

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

[ADJUDICATION ORDER Ref. No. ORDER/SBM/ASR/2022-23/17390-17407]

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005**

In respect of

**National Stock Exchange Ltd  
AAACN1797L**

**Ms. Chitra Ramakrishna  
ABVPR7353M**

**Mr. Subramanian Anand  
AARPA8290K**

**Mr. Ravi Varanasi  
AACPV0930C**

**Mr. Nagendra Kumar SRVS  
AACPN7675E**

**Mr. Deviprasad Singh  
AAZPS9535R**

**Sampark Infotainment Private Limited  
AAMCS0946C**

**Mr. Prashanth D'Souza  
AHUPD1548H**

**Mr. Netaji Patil  
AMSP9565F**

**Way2Wealth Brokers Private Ltd  
AAACW3290M**

**Mr. M R Shashibhushan  
ABDPB4470B**

**Ms. Rima Srivastava  
AECPS3267F**

**Mr. Parshant Mittal  
BDTPM2680R**

**Mr. Mohit Mutreja  
AMEPM6378D**

**GKN Securities  
AAHFG6629C**

**Ms. Sonali Gupta  
AAEPC1340F**

**Mr. Om Prakash Gupta  
AAHPG3048B**

**Mr. Rahul Gupta  
AAHPG6987B**

In the matter of

**Dark Fibre/ Leased Line connectivity allowed to certain Stock Brokers by NSE.**

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## **FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), on receipt of various complaints alleging irregularities in the matter of co-location and corporate governance at National Stock Exchange of India Ltd (hereinafter referred to as '**NSE**' / '**Noticee 1**'), formed a Cross Functional team of SEBI Officials to examine the issue raised in the complaints. Subsequently, another complaint was received by SEBI which alleged irregularities with respect to certain brokers availing point to point dark fibre

connectivity from Sampark Infotainment Private Limited (hereinafter referred to as '**Sampark**/'**Noticee 7**'). Therefore, an Expert Committee was constituted by SEBI to examine the matter in detail. The Board of NSE was advised by SEBI to, *inter alia*, initiate an independent examination (including forensic investigation by an external agency) of all the concerns highlighted in the SEBI expert committee report, including lack of processes which allowed this to happen and collusion, if any, and fix accountability for the aforesaid breaches covering NSE and stock brokers, vendors and outsourced entities involved in the issue. The Board of NSE appointed Deloitte Touche Tohmatsu India LLP to conduct the forensic investigation into the allegations stated in the aforesaid complaints.

2. Pursuant to submission of report of Deloitte Touche Tohmatsu India LLP, SEBI initiated investigation w.r.t. the dealings of the several entities, for the period 2009 to 2016 (hereinafter referred to as '**Investigation period**'), to, *inter alia*, investigate into the matter of providing connectivity to certain stock brokers by NSE in a manner which may be detrimental to the investors or the securities market and / or an intermediary or a person associated with the securities market and in the process alleged to have violated the various provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') and/ or the Rules and the Regulations made there-under such as SEBI (Stock Exchanges and Clearing Corporations) Regulation, 2012 (hereinafter referred to as '**SECC Regulations**'), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as '**Stock Broker Regulation**').
3. The focus of the aforesaid investigation was, *inter alia*, the following:
  - i. Investigation into the alleged connivance / collusion of NSE's employees (past and current) with stock brokers (including their past and current employees) during the Investigation period.
  - ii. Investigation into the role of stock brokers alleged to have benefited from preferential access to the exchange's system, including quantification of gains

of the stock brokers, to the extent possible, from such mechanism during the Investigation Period.

4. Pursuant to the investigation conducted in the matter, it was alleged that Sampark/ Noticee 7 arranged the cabling in the co-location rack of NSE in such a manner that some stock brokers, Way2Wealth Brokers Private Limited (hereinafter referred to as '**W2W**' / '**Noticee 10**') and GKN Securities (herein after referred to as '**GKN**' / '**Noticee 15**') had lower latency compared to other trading members connected to the Sampark Multiplexer (hereinafter referred to as '**MUX**') placed in NSE Meet Me Room (hereinafter referred to as '**MMR**'). On the basis of investigation conducted by SEBI, several entities are alleged to have violated various provisions of law for which adjudication was initiated against them under Sections 15HA and 15 HB of the SEBI act and Section 23 H of the SCRA, as applicable. The details of alleged violations are mentioned in the table below:

Table-1

<b>Sr. No.</b>	<b>Entity name/Noticee no.</b>	<b>Provision of law/regulation violated</b>	<b>Charging Provisions</b>
1.	NSE / Noticee1	<ul style="list-style-type: none"> <li>• Clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012</li> <li>• Non implementation of decisions taken by the Secondary Market Advisory Committee in its meeting dated November 11, 2011 which was communicated to NSE vide email dated November 28, 2011.</li> <li>• Regulations 41 (2), 47 and 48 of the SECC Regulations</li> <li>• Clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015</li> <li>• Regulations 3(d) and 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.</li> <li>• Clause 3.1, 3.2 and 3.6 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.</li> </ul>	Sections 15HA, and 15HB of the SEBI Act and Section 23H of the SCRA
2.	Ms. Chitra Ramakrishna (' <b>Chitra</b> ' / ' <b>Noticee 2</b> ')	<ul style="list-style-type: none"> <li>• Part A &amp; B of schedule II of SECC Regulations and thereby violated Regulation 26(1) and 26(2) of SECC Regulations read with SEBI Master circular dated December 31, 2010.</li> </ul>	Sections 15HA, and 15HB of the SEBI Act and Section 23H of the SCRA

		<ul style="list-style-type: none"> <li>Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act</li> </ul>	
3.	Mr. Subramanian Anand ( <b>'Subramanian'</b> / <b>'Noticee 3'</b> )	<ul style="list-style-type: none"> <li>Part A &amp; B of schedule II of SECC Regulations and thereby violated Regulation 26(1) and 26(2) of SECC Regulations read with SEBI Master circular dated December 31, 2010.</li> <li>Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act</li> </ul>	Sections 15HA, and 15HB of the SEBI Act and Section 23H of the SCRA
4.	Mr. Ravi Varanasi ( <b>'Noticee 4'</b> )	<ul style="list-style-type: none"> <li>Part A &amp; B of schedule II of SECC Regulations and thereby violated Regulation 26(1) and 26(2) of SECC Regulations read with SEBI Master circular dated December 31, 2010.</li> <li>Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act</li> </ul>	Sections 15HA, and 15HB of the SEBI Act and Section 23H of the SCRA
5.	Mr. Nagendra Kumar SRVS. ( <b>'Nagendra'</b> / <b>'Noticee 5'</b> )	<ul style="list-style-type: none"> <li>Regulations 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.</li> </ul>	Section 15HA of the SEBI Act
6.	Mr. Deviprasad Singh ( <b>'Deviprasad'</b> / <b>'Noticee 6'</b> )	<ul style="list-style-type: none"> <li>Regulations 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.</li> </ul>	Section 15HA of the SEBI Act
7.	Sampark / <b>Noticee 7</b>	<ul style="list-style-type: none"> <li>Regulations 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.</li> </ul>	Section 15HA of the SEBI Act
8.	Mr. Prashanth D'souza ( <b>'Prashanth'</b> / <b>'Noticee 8'</b> )	<ul style="list-style-type: none"> <li>Regulations 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.</li> <li>Sections 11(2)(i), 11C(2), 11C(3) and 11C(5) of the SEBI Act</li> </ul>	Sections 15HA, and 15HB of the SEBI Act
9.	Mr. Netaji Patil ( <b>'Netaji'</b> / <b>'Noticee 9'</b> )	<ul style="list-style-type: none"> <li>Section 11C(2) of the SEBI Act.</li> </ul>	Section 15HB of the SEBI Act
10.	W2W / Noticee 10	<ul style="list-style-type: none"> <li>Clauses A(1), A(2), A(3) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of the Stock Brokers Regulations read with regulation 26(xi), 26(xvi) &amp; 26(xx) of the Stock Brokers Regulations</li> <li>Regulation 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act</li> </ul>	Sections 15HA, and 15HB of the SEBI Act
11.	M R Shashibhushan ( <b>'Shashibhushan'</b> / <b>'Noticee 11'</b> )	<ul style="list-style-type: none"> <li>Regulations 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.</li> </ul>	Section 15HA of the SEBI Act.
12.	Ms. Rima Srivastava ( <b>'Rima'</b> / <b>Noticee 12</b> )	<ul style="list-style-type: none"> <li>Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.</li> </ul>	Section 15HB of the SEBI Act.
13.	Mr. Parshant Mittal ( <b>'Noticee 13'</b> )	<ul style="list-style-type: none"> <li>Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.</li> </ul>	Section 15HB of the SEBI Act.

