereinafter referred to as "the SCN"), which is the subject matter of the present proceedings. Prior to the said SCN, there was another SCN dated April 29, 2009 issued to Noticee No. 1, which was modified subsequently by corrigendum dated October 8, 2009, both of which were superseded by the SCN dated December 16, 2010. The factual narrations, inferences and charges contained in the SCN are summarily outlined in the following paragraphs.

## **1.2 Carrying out F&O trades through agents:**

**1.2.1** Noticee No.1 acted through its 12 Front entities (noticees 2 to 13 herein) which took huge short positions in the 2007 November Futures derivatives of RPL in NSE. Noticee No.1 executed separate agreements with each of these front entities whereby all the profits and losses were to be transferred to the account of Noticee no. 1 and such front entities earned commission on the transactions.

**1.2.2** Further, all orders in the cash and F&O segment of the RPL scrip were placed by one Mr. Sandeep Agarwal (an employee of a wholly owned subsidiary of Noticee no. 1). The same employee placed orders on behalf of Noticee No.1 in the cash segment also.

**1.2.3** The RPL scrip witnessed its high of ₹ 295 on BSE and ₹ 294.95 on NSE on November 1, 2007. Between November 1, 2007 and November 5, 2007, sale transactions accounting for large proportions of the open interest (OI) (45.62% of the open interest across all derivatives contracts in RPL, as on November 5, 2007) were undertaken by the Front entities of Noticee No. 1, on behalf of Noticee no. 1 in the futures contracts of RPL in just 3 trading sessions, between November 1 and November 5, 2007. On November 6, 2007, Noticees no. 10 and 11 also entered the F&O segment of the RPL scrip and took up short positions in the scrip for and on behalf of Noticee no. 1, as a result of which, the cumulative net short position held by Noticees nos. 2-13 increased to 9.92 crore shares constituting 61.15% of the OI in November futures contract of RPL and 48.64% of the OI across all the derivative contracts in RPL. Tables (iv)-a and (iv)-b of the SCN (refer para no. 4.A.6 of this order) bring out the respective positions held by various entities on 6<sup>th</sup> November, 2007 and 29<sup>th</sup> November, 2007.

**1.2.4** Subsequently, Noticees no. 12 and 13 squared off their positions during the month of November. On November 29, 2007 (the expiry day of November futures contracts), Noticees no. 2-11 continued to hold a net short position of 7.97 crore shares through several futures contracts in the RPL scrip, all expiring on November 29, 2007, accounting for 93.63% of the open interest in the November futures contracts of RPL and 40.13% of open interest across all derivatives contracts in RPL.

### **1.3. Breach of statutory position limits by Noticee No.1 through front entities**

**1.3.1** As per information provided by NSE, based on the free float market capitalization of RPL for the month of November 2007, the client wise position limit in the case of RPL futures worked

out to 1.01 crore shares as on November 6, 2007 and 90 lac shares as on November 29, 2007 and on both the aforementioned dates, most of the front entities of Noticee No.1 held a short position that was nearly equal to the maximum that was allowed to them. Thus Noticee no. 1 built up or accumulated positions in its favour by splitting the trades across the Noticees 2 -13, to circumvent the circular and avoid the regulatory limit prescribed in this respect. This amounts to a violation of SEBI circular no. SMDRP/DC/CIR-10/01 dated November 2, 2001, NSE Circular no. NSE/CMPT/2982 dated November 7, 2001, Regulation 3.2 of National Stock Exchange (Futures & Options segment) Trading Regulations, Byelaw 4 of Chapter VII of National Securities Clearing Corporation Limited (Futures & Options Segment) Bye Laws read with Byelaw 12 of Chapter I of National Securities Clearing Corporation Limited (Futures & Options Segment) Bye Laws, thus rendering the futures contracts entered into by the Noticees no. 2-13 in violation of Section 18A of the Securities Contracts (Regulation) Act, 1956, and consequently illegal to the extent that such trades were not carried out in accordance with the regulations prescribed for this purpose.

**1.3.2** There was no rollover of the net short positions in the November RPL derivatives by any of the Front entities of Noticee No. 1 and their short positions were allowed to expire at the settlement price of November 2007 derivatives contracts which resulted in a huge speculative profit. Table (vi) (Refer Para no. 4.A.26) shows the chart of entity-wise profit earned on various days.

#### **1.4 Trading background of Noticees Nos 2 to 13 in F& O :**

**1.4.1** Most of Front entities of Noticee No. 1 opened new trading accounts with different brokers in and around October and early November 2007, i.e. just on or before the date they started trading on behalf of Noticee no. 1 in the F&O segment of RPL. This was shown in Table (ix) in the SCN along with the date of first trade executed by each of them in the F&O segment. Further,

Table (x) of the SCN showed against the names of the 12 entities, the respective dates on which each one of them entered into agreements with Noticee No.1 (Ref. para 4.A.2). The trading history reveals that ten out of the 12 entities (i.e. entities except Vinamra Universal Traders Pvt. Limited and Dharti Investment & Holding Pvt Ltd.) had never traded in F&O segment between April 1, 2007 to November 1, 2007. Further, the SCN had brought out the connections between Noticee no.12 and the rest of the noticees (nos. 2-11), their connections with Mumbai SEZ Ltd (MSEZ) and Navi Mumbai SEZ (NMSEZ) and the Inter Corporate Deposits (ICDs) being placed by Noticee no. 12 with other entities, and other such details. The circumstances indicated that the sole motive for opening these accounts by most of the noticees was for the purpose of trading in the derivatives of RPL on behalf of Noticee No. 1.

## **1.5 Execution of Agreements with 12 entities**

**1.5.1** As the investigation revealed that each of the Front entities of Noticee No. 1 (Noticees no. 2-13) had undertaken F&O transactions in the scrip of RPL under respective agreements with Noticee No. 1, as stated earlier in this order and as Noticee No. 1 was its ultimate beneficiary, it was alleged that such agreements are benami contracts and therefore, illegal and invalid in terms of the Benami Transactions (Prohibition) Act, 1988. It was further alleged in the SCN that such arrangements were part of a scheme / artifice intended to manipulate and/or defraud the market. It was alleged that the object of entering into such agreements and executing such trades was to avoid detection of the breach of the client-wise position limits in derivative contracts imposed by the SEBI and NSE circulars issued in this connection.

**1.5.2** Investigation had also brought out the fund flow from noticees 2-13 back to noticee no. 1. It was admitted by Noticee No. 1 vide its letter dated 13/04/2010 that the profits transferred were

accounted for as “Other Income” in the Profit and Loss account of the noticee no.1 for the year ended March 31, 2008.

## **1.6 Trade details and manipulation in cash segment;**

**1.6.1** Between November 6, 2007 and November 23, 2007, Noticee no. 1 sold a total of 18.04 crore shares in the cash market, amounting to 4.01% of RPL’s equity, for a total amount of ₹ 4023 crore. However, Noticee no.1 did not sell any share in the cash market from November 24 until the last ten minutes of trading (between 3:21 p.m. and 3:30 p.m.) on November 29, 2007. Subsequently, on November 29, 2007 (the day of expiry of November derivative contracts), during the last ten minutes of trading, Noticee no. 1 sold another tranche of 1.95 crore shares on NSE, accounting for about 11% of the day’s total traded volume, about 25% of last half an hour’s total traded volume and about 56% of the last ten minutes’ total traded volume.

**1.6.2** It was specifically alleged that 17 sell orders for 2.43 crore shares were placed by Noticee no. 1 between 3:21:40 p.m. and 3:28:55 p.m. in the NSE cash segment, out of which orders for 1.95 crore shares got executed and induced tremendous selling pressure in the market. Further, Noticee no. 1 placed these large quantities of shares in the market by putting orders well below the last traded price as a result, the price started falling and the last trade of the day was executed at ₹ 209.80 on the NSE. It is also observed that Noticee no. 1 placed sell orders at prices lower than the LTP when there were buy orders available at higher prices in the system as shown below in Table (xi) of the SCN (Ref para 4.B.3 of this order). Based on the analysis of order log and trade logs as shown in the SCN, it was specifically alleged that Noticee no. 1, by placing orders below LTP, was able to dump a huge quantity of shares in the cash market during the last ten minutes thus affecting the price not only in the cash market, but also in the process affecting the determination of settlement

price of the November futures contracts in the derivatives segment. The settlement price of the futures contract is the volume weighted average price of the last half an hour trade in the cash segment on 29 November, 2007. It was alleged that as a result of the intervention of Noticee no. 1 in the cash segment, the price at which the derivatives contracts got settled on November, 29 2007 in NSE came down to ₹ 215.60 and its Front entities (Noticees no. 2-13) gained on their short positions. Given that Noticee no. 1 through its front entities (Noticees no. 2-13) held a short position of 7.97 crore shares in the F&O segment as on 29 November, 2007, it was alleged that the objective of dumping such a large number of shares in the cash market in such a short time was to:

- a. Bring down the price in the cash segment and consequently the derivatives segment of the RPL scrip and,
- b. Make further undue extra ordinary profits on the open short positions in the derivatives segment.

## **1.7 Hedging as a Defence.**

**1.7.1** Noticee No. 1, armed with the knowledge of its impending large sale in the cash market, undertook the short positions in the futures of RPL to the extent of 9.92 crore shares in an attempt to earn undue extra profit out of the same. Despite the nature of transactions, such a strategy cannot be considered to be a hedging strategy, for the following reasons indicated in the SCN:

- a) A hedge is normally created in some proportion to the underlying and this proportion is generally maintained throughout the period for which such hedge is created. Analysis of Noticee No. 1's sale in the cash segment vis-à-vis its position in the F&O segment does not reflect any correlation between the two; and
- b) Noticees Nos. 2-13 were continuously buying and selling RPL futures in the F&O segment during the investigation period and Noticee Nos. 12 and 13 squared off their positions before November 29, 2007 booking huge profits in the process.

## **1.8. Investigation findings and charges in the SCN:**

**1.8.1** Thus, based on the above facts, it was alleged that the whole scheme of cornering the open interest in November contracts by Noticee no. 1 has raised serious issues of market integrity and risk management. Fully knowing that the huge sales in the cash market would result in depressing the cash price of RPL, Noticee nos. 2-13 took up short positions in the derivatives segment and cumulatively, made gains of around ₹ 513.12 crore, which subsequently was transferred to Noticee no. 1. It was therefore alleged that the fraudulent, manipulative and unfair trading scheme was a well thought out and deliberate attempt to make extraordinary undue gains arising out of disequilibrium in the normal market functioning. Further Noticee No.1 by placing huge sell orders during the last ten minutes of trading on November 29, 2007 depressed the share price of the RPL scrip and consequently manipulated the settlement price. It was also alleged that the camouflaged attempt of Noticee No. 1 has significantly undermined the market integrity and risk management systems.

**1.8.2** In the light of the facts brought out above, it was alleged that the mandate under SEBI circular no. SMDRP/DC/CIR-10/01 dated November 2, 2001 that the gross open position across all derivative contracts on a particular underlying of a customer/client should not exceed the higher of 1% of the free float market capitalization (in terms of number of shares) or 5% of the open interest in the derivative was breached. Likewise, the NSE Circular No. NSE/CMPT/2982 dated November 7, 2001 issued in this connection also was violated.

**1.8.3** The violation of SEBI circular no. SMDRP/DC/CIR-10/01 dated November 2, 2001, and the rules and byelaws of the exchange is in turn a violation of the provision of Section 18A of the Securities Contracts (Regulation) Act, 1956 [“the SCRA” in short] which reads as follows:



***“Contracts in derivative.***

*18A. Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—*

*(a) traded on a recognised stock exchange;*

*(b) settled on the clearing house of the recognised stock exchange, in accordance with the rules and bye-laws of such stock exchange.”*

**1.8.4** In view of the fraudulent scheme employed by Noticee No.1 to derive profits in F&O segment by depressing the settlement price on the expiry day, besides the violation of the circulars governing the position limits issued by SEBI and NSE and section 18A of SCRA, it was alleged that the whole scheme was a fraudulent and manipulative practice in the securities market and attracts the provisions of Section 12A of the SEBI Act, 1992 read with Regulations 3(a),(b),(c) and (d) and 4(1) and 4(2)(d) and (e) of the SEBI (Prevention of Fraudulent and Unfair Trade Practices) Regulations. Accordingly, the noticees were called upon to show cause as to why all or any of the actions, including disgorgement of the undue and illegal profits made, and such other measures as deemed fit, in terms of the SEBI Act, the SCRA 1956 and SEBI (PFUTP) Regulations, 2003 should not be initiated against them.

**2. Submissions of the Noticees :**

**2.1** Noticees 2-13 were represented by Noticee no. 1 and on behalf of Noticee no. 1 and the rest of the noticees, Shri Janak Dwarkadas, Senior Counsel, Shri Rohan Rajadhyaksha, Advocate, Shri Atul S Dayal, Advocate and Shri K. R. Raja from Reliance Industries limited, appeared and argued. The hearings on January 9, 2017 and January 30, 2017 were held before me. The noticees sent the written submissions on February 10, 2017.

**2.2** It is also relevant to note that the Noticees did not dispute the facts and figures (i.e. the volume and price) relating to the trades in cash market or the F&O segment or the agency arrangement of Noticee No.1 with other noticees and other investigation findings shown to them in the SCN. However the Noticees, denied having violated the SEBI Act, the SCRA, the PFUTP Regulations, the Benami Transactions (Prohibition) Act, 1988 and the SEBI Regulations, Bye laws and relevant circulars of NSE or NSCCL etc. as alleged in the SCN.

