BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-AA/AO/31/2017-18]

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

In respect of

Shri Mehmood Vaid

(PAN: ACQPV7326Q)

In the matter of

Multi Commodity Exchange of India Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) conducted investigation in the scrip of Multi Commodity Exchange of India Limited (hereinafter referred to as "**Company/MCX**") for the period of April 27, 2012 to July 31, 2013. It was observed in investigation that National Spot Exchange Limited **("NSEL")** is a wholly owned subsidiary of Financial Technologies (India) Ltd. ("**FTIL**") which also holds 26% of the shareholding in MCX. Further, all three companies, i.e. NSEL, FTIL and MCX, are under a common management with common directors and employees.

2. A Show Cause Notice dated April 27, 2012 was issued by the Department of Consumer Affairs **("DCA** SCN") to NSEL. As per the Investigating Authority, the Unpublished Price Sensitive Information ("**UPSI**") in respect of the shares of MCX was the implication of the DCA SCN dated April 27, 2012, issued to NSEL i.e. suspension of short selling by its Members, pairing of contracts and settlement of contracts beyond 11

days and impending payment defaults by the members of NSEL and loss of reputation of Promoters and Management of MCX. It was observed that any news impacting business of NSEL will automatically impact share price of its holding company (i.e. FTIL) and associate companies (i.e. MCX) and any news impacting credentials of Promoters and Management of FTIL, NSEL and MCX will also impact the share price of MCX, therefore suspension of trading by NSEL was a negative news. As per the Investigating Authority, the *UPSI* came into existence on April 27, 2012, upon the issuance of the SCN to NSEL, by the DCA and it ceased to exist when NSEL suspended trading in all contracts (except e-series contracts) and deferred settlement of all pending contracts on July 31, 2013.

3. It was observed that Shri Mehmood Vaid ("**Noticee**") was holding position of Senior Vice President – Sales & Marketing from September 03, 2012 onwards in FTIL and thus a senior level employee of FTIL during the UPSI period to whom the "Code of Conduct for Prevention of Insider Trading" as specified by FTIL was applicable. FTIL being the holding company of NSEL, Directors and Officers of FTIL were reasonably expected of having access to the UPSI which emanated from its wholly owned subsidiary company i.e. NSEL. In that capacity, Noticee was reasonably expected of having access to the UPSI which emanated from NSEL and, thus, an insider under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**").

4. It was alleged that the Noticee, being an insider, before the outbreak of NSEL irregularities avoided losses by selling 3,750 shares of MCX between March 11, 2013 & June 26, 2013 when in possession of UPSI and thereby violated provisions of Regulation 3(i) of PIT Regulations,

1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015"**).

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15G of the SEBI Act the alleged violations of provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice no. EAD/AO-PM/AA/OW/31598/1/2017 dated December 14, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G of the SEBI Act, 1992 for the alleged violations specified in the SCN.

7. Vide letter dated January 11, 2018, Crawford Bayley & Co., Advocates & Solicitors, filed reply to the SCN on behalf of the Noticee. The summary of submissions is as follows:

   - *Without going into the merits of the case, we, on behalf of our client, would like to bring to your attention that SEBI had issued an Ex-Parte Ad-Interim Order cum SCN dated August 2, 2017* ***("Interim Order")*** *under Sections 11(1), 11(4) and 11B of the SEBI Act on the exactly same set of the facts as contained in the SCN. and the SCN is virtually identical to the Interim Order. Both the Interim Order and the captioned SCN are based on the Investigation*

Report by the IVD department of SEBI based on which allegations against our client were levelled.

- *A detailed reply dated August 24, 2017 was filed denying all the allegations levelled against our client in the Interim Order. An Order dated January 5, 2018 was passed by the Whole Time Member* ***("WTM")*** *of the SEBI in favour of our client* ***("the WTM Order"),*** *in exercise of the powers conferred under sections 11(1), 11(4) and 11B of SEBI Act and regulation 11 of PIT, 1992 read with Regulation 12 of PIT, 2015. Vide the WTM Order, the learned WTM had revoked the directions issued against our client and disposed of the Interim Order. It is pertinent to note that the WTM in para 27 the WTM Order held that "the period during which the period the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012." Thus, the whole edifice of the SCN falls apart.*

- *Since the captioned SCN has been issued on the identical set of facts and our client is already exonerated by a higher authority of SEBI i.e. WTM, after providing hearing and also after going through reply filed by the noticee, it would be in the interest of justice to avoid multiplicity of proceedings arising out of identical set of facts and the captioned SCN against our client be forthwith withdrawn, since the WTM SEBI has held that our client was not in possession of UPSI while trading in the scrip of MCX and hence is not an insider.*

8. Considering the facts and circumstances of the case, reply of Noticee and the Order dated January 05, 2018 by the WTM of SEBI under sections 11(1), 11(4)(b) and 11B of SEBI Act in the scrip of MCX, the undersigned is of the opinion that the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee.