14.	Mr. Mohit Mutreja (‘Noticee 14’)	<ul style="list-style-type: none"> <li>Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.</li> </ul>	Section 15HB of the SEBI Act.
15.	GKN / Noticee 15	<ul style="list-style-type: none"> <li>Clauses A(1), A(2), A(3) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of the Stock Brokers Regulations read with regulation 26(xi), 26(xvi) &amp; 26(xx) of the Stock Brokers Regulations</li> <li>Regulation 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act</li> <li>Section 11C(5) of the SEBI Act</li> </ul>	Sections 15HA, and 15HB of the SEBI Act
16.	Mr. Om Prakash Gupta (‘Noticee 16’)	<ul style="list-style-type: none"> <li>Regulation 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act</li> <li>Section 11(2)(i) of the SEBI Act.</li> </ul>	Sections 15HA, and 15HB of the SEBI Act
17.	Ms. Sonali Gupta (‘Noticee 17’)	<ul style="list-style-type: none"> <li>Regulation 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act</li> <li>Section 11(2)(i) of the SEBI Act.</li> </ul>	Sections 15HA, and 15HB of the SEBI Act
18.	Mr. Rahul Gupta (‘Noticee 18’)	<ul style="list-style-type: none"> <li>Regulation 3(d) &amp; 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act</li> <li>Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.</li> </ul>	Sections 15HA, and 15HB of the SEBI Act

5. The Noticees 1 to 18, mentioned above, are hereinafter collectively referred to as **‘the Noticees’**.

6. I note that based on the findings of Investigation conducted in the matter, parallel proceedings under Section 11 of the SEBI Act were also initiated against the Noticees 1 to 8, 10,11, 15 to 18. The aforesaid proceedings against the specified Noticees were concluded vide SEBI Order dated April 30, 2019. I note from the perusal of the said WTM order that apart from a few additional allegations against NSE, the allegations against the aforesaid Noticees viz. 1 to 8, 10,11, 15 to 18 are same in the instant adjudication proceedings and the Section 11 proceedings. Therefore, while arriving at conclusion in the instant proceedings, I have also considered the findings of Whole Time Member-SEBI mentioned in the order dated April 30, 2019.

## **APPOINTMENT OF ADJUDICATING OFFICER**

7. The undersigned was appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated August 30, 2018 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') and Section 23-I of the SCRA and Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules**'), to inquire into and adjudge under the provisions of Sections 15HA and 15HB of the SEBI Act and Section 23H of the SCRA, the aforementioned alleged violation of the provisions of law by the Noticee. On transfer of the undersigned from the department, Dr. Anitha Anoop was appointed as the AO in the matter vide communique dated March 25, 2019. Subsequently, vide communique dated November 03, 2020, the undersigned was once again appointed as AO in the matter.

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

8. Four different sets of Show Cause Notices ('**SCNs**') were issued to the group of Noticees (details given in the table below) in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act and Rule 4 of SCRA Adjudication Rules read with 23I of SCRA (wherever applicable) to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of Sections 15HA and 15HB of the SEBI Act and Section 23H of the SCRA (wherever applicable) for the violations alleged to have been committed by them in the said matter. The details of the SCNs issued to the Noticees are given below:

Table-2

SI no.	Show Cause Notice	Name of the Noticees
1	SCN ref no. SEBI/HO/EAD1/34303/1-7/2018 dated December 13, 2018 (hereinafter referred to as ' <b>SCN-NSE</b> ')	1. NSE. 2. <i>Mr. Umesh Jain</i> <sup>1</sup> 3. Ms. Chitra Ramakrishna 4. Mr. Subramanian Anand 5. Mr. Ravi Varanasi 6. Mr. Nagendra Kumar SRVS 7. Mr. Deviprasad Singh
2	SCN ref no. SEBI/HO/EAD1/6959/1-4/2019 dated March 15, 2019 (hereinafter referred to as ' <b>SCN-Sampark</b> ')	1. Sampark Infotainment Private Limited. 2. Mr Prashanth D'souza 3. Mr. Netaji Patel 4. Mr. Jayant Bhusare
3	SCN ref no. SEBI/HO/EAD1/6961/1-7/2019 dated March 15, 2019 (hereinafter referred to as ' <b>SCN-W2W</b> ')	1. Way2Wealth Brokers Private Limited 2. M R Shashibhushan 3. <i>C K Nityanand</i> <sup>2</sup> 4. <i>B G Srinath</i> <sup>2</sup> 5. Ms. Rima Srivatsava 6. Mr. Parshant Mittal 7. Mr. Mohit Mutreja
4	SCN ref no. SEBI/HO/EAD1/6962/1-4/2019 dated March 15, 2019 (hereinafter referred to as ' <b>SCN-GKN</b> ')	1. GKN Securities 2. Mr. Om Prakash Gupta 3. Ms. Sonali Gupta 4. Mr. Rahul Gupta

<sup>1</sup> Adjudication order dated October 30, 2019 passed against Mr. Umesh Jain disposing off the proceedings initiated against him.

<sup>2</sup> Adjudication order dated October 31, 2019 passed against Mr. C K Nityanand and Mr. B G Srinath disposing off the proceedings initiated against them.

9. The SCNs issued to the Noticees, inter-alia, alleged the following: -

**A. SCN-NSE**

Allegation pertaining to non-transparency in communication by NSE while modifying circular:

- a. The detailed allegations in this regard are mentioned on Para 11 (page17) to Para 13 (Page 26) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.
- b. It is observed that NSE, vide Circular No. 693 dated August 31, 2009 (Ref. No: NSE/MEM/12985), inter alia, stated "Members may take one or more leased line to the colocation facility from MTNL,

TATA, Bharti or Reliance for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads.” The same was reiterated on March 4, 2010 in the NSE Circular No. 712 and on April 21, 2011, in the NSE Circular No. 736.

- c. *It is further observed that in October 2013, in relation to connectivity by trading members to the NSE colocation, it was disseminated by NSE through its website that "Members may take one or more leased line to the co-location facility from different telecom service providers for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads."*
- d. *It is alleged that the website communication of NSE did not specify that existing circulars of NSE i.e. Circulars mentioned in Para 5(b) above were being modified which, prima facie, is a serious lapse when viewed in light of previous three communications in this regard. It is therefore alleged that NSE did not have a transparent mode of communication to stock brokers, wherein the existing circulars of NSE were modified merely by way of a change on website hosting. It is alleged that due to aforementioned non-transparent way of communication, several stock brokers as well as NSE's own colocation support staff were not aware that the circulars dated August 31, 2009, March 4, 2010 and April 21, 2011, had been modified. Further, while brokers/members like Way2Wealth Brokers Private Ltd (hereinafter referred to as 'W2W') and GKN Securities (hereinafter referred to as 'GKN') were allowed to establish Point to Point (hereinafter referred to as 'P2P') connectivity through Sampark Infotainment Pvt Ltd (hereinafter referred to as 'Sampark'), many other stock brokers (e.g. Mansukh Securities, Shastra Securities) who desired to lay P2P connectivity through service providers other than the four service providers mentioned in the NSE circular dated August 31, 2009, were allegedly denied permission by NSE.*
- e. *In view of the above, it is alleged that the mode of communication adopted by NSE for making changes to existing circulars violates the principle of transparency and therefore is in violation of the provisions of Regulation 41 (2) of SECC Regulations and clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. It is further alleged that by not ensuring transparent mode of communication for issuing circulars and policies as mentioned above, Noticee 3/ Chitra, who was CEO of NSE at the relevant time has violated provisions of Regulation 26(1) and 26(2) of SECC Regulations read with Part A and Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010.*

- f. Further, Noticee 4/ Mr. Subramanian Anand was the Group Operating Officer & Advisor to Managing Director of NSE and was responsible for the areas of strategy, business development, new product development, business excellence, research, people management, administration and corporate communication. Further, Noticee 5 / Mr. Ravi Varanasi was in charge of Business Development and operational activities relating to Colo requests at the relevant time. Therefore, in view of the allegations mentioned above, Noticee 4 / Mr. Subramanian Anand and Noticee 5/ Mr. Ravi Varanasi, as Key Management Person, within the meaning of SECC Regulations, have allegedly violated the provisions of Regulation 26(2) of SECC Regulations read with Part B of schedule II of SECC Regulations and also allegedly violated SEBI Master circular dated December 31, 2010.