**2.3** The contentions and defence of the noticees are being considered separately in seriatim while examining each issue identified for the purpose of this Order, framed out of the facts narrated in the SCN and the defence of the Noticees as advanced during the personal hearing and in the written submissions. The main contentions of Noticee No.1 on its own behalf and on behalf of the other noticees were that - (a) it had adopted a prudent strategy to hedge the loss that it was expecting due to the impending sales in the cash segment by taking appropriate positions in the F&O segment; (b) that it was authorized in law to enter into agency arrangements with the other noticees to take position limits in the F&O segment; (c) that it had not manipulated the cash segment while trading on 29 November 2007; (d) that it had not breached client level position as mandated in the circular; alternatively, that a mere breach of position limits in the open interest prescribed in the F&O segment by itself will not automatically amount to a 'fraudulent and manipulative trade practice' in the securities market for the purpose of the SEBI(PFUTP) Regulations; (e) that there is no violation of the Benami Act provisions; (f) that the re-investigation done by SEBI vitiates / invalidates the SCN and (g) that SEBI has no powers under section 11(4) and 11B of the SEBI Act read with the provisions of PFUTP regulations to impose the directions as proposed in the SCN.

### **3. Issues for consideration:**

#### **Factual issues:**

##### **Issue (A)**

Whether the dealings of the Noticees in the F&O Market amounts to the commission of a 'fraudulent and manipulative trade' in securities in terms of the SEBI (PFUTP) Regulations?

##### **Issue (B)**

Whether Noticee No.1, by selling 1.95 crore of RPL shares in the cash segment in the last ten minutes of the trading session on 29 November 2007 can be said to have acted fraudulently or manipulated the securities market, as per the SEBI (PFUTP) Regulations?

## **Legal and Miscellaneous Issues:**

### **Issue (C)**

(i) Whether in terms of the scheme of provisions of SCRA, in particular, Sections 18A and the circulars issued thereunder, SEBI is empowered to take enforcement action for PFUTP against the Noticees? (ii) Whether the Agency agreements executed by Noticee No.1 appointing Noticees Nos 2-13 to act as its agents to trade in the F&O segment involve a violation of the provisions of Benami Transactions (Prohibitions) Act, 1988? (iii) Whether the requirements of “fraud” as laid down by the Courts and Tribunals are being satisfied in the instant set of facts, to establish the violation of SEBI(PFUTP) Regulations? (iv) Whether the “re-investigation” carried out by SEBI without any new ground or fresh material as contended by the Noticees invalidates the SCN? (v) Whether Sebi in exercise of its powers under section 11(4) and 11B is empowered to pass the directions, as proposed in the SCN, in the given facts and circumstances?

## **4. Consideration of Issues:**

### **Issue (A)**

**Whether the dealings of Noticees in the F&O Market amounts to commission of fraudulent and manipulative trades in securities in terms of the SEBI (PFUTP) Regulations?**

- 4. A.1** In May- June 2006, RPL made a public issue of its shares at a price of ₹ 60 per share. Out of the total issued shares of 450 crore, Noticee No. 1, held 337.50 crore shares (i.e. 75%), Chevron Corporation USA held 22.50 crore shares (5%) and public shareholders held 20% of shares i.e. 90 crore shares. Going by the admitted facts, RPL was a 75% subsidiary of Noticee No. 1 in March 2007. It is the case of Noticee No.1 that the Board, in the meeting held on 29/03/2007, had approved sale of its assets to raise funds for new projects to the tune of ₹ 87000 crore for the next 2 years. Part of such fund raising avenues included the sale of 22.5 crore shares of RPL. Around this time, the shares of RPL started moving upwards and

reached approximately ₹ 150/- on September 27, 2007. This was followed by some analysts reports – Goldman Sachs in September 2007 and Kotak Institutional Equities Report dated October 30, 2007, indicating that the scrip was overvalued. Due to these facts and analysts reports, Noticee No. 1 decided to sell 5% of shares of RPL in November 2007.

#### 4.A.2 Appointment of Agents – to defeat position limits:

Noticee No.1 appointed noticees 2-13 as its “Agents” (the named entities) for undertaking transactions in the November 2007 Futures contract. Identities of the 12 agents; various dates on which Noticee No.1 entered into agreement with each entity; and the trading background were brought out in table (x) of the SCN. The table is reproduced below:-

**Table (x) of SCN**

| S. No. | Client Name                                   | Trading Member Name                        | Date of A/C opening | Date of entering into agreement with Noticee no. 1 | Date of 1 <sup>st</sup> trade in RPL |
|--------|---|--|---------------------|--|--------------------------------------|
| 1      | GUJARAT PETCOKE PETRO PRODUCT SUPPLY PVT LTD  | VISARIA SECURITIES PVT. LTD.               | 1.11.07             | 31.10.07   | 2.11.07                              |
|        |   | ENAM SECURITIES PVT LTD.                   | 2.11.07             |  |                                      |
|        |   | PACE FINANCIAL SERVICES                    | 2.11.07             |  |                                      |
|        |   | FOUR DIMENSIONS SECURITIES (INDIA) LTD     | 25.10.07            |  |                                      |
|        |   | SONAL SHARE & STOCK BROKERS PVT. LTD.      | 30.10.07            |  |                                      |
|        |   | SHRIYAM BROKING INTERMEDIARY LTD.          | 10.5.07             |  |                                      |
| 2      | AARTHIK COMMERCIALS PVT. LTD.                 | EQUI QUEST BROKERAGE HOUSE PRIVATE LIMITED | 3.11.07             | 2.11.07  | 5.11.07                              |
|        |   | VISARIA SECURITIES PVT. LTD.               | 2.11.07             |  |                                      |
| 3      | LPG INFRASTRUCTURE INDIA PRIVATE LTD          | SONAL SHARE & STOCK BROKERS PVT. LTD.      | 10.5.07             | 31.10.07   | 2.11.07                              |
|        |   | PACE FINANCIAL SERVICES                    | 2.11.07             |  |                                      |
|        |   | SHRIYAM BROKING INTERMEDIARY LTD.          | 10.5.07             |  |                                      |
| 4      | REL POL PLASTIC PRODUCTS PVT LTD              | INDIA CAPITAL MARKETS PRIVATE LIMITED      | 9.10.07             | 2.11.07  | 5.11.07                              |
|        |   | CD EQUISEARCH (P) LTD                      | 1.11.07             |  |                                      |
| 5      | FINE TECH COMMERCIALS PVT LTD                 | ROSY BLUE SECURITIES PVT. LTD.             | 2.11.07             | 3.11.07  | 5.11.07                              |
|        |   | PACE FINANCIAL SERVICES                    | 3.11.07             |  |                                      |
|        |   | ANVIL SHARE & STOCK BROKING PVT. LTD.      | 5.11.07             |  |                                      |
| 6      | PIPELINE INFRASTRUCTURE INDIA PRIVATE LIMITED | FOUR DIMENSIONS SECURITIES (INDIA) LTD     | 31.10.07            | 30.10.07   | 1.11.07                              |
|        |   | SONAL SHARE & STOCK BROKERS PVT. LTD.      | 16.10.07            |  |                                      |

| S. No | Client Name                             | Trading Member Name                        | Date of A/C opening | Date of entering into agreement with Noticee no. 1 | Date of 1 <sup>st</sup> trade in RPL |
|-------|---|--|---------------------|--|--------------------------------------|
|       |   | SHRIYAM BROKING INTERMEDIARY LTD.          | 17.10.07            |  |                                      |
| 7     | MOTECH SOFTWARE PRIVATE LTD             | OHM STOCK BROKER PRIVATE LIMITED           | 4.11.07             | 1.11.07  | 5.11.07                              |
| 8     | DARSHAN SECURITIES PVT LTD              | ENAM SECURITIES PVT LTD.                   | 5.11.07             | 3.11.07  | 5.11.07                              |
|       |   | PACE FINANCIAL SERVICES                    | 3.11.07             |  |                                      |
| 9     | RELOGISTICS (INDIA) PVT LTD.            | MONEY MATTERS SECURITIES PVT. LTD.         | 6.11.07             | 3.11.07  | 6.11.07                              |
| 10    | RELOGISTICS (RAJASTHAN) PRIVATE LIMITED | WOODSTOCK BROKING PVT LTD                  | 20.9.07             | 3.11.07  | 6.11.07                              |
| 11    | VINAMRA UNIVERSAL TRADERS P.LT          | JM FINANCIAL SERVICES PRIVATE LIMITED      | 14.8.07             | 30.10.07   | 1.11.07                              |
|       |   | ENAM SECURITIES PVT LTD.                   | 9.8.07              |  |                                      |
|       |   | EQUI QUEST BROKERAGE HOUSE PRIVATE LIMITED | 9.8.07              |  |                                      |
|       |   | SHRIYAM BROKING INTERMEDIARY LTD.          | 6.8.07              |  |                                      |
|       |   | SONAL SHARE & STOCK BROKERS PVT. LTD.      | 4.8.07              |  |                                      |
| 12    | DHARTI INVESTMENT & HOLDING PVT LTD     | ANTIQUE STOCK BROKING LTD.                 | 5.10.05             | 30.10.07   | 1.11.07                              |
|       |   | SSM SECURITIES PVT LTD                     | 20.2.06             |  |                                      |
|       |   | SONAL SHARE & STOCK BROKERS PVT. LTD.      | 30.12.05            |  |                                      |
|       |   | PACE FINANCIAL SERVICES                    | 17.3.06             |  |                                      |

**4.A.3** The table above shows that 11 entities, except Dharti, had opened new trading accounts with different trading members during the period May - November 2007. Dharti had its account opened in 2005 and 2006 through different trading members. Each of the 12 entities entered into separate agreements with Noticee No. 1 between 30.10.2007 to 03.11.2007. A few of the noticees such as Fine Tech Commercials Pvt. Ltd., Pipeline Infrastructure (India) Pvt Ltd, Motech Software Pvt. Ltd., Darshan Securities Pvt.Ltd, Relogistics (India) Pvt. Ltd. and Relogisitscs (Rajasthan) Pvt. Ltd had never traded in F&O segment between April 1, 2007 to November 1, 2007, before they entered into the agreements with Noticee No.1. The above named 6 entities traded in RPL futures for the first time on the 1<sup>st</sup>, 5<sup>th</sup> and 6<sup>th</sup> of November 2007. The agency arrangement also envisaged that the transfer of profits arising out of F&O

transactions would be made over to the account of the Noticee No.1 by the agents and that they would earn commission for these services. The relevant clauses of the agency agreement read as under :

- **Clause 1.2.** All investments will be made by the Agent based on prior instructions of the Principal. In case the Agent recommends any proposals, the Agent shall execute the transactions only after the proposal has been evaluated and approved by the Principal and investment instructions are thereafter communicated to the Agent. **Sale of all investments will also be done by the Agent only based on prior instructions of the Principal.**
- **Clause 3.2** During the course of executing transactions, the Agent is permitted to execute transactions in its own name. It is however, understood that all such transactions will be done by the Agent for and on behalf of the Principal and **all profits and losses arising out of such transactions shall be to the account of the Principal.**

**4.A.4** In terms of letters of Noticees 2-13 , one Mr. Sandeep Agarwal was commonly authorized by them to place orders on behalf of them in the F&O segment. As stated earlier in this order, Sandeep Agarwal was an employee of a wholly owned subsidiary of Noticee No.1. The details of the agents, their e-mail id (whether @ril.com or not), other connections such as directors, addresses etc. as shown in Table (iii) of the SCN is extracted hereunder :

