BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 58 /2011]

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

MR. MILAN R. PAREKH

(Pan No.: AACPP4073G)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted examination in the trading in the scrip of M/s Action Financial Services (India) Limited (hereinafter referred to as 'AFSIL/Company') for the period from August 19, 2005 to February 28, 2006 (hereinafter referred to as **"Investigation period"**).

2. The findings of the examination led to the allegation that Mr. Milan R Parekh (hereinafter referred to as 'Noticee') had violated regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**),

regulations 3(d), 4(2)(a), 4(2)(b) and 4(2)(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003 (hereinafter referred to as **"PFUTP Regulations"**) and consequently, liable for monetary penalty under section 15HA and section 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated March 25, 2010 under section 15 I of the 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 **'Rules'**) to inquire into and adjudge under sections 15HA and 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-7/PB/RG/2544/2011 dated February 10, 2011 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under sections 15HA and 15HB of the SEBI Act for the violation of regulations as alleged in the SCN.

5. It was alleged in the SCN that the Noticee had violated regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations. The trading window was closed from September 06, 2005 to September 07, 2005 and from September 11, 2005 to September 12, 2005. The announcements that the Board meeting of AFSIL to be held on September 12, 2005 would discuss

the change of name of the company, stock split and increase of authorized capital of the company was made at 2:54 PM on September 08, 2005. The decisions of the Board approving the above issues were announced at 4:00 PM on September 14, 2005. The corporate announcement was reflected on the BSE website on September 08, 2005 and September 14, 2005. It was alleged that the trading window was opened before the corporate announcements came in the public domain i.e. it was open on September 08, 2005 and September 13, 2005. The trading window should have been closed on September 08, 2005 and September 13, 2005. The Noticee is the Chairman and Managing Director of AFSIL. Since the model code of conduct specifies that the trading window should be opened after 24 hrs of the information being made public, in view of the announcements regarding stock split and issue of preference shares on preferential basis coming on September 08 and 14, 2005 and sale of shares by the Noticee on September 05, 08 and 13, 2005, it was alleged that Noticee violated the Model Code of Conduct specified under the PIT Regulations by selling his shares on September 08 and 13, 2005. It was alleged that the counter parties of major portion of Noticee's trade was concentrated amongst the clients Hamir D Ahir, Narendra B Gohil, Vikram Singh Gohil and Atul Shah (trading in the name of Charmi Investments) (hereinafter referred to as (**'Hamir Ahir Group'**). Noticee's counter party concentration with these clients was 54.96% (384752 shares). It was alleged that the Hamir Ahir group created false buying pressure in the scrip, which helped in increasing, and maintaining the price of the scrip during the period of sale by the Noticee. Thus, it was alleged that the Noticee acted in connivance with Hamir Ahir group to offload Noticee's holding in the company at relatively higher price which otherwise would not have been possible. Therefore, it was alleged that the Noticee violated regulations 3(d), 4(2) (a), 4(2)(b) and 4(2)(d) of the PFUTP Regulations.

6. The aforesaid SCN was sent through Hand Delivery. The said notice was received and acknowledged by the Noticee. Vide letter dated February 21, 2011, the Noticee requested for 4 weeks time for filing reply. Vide letter dated March 24, 2011, the Noticee filed the reply. The Noticee in his reply, inter-alia stated:

    - *There was a delay of two days by the exchange in publishing the corporate announcement on its website with respect to the information submitted vide letter dated September 06, 2005. The information was submitted to the exchange by AFSIL vide letter dated September 06, 2005 which was published on September 08, 2005. We should not be held responsible for delay of two days by the exchange in publishing the said information submitted vide our letter dated September 06, 2005 as we do not have control over the acts of omission and commissions of the esteemed exchange.*

    - *There was an inadvertent technical lapse on the part of AFSIL in keeping the trading window open on September 13, 2005 under honest belief that the letter dated September 12, 2005 was served on the BSE on September 12, 2005.*

    - *AFSIL had duly served the aforesaid letter dated September 06, 2005 on September 06, 2005 on the exchange. We were unaware of the clerical day of two days on our part and believed that the letter dated September 12, 2005 was also served on September 12, 2005. However, it was served on September 14, 2005. The technical lapse of allowing the trade window to remain open on September 13, 2005 under honest belief that the said letter dated September 12, 2005 pertaining*

to the decisions taken in the board meeting held on September 12, 2005 was filed on September 12, 2005.