Allegations pertaining to failure of NSE to manage the load on its systems properly

- a. The detailed allegations in this regard are mentioned on Para 11 (page17) to Para 13 (Page 26) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.
- b. In terms of clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012, Exchanges are required to have arrangements, procedures and system capability to manage the load on their systems in such a manner so as to achieve consistent response time to all stock brokers. It is alleged that in case of W2W and GKN, NSE allowed the connections to terminate directly in the racks placed inside NSE co-location center which was contrary to normal practice followed by NSE. However, in case of Millennium Stock Broking Private Limited (hereinafter referred to as 'Millennium'), and other brokers, due to lack of duct space, Sampark was asked by NSE to install the Multiplexer (hereinafter referred to as 'MUX') in NSE 'Meet Me Room'(hereinafter referred to as 'MMR'), which is part of NSE Colocation/ Datacenter. NSE is expected to be aware of the fact that if other brokers also take this Sampark line, then the duct space would run out and therefore, NSE ought to have made adequate arrangements in advance. Therefore, it is alleged that NSE did not manage the load on their systems properly. In view of the above, NSE is alleged to have violated provision of clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012. The aforesaid act of NSE is allegedly, also in contravention of Clause (v) of the minutes of the Secondary Market Advisory Committee (SMAC) meeting dated November 11, 2011, which was communicated to NSE vide email dated November 28, 2011 whereby it has been stipulated that "Denial of Service may be a cause for concern which is further compounded with the availability of Co-location services

offered by the exchanges. It was suggested that fairness and equal opportunity for all should be the premise going forward”.

- c. In view of the allegations mentioned above, Noticee 4 / Mr. Subramanian Anand and Noticee 5 / Mr. Ravi Varanasi as Key Management Person, have allegedly, violated provisions of Regulation 26(2) of SECC Regulations read with Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010. Further, for the aforesaid violations of NSE, it is alleged that Noticee 3 / Chitra has violated provisions of Regulation 26(1) and 26(2) of SECC Regulations read with Part A and B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010.

Allegations pertaining to differential treatment by NSE to different brokers:

- a. The detailed allegations in this regard are mentioned on Para 17 (page 32 to Page 36) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.
- b. It is observed that Sampark had represented to NSE that they had been licensed by the Department of Telecommunications (hereinafter referred to as 'DoT') to provide data connectivity. At a later stage, while examining the documents submitted by Sampark, it was discovered by NSE that Sampark was not licensed to provide data connectivity, and was only licensed to establish and maintain assets such as fibres, right of way, duct space, etc. for licensed telecom service providers and direct user customers.
- c. It is alleged that, during the year 2015, NSE allowed Sampark to install their MUX in the MMR directly, and not through a licensed telecom service provider, without verifying eligibility of Sampark. It is also alleged that while NSE was validating license issued to Sampark by DoT, the connectivity was not made live and no members were provided connectivity through newly installed MUX. It is also observed from the statement dated March 1, 2018, of vice president of IT operations of NSE viz, Deviprasad / Noticee 7 and also from the sequence of events that the responsibility of ascertaining the eligibility of service provider was vested on the Colo Support Team, which was headed by Deviprasad. From the above, it is alleged that NSE failed to carry out the necessary due diligence and allowed an ineligible entity to install MUX in their MMR in violation of its own policies. NSE is thereby alleged to have violated provisions of Regulation 41(2) of SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.

- d. *It is also observed that around the time when Sampark was allowed to install MUX in NSE MMR, NSE had rejected the application of Microscan Computers Private Limited (hereinafter referred to as 'Microscan') to install a similar facility at NSE MMR apparently due to the fact that Microscan lacked license from Department of Telecommunication. It is therefore alleged that preferential treatment was meted out by NSE to Sampark to facilitate the usage of dark fibre to select brokers viz, W2W and GKN. In view of the apparent preferential treatment by NSE to Sampark, it is alleged that NSE has violated provisions of Regulation 41(2) of SECC Regulations and clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.*
- e. *It is observed that NSE verified licenses of a service provider only when such service provider installed a MUX in NSE MMR. NSE, prima facie, did not have a clear documented policy for verifying the license of the service provider while allowing P2P connectivity. It is alleged that NSE had a practice of not verifying the license of a service provider in case the connection is directly to the rack of a trading member. For example, W2W and GKN used the services of Sampark to connect to their respective racks in NSE co-location and the same was allowed by NSE without verification of the license of Sampark. However, when another broker viz, Millennium desired to avail the services of Sampark to establish a connection (similar to W2W and GKN), the same was denied, as Sampark did not have the license to place a MUX in NSE MMR. It is alleged that the above practice of NSE was, prima facie, unfair as this resulted in certain trading members obtaining service while others were denied the same even though in both cases, the service provider was same namely Sampark, which itself was an ineligible entity. In view of the above facts, it is alleged that NSE has violated provisions of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 wherein it is stipulated that stock exchanges are required to ensure fair and equitable access to the co-location facility while providing co-location and proximity hosting.*
- f. *It is alleged that NSE has adopted an unfair policy of not verifying the license of service provider where the connection is through broker's rack since this, prima facie, resulted in certain trading members obtaining service while others were denied the same even though in both cases, the service provider was same viz, Sampark. NSE is alleged to not having a clear documented policy for conducting due diligence of services providers (a) by checking the license of service provider while allowing P2P connectivity; (b) by granting permission to Sampark to place infrastructure in NSE MMR without verifying Sampark's license. Therefore it is alleged that NSE has prima facie violated provisions of Regulation 41 (2) of SECC Regulations and clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. The aforesaid act of NSE is allegedly, also in contravention of the minutes of decisions taken in the Secondary Market Advisory Committee*

(SMAC) meeting dated November 11, 2011, which was communicated to NSE vide email dated November 28, 2011.

- g. From the above, it is alleged that the conduct of NSE in allowing Sampark to provide P2P connectivity to W2W and GKN while denying the same to Microscan was, prima facie, unfair. Further, NSE, allegedly, allowed W2W and GKN to establish the P2P connectivity through their racks while denied the same to Millennium though in both the cases the service provider was Sampark indicating differential treatment of different stock brokers by the NSE. In view of the above, it is alleged that NSE has violated provisions of Regulation 41 (2) of SECC Regulations and Clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.
- h. It is further alleged that by granting permission to Sampark, as mentioned above, to place infrastructure in NSE MMR without verifying the license of Sampark while at around the same time rejecting the application of Microscan, Noticee 7 / Deviprasad has, allegedly, violated the provisions of Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. As Umesh Jain was Chief Technology Officer of NSE at the relevant time, it was his duty to ensure that on technological matters, NSE complied with the SEBI norms. It is also alleged that Noticee 3 / Ms. Chitra Ramakrishna as the MD and CEO of NSE during relevant period of time, Noticee 5 / Ravi Varanasi and Noticee 4 / Subramanian Anand failed to ensure that the practices and policies followed by NSE were fair to its members, as explained in the previous paragraphs. It is therefore alleged that Noticee 3 has violated Regulation 26(1) and 26(2) of SECC Regulations read with Part A & B of schedule II of SECC Regulations and provisions of SEBI Master circular dated December 31, 2010. Further, for the violations mentioned above, Noticee 4/ Subramanian Anand and Noticee 5 / Mr. Ravi Varanasi, as KMP of NSE, have also allegedly violated provisions of Regulation 26(2) of SECC Regulations read with Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010.