**Table (iii) of SCN**

| S. No. | Entity   | e-mail id @ril.com (Y/N) | Person placing the order (Mr. Sandeep Agarwal) related to RIL | Other   | Address  |
|--------|--|--------------------------|---|---|--|
| 1      | Gujarat Petcoke and Petroproducts Supply Pvt. Ltd. | Y                        | Y   | One of the Directors of the company- Mr. Parimal Nathwani, is also the Group President, Corporate Affairs of RIL  | White House, Opp. 9-Patel Colony, Dadi Road, Jamnagar  |
| 2      | Aarthik Commercials Pvt. Ltd.                      | Y                        | Y   | As per details submitted by the entity, it has one Director in common with entity no. 3. As per the information memorandum filed by Reliance Communication Ventures Limited on February 28, 2006 with exchanges, its consolidated income figures included the figures of an entity named Aarthik Commercials Pvt Ltd.- <a href="http://www.bseindia.com/BSEdata/ipo_downloads/RCVL%20IM.pdf">http://www.bseindia.com/BSEdata/ipo_downloads/RCVL%20IM.pdf</a>  | 307, Parekh Market, 3rd Floor, 39 Jaganath Shankar Seth Road, Opera House, Mumbai                  |
| 3      | LPG Infrastructure India Pvt. Ltd.                 | Y                        | Y   | As per details submitted by the entity, it has one Director in common with entity no. 2. As per information provided by NSE, the address of the company is same as a Reliance Group company, Reliance Petrochemicals Private Limited  | C/O Reliance Petrochemicals P. Ltd, Gate A Central Bldg, Ghansoli, Thane-Belapur Road, Navi Mumbai |
| 4      | Relpol Plastic Products Pvt. Ltd.                  | Y                        | Y   | It is noted from the accounts of National Organic Chemical Industries for year ended March 07, "the business of Plastic Product Division (PPD) was transferred to Relpol Plastic Products Limited (Relpol) with effect from July 2005. The Company conducted the said business in trust on behalf of Relpol for the period 1 April 2005 to 20 July 2005. The income earned and expenditure incurred for the said period was transferred to Relpol and the same were disclosed as a reduction from the total income and total expenditure in Profit and Loss Account." It may be noted that Reliance Industries Ltd had taken over National Organic Chemicals Industries Ltd (Nocil) through its business associate Sunbrite Cement Agencies Pvt Ltd. From the details available with the NSDL it is noted that the client has given its address to its DP Reliance Capital Ltd as 3rd Floor, Reliance House, 15, Walchand Hirachand Marg, Ballard Estate, Mumbai. Further, it is also brought out that earlier (prior to March 2006) the company was known as NOCIL Petrochemicals Ltd. | Plot No-5, TTC Industrial Area, Thane Belapur Road, Navi Mumbai- 400701                            |
| 5      | Fine Tech Commercials Pvt. Ltd.                    | Y                        | Y   | As per the documents filed with ROC, address is same as entity no. 6 & 8. Also, according to trade mark journal no 1341, 1 Apr 2006 a Reliance Group company by the name Reliance Consolidated Enterprises Limited has the same address- <a href="http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf">http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf</a>  | 84 A Mittal Court 224 Nariman Point Mumbai Maharashtra India                                       |

| S. No. | Entity                                    | e-mail id @ril.com (Y/N) | Person placing the order (Mr. Sandeep Agarwal) related to RIL | Other  | Address  |
|--------|---|--------------------------|---|--|--|
| 6      | Pipeline Infrastructure (India) Pvt. Ltd. | Y                        | Y   | As per the documents filed with ROC, address is same as entity no. 5 & 8. Also, according to trade mark journal no 1341, 1 Apr 2006, a Reliance Group company by the name Reliance Consolidated Enterprises Limited has the same address-<br><a href="http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf">http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf</a>   | 84 A Mittal Court<br>224 Nariman Point<br>Mumbai Maharashtra<br>India                  |
| 7      | Motech Software Pvt. Ltd.                 | Y                        | Y   | As per its website (www.motechsoftware.com), it is promoted by the promoters of the Reliance Group. One of its directors, Ms. Annu Tandon is also a Corporate Consultant of the Reliance Group   | Motech House,56<br>Mogba Villge<br>Lane,Off Old<br>Nagardas<br>Road,Andheri(East)      |
| 8      | Darshan Securities Pvt. Ltd.              | N                        | Y   | As per the documents filed with ROC, address is same as entity no. 5 & 6. Also, according to trade mark journal no 1341, 1 Apr 2006 a Reliance Group company by the name Reliance Consolidated Enterprises Limited has the same address-<br><a href="http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf">http://www.patentoffice.nic.in/tmr_new/tm_journal/part7-a.pdf</a>  | 84 A Mittal Court<br>224 Nariman Point<br>Mumbai Maharashtra<br>India                  |
| 9      | Relogistics (India) Pvt. Ltd.             | Y                        | Y   | As per its website (www.reliancelogistics.com), it is an associate company of Reliance Industries Ltd. The company was earlier (prior to Jan 2007) known as Relogistics (Mumbai) Pvt Ltd. It is noted that the in Dec 2006 the company had taken a Loan of ₹1.17 Cr from HDFC bank for a commercial vehicle and the M/s Reliance Logistic was the guarantor for the said loan.   | Plot No. 17, GDC<br>House, State<br>Transport Road,<br>Santacruz<br>(W),Mumbai- 400054 |
| 10     | Relogistics (Rajasthan) Pvt. Ltd.         | N                        | Y   | The address provided by the entity is the same as the address on the website of entity no. 9.  | Plot No. 17, GDC<br>House, State<br>Transport Road,<br>Santacruz<br>(W),Mumbai- 400054 |
| 11     | Vinamra Universal Traders Pvt. Ltd.       | Y                        | Y   | As per UCI data base of the NSE, address same as entity no. 12 (Noticee no. 13), which is same as the companies Navi Mumbai SEZ Pvt Ltd. and Mumbai SEZ Ltd., which are promoted by Mr. Anand Jain and who according to the website (www.nmsez.com ), has been closely associated with the Reliance Group as a strategic advisor to the company. Further, Shri Sanjay Punkia is a Director,of NMSEZ and MSEZ and an authorized person of Noticee no. 12 as per the Board Resolution submitted by Noticee no. 12 vide letter dated September 24, 2008 | Jai Centre, 1st Floor,<br>34, P.D'mello Road,<br>Opp.Red Gate,<br>Mumbai               |
| 12     | Dharti Investments and Holdings Pvt. Ltd. | Y                        | Y   | As per UCI data base of the NSE, address same as entity no. 11 (Noticee no. 12), which is same as the companies Navi Mumbai SEZ Pvt Ltd. and Mumbai SEZ Ltd., which are promoted by Mr. Anand Jain and who according to the website (www.nmsez.com ), has been closely associated with the Reliance Group as a strategic advisor to the company.   | Jai Centre, 1st Floor,<br>34, P.D'mello Road,<br>Opp.Red Gate,<br>Mumbai               |



From the above table, it can be seen that orders were placed by the same person for all the entities and the entities were connected directly or indirectly with Noticee No. 1 (either through common directors or addresses or email identity etc.).

**4.A.5** Admittedly, the named entities that are 12 in number, took a net short position of 9.92 crore shares of RPL in the November 2007 futures during the period November 1, 2007 to November 6, 2007. Tables (iv)-a and (iv)-b of the SCN show the net short positions held by various named entities of noticee no. 1 as on November 6, 2007 and November 29, 2007 respectively and the same are extracted below.

**Table (iv) a of the SCN (as on 6/11/2007)**

| S. No. | Client Name                                       | Net Short Qty<br>(in lac shares) | % to total<br>Open<br>Interest | Maximum<br>Permissible Client<br>wise position limit<br>on November 6,<br>2007 (lac shares) |
|--------|---|----------------------------------|--------------------------------|---|
| 1      | Gujarat Petcoke And Petro Products Supply Pvt Ltd | 90.42                            | 4.43                           | <b>101</b>  |
| 2      | Aarthik Commercials Private Limited               | 89.88                            | 4.41                           |   |
| 3      | LPG Infrastructure India Private Limited          | 88.91                            | 4.36                           |   |
| 4      | Relpol Plastic Products (p) Ltd.                  | 89.88                            | 4.41                           |   |
| 5      | Fine Tech Commercials Pvt Ltd                     | 89.65                            | 4.39                           |   |
| 6      | Pipeline Infrastructure India Private Limited     | 89.98                            | 2.69                           |   |
| 7      | Motech Software Private Ltd                       | 89.61                            | 4.39                           |   |
| 8      | Darshan Securities Pvt Ltd                        | 80.00                            | 3.92                           |   |
| 9      | Relogistics India Private Limited                 | 77.49                            | 3.80                           |   |
| 10     | Relogistics (Rajasthan) Private Limited           | 12.06                            | 0.59                           |   |
| 11     | Vinamra Universal Traders P.Lt                    | 89.55                            | 4.39                           |   |
| 12     | Dharti Investment And Holdings Limited            | 104.79                           | 5.14                           |   |
|        | <b>Total</b>                                      | <b>992.2</b>                     | <b>48.64</b>                   |   |

**4.A.6** As can be seen from table (iv)-a, the first eleven entities had stayed within the maximum permissible client wise position limit of 1.01 crore shares per client. One out of the 12 entities exceeded the maximum client limit which attracted the levy of penalty by NSE.

**Table iv - (b) of the SCN(As on 29/11/2007)**

| No  | Client Name                                      | Total Net Short position in near month expiry as on <u>November 29, 2007</u> (lac shares) | Maximum permissible client-wise position limit on <u>November 29, 2007</u> (lac shares) |
|-----|--|---|---|
| 1.  | Gujarat Petcoke and Petro Product Supply Pvt Ltd | 89.75   | 90  |
| 2.  | Aarthik Commercial Pvt. Ltd.                     | 89.88   |   |
| 3.  | LPG Infra Structure India Private Ltd            | 88.91   |   |
| 4.  | Relpol Plastic Products Pvt Ltd                  | 89.88   |   |
| 5.  | Fine Tech Commercial Pvt Ltd                     | 89.65   |   |
| 6.  | Pipeline Infra Structure India Private Limited   | 89.98   |   |
| 7.  | Motech Software Pvt Ltd.                         | 89.61   |   |
| 8.  | Darshan Securities Pvt Ltd                       | 80.00   |   |
| 9.  | Relogistics (India) Pvt Ltd.                     | 77.49   |   |
| 10. | Relogistics Rajasthan Private Limited            | 12.06   |   |
|     | <b>Total</b>                                     | <b>797.21</b>   |   |

**4.A.7.** From table (iv)-b above, it is seen that two out of the twelve entities had closed their positions before November 29, 2007. As on November 29, 2007, all the ten entities had jointly held a net short position of 797.21 lac shares. Each of the entity was within the maximum permissible client-wise limit of 90 lac shares per client. The named front entities took net short positions of 7.86 crore shares of RPL in November 2007 Futures between 1<sup>st</sup> and 5<sup>th</sup> November 2007. On November 6, 2007, the net short position increased to 9.92 crore shares, accounting for **61.15%** of the Open interest (O.I) in the November futures contract. In this connection, it is relevant to mention that it was on November 6, 2007 that the derivatives contracts of RPL reached 95% of MWPL of the Futures & Options segment of NSE, thereby leading to a restriction upon it, of no further increase in O.I, as per the existing exchange rules. In short, during the month of November 2007, the front entities of Noticee No. 1 had held a position which was “nearly equal” to the maximum permissible limit, in accordance with NSE data.

**4.A.8** On the basis of the terms and conditions of the agency agreements executed by Noticee No.1, the lack of prior knowledge and experience on the side of most of these agents in F&O trading, the pattern of position limits assumed by the agents as against the individually available position limits established in the SCN, it was alleged in the SCN that these arrangements were entered

with the intention to corner the F&O segment and were therefore fraudulent and manipulative in nature.

**4.A.9** I find that, in the instant case, the agents have independently assumed position limits from trading members, without disclosing their relationship with the principal. The fact that the clients have been authorized by the Noticee No.1 to take separate and independent position limits was not known to the trading members or the market at large.

**4.A.10** “Agency” in law connotes the relation which exists where one person has an authority or capacity to create legal relations between a person occupying the position of principal and third parties. [‘Agency’ - Halsbury’s Laws of England, fourth edn. Re-issue Vol.1(2) para 1. International Harvester Co of Australia Pvt Ltd vs. Carrigan’s Hazeldene Pastoral Co. (1958). 100 CLR 644 at 652-653]. It is a settled principle in law relating to agency that the principal must be capable of doing in law what he wants his agents to do. “Capacity to contract or to do any other act by means of an agent is coextensive with the capacity of the principal himself to make the contract or do the act which the agent is authorized to make or do”. (Bowstead on Agency, 14<sup>th</sup> Edn. Art 5. P. 18). In view of the settled legal position in this regard, I am of the view that the principal could not have authorized the agents to do what they were assigned to do under the agreement as the principal itself lacked the authority to do such acts. Noticee No. 1 could not have by itself, taken positions in RPL futures beyond the permissible limits of about 1 crore shares ( marginally varying on the basis of the day’s OI position). The principal-agent arrangement, put forward by Noticee No.1 to justify the cornering of position limits by individual entities in the F&O segment and execute the trades through a common person authorized on their behalf, who also happens to be the same person executing the trade on behalf of Noticee No.1 in the cash segment is clearly a well – orchestrated scheme to defeat

the position restrictions. I therefore find that the principal agent arrangement was sought to be used as a shield to cover up the unauthorized acts of the noticees and is itself a sham.

**Significance of the client wise position limit in the market :**

**4.A.11** ‘Position limits’ define the maximum position, either total or net long / short that may be held or controlled by one entity or one class of traders. The concept of “client level position limits” in equity derivatives markets stems from the prime objective of avoiding / limiting concentration of positions in a few hands and ensuring a wide dispersal of positions. Section 18A was introduced in the SCRA with effect from 22.2.2000 enabling the trading in derivative contracts subject to those contracts being traded on the stock exchanges in accordance with the rules and bye-laws of such stock exchanges. The SEBI and NSE circulars issued in this connection in the year 2001, empowered the stock exchanges to introduce position limits with respect to derivative futures to prevent market manipulation, distortion as well as excessive speculation. The SCRA and the circulars / exchange bye laws require the exchanges to put in place (more stringent) position limits to ensure that market does not become too concentrated and the diversity of the financial actors is maintained.

**4.A.12** The imposition of position limits will naturally result in risk mitigation apart from bringing into play heterogeneity in views of market participants which will add an element of robustness to the price discovery process. This has also been echoed in many studies done in India prior to the introduction of derivative trading such as the LC Gupta Committee report and the Prof. J R Varma Committee report. Thus, in short, position limits are designed to deal with market integrity. Therefore, stock-wise, client-wise and broker/ member-wise position limits are recommended / prescribed by rules so as to reduce concentration risk. The position

limit stipulation is one among the risk containment measures in the field of derivatives amongst others such as capital adequacy, stringent margin requirements, automatic disentitlement from trading when limits are crossed etc.