- *AFSIL had thus, considered the dates as on when the corporate announcements were made public as September 06, 2005 and September 12, 2005 and accordingly the trading window remained closed from September 06, 2005 to September 07, 2005 and from September 11, 2005 to September 12, 2005.*

- *It is submitted that the company was in desperate need of finance. The price of our scrip was rising from August 26, 2005 onwards. In view of the above, I proposed to sell my shares and bring the money back in the company by way of subscribing preference shares in the company. Under the said circumstances, trade clearance was granted to me by AFSIL and I traded on September 05, 2005, September 08, 2005, and September 13, 2005 when the trading window was open. I totally sold 7,00,000 lacs shares for the sum of ₹ 1,07,62,750.00 on the aforesaid dates. The entire amount of ₹ 1,07,62,750.00 was brought back by me in the company by way of subscribing in non-convertible redeemable preference shares. The aforesaid shares were floated back in the company as and by way of subscription in non- convertible redeemable preference shares which were allotted to me on September 30, 2005. This goes to prove that I had no malafide intentions. Thus, it was a business decision, in the circumstances of financial emergency to save the company. Thus, the act of selling my investments may be exempted and no adverse inference may be drawn therefrom. Further, I sold the aforesaid 7,00,000 shares of the company at an average price of ₹ 15.37*

per share. Thus, it was neither a case of earning any undue profit nor a case of taking any undue advantage of the unpublished price sensitive information by me. There was no loss or disadvantage caused to the general public.

- *I am neither aware, nor concerned nor involved with the relation between Mr. Hamir Ahir, Mr. Vikram Singh Gohil, Mr. Narendra B Gohil and Mr. Atul Shah. It is most humbly submitted that the BSE has put in place an automatic price matching mechanism which is a blind system and where the identities of the counterparties are not known. I am neither aware, nor involved nor exercise any control over the acts of Mr. Hamir Ahir, Mr. Vikram Singh Gohil, Mr. Narendra B Gohil and Mr. Atul Shah.*

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on April 25, 2011 vide notice dated April 13, 2011. Noticee appeared for the hearing. During the course of the hearing, the Noticee reiterated the submissions made by him vide letter dated March 24, 2011. Noticee further inter-alia stated that:

"*I sold 7,00,000 shares for the sum of Rs. 1,07,62,750.00 on September 05, 2005, September 08, 2005 and September 13, 2005. This was the only instance in my lifetime as a promoter when I sold shares in the market. I have also never purchased the shares from the market as a promoter. I would like to prove this by way of documentary evidence which will be filed by me in a couple of days. In November 1994, I as a promoter invested at Rs. 10 per share in the company, out of which 7,00,000 shares were sold in September 2005 at an average rate of Rs. 15.37 per share. The shares were sold bring the liquidity in the company and to safeguard the shareholder's interest. Moreover,*

the entire 7,00,000 shares sold by me were brought back by me in the company by way of subscribing in non-convertible redeemable preference shares. So, it can be seen that I have not earned any profit from the sale. There is no mala fide intention on my part. "

The Noticee was given time upto April 28, 2011 to file additional written submissions. During the course of hearing the Noticee mentioned that he sold shares only once in his lifetime as a promoter of AFSIL. However, vide letter dated April 29, 2011, the Noticee stated that he had sold shares of AFSIL on two occasions: On August 31, 2004 at Rs. 1.50 he sold 3,91,000 shares and then between September 05, 2005 to September 13, 2005, he sold 7,00,000 shares.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case are :

    a. Whether there is any violation of regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations and regulations 3(d), 4(2)(a), 4(2)(b) and 4(2)(d) of the PFUTP Regulations by the Noticee?
    b. Does the violation, if any, attract monetary penalty under section 15HA and section 15HB of the SEBI Act?
    c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

9. Before moving forward, it would be pertinent to refer to the provisions of regulation 12(1) of PIT Regulations, clauses 3.2-3, 3.2-4 and 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations and regulations 3(d), 4(2) (a), 4(2)(b) and 4(2)(d) of the PFUTP Regulations which reads as under:-

PIT Regulations

Regulation 12

Code of internal procedures and conduct for listed companies and other entities.