Allegations regarding recommendation of NSE to its members to move from Sampark to Reliance Communications Limited:

- a. The detailed allegations in this regard are mentioned on Para 18 (page 37 to Page 42) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.
- b. It is observed that the vice president of Membership Department of NSE viz, Mr. Nagendra Kumar / Noticee 6 vide email dated August 12, 2015 instructed W2W to shift operations to Reliance

*Communications Limited (hereinafter referred to as 'Reliance'). It is further observed that vide email dated July 17, 2015, Deviprasad emailed to Nagendra with subject read as 'Fibre laying and MUX installation activity', stating that "Reliance and Sampark are starting work today." Thereafter, Nagendra sent a WhatsApp message to Millennium Stock Broking Private Limited (hereinafter referred to as 'Millennium'), on July 22, 2015 stating that "Sampark has regulatory issues. Reliance has started doing their work for other members". It is observed that the official communication to NSE regarding Sampark's infrastructure being handed over to Reliance was issued on August 19, 2015 i.e. much after the above communications. It appears from the above emails that NSE employees viz, Nagendra and Deviprasad, had discussed the matter with Reliance post which the infrastructure of Sampark was handed over to Reliance. Therefore, it is alleged that NSE has facilitated the arrangement between Sampark and Reliance in an attempt to give post facto legitimacy to an unauthorised activity of Sampark. In view of the above, NSE is alleged to have violated Regulation 41 (2) of SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.*

- c. It is observed that NSE did not allow direct P2P connectivity between NSE Colo and BSE Colo. However, as discussed in detail in Para 20 (Page 44 to Page 48) of the IR, It is alleged that NSE contributed towards the negligence on its part that, prima facie, facilitated W2W and Sampark establishing connectivity to provide unfair latency advantage to W2W. It is therefore alleged that NSE has, violated regulation 41 (2) of SECC Regulations and clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. Further, in this context, NSE has also, allegedly, failed to implement the decision taken at the SMAC meeting dated November 11, 2011.*

*Failure of NSE to monitor the cabling in the co-location rack and ensure fair and equitable access to all its trading members:*

- a. The detailed allegations in this regard are mentioned on Para 22 (page 52 to Page 57) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.*
- b. It is observed that W2W through Sampark arranged the cabling in the co-location rack such that W2W had the lower latency compared to other trading members connected to the Sampark MUX placed in NSE MMR. It is observed that NSE issued the work permits through Sampark and the cabling was through NSE's MMR. It was the responsibility of NSE to monitor the cabling and ensure fair and equitable access to all its trading members. However, it is alleged that NSE failed to carry out the necessary due diligence and oversight, as warranted under their own colocation*

framework. By not monitoring the cabling, NSE has, allegedly, failed to ensure fair and equitable access to all its trading members. It is also alleged that the aforesaid cabling arrangement for W2W had taken place with collusion of NSE, W2W, Sampark and staff of NSE. In view of the above, NSE i.e. Noticee 1 is alleged to have violated the provisions of Regulation 3(d) and 4(1) of the PFUTP Regulations read with Section 12 A(c) of the SEBI Act, Regulation 41 (2) of SECC Regulations, clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 and also not implemented the decisions of the Secondary Market Advisory Committee (SMAC) in its meeting dated November 11, 2011 which was communicated to NSE by SEBI vide email dated November 28, 2011.

- c. Further, it is duty of colo-support department to ensure prevention of irregularities as mentioned above. Noticee 7 / Deviprasad, Head of Colo Support, allegedly, failed in his duty to ensure fair and equal access to all brokers by NSE. Thereby, Noticee 7 / Deviprasad and his reporting officer Umesh Jain have, allegedly, violated Regulation 3(d) & 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act. Further, it was also the duty of Noticee 3 / Chitra (MD and the CEO of NSE), Noticee 2 / Umesh Jain (CTO) and Noticee 4 / Subramanian Anand (Group Operating Officer & Advisor to Managing Director) to incorporate checks and balances so that, such incidents are detected early and appropriate actions are taken. In the present case, the aforesaid persons failed in their duty to take appropriate action/steps. It is therefore alleged that Noticee 3 / Chitra has violated Regulations 3(d) and 4(1) of PFUTP read with Section 12A(c) of the SEBI Act, Regulation 26(1) and 26(2) of SECC Regulations read with code of conduct specified under Part A & Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010. It is also alleged that Noticee 4 / Subramanian Anand have violated Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act, Regulation 26(2) of SECC Regulations read with code of conduct specified under Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010.

Allegation of differential access of Sampark's P2P connectivity for selected members.

- a. The detailed allegations in this regard are mentioned on Para 25 (page 63 to Page 68) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.
- b. It is observed that GKN and W2W obtained the work permit from NSE to lay the fibre for Sampark connectivity on April 24, 2015. It is alleged that NSE did not allow trading members viz, Millennium, GRD Securities and Marwadi Shares and Finance Limited to avail the services of Sampark post July

28, 2015, i.e. the date on which NSE found out about the license issue of Sampark. However, it allegedly, did not disconnect/instruct to disconnect Sampark P2P connectivity (i.e. between NSE and BSE) of GKN and W2W even after discovering that Sampark did not have the required telecom licenses, as per internal practices followed by NSE. It is observed that since the year 2014, W2W had already been using a P2P line from Reliance for connecting from their rack in NSE colocation to their office in BSE building. Therefore, permitting W2W and GKN to continue using services of Sampark while barring other members to avail the same services also, allegedly, resulted in inequitable treatment of its members by NSE. In view of the above, it is alleged that NSE did not adhere to the principle of fair, equal and transparent access to its trading members. In view of the aforesaid, it is alleged that NSE has violated provisions of Regulation 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act, Regulation 41 (2) of SECC Regulations and also Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. Further, NSE, allegedly, has also not implemented the decisions of the Secondary Market Advisory Committee (SMAC) in its meeting dated November 11, 2011 which was communicated to NSE vide email dated November 28, 2011.

- c. Since, the decision to allow W2W and GKN to continue to avail Sampark connection even after finding out that Sampark did not have the requisite license was taken by Noticee 5 / Ravi Varanasi, Noticee 7 / Deviprasad and Noticee 6 / Nagendra, it is alleged that they have violated provisions of Regulation 3(d) & 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act. Further, by not ensuring fairness, Noticee 3 / Chitra has allegedly violated regulation 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act and Regulation 26(1) and 26(2) of SECC Regulations read with Part A and Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010. Further, Noticee 4 / Subramanian Anand and Noticee 5 / Ravi Varanasi of NSE, were responsible for the day to day functioning of the NSE. In view of the above, it is alleged that Noticee 4 / Mr. Subramanian Anand has violated 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act. Further, it is also alleged that Noticee 4 / Subramanian Anand and Noticee 5 / Ravi Varanasi of NSE, being responsible for the day to day functioning of the NSE, have violated provisions of Regulation 26(2) of SECC Regulations read with the code of conduct specified under Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010.

Allegations pertaining to application of Millennium:

- a. *The detailed allegations in this regard are mentioned on Para 26 and Para 27 (page 68 to Page 74) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.*
- b. *It is alleged that Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other members (GKN and W2W) were allowed to avail the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies. Therefore, it is alleged that NSE favoured W2W and GKN to detriment of its other members and did not act in a fair, transparent and equitable manner. NSE has, therefore, allegedly violated the provisions of Regulation 41 (2) of SECC Regulations and also clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.*
- c. *In view of the above, it is alleged that Noticee 3 / Chitra and Noticee 4 / Subramanian Anand, failed to ensure that the practices and policies followed by NSE were fair and transparent. It is therefore alleged that Noticee 3 / Chitra has violated Regulation 26(1) and 26(2) of SECC Regulations read with Part A & B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010. Further, Noticee 4 / Subramanian Anand is alleged to have violated Regulation 26(2) of SECC Regulations read with Part B of the schedule II of SECC Regulations and SEBI Master Circular dated December 31, 2010.*
- d. *It is observed that during the period 2009-16, there were 551 P2P connections availed by the members of NSE through the MUX placed at NSE MMR. However, there were only two members namely W2W and GKN, which were allowed to avail P2P connections directly to their racks through an ineligible service provider i.e. Sampark. It is observed that, stock brokers who had earlier availed connectivity directly to their racks had always appointed vendors who were pre-approved by NSE in terms of the circular no 693 dated August 31, 2009. However, W2W and GKN had requested NSE to permit connectivity through Sampark, which was new vendor. Therefore, it was essential for NSE to check the antecedents of the vendor, including license of Sampark before granting such permission. However, it is alleged that NSE failed to do any such due diligence. It appears from the trail of emails dated March 26, 2015- April 06, 2015, that NSE did not verify the license of Sampark before granting permission to W2W and the decisions on behalf of NSE in this regard were, allegedly, taken by Noticee 6 / Nagendra and Noticee 7 / Deviprasad of NSE. Therefore, NSE is alleged to have violated the provisions of Regulation 41 (2) of SECC Regulations and Clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. Further, in view of the role of Noticee 6 /*

Nagendra and Noticee 7 / Deviprasad in the aforementioned violation, it is alleged that they have violated provisions of Regulation 3(d) and 4(1) of the PFUTP Regulations read with Section 12 A(c) of the SEBI Act.

