

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/PM-AA/AO/32/2017-18]**

**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 Joseph Massey**  
**(PAN: AALPM7937P)**

In the matter of  
**Multi Commodity Exchange of India Limited**

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**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 As per the Investigating Authority, the Unpublished Price Sensitive Information ("**UPSI**") in respect of the shares of MCX was the implication of the DCA SCN dated April 27, 2012, issued to NSEL i.e.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, 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 Joseph Massey ("**Noticee**") was holding managerial position in MCX & NSEL during *UPSI* period i.e. he was i) a Non-Executive Non-Independent Director of MCX from June 01, 2009 to September 30, 2013 and ii) a Non-Executive Director of NSEL until October 21, 2013. When DCA issued SCN dated April 27, 2012 to NSEL, Noticee was holding position of Non-Executive director in NSEL and he continued to be director in NSEL till October 21, 2013 i.e. after the announcement of suspension of trading by NSEL on July 31, 2013 and being a director, he was well aware of all the developments in NSEL, right from issuance of SCN by DCA to NSEL till suspension of trading by 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 11,240 shares of MCX between May 04, 2012 to June 28, 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**”).

5. Investigation also revealed that Noticee sold shares of FTIL during the Investigation period resulting into change in his shareholding which exceeded ₹ 5 lakh in value on six days i.e. May 04, 2012, June 01, 2012, November 06, 2012, November 07, 2012, February 25, 2013 and June 28, 2013 but he failed to make timely disclosures under Regulation 13(4) of PIT Regulations on two instances i.e. May 04, 2012 and February 25, 2013. It was, therefore, alleged that Noticee failed to make requisite disclosures to the company and the stock exchange within 2 working days of change in his holdings in MCX exceeding ₹ 5 lakh in value and thereby violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

6. 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 and 15A(b) of the SEBI Act the alleged violations of provisions of Regulation 3(i) and Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 of read with Regulation 12(2) of PIT Regulations, 2015 by the Noticee.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

7. A Show Cause Notice no. EAD/AO-PM/AA/OW/31620/2017 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 and 15A(b) of the SEBI Act, 1992 for the alleged violations of i) Regulation 3(i) of PIT Regulations, 1992 and ii) Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992.

8. Noticee filed reply to the SCN vide letter dated January 12, 2018 and his main submissions as regards the first charge of alleged violation of Regulation 3(i) of PIT Regulations, 1992 is as follows:

- I was not an insider nor was I in possession of alleged UPSI pertaining to NSEL.
- UPSI pertaining to NSEL cannot be treated as UPSI pertaining to MCX and the said UPSI had already become public on 03.10.2012 when an article on the subject was published in the Economic Times.
- It is submitted that I had not traded on the basis of alleged UPSI. Crucially and critically, I had sold the shares prior to the alleged UPSI period also, as also acknowledged by SEBI in the Notice. Further, as on date I am still holding 20,000 shares of MCX, which has been completely ignored and overlooked by SEBI.
- During my employment with MCX, I was allotted 31,240 shares of MCX in terms of MCX's Employee Stock Option Plan ("ESOP") since 2006. As such it was possible for me to deal with the said shares only after listing which happened after several years. In the year 2012 MCX came out with Initial Public Offer ("**IPO**") for issuance of 6,427,378 shares at a price of Rs. 1032/- per share (including premium). Since I wanted to sell the shares I had informed the company regarding my intention to do so. Accordingly, MCX had in its Prospectus dated February 28, 2012 inter alia disclosed as follows:

*"Except for Joseph Massey, Sumesh Parasrampurua and Dipak Shah, who intends to sell 10,000, 6,250 and 2,000 Equity shares respectively, all other directors and the key management personnel of the*

*Company who have been granted options and Equity Shares on the exercise of the options have confirmed to us that they do not intend to sell any shares arising from such options within three months after the date of listing of the Equity Shares in this Offer. Other employees of the Company holding Equity Shares at the time of listing of Equity Shares and Equity Shares on exercise of vested options may sell their equity shareholding within the 3 month period after the listing of the Equity Shares. This disclosure is made in accordance with para 15.3 (b) of the SEBI (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 2000, as amended"*

- Significantly, with regard to the alleged violation of Regulation 3(i) of PIT Regulations, 1992, I may highlight that the said violation is an offshoot of same investigation report, based on which Ex- parte Order No. SEBI/WTMISRIIVD/ID-6/45/08/20 17 dated August 2, 2017 was passed by the Whole Time Member, SEBI against me and other persons/entities named therein alleging violation of provisions of Regulation 3(i) of PIT Regulations. It may be noted that post filing of reply/written submission and grant of personal hearing the Whole Time Member, SEBI vide Order dated January 05, 2018 *inter alia* concluded that there has been no violation of Regulation 3(i) of PIT Regulations, 1992 by me and others.
  - Since the Notice under reference is also based on the same facts and same Investigation Report and vide the Order dated January 05, 2018 the Whole Time Member, SEBI had already concluded that there is no violation of Regulation 3(i) of PIT Regulations, 1992, I respectfully submit that the allegations of violation Regulation 3(i) of PIT Regulations, 1992 cannot survive. Needless to state that the said findings of the Whole Time Member, SEBI are binding on you. I crave leave to refer to and rely on the same during the course of hearing.
9. I note that in the SCN dated December 14, 2017 there are following two charges that have been alleged against the Noticee:
- i. Violation of Regulation 3(i) of PIT Regulations, 1992 punishable under section 15G of SEBI Act, and

- ii. Violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 punishable under section 15A(b) of SEBI Act.