(1) All listed companies and organisations associated with securities markets including:
(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;
(b) the self-regulatory organisations recognised or authorised by the Board;
(c) the recognised stock exchanges and clearing house or corporations;
(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

3.2-3 *The trading window shall be, inter alia, closed at the time:—*
(a) Declaration of financial results (quarterly, half-yearly and annually).
(b) Declaration of dividends (interim and final).
(c) Issue of securities by way of public/rights/bonus etc.
(d) Any major expansion plans or execution of new projects.
(e) Amalgamation, mergers, takeovers and buy-back.
(f) Disposal of whole or substantially whole of the undertaking.
(g) Any changes in policies, plans or operations of the company.

3.2-4 The trading window shall be opened 24 hours after the information referred to in para 3.2.3 is made public.

3.2-5 *All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.*

PFUTP Regulations

Regulation 3

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) ……..

(b) …….

(c) …….

(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 thereunder.

Regulation 4

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1)……..
(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) indulging in an act which creates false or misleading appearance of trading in the securities market;

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(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;

(e)……..

10. The first issue for examination is whether there is any violation of regulation 12(1) read with clause 3.2-5 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations by the Noticee.

Regulation 12(1) of PIT Regulations deals with the code of internal procedures and conduct for listed companies and other entities which include intermediaries, self-regulatory organisations, recognised stock exchanges and clearing house or corporation, public financial institutions, professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc, assisting or advising listed companies. The regulations require such entities to frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of the PIT Regulations.

Clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations states that all the directors/officers/designated employees of the company shall conduct all their dealings in the securities of the company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when the trading window is closed which is explained under clause 3.2-3 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations or during any other period as may be specified by the company from time to time.

11. Upon perusal of the facts and circumstances of the case, submissions of the Noticee and the charges thereof, I find that the contention of the Noticee that there was a delay of two days by the exchange in publishing the corporate announcement on its website with respect to the information submitted vide letter dated September 06, 2005 can be accepted. On perusal of records, I find that the information was submitted to the exchange by AFSIL vide letter dated September 06, 2005. The letter was received and acknowledged by BSE on the same day i.e. September 06, 2005. However, BSE published the information only on September 08, 2005. I find that it was not reasonably possible for AFSIL to foresee such a possibility. The company was under an impression that the information received by the exchange on September 06, 2005 will be published by the exchange on the same day. Therefore, AFSIL kept the trading window open on September 08, 2005. I find that the contention of the Noticee can be accepted that by selling shares on September 08, 2005 the Noticee was under an impression that the information submitted by the company was received and published by the exchange on September 06, 2005 and thus, he was trading in a valid trading window. However, the second contention of the Noticee stating that there was an inadvertent technical lapse on the part of AFSIL in keeping the trading window open on September 13, 2005 under honest belief that the letter dated September 12, 2005 was served on the BSE on September 12, 2005 cannot be accepted. On perusal of records, I find that the company wrongly presumed that the letter dated September 12, 2005 was received by the exchange on the same day. The letter dated September 12, 2005 was received by the exchange on September 14, 2005. I find that the contention of the Noticee is devoid of merit. In this regard, it will be appropriate to refer to the observations of The Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001. The Hon'ble

Court while examining the issue of compliance with regard to regulation 7 (the provision deals with disclosure by an acquirer to the target company) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, made the following observations:-

> *"…… Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending a written information through the agency of someone else, appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent."*

In the instant case, the information did not reach the exchange on September 12, 2005. Since, the said information was received by the exchange on September 14, 2005 and published at 4 p.m. by the

exchange, the company was required under the PIT Regulations to keep the trading window closed on September 13, 2005. The Noticee being the Chairman and Managing Director of AFSIL by selling the shares on September 13, 2005 violated the Model Code of Conduct specified under the PIT Regulations.

12. The company by not making disclosure on time and thereby keeping the trading window open, the Noticee being the Chairman and Managing Director of the company by selling shares on September 13, 2005; when the window was supposed to be closed, violated the Model Code of Conduct specified under the PIT Regulations . The timely disclosure of information and restriction in trading is mandated for the benefit of the investors at large. In Appeal No. 66 of 2003-Milan Mahendra Securities Pvt. Ltd. V. SEBI- Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

13. At same time, I have considered the following submissions of the Noticee:
    - *There was an inadvertent technical lapse on our part in keeping the trading window open on September 13, 2005 under honest belief that the letter dated September 12, 2005 was served on the BSE on September 12, 2005.*
    - *The company was in desperate need of finance. The price of AFSIL was rising from August 26, 2005 onwards. In view of the above, Chairman and Managing Director of the company, Mr. Milan Parekh proposed to sell his shares and bring the money back in the company by way of subscribing preference shares in the company. Under the said circumstances, the company granted*

trade clearance to Mr. Milan Parekh and he traded on September 05, 2005, September 08, 2005, and September 13, 2005 when the trading window was open.