**4.A.13** In para 12.2 of its reply, Noticee No.1 has submitted that “ the position limits for derivative contracts prescribed by stock exchanges and by SEBI are applicable to a customer/client and we believe that these limits apply to each customer / client individually and independently. In any event, the relevant circulars do not provide for aggregating the position limits”. The noticees have also quoted the SEBI circular at para 12.4 of its written submission, as shown below :

“the gross open position across all derivatives contracts on a particular underlying of a customer / client should not exceed the higher of :

- (a) 1 % of the free float market capitalization ( in terms of number of shares) or
- (b) 5 % of the open interest in the derivatives contract on a particular underlying stock (in terms of number of contracts)”.

By citing the said provision, it has been argued that the thresholds prescribed are “with respect to a specific customer or client only”. It has also been stated that SEBI has not provided for any concept of aggregation of holdings in this circular unlike in the Takeover Regulations (reference made to “persons acting in concert” etc.)

**4.A.14** In my view, the interpretation as advanced by Noticee No.1 holds good only if the words ‘clients’ or ‘customers’ would mean different clients or customers and not in a case where several clients or customers were acting on behalf of one common ultimate beneficiary. If the argument of Noticee No.1 is adopted, the stipulation of a client-wise limit in the relevant circular itself becomes irrelevant and redundant. Further, it would throw open the possibility

of grave misuse by a person to multiply his position by enlisting agents to act on his behalf rather than to limit itself to the stipulated criteria laid down in law. Such a concentration of the position limits by one person deprives the other market players of the availability of the OI in a particular scrip. If a client corners position by procuring position limits clandestinely from their trading members showing different names and identities, it is nothing but perpetration of a large scale fraud on the market including the trading members, the public shareholders in the scrip and the investors in general. The other arguments of the noticees relating to aggregation of holdings of a client not being provided in law, does not merit any consideration in view of the above observations.

**4.A.15** The circulars authorizing exchanges to impose penalty for breaches committed with respect to client-wise position limits cannot be construed in such a way to impose a limitation upon the inherent powers of the regulator to check and curb the perpetration of fraudulent and manipulative practices in the securities market and to protect and preserve the market integrity. From the manner and the time frame in which the agency agreements were executed, it is obvious that these agreements were executed by Noticee No. 1 for the purpose of circumventing the regulatory framework laid down to govern the transactions in the F&O segment. The whole exercise of position limit violation has been perpetrated from the time the noticees 2-13 were identified and appointed as agents by Noticee No.1 for the sake of taking positions in F&O segment. Therefore, this appears to be a premeditated and pre planned exercise of Noticee No.1 as alleged in the SCN.

**4.A.16** All the above aspects again have to be viewed against the backdrop of the impending sale of 22.5 crore of RPL Shares in the cash segment to get a better understanding of the strategy adopted by noticee no. 1. Any sale of such a magnitude in the cash segment is naturally

expected to trigger steep price declines in the cash segment and concomitantly in the futures segment. The only way to take advantage of the sharp price decline will be by taking large positions in futures markets. It is pertinent to reiterate that the Noticee No 1, by itself, could have taken a maximum position of about 1.09 crore shares in futures in the month of November 2007 but by roping in 12 entities to act on its behalf, its position taking capacity in futures got proportionately amplified.

**4.A.17** In this background, the argument of Noticee No. 1 that the position limit violation can only attract the stipulated monetary penalty and such a breach will not automatically amount to market manipulation or a fraudulent trade in securities does not hold good. Finally, it needs to be mentioned that concentration risk is the most serious risk that the derivatives market is exposed to. The significance of client wise, member wise, position limits can in no way be allowed to be undermined by fraudulent and deceitful methods. Therefore, I find that the very act of appointment of several entities by noticee no. 1 coupled with the act of assuming separate position limits by noticees 2-13, in the F&O segment was fraudulent in nature and qualifies to be so for the purpose of sub-sections (1) to (3) of section 12A of the SEBI Act and Regulations 3 and 4 of SEBI PFUTP Regulations.

**Strategy of Hedging:**

**4.A.18** With respect to hedge, the noticees contended that "...a derivative transaction is a hedge when there is an underlying exposure with an identified and existing risk. Once this criteria is fulfilled, the transaction becomes a valid hedge and does not amount to speculation or for that matter, a fraudulent transaction". To appreciate the defense of a prudent strategy of hedging having been adopted by Noticee No.1, the concept of hedging needs to be explained and

distinguished from other type of transactions. Hedging is a strategy resorted to by market entities to mitigate the price risk associated with sale or purchase transactions to be undertaken in the cash segment at a pre-determined point of time in future by entering into a derivative transaction which enables the entities to lock into a price for a future date. So by undertaking a hedge transaction, one is certain about the price for a future transaction and as such, the fluctuations in the market price, which happen on a day-to-day basis, do not become a point of concern. So typically, if one has to buy an asset one month hence and is concerned as to how the market will move in the next 30 days, he can hedge himself by entering into a 1 month future contract in that asset at a price offered to him today so that he can take delivery of that asset one month hence at a price determined today. The hedge transaction of this variety (which is against a future purchase or a sale) is called a cash flow hedge. In contrast to this type of hedge, there is another type of transaction put through to safeguard the value of an inventory of asset, which is expected to witness a decline in value in future. Such hedge transactions are called fair value hedge or inventory hedge transactions.

**4.A.19** From an accounting perspective, a corporate is expected, to upfront enunciate the nature of the hedging transaction in order to follow a consistent accounting policy throughout the life of the hedge. The question for consideration now is whether Noticee No. 1 had a hedging policy which outlined the hedging methodology, hedging ratio, hedge accounting and the delegation of powers to undertake hedging transactions. It is apparent from the written submissions of Noticee No.1 and the responses of Noticee No.1 during the hearing that while the Board had approved the operating plan for 2007-08 and the broad resource requirements for the next 2 years, there was nothing laid down by the Board in more granular detail, but it left these details to be decided by two senior level officials. It is also clear from the submissions of Noticee No.



1 that it did not draw up a clear cut hedging policy for the sale of 22.5 crores of RPL shares. One is therefore compelled to come to the conclusion that the transactions in RPL futures were decided by the authorized officials without putting in place a policy framework for the same. It is also a matter of surprise, that in a large corporate of the size of Noticee No. 1, major operations in the market are not guided by an approved policy plan, which will minimize the scope for individualistic discretions to come into play.

**4.A.20** The next question for consideration is whether the transactions put through by Noticee No. 1 fall within the ambit of hedge as per accounting norms, despite the fact that the corporate did not have a hedging policy. Noticee no.1 has stated in its submissions that “there is no requirement, legal or otherwise that the hedge proportion should be generally maintained at the same level throughout the period of hedge. This is SEBI’s own hypothesis and is not correct”. It needs to be emphasized here that stipulations regarding the hedging framework flow from an accounting perspective. While compliance with hedge accounting norms is not a legal requirement, non-compliance would take away the character of a hedge and render it to be classified as trading or speculative position. Maintaining a so-called hedge position of 7.97 crore shares in the F&O segment as against the physical requirement of 1.95 crore shares exposes the motives of Noticee No.1 and it clearly shows that the hedging argument has no basis.

**4.A.21** In its oral submissions during the hearing, Noticee No. 1 argued that it found merit in not closing out the futures position, as it was felt that the RPL futures would slide down further. Thus the view expressed on behalf of the noticee militates against the very concept of hedging and lends strong support to the view that the futures position was never planned from the perspective of an effective hedge and it was used for an active view-taking or a speculative

purpose. In other words, it is clear that the futures position was never intended to be used to mitigate the price risk and hence the argument of hedging falls apart.

**4.A.22** Noticee No. 1 also stated that it is not correct to contend that the futures position was put on only to protect cash market sales; it was also from an angle of providing an inventory hedge. Clearly, this argument seems to be an afterthought and a post-facto justification to the excessive futures position held in the second half of November 2007 for the following reasons. Noticee No. 1 has been holding on to the shares of RPL (when RPL was formed) from 2006 onwards and there has been no evidence of Noticee No.1 formulating a policy for inventory hedge. Further, even if it was decided to go in for an inventory hedge, the futures contract earmarked to serve as fair value hedge for inventory would only permit Noticee no. 1 to hedge against a miniscule fraction of the inventory held by it (i.e. to the extent of 1.01 cr shares out of 337 crore shares) and hence does not reconcile with the idea of inventory hedge being a well-planned hedging strategy. The fact that the so-called inventory hedges were never taken before November 1, 2007 or after November 29, 2007 clearly bears testimony to the hollowness of the explanation offered by Noticee No. 1. Thus there is no evidence on record to conclude that the futures positions were assumed by Noticee No. 1 through its agents with a perspective of genuine hedging, either cash flow or inventory hedging.

**4.A.23** Since it is clear that hedging is not an objective of the futures transactions, then the question arises as to what was sought to be achieved by taking positions in futures. As stated in its submission, Noticee no. 1 clearly expected the cash market prices of RPL to dip once they start selling in the market. A large dip in the cash market would bring down the extent of realization of RPL shares sales in the cash market. Hence, Noticee no. 1 was led to corner a

huge position limit in futures (much more than what is permissible to an individual client) and sequence the transactions in such a manner as to make unlawful gains in the process. The entire sequence of operation as stated above could not have been done without a strategy to corner the futures position in the first place.

**4.A.24** When the investigation unfurled the inter-connectedness between the Noticee No. 2-13, Noticee No. 1 appears to have accepted the connections and claimed the same to be a principal agent arrangement between itself and the others and also imported the concept of “hedging” to divert the regulatory attention from position concentration to their alleged hedging strategy. To justify the hedging strategy, Noticee No.1 relied on the following Table (Table I) in its written submissions.

| <b>Table 1</b>   |                                       |             |                 |                |   |              |                |                            |  |   |
|------------------|---------------------------------------|-------------|-----------------|----------------|---|--------------|----------------|----------------------------|--|---|
| <b>Date</b>      | <b>Position in RPL Nov-07 Futures</b> |             |                 |                | <b>Qty of Shares yet to be sold in Cash Segment out of proposed 22.5 Cr</b> |              |                | <b>% of Hedge Position</b> | <b>So called "Excess Hedge" Position</b> | <b>Inventory of RPL Shares with RIL</b> |
|                  | <b>Opening</b>                        | <b>Sale</b> | <b>Purchase</b> | <b>Closing</b> | <b>Opening</b>  | <b>Sales</b> | <b>Closing</b> |                            |  |   |
| <b>(1)</b>       | <b>(2)</b>                            | <b>(3)</b>  | <b>(4)</b>      | <b>(5)</b>     | <b>(6)</b>  | <b>(7)</b>   | <b>(8)</b>     | <b>(9) = (5)/(8)%</b>      | <b>(10) = (5)-(8)</b>                    | <b>(11)</b>                             |
| 01-Nov-07        | -                                     | 2.22        |                 | 2.22           | 22.50   |              | 22.50          |                            |  | 337.50                                  |
| 02-Nov-07        | 2.22                                  | 2.63        | (0.53)          | 4.32           | 22.50   |              | 22.50          |                            |  | 337.50                                  |
| 05-Nov-07        | 4.32                                  | 3.92        | (0.38)          | 7.86           | 22.50   |              | 22.50          |                            |  | 337.50                                  |
| <b>06-Nov-07</b> | <b>7.86</b>                           | <b>2.68</b> | <b>(0.62)</b>   | <b>9.92</b>    | <b>22.50</b>  |              | <b>22.50</b>   | <b>44.10%</b>              |  | <b>337.50</b>                           |
| 06-Nov-07        | 9.92                                  |             |                 | 9.92           | 22.50   | 7.19         | 15.31          | 64.80%                     |  | 330.31                                  |
| 07-Nov-07        | 9.92                                  |             | (0.15)          | 9.77           | 15.31   |              | 15.31          | 63.82%                     |  | 330.31                                  |
| 08-Nov-07        | 9.77                                  |             |                 | 9.77           | 15.31   |              | 15.31          | 63.82%                     |  | 330.31                                  |
| 09-Nov-07        | 9.77                                  |             | (0.01)          | 9.77           | 15.31   |              | 15.31          | 63.77%                     |  | 330.31                                  |
| 12-Nov-07        | 9.77                                  |             |                 | 9.77           | 15.31   |              | 15.31          | 63.77%                     |  | 330.31                                  |
| 13-Nov-07        | 9.77                                  |             |                 | 9.77           | 15.31   | 1.33         | 13.98          | 69.84%                     |  | 328.98                                  |
| 14-Nov-07        | 9.77                                  |             |                 | 9.77           | 13.98   | 2.91         | 11.07          | 88.21%                     |  | 326.07                                  |
| 15-Nov-07        | 9.77                                  |             | (0.01)          | 9.75           | 11.07   | 1.73         | 9.34           | 104.40%                    | 0.41                                     | 324.34                                  |
| 16-Nov-07        | 9.75                                  |             | (0.01)          | 9.75           | 9.34  | 0.58         | 8.76           | 111.23%                    | 0.98                                     | 323.76                                  |
| 19-Nov-07        | 9.75                                  | 0.01        | (0.33)          | 9.43           | 8.76  | 1.55         | 7.21           | 130.74%                    | 2.22                                     | 322.21                                  |
| 20-Nov-07        | 9.43                                  |             | (0.13)          | 9.30           | 7.21  | 1.00         | 6.21           | 149.64%                    | 3.08                                     | 321.21                                  |
| 21-Nov-07        | 9.30                                  |             | (0.26)          | 9.04           | 6.21  | 0.36         | 5.86           | 154.33%                    | 3.18                                     | 320.86                                  |
| 22-Nov-07        | 9.04                                  |             | (0.76)          | 8.28           | 5.86  | 0.88         | 4.97           | 166.49%                    | 3.31                                     | 319.97                                  |
| 23-Nov-07        | 8.28                                  |             |                 | 8.28           | 4.97  | 0.52         | 4.45           | 185.91%                    | 3.83                                     | 319.45                                  |
| 26-Nov-07        | 8.28                                  |             | (0.31)          | 7.97           | 4.45  |              | 4.45           | 178.96%                    | 3.52                                     | 319.45                                  |
| 27-Nov-07        | 7.97                                  | 0.01        | (0.01)          | 7.97           | 4.45  |              | 4.45           | 178.96%                    | 3.52                                     | 319.45                                  |
| 28-Nov-07        | 7.97                                  |             |                 | 7.97           | 4.45  |              | 4.45           | 178.96%                    | 3.52                                     | 319.45                                  |
| 29-Nov-07        | 7.97                                  |             | <b>(7.97)</b>   | 0.00           | 4.45  | 2.25         | 2.21           |                            |  | 317.21                                  |

**4.A.25** As can be seen from the table submitted by Noticee No.1(extracted above) containing an analysis of the day-wise quantum of RPL shares remaining to be sold by noticee No. 1 in the cash segment vis-à-vis the quantum of net short position accumulated on the F&O side, it can be seen that from 15 November, 2007 onwards, the hedge position was in excess of the cash market sales remaining to be undertaken or that the F&O positions were naked until the close out of the entire positions on 29 November 2007. This does not reflect a genuine intention to hedge the position but to earn speculative gains by taking advantage of the price dip in the cash segment in the last half an hour, on the day of expiry of the futures.