Allegations pertaining to delay in processing the requests of the Members:

- a. The detailed allegations in this regard are mentioned on Para 27 (page 75) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.
- b. In terms of clause 3.6 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015, NSE is required to expeditiously decide on the request of the desirous stock brokers / data vendors for availing co-location / proximity hosting and communicate the decision within fifteen working days from the receipt of the request from the stock brokers / data vendors. Further, in case of a rejection, stock exchanges shall also provide reasons in writing to the stock brokers / data vendors. However, it is alleged that in the following cases NSE did not adhere to the above time line and did not expeditiously decide on the request of the stock brokers:

Sl. No	Name of the Stock Broker	Date of application	Date of Decision	No. of working days taken	Delay in no. of working days
1	GRD	July 04, 2015	Sep 02, 2015	41	26
2	Quadeye	Aug 28, 2015	Sep 29, 2015	21	6
3	Millennium	July 23, 2015	Sep 05, 2015	53	38
4	Kredent	May 25, 2015	Sep 12, 2015	79	64
5	Marwadi	July 28, 2015	Sep 5, 2015	28	13
6	KIFS	Nov 26, 2015	Dec 22, 2015	19	4

- c. In view of the abovementioned delay in processing the requests of Members for availing point-to-point connectivity, NSE is alleged to have violated clause 3.1, 3.2 and 3.6 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.

Allegations pertaining to the site visit of members by NSE:

- a. The detailed allegations in this regard are mentioned on Para 28 (page 76 to Page 79) of the IR, and shall be referred by the Noticees while making their detailed reply/ submissions to the present notice.

b. Noticee 6 / Nagendra in his submission to statement dated March 1, 2018, mentioned that “as a matter of principle whenever P2P requests used to come to membership team, we used to initiate site inspection where officers from the membership team used to visit members’ office at BSE office building, PJ towers if the members end point connectivity was with BSE office building.... During 2014, based on the concerns raised by the Colo team that they were getting requests for termination @ PJ Tower, it was decided to do a site-visit to ensure the following:

2.1:- The member had an actual office space.

2.2:- that the line was not terminating @ any rack space/BSE colo.....”

c. However, NSE, vide mail dated April 13, 2018 , inter alia, stated that the process to conduct site visits of member offices in BSE building was implemented from May, 2015. NSE, vide email dated May 2, 2018, reiterated the same. It is also observed that during November - December 2014, a site visit was conducted by NSE when a P2P link request (between BSE and NSE) was given by Kumar Goradia (Tower Research – Shaastra Securities Private Limited). Noticee 6 / Nagendra (NSE) was co-ordinating for the said site visit. This site visit was conducted for Shaastra’s office in BSE Ltd., PF-11, 1st Floor, Rotunda Building. Therefore, it appears that the submission of NSE that the process to conduct site visits was implemented from May, 2015 is factually incorrect. Thus, it is alleged that NSE has submitted contradictory information with respect to actual date of implementation of policy for conducting site visit since vide emails dated April 13, 2018, it mentioned the date of commencement of site visit as May, 2015 while, its employee Noticee 6 / Nagendra had mentioned that the site visit used to be conducted from 2014. In view of the above, NSE is alleged to have violated regulations 47 and 48 of the SECC Regulations.

d. It is also alleged that NSE did not conduct any site visit for W2W and GKN while in the case of Millennium, NSE conducted a site visit. The aforesaid approach allegedly indicates towards differential treatment shown by Noticee 1 / NSE towards its members and has, allegedly, resulted in preferential treatment of some members at the cost of other members. Noticee 1 / NSE is therefore, alleged to have violated the provisions of Regulation 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act, Regulation 41 (2) of SECC Regulations and also clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. NSE is also alleged to have not implemented the decisions taken by the Secondary Market Advisory Committee in its meeting dated November 11, 2011 which was communicated to NSE by SEBI vide email dated November 28, 2011.

e. *Noticee 5/ Mr. Ravi Varanasi and Noticee 6 / Nagendra at the relevant point of time were responsible for Operational activities relating to Colo rack allocation as well as processing of Colo request. Therefore, they were, allegedly, responsible for differential treatment meted to members, in the matter of site visits, as mentioned above. Accordingly, Noticee 5 / Ravi Varanasi and Noticee 6 / Nagendra have allegedly violated Regulation 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act. Further, Noticee 5 / Ravi Varanasi has allegedly violated Regulation 26(2) of SECC Regulations read with Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010. Further, due to the abovementioned violations alleged to have been committed by NSE, Noticee 3 / Chitra, as MD and CEO of NSE, is also alleged to have violated provisions of Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act, Regulation 26(1) and 26(2) of SECC Regulations read with Code of conduct specified under Part A & Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010. Noticee 4 / Subramanian Anand (supervisor of Ravi Varanasi) is also alleged to have violated regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12 A(c) of the SEBI Act, Regulation 26(2) of SECC Regulations read with Code of conduct specified under Part B of schedule II of SECC Regulations and SEBI Master circular dated December 31, 2010.*

### **B. SCN-Sampark**

- a. *Allegation pertaining to Noticee 1 / Sampark and Noticee 2 / Prashanth acting in collusion with Way2Wealth Brokers Private Limited (hereinafter referred to as 'W2W') and NSE to provide lower latency to W2W compared to other trading members. The detailed allegations in this regard are mentioned on Para 22 (page 52 to page 57) of the IR, and shall be referred to by the Noticees while making their detailed reply/ submissions to the present notice.*
- b. *It is alleged that Sampark arranged the cabling in the co-location rack such that W2W had the lower latency compared to other trading members connected to the Sampark MUX placed in NSE MMR. It is alleged that Noticee 1 / Sampark and Noticee 2 / Prashant, who was Chief Operations Officer (COO) of Sampark acted in collusion with W2W and NSE in such a way that W2W had lower latency compared to other trading members connected to the Sampark Multiplexer (MUX) placed in NSE Meet Me Room (MMR). In view of the above observations and also the observations made in the IR, it is alleged that the Noticee 1/ Sampark and Noticee 2 / Prashanth, COO of Sampark have, prima facie, violated provisions of Regulations 3(d) & 4(1) of PFUTP Regulations. Allegation pertaining to Noticee 2 / Prashanth, Noticee 2 and Noticee 3 destroying relevant information and furnishing false statements to SEBI under oath.*