10. 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 allegation of violation of Regulation 3(i) of PIT Regulations, 1992 by the Noticee in the present matter can be decided on the basis of facts/materials available on record without personally hearing the Noticee. It is clarified that the allegation of violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by the Noticee in the SCN dated December 14, 2017 shall be dealt with separately after hearing the Noticee.

#### **CONSIDERATION OF ISSUES AND FINDINGS**

11. The issues that arise for consideration in the present case, as regards the first charge in the SCN, are :

- I. Whether Noticee avoided losses by selling 11,240 shares of MCX between May 04, 2012 to June 28, 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?

12. Before moving forward, it is pertinent to refer to the relevant provision 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”*

13. 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.

14. I find that Noticee was non-executive director on the Board of NSEL from 18/05/2005 to 21/10/2013 and also a non-executive director of MCX from 01/06/2009 to 30/09/2013. Admittedly, he was on the board of both NSEL and MCX during UPSI period 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 11,240 shares of MCX between May 04, 2012 to June 28, 2013 as specified in the SCN have also not been disputed.

15. 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 exceeding 11 days were in violation of the provisions of FCRA.*
- The conduct of NSEL was allegedly in violation of the conditions stipulated in the DCA notification dated June 5, 2007.*
- NSEL had filed its reply to the SCN issued by DCA.*
- In the event of NSEL failing to file a satisfactory explanation, DCA would withdraw the exemption granted vide notification dated June 5, 2007 without any further communication.*

*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.”*

16. I note that in the said order, WTM after deciding the period of UPSI as April 27, 2012 to October 3, 2012, inter alia, observed that the Noticee was an insider and the following two trades of the Noticee was during the UPSI period:

<b>Date</b>	<b>No. of shares sold</b>	<b>Amount (in ₹)</b>
04.05.2012 (NSE)	1000	10,20,000
01.06.2012 (NSE)	5000	47,81,121
<b>TOTAL</b>	<b>6,000</b>	<b>58,01,121</b>

17. WTM, further, held as under as regards the trades of the Noticee:

*“40. As observed above, Shri Joseph Massey was an “insider” having access to UPSI under regulation 2(e) of the PIT Regulations, 1992 and therefore, there is a presumption that he traded when in possession of the unpublished price sensitive information. Consequently, it becomes necessary to examine whether Shri Joseph Massey has been able to rebut the said presumption in the facts and circumstances of the case.*

*41. Shri Joseph Massey has submitted that even assuming that the alleged information regarding implications of SCN was price sensitive and unpublished, he was not at all aware of the same. He submitted that he was a non- executive director of NSEL and MCX. Further, as a non-executive director of NSEL, he was not aware of issuance of SCN dated 27-04-12 to NSEL by DCA and NSEL’s reply dated May 29, 2012. He also submitted that no such information was made known to him directly or through the Board of Directors of NSEL either in the form of a board note or by way of disclosure, discussion at the Board Meeting or in any other way. Also, as a non-executive director of MCX, he did not become*

*aware of the said SCN either directly or indirectly through the board of MCX as the matter was never discussed in the Board. According to Shri Massey, he got to know about the SCN against NSEL only on October 3, 2012 when the article was published in Economic Times.*

*42. Mr. Joseph Massey submitted that his shareholding in MCX was built up from allotment of shares by way of ESOPs, prior to listing of MCX. In 2012, when MCX came out with IPO, it was specifically disclosed upfront in the Prospectus dated February 28, 2012 that he would be selling 10,000 shares post IPO within 3 months of the IPO. Pursuant to the said disclosure, he sold a total of 6000 shares within three months of the IPO. Subsequently, he sold 5240 shares of MCX after October 3, 2012 (when the alleged UPSI had become "published"). He further submitted that he had sold the shares from time to time inter alia based on his personal requirement, in the ordinary course, for meeting personal/family expenses and some due to media reports /rumors about imposition of CTT in the market. He also submitted that as on date he continues to hold 20,000 shares of MCX.*

*43. From the above submissions of Shri Joseph Massey, it appears that the sale of 6,000 shares by Shri Joseph Massey was pre-determined and a disclosure in that regard was also made in the prospectus of MCX dated February 28, 2012. The SCN by DCA to NSEL was issued on April 27, 2012 and thus it was an event subsequent to the disclosure of intention by Shri Joseph Massey to sell the shares of MCX. Thus, the presumption under law that as an insider, his trades were carried out when in possession of UPSI stands rebutted. In view of the facts, circumstances and observations discussed above, the violation of regulation 3(i) and 4 of the PIT Regulations, 1992 and section 12A(d) of the SEBI Act does not stand established against Shri Joseph Massey."*

18. 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 and that the sale of 6,000 shares by the Noticee was

pre-determined event subsequent to the disclosure of intention by the Noticee to sell the shares of MCX in the prospectus of MCX dated February 28, 2012. I also agree with the view of the WTM that the presumption under law that as an insider, his trades were carried out when in possession of UPSI stands rebutted.

19. I note that the prohibition contained in regulation 3 of the PIT Regulations, 1992 apply only when an insider trades or deals in securities on the basis of any UPSI and not otherwise and the Noticee has been able to show that he did not trade on the basis of UPSI rather the fact of his sale of shares of MCX was pre-determined and was mentioned in the Prospectus of MCX date February 28, 2012. In view of the same, 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**

29. For the aforesaid reasons, the first allegation of violation 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 Joseph Massey in the Show Cause Notice EAD/AO-PM/AA/OW/31620/2017 dated December 14, 2017 is disposed of without imposition of any penalty.

30. It is clarified that the second allegation of violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by the Noticee in the SCN dated December 14, 2017 shall be dealt with separately after hearing the Noticee.

31. 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: February 01, 2018**  
**Place: Mumbai**

**Prasanta Mahapatra**  
**Adjudicating Officer**