**4.A.26** The extent of profits so made by the agents and passed on to Noticee No. 1 is shown in table (vi)

of the SCN extracted hereunder:-

**Table (vi) of the SCN**

| S. No. | Entity   | Trading in F&O |                                |                 |   |                           | Profit Earned through derivatives trading (in ₹ Crores) |
|--------|--|----------------|--------------------------------|-----------------|---|---------------------------|---|
|        |  | Date           | Purchase (squared up position) | Sale            | Net Short position (held at the end of the day) | Comments                  |   |
| 1      | Gujarat Petcoke and Petro Product Supply Pvt Ltd | 2-Nov-07       |                                | 7336500         | 7336500   | Position held till expiry | 48.00   |
|        |  | 5-Nov-07       |                                | 2338300         | 9674800   |                           |   |
|        |  | 6-Nov-07       | 633150                         |                 | 9041650   |                           |   |
|        |  | 9-Nov-07       | 67000                          |                 | 8974650   |                           |   |
|        |  | 29-Nov-07      | 8974650                        |                 | 0   |                           |   |
|        |  | <b>Total</b>   | <b>9674800</b>                 | <b>9674800</b>  |   |                           |   |
| 2      | Aarthik Commercial Pvt. Ltd.                     | 5-Nov-07       |                                | 8988050         | 8988050   | Position held till expiry | 53.87   |
|        |  | 29-Nov-07      | 8988050                        |                 | 0   |                           |   |
|        |  | <b>Total</b>   | <b>8988050</b>                 | <b>8988050</b>  |   |                           |   |
| 3      | LPG Infra Structure India Private Ltd            | 2-Nov-07       |                                | 8890900         | 8890900   | Position held till expiry | 42.57   |
|        |  | 29-Nov-07      | 8890900                        |                 | 0   |                           |   |
|        |  | <b>Total</b>   | <b>8890900</b>                 | <b>8890900</b>  |   |                           |   |
| 4      | Relpol Plastic Products Pvt Ltd                  | 5-Nov-07       |                                | 8733450         | 8733450   | Position held till expiry | 60.51   |
|        |  | 6-Nov-07       | 3748650                        | 4003250         | 8988050   |                           |   |
|        |  | 29-Nov-07      | 8988050                        |                 | 0   |                           |   |
|        |  | <b>Total</b>   | <b>12736700</b>                | <b>12736700</b> |   |                           |   |
| 5      | Fine Tech Commercial Pvt Ltd                     | 5-Nov-07       |                                | 4502400         | 4502400   | Position held till expiry | 33.76   |
|        |  | 6-Nov-07       |                                | 4462200         | 8964600   |                           |   |
|        |  | 29-Nov-07      | 8964600                        |                 | 0   |                           |   |
|        |  | <b>Total</b>   | <b>8964600</b>                 | <b>8964600</b>  |   |                           |   |
| 6      | Pipeline Infra Structure                         | 1-Nov-07       |                                | 8411850         | 8411850   | Position held till expiry | 54.42   |
|        |  | 2-Nov-07       |                                | 586250          | 8998100   |                           |   |
|        |  | 29-Nov-07      | 8998100                        |                 | 0   |                           |   |

| S. No. | Entity                                | Trading in F&O |                                |   |   |                           | Profit Earned through derivatives trading (in ₹ Crores) |
|--------|---------------------------------------|----------------|--------------------------------|---|---|---------------------------|---|
|        |                                       | Date           | Purchase (squared up position) | Sale  | Net Short position (held at the end of the day) | Comments                  |   |
|        | India Private Limited                 | <b>Total</b>   | <b>8998100</b>                 | <b>8998100</b>  |   |                           |   |
| 7      | Motech Software Pvt Ltd.              | 5-Nov-07       |                                | 5711750   | 5711750   | Position held till expiry | 38.56   |
|        |                                       | 6-Nov-07       |                                | 3249500   | 8961250   |                           |   |
|        |                                       | 29-Nov-07      | 8961250                        |   | 0   |                           |   |
|        |                                       | <b>Total</b>   | <b>8961250</b>                 | <b>8961250</b>  |   |                           |   |
| 8      | Darshan Securities Pvt Ltd            | 5-Nov-07       |                                | 790600 contracts of ₹ 270 Call option and another 201000 contracts of ₹ 280 call option |   | Position held till expiry | 1.69  |
|        |                                       | 5-Nov-07       |                                | 5209250   | 5209250   |                           | 35.48   |
|        |                                       | 6-Nov-07       | 311550                         | 3102100   | 7999800   |                           |   |
|        |                                       | 29-Nov-07      | 7999800                        |   | 0   |                           |   |
|        |                                       | <b>Total</b>   | <b>8311350</b>                 | <b>8311350</b>  |   |                           |   |
| 9      | Relogistics (India) Pvt Ltd.          | 6-Nov-07       |                                | 3758700   | 3758700   | Position held till expiry | 10.94   |
|        |                                       | 6-Nov-07       |                                | 3999900   | 7758600   |                           |   |
|        |                                       | 6-Nov-07       | 10050                          |   | 7748550   |                           |   |
|        |                                       | 29-Nov-07      | 3748650                        |   | 3999900   |                           |   |
|        |                                       | 29-Nov-07      | 3999900                        |   | 0   |                           |   |
|        |                                       | <b>Total</b>   | <b>7758600</b>                 | <b>7758600</b>  |   |                           |   |
| 10     | Relogistics Rajasthan Private Limited | 6-Nov-07       |                                | 1206000   | 1206000   | Position held till expiry | 0.49  |
|        |                                       | 29-Nov-07      | 1206000                        |   | 0   |                           |   |
|        |                                       | <b>Total</b>   | <b>1206000</b>                 | <b>1206000</b>  |   |                           |   |
| 11     |                                       | 1-Nov-07       |                                | 8760250   | 8760250   |                           | 60.30   |

| S. No. | Entity                              | Trading in F&O |                                |                 |   |  | Profit Earned through derivatives trading (in ₹ Crores) |
|--------|-------------------------------------|----------------|--------------------------------|-----------------|---|--|---|
|        |                                     | Date           | Purchase (squared up position) | Sale            | Net Short position (held at the end of the day) | Comments                                       |   |
|        | Vinamra Universal Traders Pvt. Ltd. | 2-Nov-07       | 5282950                        | 5517450         | 8994750   | Position squared off before expiry on 28.11.07 |   |
|        |                                     | 5-Nov-07       | 2140650                        | 2100450         | 8954550   |  |   |
|        |                                     | 19-Nov-07      | 331650                         | 110550          | 8733450   |  |   |
|        |                                     | 20-Nov-07      | 1192600                        |                 | 7540850   |  |   |
|        |                                     | 21-Nov-07      | 1969800                        |                 | 5571050   |  |   |
|        |                                     | 22-Nov-07      | 2475650                        |                 | 3095400   |  |   |
|        |                                     | 26-Nov-07      | 3095400                        |                 | 0   |  |   |
|        |                                     | 28-Nov-07      | 110550                         | 110550          | 0   |  |   |
|        |                                     | <b>Total</b>   | <b>16599250</b>                | <b>16599250</b> |   |  |   |
| 12     | Dharti Investment and Holdings Ltd. | 1-Nov-07       |                                | 5028350         | 5028350   | Position squared off before expiry on 22.11.07 | 72.53   |
|        |                                     | 2-Nov-07       | 43550                          | 4013300         | 8998100   |  |   |
|        |                                     | 5-Nov-07       | 1618050                        | 1604650         | 8984700   |  |   |
|        |                                     | 6-Nov-07       | 1504150                        | 2998250         | 10478800  |  |   |
|        |                                     | 7-Nov-07       | 1500800                        |                 | 8978000   |  |   |
|        |                                     | 15-Nov-07      | 103850                         |                 | 8874150   |  |   |
|        |                                     | 16-Nov-07      | 63650                          |                 | 8810500   |  |   |
|        |                                     | 19-Nov-07      | 2948000                        |                 | 5862500   |  |   |
|        |                                     | 20-Nov-07      | 134000                         |                 | 5728500   |  |   |
|        |                                     | 21-Nov-07      | 2130600                        |                 | 3597900   |  |   |
|        |                                     | 22-Nov-07      | 3597900                        |                 | 0   |  |   |
|        |                                     | <b>Total</b>   | <b>13644550</b>                | <b>13644550</b> |   |  |   |
|        |                                     |                |                                |                 |   |  |   |
|        | <b>Total Profit</b>                 |                |                                |                 |   |  | <b>513.12</b>   |

**4.A.27** To conclude, I find that Noticee No. 1 was not genuinely hedging the risk but was aiming at reaping huge speculative profits by cornering futures positions and playing a fraud on the general

investors and the market. Noticee No.1 cornered the OI position to the extent of 61.5% as on 6/11/07 and 40.13% as on 29/11/07 and closed out the outstanding short position of 7.97 crore shares on 29 November, 2007 through its agents (Noticees 2 - 13). This would amount to a well-planned, fraudulent and manipulative trading scheme in terms of the SEBI (PFUTP) Regulations.

### **Issue (B) :**

**Whether Noticee No.1, by selling 1.95 crores of RPL shares in the cash segment in the last ten minutes of the trading session on 29 November 2007 can be said to have acted fraudulently or manipulated the securities market, as per the SEBI (PFUTP) Regulations?**

**4.B.1** Noticee No. 1 commenced selling RPL shares in the cash segment of both BSE and NSE on November 6, 2007 and by November 23, 2007, it had sold 18.04 crore shares. It is noted that the price of the scrip fell by a large amount on November 06, 2007 (from an opening price of ₹ 271.7 to a closing price of ₹ 220.15) and kept on decreasing gradually to touch an intraday low of ₹ 188.15 on November 29, 2007.

**4.B.2** Subsequent to November 23, 2007, Noticee No. 1 sold another tranche of 1.95 crore shares of RPL on NSE and 29 lakh shares on the BSE aggregating to 2.24 crore shares during the last 10 minutes of trading on November 29, 2007 i.e on the expiry date of November contracts. Trading activity of Noticee no. 1 on November 29, 2007 in the cash segments of both the exchanges is as shown below :

***Table (vii)-b***

| <b>Date</b>      | <b>NSE</b>           |                     |                          | <b>BSE</b>           |                     |                          | <b>Total Sale on both exchanges</b> |
|------------------|----------------------|---------------------|--------------------------|----------------------|---------------------|--------------------------|-------------------------------------|
|                  | <b>Quantity Sold</b> | <b>Total Volume</b> | <b>% of total volume</b> | <b>Quantity Sold</b> | <b>Total Volume</b> | <b>% of total volume</b> |                                     |
| <b>29-Nov-07</b> | 19534004             | 176590962           | 11.06                    | 2953320              | 55686748            | 5.30                     | 22487324                            |



**4.B.3** Table (xi) of the SCN demonstrated the minute-wise sequence in which the sell orders were placed by Noticee no. 1 and the same is extracted as below:-