CONSIDERATION OF ISSUES AND FINDINGS

9. The issues that arise for consideration in the present case are :
   I. Whether Noticee avoided losses by selling 3,750 shares of MCX between March 11, 2013 & June 26, 2013 when in possession of

UPSI and thereby violated provisions of Regulation 3(i) of PIT Regulations, 1992? and

II. Does the violation, if any, attract monetary penalty under section 15G of SEBI Act?

10. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 which reads as under:-

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

3. *No insider shall—*

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

11. I have perused the written submissions of the Noticee, documents available on record and the WTM order dated January 05, 2018 in the same matter in different proceedings. Having considered the same, I record my findings hereunder.

12. I find that Noticee was a senior level employee of FTIL during the UPSI period to whom the "Code of Conduct for Prevention of Insider Trading" as specified by FTIL was applicable and in that capacity was reasonably expected of having access to the UPSI which emanated from NSEL. Further, the transactions in question i.e. sale of 3,750 shares of MCX between March 11, 2013 & June 26, 2013 as specified in the SCN have also not been disputed.

13. Noticee has brought to my attention the fact that WTM of SEBI vide Order dated January 05, 2018 (**WTM order**) in a separate proceedings against the noticee under sections 11(1), 11(4)(b) and 11B of SEBI Act, on the same set of facts and allegations, had exonerated him of the charges leveled against him. I note that in the said WTM order, there was

a specific finding with regard to the periodicity of the UPSI which is as under:

"25. Having answered the first issue in the affirmative, the next issue for consideration is whether the "price sensitive information" was unpublished during the period of investigation. In this regard, it is noted that on October 3, 2012 an article appeared in the Economic Times, a widely distributed financial newspaper, which contained information relating to the issuance of SCN dated April 27, 2012 to NSEL, majority of the contents of the SCN, allegations against NSEL with regard to violation of conditions of DCA notification dated June 5, 2007 and the gist of NSEL's reply to the SCN. The article also covered the possible action that could be taken by DCA against NSEL i.e. withdrawal of exemption granted to NSEL vide the notification dated June 5, 2007.

26. On a careful perusal of the newspaper article dated October 3, 2012, I find that the publication of the said article made the following information public:

- *DCA had issued a show cause notice dated April 27, 2012 to NSEL hereby it had found fault with certain types of contracts which were being traded on NSEL.*
- *There were allegations against NSEL that it was permitting short selling on its platform. It was also alleged that NSEL did not have a stock check facility for validating a member's position.*
- *SCN also alleged that all contracts traded on NSEL with a settlement period exceeding11 days were in violation of the provisions of FCRA.*
- *The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.*
- *NSEL had filed its reply to the SCN issued by DCA.*
- *In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.*

27. In my view, a reader of the newspaper article dated October 3, 2012 (containing the information noted above) could have deduced the implications of the SCN dated April 27, 2012 to a lesser or greater extent

depending on his/her exposure to the subject matter covered in the newspaper article. In my view, the newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN and also brought out specific contents of the SCN summarizing the allegations levelled against NSEL and the possible consequences thereof. The article categorically mentioned that failure on part of NSEL to provide a satisfactory explanation to the allegations levelled in the SCN would result in withdrawal of exemption granted to NSEL vide notification dated June 5, 2007. The said withdrawal of exemption in turn would have had a cascading effect on the contracts being traded on NSEL, payment defaults in relation thereto and the eventual loss to the reputation of the promoters / management of NSEL. Considering the above, I find that the price sensitive information, relating to the implication of the SCN dated April 27, 2012 became public from the time when the article relating to the SCN dated April 27, 2012 appeared in Economic Times on October 3, 2012, and as such ceased to be UPSI from that date. Accordingly, the period during which the period the UPSI existed was from the issuance of the SCN to its publication i.e. from April 27, 2012 to October 3, 2012."

14. I note that in the said order, WTM, inter alia, held that since Noticee did not trade in the shares of MCX when in possession of UPSI, the violation of regulation 3(i) of the PIT Regulations, 1992 cannot be established against him. I have also gone through the charges leveled against the Noticee in the SCN which have arisen out of the same set of facts identical to that of in the WTM Order and I do not find any reason to disagree with the view taken by the WTM about the periodicity of UPSI i.e. from April 27, 2012 to October 3, 2012. Since there was no UPSI in existence at the time of sale of 3,750 shares of MCX between March 11, 2013 & June 26, 2013 by the Noticee, therefore, I am inclined to conclude that violation of Regulation 3(i) of the PIT Regulations, 1992 by the Noticee as alleged in the SCN dated December 14, 2017 do not stand

established. Since the alleged violation is not established against the Noticee, Issue No. 2 requires no consideration.

ORDER

15. For the aforesaid reasons, Show Cause Notice EAD/AO-PM/AA/OW/31598/1/2017 dated December 14, 2017 alleging violations of provisions of Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee i.e. Shri Mehmood Vaid, is disposed of without imposition of any penalty.

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

Date: January 30, 2018 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**