- c. *The detailed allegations in this regard are mentioned on Para 22 (page 52 to page 57), Para 36 (page 91) to Para 37 (Page 92) of the IR, and shall be referred to by the Noticees while making their detailed reply/ submissions to the present notice. It is alleged that during the review of mobile data of Noticee 2 / Prashanth, a WhatsApp conversation dated December 13, 2017 was found between Noticee 3 / Netaji and Prashanth, wherein, Netaji had stated that he had "reviewed all the PSTs before handing it over" to Prashanth D'souza and now if Prashanth D'souza "had any issues he was free to delete mails without any further discussion".*
- d. *It is further alleged that during the review of emails of Noticee 4 / Jayant, it was observed that emails pertaining to the investigation period were allegedly deleted by him. It is alleged that the aforesaid act of deleting emails was further affirmed by Jayant in his submission dated March 30, 2018*
- e. *In view of the above, it is alleged that by destroying information in the manner explained above and in the IR, Noticee 2 / Prashanth, Noticee 3 / Netaji and Noticee 4 / Jayant have, prima facie, violated provisions of section 11C(2) of the SEBI Act.*
- f. *It is further observed that Noticee 2 was called for recording of his statement by the Investigating Authority of SEBI on August 16, 2017, March 26, 2018 and March 30, 2018. It is alleged that in his statement dated August 16, 2017 which was recorded under oath, Noticee 2 has, inter alia, provided the following information which appeared to be false:*
- g. *Sampark has not provided Point to Point connectivity to the said GKN and W2W. The connection was an IPsec connectivity over internet on demo purpose Way2Wealth and GKN securities approached Sampark through Netaji Patil, one of Sampark's employee. Sampark installed switches and MUX inside NSE Colo Meet Me Room and from there laid fibre cable till the duct outside NSE premises. These switches and MUX were used as a single point to provide the connectivity service to both the brokers i.e. W2W and GKN Securities (hereinafter referred to as 'GKN'). Sampark never installed any MUX in customer rack. It was installed in NSE provided rack in Meet Me Room. No payments have been made to Tekzi India by brokers in relation to Sampark or Reliance connectivity/link.*
- h. *It is observed that Crosseas Capital Services Private Limited (Crosseas) and KIFS Securities Private Limited (KIFS) have made payments for the P2P connectivity provided by Sampark to Tekzi India, which, prima facie, appears to be in contradiction to the submissions made by Noticee 2 in*

his statement dated August 16, 2017. Therefore, it is alleged that Noticee 2 has, prima facie, violated provisions of section 11(2)(i), 11C(3) and 11C(5) of the SEBI Act.

### **C. SCN-W2W**

#### **Allegations against the Noticees**

- a) It is alleged in the IR that while applying for point to point connectivity to NSE through Sampark Infotainment Private Ltd (hereinafter referred to as 'Sampark'), it was the responsibility of W2W to ensure that Sampark had the requisite DoT license to carry out such activity. It is alleged in the IR that the sequence of events indicate that Sampark, prima facie, did not have the requisite DoT license at the time W2W had applied to NSE for availing the services of Sampark. Therefore, it is alleged that W2W, allegedly, failed to exercise due skill, care and dilligence in the matter as expected from a registered stock broker and has thereby, prima facie, violated the provisions of Clause A(2) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations.
- b) It is alleged that W2W continued to avail the services of Sampark during the period, May 28, 2015 to September 8, 2015 and switched over to Reliance Communications Limited (hereinafter referred to as 'Reliance') only after termination of the services of Sampark, on September 9, 2015. It is alleged that W2W continued to avail the services of Sampark in above manner, even after W2W was directed by NSE to shift to Reliance in August 2015. Therefore, it is alleged that due to the aforesaid act of W2W to continue to use the services of Sampark as service provider despite being directed by NSE to discontinue the services of Sampark, W2W has violated clause A(1), A(2) and A(5) of the Code of conduct stipulated under regulation 9 of the Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations and Regulation 3(d) and 4(1) of the PFUTP Regulations. It is observed from the IR that in the year 2014, while taking approvals from Mr. Ramachandra (Chief Operating Officer of W2W) for purchasing of the office space in BSE building on March 24, 2014, Noticee 5 / Rima Srivastava in her email stated that "We're looking to establish a direct connectivity between NSE Colo to BSE Colo. However, NSE as a policy has not been allowing brokers to do this. NSE however cannot decline permission to the members to establish connectivity from their colo to their own office premises (in this case the BSE office being considered). We have shown this office as a branch office of W2W Brokers which will be used for monitoring purposes."

- c) *It is further observed that W2W had also mentioned that they had done a similar P2P connectivity (45 mbps) i.e. they had not terminated the link in their office, rather looped through their office to their rack in BSE Colo from Reliance in June 2014. It is observed that W2W in their statement stated that “The design of the circuit was based on our previous Reliance circuit design and discussed with the vendor. The vendor personnel was aware of the design as he was earlier at Reliance”*
- d) *Therefore, it is alleged that on the basis of email dated March 24, 2014, the employees of W2W were aware about the NSE practice of not allowing a direct connectivity between NSE and BSE co-locations. However it is alleged on the basis of the internal email dated July 7, 2015 of W2W, that W2W deliberately misled NSE by terminating the link at the W2W rack at BSE co-location though they had undertaken to terminate the P2P link at their BSE office. Therefore, it is alleged that W2W had an advantage of at least one lesser hop/switch until they claim to have terminated this line through a switch in their office around July, 2015. This, prima facie, enabled W2W to reduce the latency in terms of the data flow from NSE co-location. It is alleged that such conduct of W2W is not expected from a registered intermediary. Therefore, it is alleged that by giving false undertaking, W2W has violated clause A(1), A(2) and A(5) of the Code of conduct stipulated under regulation 9 of the Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations and Regulation 3(d) and 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act. It is also alleged that, Noticee 5, Noticee 6 and Noticee 7 had also provided false information to SEBI in their statement dated March 9, 2018 and March 26, 2018 and therefore had also allegedly tried to deliberately mislead the investigation thereby violating provisions of Sections 11(2)(i), 11 C (3) and 11 C(5) of the SEBI Act.*
- e) *It is alleged in the IR that Sampark was the only vendor of W2W / Noticee 1 and any work carried out on W2W’s Multiplexer (MUX) could have taken place only at the behest of W2W. It is further alleged that W2W, in collusion with NSE, was fully aware of violations regarding preferential access given to W2W. Therefore, it is alleged that the conduct of W2W of instructing Sampark to lay the cabling in such a manner that W2W got preferential access to the detriment of other trading members brings out the collusive conduct of W2W with NSE.*
- f) *Thus, in view of the abovementioned acts of the Noticees, it is alleged that Noticee 1 has violated provisions of Clause A(1), A (2), A (3) and A (5) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations and Regulations 3(d) and 4(1) of PFUTP Regulations. In view of the*

*alleged violations of Noticee 1 / W2W it is alleged that its directors viz, Noticee 2 / Mr. C K Nithyanand, and Noticee 3 / Mr. B G Srinath and its CEO viz Noticee 4 / M R Shashibhushan have also, prima facie, violated Regulation 3(d) & 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act.*

- g) It is alleged in the IR that W2W was the direct beneficiary of preferential treatment by NSE, since NSE allowed W2W to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE and W2W, prima facie, indicates collusion between employees of W2W and NSE to provide benefit to W2W. Thus, it is alleged that W2W has violated provisions of clauses A(1), A(2), A(3) and A(5) of the Code of conduct stipulated under regulation 9 of the Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations and Regulation 3(d) and 4(1) of PFUTP Regulations. Further, due to above activities, it is also alleged that its directors viz, Noticee 2 / Mr. C K Nithyanand, and Noticee 3 / Mr. B G Srinath and its CEO viz Noticee 4 / M R Shashibhushan have also, prima facie, violated Regulation 3(d) & 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act.*

#### **D. SCN-GKN**

##### **Allegations against the Noticees:**

- a. It is alleged in the IR that while applying for point to point connectivity to NSE through Sampark, it was the responsibility of GKN to ensure that Sampark had the requisite DoT license to carry out such activity. It is alleged in the IR that the sequence of events indicate that Sampark, prima facie, did not have the requisite DoT license at the time GKN had applied to NSE for availing the services of Sampark. Therefore, it is alleged that GKN, allegedly, failed to exercise due skill, care and diligence in the matter as expected from a registered stock broker and has thereby, prima facie, violated provisions of Clause A(2) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations.*
- b. It is observed in the IR that one of the partner in GKN viz, Noticee 4 / Mr. Rahul Gupta in his statement dated March 9, 2018 to SEBI stated the following:*
- c. "We had agreed for POC with Sampark for 7.25 lac. Earlier we had paid him 6.25 lac as advance. He told me to release balance payment as he said he is in loss and I had done commitment so I*

said them to raise a bill for balance amount and I paid them the balance amount in good terms and did not notice period mentioned and the bill and release the payments.”