**Table (xi) of the SCN – Cash segment Last 10 minutes**

| AskOrderId of RIL's orders | Time of RIL's orders | Volume of RIL's orders | Price of RIL's orders | LTP (Last Traded Price) | LTP Variation | Best Ask Price | Best Bid Price | Pending Buy Orders (quantity) in the system above the RIL's Ask Price |
|----------------------------|----------------------|------------------------|-----------------------|-------------------------|---------------|----------------|----------------|---|
| "2007112903205206"         | 15:21:40             | 2000000                | 222                   | 224.7                   | -2.70         | 224.90         | <b>224.70</b>  | 885857  |
| "2007112903221378"         | 15:22:39             | 1000000                | 220                   | 221.5                   | -1.50         | 221.55         | <b>221.50</b>  | 406223  |
| "2007112903225754"         | 15:22:55             | 1000000                | 220                   | 219.7                   | 0.30          | 219.90         | <b>219.70</b>  | -   |
| "2007112903241557"         | 15:23:53             | 833197                 | 219                   | 219.5                   | -0.50         | 219.50         | <b>219.35</b>  | 143841  |
| "2007112903249462"         | 15:24:23             | 1000000                | 220                   | 218.55                  | 1.45          | 218.65         | <b>218.55</b>  | -   |
| "2007112953508369"         | 15:24:26             | 3000000                | 218                   | 218.9                   | -0.90         | 218.90         | <b>218.55</b>  | 244111  |
| "2007112903261198"         | 15:25:08             | 1000000                | 215                   | 217                     | -2.00         | 217.25         | <b>217.00</b>  | 864980  |
| "2007112903266785"         | 15:25:30             | 2000000                | 210                   | 217.25                  | -7.25         | 217.5          | <b>217.25</b>  | 1869953   |
| "2007112903270909"         | 15:25:46             | 2000000                | 210                   | 216.75                  | -6.75         | 216.00         | <b>215.30</b>  | 1146974   |
| "2007112903275904"         | 15:26:04             | 1000000                | 210                   | 212.7                   | -2.70         | 212.70         | <b>212.00</b>  | 324674  |
| "2007112903277009"         | 15:26:11             | 1000000                | 210                   | 212.7                   | -2.70         | 212.80         | <b>212.70</b>  | 144748  |
| "2007112903281073"         | 15:26:22             | 500000                 | 210                   | 210                     | 0.00          | 210.00         | <b>209.70</b>  | -   |
| "2007112953555204"         | 15:27:07             | 2500000                | 211                   | 212.8                   | -1.80         | 212.80         | <b>212.60</b>  | 368296  |
| "2007112903303201"         | 15:27:40             | 3000000                | 210                   | 211                     | -1.00         | 211.00         | <b>210.80</b>  | 228397  |
| "2007112903307149"         | 15:27:55             | 1000000                | 210                   | 209.25                  | 0.75          | 210.00         | <b>209.25</b>  | -   |
| "2007112903312638"         | 15:28:17             | 500000                 | 210                   | 210                     | 0.00          | 210.00         | <b>209.75</b>  | -   |

**4.B.4** On 29 November 2007, by 3:00 p.m. the scrip price had risen to ₹ 208.10 and continued to rise to touch a price of ₹ 224.7 at 3:21:40 p.m. (just before Noticee no. 1 entered the market with its sell orders). The sale of a large quantity of 1.95 crore shares in such a short duration of time by

Noticee no. 1 caused the price to fall and the last trade of the day was executed at ₹ 209.80 on the NSE (price at 3:30 p.m.). Based on the volume traded by noticee no. 1 during the last 10 minutes (56% of the total volume) and the volume traded during the last half hour (25% of the total volume), it was alleged in the SCN that the volume of trades was enough to significantly impact the price of the share, which it did, by bringing down the price from ₹ 224.70 to ₹ 215.05 as the closing price. Further, from the extracts of the order and trade log of the scrip pertaining to the orders and trades of Noticee no. 1 in the cash market during the investigation period (November 1, 2007 to November 29, 2007), it was alleged that Noticee no. 1, placed a large number of its sell orders below the Last Traded Price (LTP).

**4.B.5** From Annexure 4 of the SCN (i.e. the extracts of order log and trade log) and the extracted table above, it was observed that on November 29, 2007, Noticee no. 1 placed a total of 17 sell orders between 3:21:40 p.m. and 3:28:55 p.m. for 2.43 crore shares on NSE, out of which orders for 1.95 crore shares got executed through 22704 trades. The LTP, when Noticee no. 1 entered the cash market with its sell orders on November 29, 2007 during the last ten minutes of trading was ₹ 224.7 (at 3:21:40). The last trade of the last sell order placed by Noticee no. 1 on November 29, 2007, was executed at ₹ 210 (at 3:30). Further, the last trade of the day on the NSE was executed at ₹ 209.8 (at 3:30). As shown in the table at (xi) above, out of the 17 sell orders placed by Noticee no. 1 during the last ten minutes of trading on November 29, 2007, 10 sell orders were placed below the last traded price. It is further observed that at 3:21:40, when Noticee no. 1 placed its first sell order for 20 lac shares in the cash segment of the RPL scrip, the pending sell order quantity present in the system was 32.63 lac shares i.e. the sell order quantity of Noticee no. 1 was approximately 63% of the pending sell order quantity in the system, as observed from NSE data (Annexure-10 of the SCN). From the pattern of trading adopted by

Noticee no. 1 on November 29, 2007 (the expiry day of November futures contracts) during the last ten minute of trading in the RPL scrip, it was alleged that in the last 10 minutes of trading session, a huge selling pressure was created in the scrip, and that it had adversely affected the price of the scrip, which fell from ₹224.70 at 3.21.40 p.m. and closed at ₹215.60 on November 29, 2007. Further, it was alleged that the Noticee No.1 intervened in the cash market during the last 10 minutes of the trading session so as to get the benefit of a dip in the settlement price (of futures) which is the volume weighted average price of the last half an hour of trades in the cash market for closing out the outstanding short positions in futures.

**4.B.6** The number of sell orders put below the LTP has been admitted pursuant to the investigation in **Annexure 1** of the Written submissions of the Noticees.

| Order Log & Execution sequence in RPL scrip by RIL - 29th November 2007 on NSE |        |          |           |           |        |                            |                         |                  |             |             | Annex 1   |
|--|--------|----------|-----------|-----------|--------|----------------------------|-------------------------|------------------|-------------|-------------|-----------|
| Sr   | Client | Time     | Order Qty | Ask Price | LTP    | Qty traded above Ask Price | Qty traded on Ask Price | Total Qty Traded | Balance Qty | Value (₹Cr) | Avg Price |
| 1  | R0521  | 15:21:40 | 2,000,000 | 222       | 224.70 | 885,857                    | 762,371                 | 1,648,228        | 351,772     | 36.70       | 222.69    |
| 2  | 5623   | 15:22:39 | 1,000,000 | 220       | 221.50 | 406,223                    | 593,777                 | 1,000,000        | -           | 22.03       | 220.25    |
| 3  | 5623   | 15:22:55 | 1,000,000 | 220       | 219.70 | -                          | 153,478                 | 153,478          | 846,522     | 3.38        | 220.00    |
| 4  | R0521  | 15:23:53 | 833,197   | 219       | 219.50 | 143,841                    | 117,846                 | 261,687          | 571,510     | 5.73        | 219.14    |
| 5  | 5623   | 15:24:23 | 1,000,000 | 220       | 218.55 | -                          | -                       | -                | 1,000,000   | -           | NA        |
| 6  | 6151   | 15:24:26 | 3,000,000 | 218       | 218.90 | 244,111                    | 547,149                 | 791,260          | 2,208,740   | 17.25       | 218.06    |
| 1A   | R0521  | 15:24:31 | 351,772   | 216       | 217.95 | 351,772                    | -                       | 351,772          | -           | 7.64        | 217.26    |
| 7  | R0521  | 15:25:08 | 1,000,000 | 215       | 217.00 | 864,980                    | 135,020                 | 1,000,000        | -           | 21.56       | 215.61    |
| 8  | 5623   | 15:25:30 | 2,000,000 | 210       | 217.25 | 1,869,953                  | 130,047                 | 2,000,000        | -           | 42.52       | 212.61    |
| 9  | 5623   | 15:25:46 | 2,000,000 | 210       | 216.75 | 1,146,974                  | 853,026                 | 2,000,000        | -           | 42.27       | 211.36    |
| 10   | 5623   | 15:26:04 | 1,000,000 | 210       | 212.70 | 324,674                    | 675,326                 | 1,000,000        | -           | 21.02       | 210.24    |
| 11   | HNC163 | 15:26:11 | 1,000,000 | 210       | 212.70 | 144,748                    | 855,252                 | 1,000,000        | -           | 21.01       | 210.15    |
| 4A   | R0521  | 15:26:21 | 571,510   | 210       | 210.00 | -                          | 571,510                 | 571,510          | -           | 12.00       | 210.00    |
| 12   | HNC163 | 15:26:22 | 500,000   | 210       | 210.00 | -                          | 500,000                 | 500,000          | -           | 10.50       | 210.00    |
| 13   | 6151   | 15:27:07 | 2,500,000 | 211       | 212.80 | 368,296                    | 1,743,352               | 2,111,648        | 388,352     | 44.58       | 211.14    |

| Order Log & Execution sequence in RPL scrip by RIL - 29th November 2007 on NSE |        |          |                   |           |        |                            |                         |                   |                  |               | Annex 1       |
|--|--------|----------|-------------------|-----------|--------|----------------------------|-------------------------|-------------------|------------------|---------------|---------------|
| Sr   | Client | Time     | Order Qty         | Ask Price | LTP    | Qty traded above Ask Price | Qty traded on Ask Price | Total Qty Traded  | Balance Qty      | Value (₹Cr)   | Avg Price     |
| 14   | R0521  | 15:27:40 | 3,000,000         | 210       | 211.00 | 228,397                    | 2,771,603               | 3,000,000         | -                | 63.01         | 210.03        |
| 15   | HNC163 | 15:27:55 | 1,000,000         | 210       | 209.25 | -                          | 1,000,000               | 1,000,000         | -                | 21.00         | 210.00        |
| 16   | HNC163 | 15:28:17 | 500,000           | 210       | 210.00 | -                          | 450,000                 | 450,000           | 50,000           | 9.45          | 210.00        |
| 17   | 6151   | 15:28:55 | 1,000,000         | 210       | 209.00 | -                          | 694,421                 | 694,421           | 305,579          | 14.58         | 210.00        |
| <b>Total (NSE)</b>   |        |          | <b>24,333,197</b> |           |        | <b>6,979,826</b>           | <b>12,554,178</b>       | <b>19,534,004</b> | <b>4,799,193</b> | <b>416.26</b> | <b>213.09</b> |
|  |        |          |                   |           |        |                            |                         |                   |                  |               |               |

**4.B.7.** The facts and figures given in Table (xi) of the SCN (i.e. the details of the 17 trades put in the system during the last 10 minutes of the trading session) have been corroborated by the noticees in Annexure 1(i.e. the order execution sequence). The argument of the Noticee no.1 is that the “If the seller needs a guaranteed sale, then the seller has to offer them at prices below the LTP. Even offering to sell at prices below LTP does not guarantee that the entire quantity offered will be sold.”

**4.B.8** In para 11.5 of the Written submissions, Noticee No.1 has sought to establish that the sale order quantity matched with higher prices than the ask price it had put, on 12 out of 19 occasions. When the ask price was slightly more than the LTP , i.e. at ₹ 220 per share when the LTP was ₹ 219.70 , only 1.5 lakh out of 10 lakh shares got executed. It has also been contended by Noticee No.1 that when at 15:25:30 hrs, it had put orders for ₹ 210, i.e. ₹ 7 lesser than the LTP, the trades got executed at ₹ 212.61. More buyers were available nearer to ₹ 212. Therefore, after 15:25:30 they continued to place sell orders at ₹ 210/- only. Noticee No. 1 further contended that there were several other sellers in the market who were placing orders even below the ask price of Noticee No. 1. For this they have relied on three instances when they had put the ask price slightly above the LTP as ₹ 220 when LTP was ₹ 219.70 and ₹ 218.55 respectively at 15:22 and 15:24:23. Likewise when the

LTP was ₹ 209.25, Noticee No.1 placed its order at ₹ 210 at 15:27:55 and when the LTP was ₹ 209, the ask price put in by the Noticee was ₹ 210 at 15:28:55.

**4.B.9** Noticee No.1 further contended that it had no incentive to depress the price in the cash segment. It had computed and stated that if it had sold 1.95 cr shares at ₹ 224.70/- (i.e. at least ₹10 crores more than the current actuals), it makes an insignificant increase of ₹ 10 crores on the overall realization on sale of 20.29 crore shares. It is the noticee's case that the realization would have been ₹ 5003 crores as against the actual realization or ₹ 5013 crores. etc which according to the Noticee is 0.2% of the total realization. It has been further contended that the time slot is too short to make a material difference to the last half hour weighted average price by orderly selling that was done. The prices at which the trades were done was not too low such as ₹ 155 etc. which still would have been allowed under the applicable price band. The entire thrust of the argument is that the demand for the shares existed only at lower prices and hence the orders were placed below LTP. There was neither a manipulation nor an artificial depression of share prices. Further Noticee No.1 has contended that matching the demand in terms of price and quantity is not manipulation. Mere placing of orders at a price different from the LTP does not by itself lead to the conclusion that one is manipulating the price. For this position, Noticee No. 1 has placed reliance on some judgments of SAT. Thus in short, the Noticee No.1 submitted that the selling of 1.95 cr shares in the last 10 minutes of trading in the cash segment on Nov 29, 2007 was neither a manipulation nor an artificial depression of share prices. Selling at marginally below the LTP to meet market demand and delivery cannot be a fraudulent and manipulative practice. Therefore, it was stated on behalf of Noticee No.1 that the allegation that the price of RPL shares in the cash market was depressed by dumping huge quantities of RPL shares in the last 10 minutes is without any basis.