I am of the view that the reasons cited by the Noticee, did not, in any way, absolve the Noticee from the violation. At the best, these are the factors which may, to some extent, be relevant while considering the penal consequences that could attract the violation.

In view of the foregoing, the allegation of violation of provisions of regulation 12(1) of the PIT Regulations read with clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations against the Noticee stands established as the trading window was open on September 13, 2005.

14. The second issue for examination is whether there is any violation of regulations 3(d), 4(2)(a), 4(2)(b) and 4(2)(d) of PFUTP Regulations by the Noticee.

15. Regulation 3(d) of the PFUTP Regulations prohibits a person from directly or indirectly engaging in any act, 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 SEBI Act, 1992 or the rules and regulations made thereunder.

16. Regulation 4(2) (a) of the PFUTP Regulations states that indulging in an act which creates false or misleading appearance of trading in the securities market shall be deemed to be a fraudulent or an unfair trade practice. Regulation 4(2) (b) of the PFUTP Regulations states that

dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss shall be deemed to be a fraudulent or an unfair trade practice. Regulation 4(2) (d) of the PFUTP Regulations states that 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 shall be deemed to be a fraudulent or an unfair trade practice.

17. Upon perusal of the facts and circumstances of the case, reply of the Noticee and the charges leveled against the Noticee I find the following:

- The counter parties of major portion of the trades of the Noticee were concentrated amongst the clients Hamir D Ahir, Vikram Singh Gohil, Narendra B Gohil and Atul Shah (trading in the name of Charmi Investments) i.e. the Hamir Ahir Group. Amongst these, Hamir Ahir was a client of AFSIL and the other three are connected to Hamir Ahir. The connections are established based on name, address, telephone nos. observed in the UCC database maintained by the members at the Exchange. These connected clients were dealing through more than one member. These connected clients dealing in the scrip are Ahmedabad based and the company is Mumbai based. These clients traded mainly through India bulls Securities Ltd. (Clg.no.907), Archi Shares & Stock Brokers (P) Ltd. (Clg.no.3032) and Fortis Securities Ltd. These members accounted for 40.85%, 28.54% and 13.96% respectively of the total trades of the market volume of the Noticee's trades. The members Indiabulls Securities Ltd.

(Clg.no.907) and Archi Shares & Stock Brokers (P) Ltd. (Clg.no.3032) have mainly dealt for clients Vikram Singh Gohil, Hamir Ahir, and Atul Shah (trading in the name of Charmi Investments). Thus, the total counter party concentration of the Noticee with these clients was 54.96% (384752 shares).

- I find that Mr. Vikram Singh Gohil is connected to Mr. Hamir Ahir on the basis of common Mobile No.9879001872. Also, Mr. Narendra Gohil is connected to Mr. Hamir Ahir on the basis of common mobile no. 9327916325. Further, it is observed that Mr. Atul Shah (trading in the name of Charmi Investments) is connected to Mr. Vikram Singh Gohil. The connection was established in the case of Netvision Web Technologies Ltd. The KYC of Mr. Vikram Singh Gohil revealed that one Mr. Jignesh who was the introducer had the same telephone no. i.e. 079-26440620 as that of Mr. Atul H Shah (trading in the name of Charmi Investments).