- d. It is alleged that the aforesaid submission of GKN that payment to Sampark Infotainment Private Ltd (hereinafter referred to as 'Sampark'), in November, 2015 was for the balance amount for previous quarter is incorrect and GKN allegedly continued to use the connectivity through Sampark during the period August 11, 2015 to September 10, 2015. It is also observed in the IR that Shri Vice President in Membership department of NSE viz, Mr. Nagendra Kumar and Vice president in IT Department of NSE viz, Shri Deviparasad Singh have submitted to SEBI that GKN was allowed to continue the Sampark line. Therefore, it is alleged that, GKN made an incorrect submission before SEBI that it had discontinued the Sampark line after July, 2015. Thus, it is alleged that due to prima facie misleading submissions made by the Noticees, Noticee 1 has violated provisions of 11C(5) of the SEBI Act, Mr. Om Prakash Gupta and Noticee 3 / Ms. Sonali Gupta have violated provisions of Section 11(2)(i) of the SEBI Act and Noticee 4 / Mr. Rahul Gupta has violated provisions of Regulations 11(2)(i), 11C(3) and 11C(5) of the SEBI Act.
- e. It is alleged in the IR that GKN was the direct beneficiary of preferential treatment by NSE, since NSE had allowed GKN to continue to use the Sampark line despite GKN and NSE being aware that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of GKN prima facie, indicates a collusion between GKN and NSE to provide undue benefit to GKN. Thus, it is alleged that GKN has violated provisions of clauses A(1), A(2), A(3) and A(5) of the Code of conduct stipulated under regulation 9 of the Stock Brokers Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations and Regulation 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act. Further, the partners of GKN viz, Noticee 2 / Mr. Om Prakash Gupta, Noticee 3 / Ms. Sonali Gupta and Noticee 4/ Mr. Rahul Gupta are also alleged to have violated provisions of Regulation 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act.
- f. Thus, in view of the abovementioned acts of the Noticees, it is alleged that Noticee 1 has violated provisions of Clause A (1), A (2), A (3) and A (5) of Code of Conduct as specified in Schedule II of Regulation 9 of Stock Broker Regulations read with Regulation 26 (xi), 26(xvi) and 26 (xx) of the Stock Broker Regulations and Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act and Section 11C (5) of the SEBI Act. In view of the alleged violations of Noticee 1 / GKN, it is alleged that its partners viz, Noticee 2 / Mr. Om Prakash Gupta, Noticee 3 /

*Ms. Sonali Gupta and Noticee 4/ Mr. Rahul Gupta have also, prima facie, violated Regulation 3(d) & 4(1) of PFUTP Regulations read with Section 12A(c) of the SEBI Act.*

10. The Noticees made submissions to the SCNs according to the allegations levelled against them in respective SCNs. Thereafter, in the interest of natural justice, opportunities of hearing were provided to the Noticees. Pursuant to which, a few Noticees made additional submissions during the course of the adjudication proceedings. It is relevant to mention that the Noticee no.2 viz. Ms. Chitra and the Noticee no. 3 viz. Mr. Anand were arrested by the Central Bureau of Investigation ('CBI') on March 06, 2022 and February 24, 2022 respectively and were subsequently lodged in the Tihar Jail, New Delhi. In this context, the hearing notices dated April 22, 2022, during the course of the instant adjudication proceedings, were served on the aforementioned Noticees viz. Ms. Chitra and Mr. Anand through the office of Superintendent of Prisons, Tihar Jail. The relevant acknowledgement copies duly signed by them, in respect of receiving the hearing notices, were also obtained. Thereafter, the authorized representatives of the aforesaid Noticees (mentioned in the table below) attended the hearing behalf of the Noticees on the scheduled dates and availed the opportunity of hearing provided to the Noticees. The details pertaining to replies of the Noticees, dates of hearing, final submissions made by few Noticees post hearing are given in the table below:

Table-2

<b>Noticee no.</b>	<b>Noticee name</b>	<b>Details of Replies submitted on merits</b>	<b>Dates and Mode of Hearing</b>	<b>Details of Authorized Representatives who attended the hearing on behalf of the Noticee</b>	<b>Date of Final submissions</b>
1	National Stock Exchange Limited	i. May 20, 2020 ii. January 04, 2021 iii. April 05, 2022 iv. April 22, 2022	i. March 17, 2020 (Physical mode) ii. April 22, 2022 (virtual mode)	Mr. Somasekhar Sundaresan, Mr. Prabhav Shroff, Mr. Harshit Jaiswal, Mr. M Vasudev Rao and Mr. Saksham Kaushik	i. April 27, 2022

2	Ms. Chitra Ramakrishna	i. February 24, 2020 ii. March 13, 2020 iii. September 27, 2021	i. May 12, 2022 (virtual mode)	Mr. Piyush Raheja, Advocate and Ms. S Priya	i. June 20, 2022
3	Mr. Subramanian Anand	i. January 20, 2019 ii. June 20, 2022	i. June 20, 2022 (Virtual mode)	Mr. Ankit Lohia, Advocate, Ms. Shachi Udeshi, Advocate and Ms. Pooja Rathi, Advocate	NA
4	Mr. Ravi Varanasi	i. March 10, 2020	i. March 11, 2020 (Physical mode) ii. April 25, 2022 (virtual mode)	Mr. Pesi Modi Senior Counsel, Mr. Neville Lashkari Counsel, and Mr. Rashid Boatwalla	NA
5	Mr. Nagendra Kumar SRVS.	ii. April 23, 2020			
6	Mr. Deviprasad Singh	iii. April 22, 2022			
7	M/s Sampark Infotainment Private Limited.	i. April 03, 2022	i. May 11, 2022 (virtual mode)	CA Kushal Shah and Mr. Shashidhar Kotian	NA
8	Mr. Prashanth D'Souza	i. April 04, 2022	i. May 11, 2022 (virtual mode)	CA Kushal Shah and Mr. Shashidhar Kotian	NA
9	Mr. Netaji Patel	i. March 05, 2022	i. March 24, 2022 (virtual mode)	Ms. Mitravinda Chunduru	NA
10	Way2Wealth Brokers Private Limited.	i. March 10, 2022	i. March 24, 2022 (virtual mode)	Mr. Manjit Singh, Ms. Shruti Rajan and Mr. Vivek Shah	i. April 05, 2022
11	M R Shashibhushan	i. March 10, 2022	i. March 24, 2022 (virtual mode)	Mr. Manjit Singh, Ms. Shruti Rajan and Mr. Vivek Shah	i. April 05, 2022
12	Ms. Rima Srivatsava	i. June 07, 2022 ii. June 13, 2022	i. June 14, 2020	Mr. Sandeep Parekh, Mr. Anil Choudhary, Mr. Rahul Das, Mr. Parker Karia, Ms. Sudarshana Basu	i. June 24, 2022
13	Mr. Parshant Mittal				
14	Mr. Mohit Mutreja				
15	GKN Securities	i. May 18, 2022	i. May 23, 2022 (virtual mode)	Mr. Ravichandra S Hegde, Ms. Mitravinda Chunduru and Ms. Saachi Purohit	NA
16	Mr. Om Prakash Gupta				
17	Ms. Sonali Gupta				
18	Mr. Rahul Gupta				

11. Briefly the Noticees, inter-alia, made the following submissions vide the aforementioned replies as stated in the table- 2 :

### Submissions of NSE/Noticee no.1

*The Noticee submits that the amendments made to the 2009 NSE Circular in October/November 2013 (“2013 Modification”) was transparently communicated to trading members by posting it on its website and conforms to the requirements stipulated by SEBI. The Noticee’s actions taken several years prior to the May 2015 SEBI Circular being assailed as being inconsistent with a mode of communication stipulated two years later, and that too in a manner that is actually endorsed in the circular issued later, makes this allegation absurd and untenable.*

*The SCN wrongly alleges that the 2013 Modification was not transparent since it did not specifically refer to the 2009 NSE Circular. There was no need for such a reference. The changes were self-explanatory. Trading members desirous of availing of co-location services in any case had to access a dedicated section of the Noticee’s website to download the application form for availing co-location services, where the amendments were posted – therefore while applying for co-location, the members would have anyways had to access the same section where these provisions were clearly set out. Trading members are expected to be conversant with these matters and would have been able to view these changes and understand the Noticee’s policies.*