**4.B.10** Upon an evaluation of the overall figures and the manner in which the trades were executed by Noticee No.1, it is apparent that Noticee no. 1 waited and watched for the day of expiry of the RPL futures to liquidate a chunk of around 2.43 cr shares. It is again certain that it not only waited for the last day but also for the last patch of the day's trading session to execute its liquidation plan. I have evaluated the way in which the trades have taken place in the cash segment on the 29<sup>th</sup> of November 2007. Noticee No.1 admittedly has used the last 10 minutes of the trading session to put in the sell order for 1.95 crore shares. In fact out of the total sell orders, 1.95 cr shares got matched and orders for 3.5 lakh shares did not get matched. To see whether there was an attempt to manipulate the share prices by the Noticee No.1 or not, it is relevant for me to see –

- i) Whether Noticee No.1 had attempted to manipulate the market in its favour by selecting November 29 as the day for its last minute sales, which is also the expiry day of the November RPL Futures ?
- ii) Whether the selection of the time patch for placing the huge sell orders was an indication of such a fraudulent or manipulative attempt or not?
- iii) Whether Noticee No.1 had manipulated the price of the scrip by placing the sell orders below the LTP? Was there an actual attempt to depress the price of the scrip in the physical market or not?

**4.B.11** When I look at the totality of the events such as the time of placing the orders, the price at which the orders have been placed and the quantity that has got matched during the last ten minutes of the trading session, I am of the view that the market had sufficient depth at that point of time (i.e between 3.21:40 onwards till 3:30pm) to absorb all the orders placed by the Noticee No.1 barring the 3.50 lakh shares that did not get matched with any buy order. While I appreciate the compulsion of a seller to place its orders at a price lower than the LTP, what still

continues to cast a doubt on the trading pattern is the selection of the time-patch for the voluminous trades executed; the significance of the day selected for such sale; the holding of a disproportionate quantum of futures derivatives in the scrip on the very same day; and the fact that the futures derivatives were all closed out on the same day. Further, it is noticed that Noticee No.1 did not trade in the cash segment from 24<sup>th</sup> November 2007 onwards and only sprung up with the set of sudden and dense sell orders in the cash segment at the last 10 minute time-patch of the trading session. What still strengthens the doubt is the fact that November 29, 2007 was the chosen day for such trades which also happens to be the expiry day for the RPL futures contracts of November. At this juncture, it is also relevant for me to weigh these trades against the admitted fact of the Noticee no.1 having engaged noticees Nos 2 to 13 to take position limits in the F&O segment and authorizing a common person to place the trade orders in the cash segment as well as the futures segment. The fact of the cornering of more than 61.15% of the futures derivatives in the RPL scrip was only known to Noticee No.1 and its agents. It is reiterated that the very appointment of the agents to do the acts which the principal was itself not authorized under law makes that arrangement a total sham, as observed earlier. To make the situation even more susceptible to the allegations of fraud and manipulation, the Noticee No.1 had selected the specific day of expiry to do the last ten minute trading. Had such huge sales, happened on any other day, it would have been difficult for me to look at the set of trades with suspicion to the effect that it was intended to manipulate the prices, as alleged in the SCN. But the manner in which the whole scheme has been perpetrated makes it but obvious that the Noticee No.1 had selected the said trading time frame to get an advantage in the closing price of the cash segment which would immediately convert into returns in the futures segment. All the circumstances put together in the instant case show that the attempt of Noticee No.1 was to fraudulently depress the price in the cash segment to get an advantage in

the huge volume of futures derivatives that were entirely closed out / allowed to expire on the same day.

**4. B.12** Ultimately, the question that arises for my consideration is whether Noticee No.1 was a genuine seller who entered the market with the idea of selling his shares or was the underlying idea behind the huge sales a clear dump on the market to depress the price of the scrip. A genuine seller would not have placed order at ask prices as per the **Annexure I** table in the written submissions, when better bids were available in the system. The number of instances the seller puts the orders at below LTP within the time slot of 10 minutes creates a doubt on the genuine nature of such order 12 out of 19 times the ask price of the orders were lower than the LTP (i.e. lower ranging from ₹0.50 to ₹7.25). This also needs to be viewed in the backdrop of the fact that there was no deadline faced Noticee No.1 that the sales of shares in the cash segment had to be completed by a certain date. This clearly leads me to the conclusion that the unseemly hurry to press ahead with the sales in the last 10 minutes was motivated entirely by the objective to push the price down or at least prevent the price from surging.

**4.B.13** Therefore, in my view, there was a clear attempt on the part of the noticee no. 1 to guide the prices lower by repeatedly putting in lower price than LTP. From the facts and figures available, I am constrained to answer the queries raised in para 4.B.10 above in the affirmative. Consequently, I find that the cash segment trades of Noticee No.1 on 29 November, 2007 during the last ten minutes of trading hours is fraudulent and manipulative in nature as contemplated under the SEBI (PFUTP) Regulations.



## Issue C

- (i) **Whether in terms of the scheme of provisions of SCRA, in particular, Sections 18A and the circulars issued thereunder, SEBI is empowered to take enforcement action for violation of the PFUTP Regulations against the Noticees?**

**4.C.1** In para 12 of the Written Submissions, the allegation in the SCN has been quoted as “Trades in Futures segment beyond position limits is in violation of the circulars and Bye-laws and hence illegal and invalid under section 18A of SCRA.” Noticees have further contended that the rule making power of the stock exchanges under section 9(2) and 9(3) of the SCRA are restrictive in nature and that the bye-laws can either provide for - (a) those provisions the breach of which would make the contracts void for want of compliance with the bye-laws under section 14; and (b) those provisions for which punishments such as fines/expulsion or suspension from membership or other non-monetary penalties can be imposed.

**4.C.2.** Section 18A of SCRA deals with the legality or validity of the contracts in derivatives, by and between the trading members, traded on the exchange and settled on the clearing house of the stock exchanges. Any person entering trades in derivative segment of the stock exchange is under an obligation to follow the stipulations of the exchange bye-laws and regulations. The rule-making power of the stock exchanges in making bye-laws under section 9 has been wrongly interpreted by the Noticees to restrict the power of the regulator to initiate action for fraudulent trading practices under the SEBI Act and Regulations. Hence the penalty stipulated in the circulars issued to the Exchanges cannot be the end of the action for the position limit violation, as far the powers of SEBI to initiate enforcement proceedings are concerned. This issue has been generally addressed earlier in this order and does not merit any re-consideration at this stage.

- (ii) **Whether the Agency agreements executed by Noticee No.1 appointing Noticees Nos 2-13 to act as its agents to trade in the F&O segment involve a violation of the provisions of Benami Transactions (Prohibitions) Act, 1988?**

**4.C.3.** The SCN had alleged that the execution of agency agreements whereby the profits and losses of the agents were to be credited to the account of Noticee No.1 are benami contracts and are therefore invalid in terms of the Benami Act. In this respect, the noticees have submitted cogent reasons as to why the allegation is incorrect. It was shown that the provisions of Benami Act have not invalidated the principal-agent relationship or other fiduciary relationship and the holding of property by such agents. Further, in view of the fact that the provisions of Benami Act do not fall within the jurisdiction of SEBI, I am inclined to drop the allegation in the SCN against the Noticees on this account.

- (iii) **Whether the requirements of “fraud” as laid down by the Courts and Tribunals are being satisfied in the instant set of facts, to establish the violation of SEBI (PFUTP) Regulations?**

**4. C.4.** In para 10.1 of the Written Statements, the Noticees stated that “The SCN does not make out any case for the RPL Futures transactions to be a fraudulent and unfair trade practice. The charges and allegations in the SCN are bald, vague, unsubstantiated and based on mere surmises, conjectures and suspicion.” The Noticees have relied on various case laws to state that serious allegations need to be based on stronger evidence and tested on the balance of probability standard and that the allegation of fraud needs to be proved with cogent, convincing charges and not be vague.

The relevant provisions of PFUTP Regulations alleged to have been violated are reproduced below:

***“ Prohibition of certain dealings in securities.***

***3. No person shall directly or indirectly-***

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

***Prohibition of manipulative, fraudulent and unfair trade practices.***

- 4.*** *(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*
  - (a) – (c) .....*
  - (d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money’s worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security; and*
  - (e) any act or omission amounting to manipulation of the price of a security;*
  - .....”*

**4.C.5.** It is clear from a plain reading of regulations 3 and 4 of the PFUTP regulations that while regulations 3 and 4(1) prohibit fraudulent trades, sub-regulation (2) of regulation 4 provides an illustrative list of those actions which are deemed to be fraudulent in nature. The two clauses of sub-regulation (2) of regulation 4 specifically pointed out in the SCN were clauses (d) and (e). The conduct of Noticee No.1 of placing huge orders for sale at lower than LTP prices in the last 10 minutes of the trading session on the day of expiry of the Futures derivatives has been

unambiguously brought out in the SCN. Given that a large volume of 1.95 crore was pressed in a compressed period of 10 minutes, that too towards the dying minutes of the market, such sale orders would submerge the buying orders and push the prices artificially down. In my view, there is a fraudulent scheme carried out by Noticee No.1 through the 12 connected persons/ front entities with the intention of making profits on account of the legally impermissible limits held by it clandestinely and lowering the price in the cash market. Therefore the allegation against the Noticees of regulation 4 (2)(e) having been violated in my opinion stands sufficiently established. However, I am of the opinion that the SCN has not made out the charge of violation of Regulation 4(2)(d) clearly and hence I am inclined to drop the same. Regulation 4(1) clearly states that it is without prejudice to regulation 3 of the PFUTP regulations. I find that clauses (b), (c) and (d) of regulation 3 are particularly applicable to the facts before me. All the facts and circumstances narrated in the paragraphs above show that the actions of Noticee No.1 through 2-13 have been done in a fraudulent manner. The elaborate scheme or artifice devised by Noticee No. 1 involved coordination of positions in cash and derivative markets using the assistance of agents to defeat the risk management framework in the stock exchanges. Even assuming that the case may not fall within one of the itemized illustrations of fraudulent activities in regulation 4(2), the fraudulent device employed or structured by the Noticees, in the instant case, certainly falls foul of regulations 3, 4(1) and 4(2) (e) of PFUTP regulations on a combined reading thereof. It is not just the individual legs of the manipulative scheme but the entire *modus operandi* that convinces me of the Noticees having violated the aforesaid provisions of the PFUTP regulations.

**4.C.6** Noticees have also placed reliance on *Kandla Vs. Essar Oil Ltd. & Ors* and certain other observation of Lord Cairns in *William Peek Vs. Gurney, 1873* to support the position that mere non-disclosure of a fact not required by statute to be disclosed may not amount to a “fraud”. In

this regard, it is relevant to understand that the non-disclosure of its identity to the trading members in the F&O segment cannot be viewed as a mere non-disclosure; it is rather an active misrepresentation carried out on the trading members in the form of 12 different clients. When the SEBI circular dated November 2, 2001 mandated the exchanges and the trading members to put in place a system for identifying a single client opening different accounts with different trading members in derivative market and casting an obligation of disclosure on the clients in this respect, the conduct of Noticee No.1 in arranging for the agents, clearly evidences the lack of bonafides and the intention to defeat the objects of the provisions governing Position Limits, solely to its advantage. Further, in the context of intentional breach by market players causing dents to the risk management framework governing the derivatives exchange segment, whether any prejudice has been caused to any counter party etc is immaterial.

**4.C.7** In para 10.34 of the Written Submissions, the Noticee has stated that the SCN has not provided any analysis to show market manipulation by Noticee No.1 by having an aggregate open position (61.15% of OI on 6 November 2007 and 93.63% on 29 November 2007) in the November Futures of RPL and 48.64% and 40.13 % OI across all derivatives on the said dates. In the light of the contentions in the Written Submissions, I am independently considering the issue as to whether the securities market has been “manipulated” by Noticee No.1 or not. The manipulation of the nature that has been brought out in the SCN differs substantially from the whole lot of normal cases of manipulation, in the sense that a single entity used up a substantial part of the OI in the derivatives market to its advantage by fraudulent means, as explained earlier in this order. This kind of a fraudulent activity is detrimental to the interests of the investors and the securities market. It is a way of indirectly ousting other market players and consolidating or cornering the position in a particular scrip with a pre-planned agenda of making illegal profits.

**(iv) Whether the “re-investigation” carried out by SEBI without any new ground or fresh material as contended by the Noticees invalidates the SCN?**

**4.C.8** Noticee No.1 raised the objection that after issuing a SCN dated 29<sup>th</sup> April 2009 which was modified by a corrigendum dated October 8, 2009 alleging violations of Insider Trading Regulations, the issuance of the subsequent SCN dated 16 December 2010 is arbitrary and violative of the principles of Natural justice. Noticees have also alleged mala fide from the side of SEBI behind the re-investigation. Noticee No.1 further contended that vide its letter dated 28/12/2010, it had objected to the unfair and arbitrary manner in which SEBI had acted in the matter. The re-investigation was done without assigning any reason and in disregard of the principles of natural justice. The additional violation of PIT Regulations vide the subsequent corrigendum and the issuance of the present SCN dated 16/12/2010 have been alleged to be an off-shoot of the reply of Noticee No. 1 sent in response to the SCN dated April 29, 2009.

**4.C.9** The issues that arise for consideration in this connection are –

- (i) Whether there has been any arbitrariness from the side of SEBI, as alleged, in reinvestigating the matter based on external legal opinion or based on the reply of Noticee No.1;
- (ii) Was the existence of fresh grounds/material required for a re-investigation and if there was none, would it vitiate the SCN dated 16/12/2010, issued on the basis of such re-investigation.