- The date wise analysis of the above trades reveals that a total of 7,00,000 shares were sold by the Noticee. Out of 91000 shares sold by the Noticee on September 05, 2005, 60000 shares and 30000 shares were purchased by Vikram Singh Gohil and Hamir Ahir respectively. Similarly, out of the 377000 shares sold by the Noticee on September 08, 2005, Atul Shah (trading in the name of Charmi Investments) bought 99800 shares. Similarly, out of 232000 shares sold by the Noticee on 13/09/2005, Vikram Singh Gohil and Hamir Ahir bought 147952 shares and 47000 shares respectively. The table below shows the details of shares sold by the Noticee:

Client	Date	Sold Qty	Rate
Milan R Parekh	05/09/05	91000	10.00
Milan R Parekh	08/09/05	377000	14.43
Milan R Parekh	13/09/05	232000	19.02

- I find that Mr. Atul Shah (trading in the name of Charmi Investments) was continuously updating the orders placed and there by keeping buying pressure due to which the scrip continued to trade at or near the upper circuit limit. Also, large orders placed and large quantities revealed and continuous updating of the orders by Mr. Narendra B Gohil created false appearance of volume in the scrip since at a given point of time large buy orders remained unexecuted. Further, I find that Mr. Narendra B Gohil was also deleting the orders after placing them.

- The said acts of Mr. Narendra B Gohil and Mr. Atul Shah reveal that they did not intend to execute the orders but merely intended to create buying pressure in the scrip and thereby maintaining the price so that the Noticee could offload his holdings on September 08 and 13, 2005.

The Noticee in his reply inter-alia stated that:

> *I am neither aware, nor concerned nor involved with the relation between Mr. Hamir Ahir, Mr. Vikram Singh Gohil, Mr. Narendra B Gohil and Mr. Atul Shah. It is most humbly submitted that the BSE has put in place an automatic price matching mechanism which is a blind system and where the identities of the counterparties are not known. I am neither aware, nor involved nor exercise any control over the acts of Mr. Hamir Ahir, Mr. Vikram Singh Gohil, Mr. Narendra B Gohil and Mr. Atul Shah.*

18. Upon careful perusal of the documents available on record and the reply of the Noticee, I do not find any merit in the contention of the Noticee that he does not have any connection with the Hamir Ahir Group. I find that the Hamir Ahir Group intentionally entered in the trading of the scrip of AFSIL from September 05, 2005 to September 13, 2005. There is no trading by this group before September 05, 2005. I find that Charmi Investments of which Mr. Atul Shah is proprietor placed a total of 99,800 buy orders on September 08, 2005. Mr. Hamir Ahir placed the orders through Indiabulls Securities Ltd. and Archi Shares and Stock Brokers Pvt. Ltd; he placed a total of 77,000 buy orders on September 05, 2005 and September 13, 2005. Mr. Narendra B Gohil placed the orders through Insight Shares Brokers Pvt. Ltd; he placed a total of 18975 buy orders on September 13, 2005 and September 20, 2005. Mr. Vikram B Gohil placed the orders through Indiabulls Securities Ltd. and Archi Shares and Stock Brokers Pvt. Ltd.; he placed a total of 2,07,952 buy orders on September 05, 2005 and September 13, 2005. I find that the Hamir Ahir Group continuously updated the orders hence loosing time priority and ultimately the orders got deleted at the end of the trading session since the orders remained unexecuted. The Hamir Ahir Group intentionally placed orders at the same time and has created false buying pressure in the scrip, which has helped in increasing, and maintaining the price of the scrip during the period of sale by the Noticee. Further, I find that Mr. Hamir Ahir is a client of AFSIL. However, he has not traded through AFSIL in this particular scrip. Also, the Noticee is the Chairman and Managing Director of AFSIL. Thus, I find that the Noticee has acted in connivance with Hamir Ahir Group to offload his holdings in the company at relatively higher price which otherwise would not have been possible.

The second contention of the Noticee that the BSE has put in place an automatic price matching mechanism which is a blind system and where the identities of the counterparties are not known is devoid of merit. The execution of trades by the Hamir Ahir Group for a certain number of days i.e. from September 5 to September 13, 2005 by the entities as a group reveals that they were having nexus with each other and were executing the trades with prior meeting of minds. I find that the Hamir Ahir Group intentionally entered in the trading of the scrip AFSIL from September 05, 2005 to September 13, 2005. There is no trading by this group before September 05, 2005. Large unexecuted buy orders were displayed, which created non-genuine interest in the scrip. Large orders were placed just to create buying pressure in the scrip. These entities executed trades with a pre-determined plan which is not indicative of genuine transaction since the above transaction created artificial volume. The manipulative intent of the Hamir Ahir Group is clearly reflected.