**4.C.10** I find from the table at para 16.7 of the Written Submissions of Noticee No.1. dated 10 February, 2017 that the SCN dated 16/12/2010 was a further elaboration of the charges contained in the

earlier SCN along with the observations arising out of a systematic analysis of the information and data that was already collected during the preliminary investigation. I notice that even going by the content-wise improvements done at the factual level, the basis/details of the observations and charges have been communicated to the Noticees vide the SCN dated 16/12/2010, so as to avoid causing any prejudice to the noticees and in due compliance with the requirements of the principles of natural justice. Further, contrary to the contentions of the noticees, the fresh SCN with more material and elaborations was to enable the noticees to defend their case properly and in the interest of compliance of natural justice. I do not find any arbitrariness in the re-investigation and take note of the fact that the subsequent examination within SEBI confirmed that the pattern and nature of trading show a manipulative pattern and this falls under PFUTP Regulations and this justifies the SCN. The argument to the effect that a re-investigation can only be done if any fresh material is available is not acceptable, as it amounts to imposition of fetters on the powers of the regulator to investigate a matter or conduct an enquiry, until the proceedings are concluded satisfactorily keeping in view the market integrity and interest of investor. I am sufficiently convinced that the re-investigation does not vitiate the SCN dated 16/12/10, in any manner, as contended.

**(v) Whether SEBI in exercise of its powers under section 11(4) and 11B is empowered to pass the directions, as proposed in the SCN, in the given facts and circumstances?**

**4.C.11** Noticee No. 1 has raised two primary contentions with regard to exercise of powers under section 11 and 11B of the SEBI Act- the first being that the said powers are only executive in nature which do not empower SEBI to proceed in an adjudicatory manner and that it is not open for SEBI to exercise its executive powers under section 11 and 11B after ten years; and the second

being that SEBI cannot order disgorgement unless guilt is adjudicated by way of an adjudication process. In my considered opinion, both the aforesaid contentions do not hold merit.

**4.C.12** I note that the SCNs were issued by SEBI in exercise of powers under sections 11 and 11B of the SEBI Act. With regard to the Noticee's contention that sections 11 and 11B are only executive in nature, the Noticee has placed reliance on observations of the Hon'ble Securities Appellate Tribunal (SAT) in the cases of Sterlite Industries, Anand Rathi, Roopram Sharma etc. to state that the powers under section 11B are for immediate preventive action and cannot be used to impose penalties. The principles of law discussed in most of the decisions referred to by the Noticee in its reply, were subsequently clarified/modified and it is now a well-established principle that enforcement directions under section 11B is permissible for preventive as well as remedial purposes, whether pending or after causing to make an enquiry.

**4.C.13** In particular, two decisions of the Hon'ble Supreme Court and SAT, respectively extracted below are relevant. In the case of Clariant International Ltd. and Another v. SEBI AIR 2004 SC 4236, the following was observed:

*"The Board exercises its legislative power by making regulations, **executive power by administering the regulations framed by it and taking action against any entity violating these regulations** and judicial power by adjudicating disputes in the implementation thereof. (emphasis supplied)*

In the case of Karvy Stock Broking Ltd. v. SEBI 2007 73 SCL 261 SAT, the Hon'ble SAT inter alia stated the following:

*"Parliament by Act 9 of 1995 introduced Section 11B with effect from 25.1.1995. This section enables the Board to issue directions to any intermediary of the securities market or any other person associated therewith if it thinks it is necessary in the interests of investors or orderly development of securities market or to prevent the affairs of any*



*intermediary or any other person referred to in Section 12 from being conducted in a manner detrimental to the interests of investors or securities market or to secure the proper management of any such intermediary. For regulating the securities market and with a view to protect the same, the Board started issuing interim orders/directions under this newly added provision to keep the erring intermediaries or other delinquents associated therewith out of the market. The exercise of this power was challenged in different courts and even though the same was upheld, Parliament thought that the provisions of the Act were inadequate and in its wisdom amended Section 11 by introducing Sub section (4) therein with effect from 29.10.2002 and gave specific power to the Board to pass interim as well as final orders in the interests of investors or the securities market."* (emphasis supplied)

**4. C.14** The comparatively recent case of *G.M.Bosu v. SEBI* cited by the Noticee, was in relation to violation of SEBI (DP) Regulations, 1996 by a registered Depository Participant (DP). The decision therein was guided by the observations that there was no serious infraction on the part of the DP and that the matter involved was essentially a civil/criminal dispute between two persons other than the appellant. Therefore, the decision therein does not suitably address the facts similar to those in this Order.

**4.C.15** Further, I note that SAT has in the case of *MP Mehrotra v. SEBI* [2003] 43 SCL 315 (SAT), observed that whether a direction is penal or remedial in nature would depend on the facts specific to each case. The following observations of SAT in the case of *Libord Finance Ltd. v. SEBI* 2008 86 SCL 72 SAT, is also instructive in this regard:

*"When such directions are issued, the object is not to punish the delinquent but to protect and safeguard the market and the interest of the investors which is the primary duty cast on the Board under the Act. The directions may result in penal consequences to the entity to whom those are issued but that would be only incidental. The purpose or the basis of the order or the directions would nevertheless be to protect the securities market and the interest of the investors."*

All recent decisions of SAT have considered all the principles stated above while upholding SEBI's orders under section 11B. Therefore any interpretation seeking to restrict the powers of SEBI under section 11B as being executive in nature, is contrary to the plain reading of the provision and the well settled legal position that recognizes SEBI's powers to pass enforcement orders under section 11B.

**4.C.16** With regard to the second contention alleging that SEBI does not possess power to order disgorgement unless guilt is adjudicated, I note that no such process has been prescribed by the Tribunal or the Courts. The Noticees' reliance on observations in the case of *NSDL v. SEBI* is misplaced. The decision therein dealt with interim orders of disgorgement which were issued by SEBI. SAT had concluded that guilt needs to be determined first before SEBI makes an order for disgorgement. This decision is therefore not relevant for the facts in this Order, which is final in nature wherein after having complied with principles of natural justice, the noticee's liability is sought to be determined. Further disgorgement orders are remedial measures which, however delayed, must be executed to remedy an elaborately conceived and perpetrated fraud on the securities market resulting in illegal gains for the noticees. The regulator would be failing in its duties if this remedial measure is not ordered, notwithstanding the process of reaching this conclusion. The courts have consistently upheld the power of SEBI to disgorge the unlawful gains under section 11B, if the facts justify the same.

## **5. Conclusions:**

**5.1** Going by the facts narrated by Noticee No. 1, liquidation of 5 % stake was decided. The same had to be done in an orderly manner. There was no outer time fixed for liquidation. Being guided by the analysts' reports and the price trends of the scrip, Noticee No. 1 decided to start the sale in November 2007. Before the sale in the cash segment started, Noticee No. 1, booked positions in the F&O segment to the extent of 9.92 crore shares by entering into agreements with 12 entities for a commission payment. Entrusting a common person to carry out the trades in both cash and F&O segment was the other key factor in the whole operation. Finally when the price dipped on November 29, the entire F&O open positions to the extent of 7.97 crore shares was allowed to expire. In the meanwhile 1.95 crore shares were also liquidated in the cash segment. This is not a normal case of price manipulation or volume manipulation. This is a case of a unique strategy of *per se* not

manipulating the price or volume in a single market, but manipulating the settlement price in one market to gain across the volumes accumulated in the other market. The actual manipulation has happened with respect to the convergence price of the spot with the futures.

**5.2** Throughout its written and oral submissions, Noticee No. 1 has referred to its actions as 'hedging' to justify its elaborate scheme. The strategy of 'hedging', put forward as a defence by Noticee No.1 is nothing but a mirage. While Noticee No.1 has sought to depict a strategy of hedging, when one takes a closer look at what was actually done or intended to be done, the facade of hedge wanes off and exposes the hidden motive or strategy of speculation. It is now amply clear that the 'hedging' strategy is a defence set up as an after-thought and was not a pre-planned business strategy. To conclude, I find that Noticee No. 1 was not genuinely hedging the risk but was aiming to reap huge speculative profits by cornering futures positions and playing a fraud on the general investors and the market. Noticee No.1 cornered the OI position to the extent of 61.5% as on 6/11/07 and 40.13% as on 29/11/07 and closed out the outstanding short position of 7.97 crore shares on 29 November, 2007 through its agents (Noticees 2 - 13). This would amount to a well-planned, fraudulent and manipulative trading scheme in terms of the SEBI (PFUTP) Regulations, 2003.

**5.3** Thus, on an overall evaluation of the facts and circumstances brought out in the SCN and, the replies tendered through written submission and during the course of the quasi-judicial proceedings, I arrive at the following findings:

- (i) Noticee no.1 by employing 12 agents to take separate position limits of Open Interest on its behalf by executing separate agreements with each one of them and cornering 93.63% of the November futures of RPL, has acted in a fraudulent manner while dealing in RPL scrip.
- (ii) The Noticee No.1, by manipulating the F&O segment through 12 of its agents (Noticees Nos. 2 -13) and allowing them to hold the contracts till the last day of expiry and thereafter by closing out the derivative contracts on the 29<sup>th</sup> of November, 2007 has engaged in a pre-planned fraudulent practice and the same cannot be held to be a mere breach of position limits by the clients attracting penalty under the exchange circulars.
- (iii) On the basis of the analysis of the trading strategy/pattern adopted by Noticee No.1 in the cash market during the month of November 2007 and specifically on the 29<sup>th</sup> of November 2007, being the expiry day of the November Futures of RPL, it is found that there has been a manipulation of the last half an hour settlement price.

**5.4** In short, the actions of Noticee No.1 and Noticee Nos.2-13, described in sub-paras (i), (ii) and (iii) above constitute a violation of the provisions of section 12A of SEBI Act, 1992 read with regulations 3, 4(1) and 4(2)(e) of the SEBI (PFUTP) Regulations, 2003. Noticee Nos. 2 to 13 have also violated provisions of the SEBI circular No. SMDRP/DC/CIR-10/01 dated November 2, 2001 and NSE circular No. NSE/CMPT/2982 dated November 7, 2001.

**5.5** The scope and nature of directions that can be passed in exercise of powers under section 11B of the SEBI Act have been discussed elaborately earlier in this order. In view of the fact that Noticee No.1 has made unlawful gains of ₹ 513/- crores, which could not have been made but for the fraudulent and manipulative strategy/pattern adopted by them, I am inclined to direct disgorgement of the unlawful gains made by Noticee No.1. An assessment of the extent of unlawful gains or the loss caused to the investors is necessary, at this stage, so as to decide the exact direction that can be passed against the Noticees, in the matter. I find that the sum of ₹ 513/- crores has been arrived at as the profits in the SCN by taking into account the net short positions in derivatives for all days that the Noticees nos. 2-13 have maintained during November 2007. In the facts of the instant case, I am inclined to adopt the following formula, for the purpose of computation of the unlawful gains:

**Computation of the Unlawful gains**

|   |  |  |
|---|--|--|
| 1 | Average Net short open position in derivatives held by Noticee. Nos. 2-13 across 29 days (Nov. 1 to 29)* | = 8.51 Crore shares                    |
| 2 | OI limit available to noticees 2-13  | = 1.09 crore shares                    |
| 3 | OI limit illegally procured  | = 7.42 cr shares                       |
| 4 | Average gain per share   | = 513 cr / 8.51 cr = ₹ 60.28 per share |
| 5 | Total illegal gains made   | = 60.28 X 7.42 = ₹ 447.27 crore        |
|   | (* based on day-wise “cumulative net short” shown in Annex -12 to the SCN)                               |  |

## 6. Directions :

**6.1** In view of the above findings and taking into consideration the magnitude of the fraud across the markets; the quantum of unlawful gains made by the Noticee No. 1 and the role of the agents in facilitating the fraudulent design, I am inclined to pass certain directions against the noticees in order to protect the interest of the investors and reinstall their faith in the regulatory system.

**6.2** Accordingly, in exercise of the powers conferred upon me under section 19 of the SEBI Act, 1992 read with sections 11 and 11B of the SEBI Act, and Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, I hereby pass the following directions:-

(i) The noticees named above shall be prohibited from dealing in equity derivatives in the F&O segment of stock exchanges, directly or indirectly, for a period of one year from the date of this order. The noticees may however square off or close out their existing open positions.

(ii) Noticee No. 1 shall disgorge an amount of ₹ 447.27 crores, as ascertained in para No. 5.5 above along with interest calculated at the rate of 12% per annum from 29 November, 2007 onwards, till the date of payment.

(iii) Noticee No. 1 shall pay the said amounts within 45 days from the date of this Order either by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment \* to SEBI account as detailed below:

| Name of the Bank | Branch Name         | RTGS Code    | Beneficiary Name                       | Beneficiary Account No. |
|------------------|---------------------|--------------|--|-------------------------|
| Bank of India    | Bandra Kurla Branch | BKID 0000122 | Securities and Exchange Board of India | 012210210000008         |

*\*Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the*

*format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

|   |  |
|---|--|
| 1. Case Name:   |  |
| 2. Name of the payee:   |  |
| 3. Date of payment:   |  |
| 4. Amount paid:   |  |
| 5. Transaction No:  |  |
| 6. Bank Details in which payment is made:   |  |
| 7. Payment is made for: (like penalties/disgorgement/recovery/settlement amount and legal charges along with order details: |  |

**6.3** The above directions shall come into force with immediate effect.

**6.4** A copy of this order shall be served upon the stock exchanges and the depositories for necessary action and compliance.

**Date:** March 24, 2017  
**Place:** Mumbai

**G. MAHALINGAM**  
**WHOLE TIME MEMBER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**