19. At same time, I have considered the following submissions of the Noticee:

It is submitted that the company was in desperate need of finance. The price of our scrip was rising from August 26, 2005 onwards. In view of the above, I proposed to sell my shares and bring the money back in the company by way of subscribing preference shares in the company. Under the said circumstances, trade clearance was granted to me by AFSIL and I traded on September 05, 2005, September 08, 2005, and September 13, 2005 when the trading window was open. I totally sold 7,00,000 lacs shares for the sum of ₹ 1,07,62,750.00 on the aforesaid dates. The entire amount of ₹ 1,07,62,750.00 was brought back by me in the company by way of subscribing in non-convertible redeemable preference shares. The aforesaid shares were floated back in the company as

and by way of subscription in non- convertible redeemable preference shares which were allotted to me on September 30, 2005. This goes to prove that I had no malafide intentions. Thus, it was a business decision, in the circumstances of financial emergency to save the company. Thus, the act of selling my investments may be exempted and no adverse inference may be drawn therefrom. Further, I sold the aforesaid 7,00,000 shares of the company at an average price of ₹ 15.37 per share. Thus, it was neither a case of earning any undue profit nor a case of taking any undue advantage of the unpublished price sensitive information by me. There was no loss or disadvantage caused to the general public.

I am of the view that the reason cited by the Noticee, did not, in any way, absolve the Noticee from the violation. The fact that the money was brought back by the Noticee in the company does not absolve the Noticee from the act of connivance. The Noticee acted in connivance with the Hamir Ahir Group and has thus violated PFUTP Regulations. At the best, this is a factor which may, to some extent, be relevant while considering the penal consequences that could attract the violation.

In view of the foregoing, the allegation of violation of provisions of regulations 3(d), 4(2)(a), 4(2)(b) and 4(2)(d) of PFUTP Regulations against the Noticee stands established.

20. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation*

becomes totally irrelevant. Once the contravention is established then the penalty is to follow".

21. As the violation of the provisions of regulations 3(d), 4(2)(a), 4(2)(b) and 4(2)(d) of PFUTP Regulations and regulation 12(1) read with clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations has been established, I hold that the Noticee is liable for monetary penalty under sections 15HA and15HB of the SEBI Act, which reads as under:-

> ***15HA Penalty for fraudulent and unfair trade practices.***
>
> *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

> ***15HB.Penalty for contravention where no separate penalty has been provided.-***
>
> *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

22. While determining the quantum of penalty under sections 15HA and 15HB of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

> ***"15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
>
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
>
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *(c) the repetitive nature of the default."*

23. From the material available on record, I find that the PIT Regulations mandate that the trading window should be opened after 24 hrs of the information being made public. The company, in the instant case, was under an obligation to keep the trading window closed on September 13, 2005 as the information submitted by the company was received by BSE on September 14, 2005, which it failed to do. The Noticee being the Chairman and Managing Director of the company was under a statutory obligation to not sell his shares on September 13, 2005. The Noticee by selling shares on September 13, 2005 has violated the Model Code of Conduct specified under the Regulations. The Hamir Ahir Group intentionally entered in the trading of the scrip of AFSIL from September 05, 2005 to September 13, 2005. There is no trading by this group before September 05, 2005. Further, Hamir Ahir Group continuously updated the orders hence loosing time priority and ultimately the orders got deleted at the end of the trading session since the orders remained unexecuted. Thus, the Hamir Ahir Group has created false or misleading appearance by creating buying pressure in the scrip. The object of Hamir Ahir Group was to create false buying pressure in the scrip, which has helped in increasing, and maintaining the price of the scrip during the period of sale by the Noticee. Thus, the Noticee has acted in connivance with Hamir Ahir Group to offload his holdings in the company at relatively higher price which otherwise would not have been possible and thereby violated PFUTP Regulations.

ORDER

24. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 1,00,000/- (Rupees One Lac Only/-) under section 15HA and ₹ 25,000/- (Rupees Twenty Five Thousand only) under section 15HB of the SEBI Act, {i.e. a total penalty of ₹1,25,000/- (Rupees One Lac Twenty Five Thousand only/-)} on the

Noticee which will be commensurate with the violation/s committed by him.

25. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Smt. Medha Sonparote, Deputy General Manager, Investigation Department- 1, SEBI, SEBI Bhavan, Plot No. C– 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **MAY 31, 2011**
Place: **MUMBAI**

PARAG BASU
ADJUDICATING OFFICER