*The Noticee has made the 2013 Modification, amendment publicly available and hence provided equal, transparent and fair access to trading members. The 2013 Modification was not made available selectively to certain trading members. It was made available to all on a dedicated section in the Noticee’s website that members availing of co-location services are reasonably expected to access and acquaint themselves with. Therefore, the allegation that the Noticee failed to provide equal, fair and transparent access is incorrect.*

### VI. OVERVIEW OF P2P CONNECTIVITY

*Before dealing with the Noticee’s responses to the allegations in the SCN relating to P2P connectivity, it is important to provide an overview of P2P connectivity in the context of colocation services, and the limited role played by the Noticee in this regard.*

*The Noticee began offering co-location services in August 2009, in keeping up with “global trends, member representation, and in continuation of service excellence”. This was communicated to trading members vide the 2009 NSE Circular. The primary objective of providing co-location services was to reduce latency for connectivity to the Noticee’s trading systems for Direct Market Access, Algo trading and Smart Order Routing. Co-location allows members to rent specific racks designated for this purpose and colocate their trading systems within the exchange premises, in order to have a low latency connection to the exchange. The trading systems placed in these racks would receive the data feed disseminated by the exchange, process the data, and place orders to the exchange. The Noticee’s infrastructure for co-location therefore*

consists of the dissemination architecture (including the primary dissemination centre, point-of-presence servers and ports on the point-of-presence servers to which members connected), and the colocation racks of individual members where the trading systems and equipment of the members was located (i.e., NSE Colo).

#### *P2P connectivity to Colocation Racks*

On the other hand, P2P connectivity starts where the co-location infrastructure of the Noticee ends – this is a service that could be taken by members from a telecom service provider, whereby a leased line (including fibre optic cable) connected two designated points – one end was the trading member's rack at NSE Colo, and the other end was a location designated by the members (usually the members' office(s) outside NSE Colo). In this regard, it may be noted that the 2009 NSE Circular states that “members may take one or more leased line to the co-location facility ... for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download/upload and monitoring and data downloads.” The P2P connectivity was therefore a value added service available to trading members to enable supporting activities such as monitoring algo performance, setting parameters for the algo, and for risk management and back office operations. The additional guidelines with respect to processes and procedures related to P2P connectivity were also notified by way of the Colocation Guidelines, which are updated from time to time. The P2P connectivity does not lie in the core data dissemination and trading path of the exchange and is not directly connected to the Noticee's trading systems – accordingly, it was not part of the infrastructure provided by the Noticee to trading members. Therefore, the Noticee had limited involvement in the P2P architecture set up by the trading members, including the choice of service provider selected by the trading members. The Noticee allowed members to purchase rack space and host their servers and other infrastructure at the co-location facility, and provides stable power supply, provision for rack and cable space etc. If members want to avail P2P connectivity, the Noticee merely facilitates the same by allowing the members (and / or their service providers) to lay cables, and physically access the co-location data centre to set up such P2P connectivity. The nonprescriptive stance of the Noticee is evident from the following:

(i) The Noticee did not and even today does not, regulate the type of infrastructure a trading member wishes to install in the racks that are allocated to a trading member. These are matters left to the commercial wisdom of the members;

(ii) The Noticee did not enquire into arrangements between trading members and third party vendors. The P2P connections obtained by the trading members was the responsibility of the members alone; and

(iii) Trading members were free to avail of a P2P connection initially from a specified list of service providers in NSE Colo as provided in the 2009 NSE Circular. This too was amended in October-November 2013 by the 2013 Modification and trading members were free to avail of P2P connectivity from any service

provider of their choice. The foregoing demonstrates that matters such as the choice of service provider, equipment specification, connection bandwidth and connection quality, etc. are left entirely to the choice and discretion of the member. It may also be noted that the contract for provision of P2P connectivity is entered into between the telecom service provider and the member. The Noticee is not a party to the contract, or privy to the commercial arrangements between the telecom service provider and the member. Like the Noticee, SEBI too rightly did not adopt a prescriptive role in regulating colocation services when it issued the May 2015 SEBI Circular . The May 2015 SEBI Circular was not prescriptive about the type of equipment to be installed at the NSE Colo by trading members, the service providers they were entitled to engage, etc.

#### *Installation of MUX by Service Providers*

Service providers providing P2P services could set up their connections and equipment directly in the colocation rack of the relevant member. This equipment included Multiplexer or “MUX”, which facilitated the termination of the cable and transmission of the data to one or more receiving points. An MUX is a telecommunication device which transmits data between two endpoints. Based on its configuration, a MUX can be used for a single point to point connection as well as for combining multiple P2P connections, and stream of data for transmission through a single line to multiple end points. The Noticee has provided for the physical duct space required for the passage of cables for P2P connectivity from the NSE Colo to the outside world. However, if service providers were to lay new cables for each member to whom they were providing services, then (i) more and more physical duct space would be required for accommodating new cables for each member and (ii) the time taken to commission colocation connections would also increase on account of the time consumed in laying new cables in every instance.

In order to obviate the need for service providers to lay new cables for each member, the Noticee permitted telecom service providers to deploy the MUX as part of the infrastructure in the Noticee’s MMR – the telecom service providers could then configure the MUX in the MMR to combining multiple point to point connections, provide P2P connectivity to multiple members, without multiple cables having to be laid to connect to the outside world. In this case, the telecom service provider would rent a rack from the Noticee (against fees and charges), and therefore, enter into contractual relations with the Noticee for that limited purpose. As an exception to the Noticee’s non-prescriptive approach in respect of P2P connectivity, where a telecom service provider deploys a MUX in the MMR to provide connectivity to multiple trading members (and thereby contracted with the Noticee), the Noticee would enquire into the licenses of the service provider in order to satisfy itself that the service provider which is duly licensed by the DoT and the Telecom Regulatory Authority of India (“TRAI”) to provide the relevant services. Of course, it is important to note that even in this case, the Noticee only played the role of facilitator, and did not interfere in the relationship between the service provider and the members, or guarantee / monitor the quality of the connection provided through the MUX in the MMR. The equipment specification for the connection, bandwidth, quality,

*charges and other commercial arrangements relating to P2P connectivity remained the subject matter of a separate contract between the telecom service provider and the member.*

#### *Use of 'Dark Fibre' for P2P connectivity*

*One of the options for undertaking P2P connectivity was to use 'dark fibre' – this is nothing but unutilized fibre optic cables, which are not connected to active electronics / equipment and do not have other data flowing through them (and can therefore be used to convey data between two points). In fact the term 'dark fibre' is also expressly recognized in extant telecom regulations, and is subject matter of licensing by the DoT – Infrastructure Providers Category I ("IP-I") licensed by the DoT can establish and maintain the assets such as Dark Fibres, right of way, duct space and tower for the purpose to grant on lease / rent / sale basis to the licensees of Telecom Services licensed under Section 4 of Indian Telegraph Act, 1885. A snapshot of the DoT website demonstrating the above is annexed as Annexure 35 to the NSE WTM Reply.*

#### *SUBMISSIONS ON ALLEGATIONS RAISED IN THE SCN*

*The Noticee denies all the allegations set out in the SCN and submits that they are devoid of merit. Without prejudice to the aforesaid, the Noticee's detailed submissions in this regard are set out below.*

#### *THE NOTICEE'S ACTIONS IN DEALING WITH REQUESTS FOR P2P CONNECTIVITY WERE BONA-FIDE, FAIR AND REASONABLE AND THERE WAS NO PREFERENTIAL TREATMENT*

*The charge in the SCN that the Noticee gave preferential treatment may be classified into the following heads: (i) the Noticee's approach to trading members' requests for P2P connectivity, (ii) the Noticee's reaction on discovering Sampark's lack of regulatory approvals, (iii) the Noticee's policy on site-visits to offices of trading members located in BSE and (iv) the Noticee's handling of requests made by service providers for providing P2P connectivity. It is respectfully submitted that the considerations that weighed with the Noticee and informed each of these decisions were fair, reasonable and taken in good-faith.*

#### *The Noticee's approach to requests for P2P connectivity*

*As noted in the 2009 NSE Circular, co-location services provided by the Noticee are on a "best efforts basis". Therefore, considerations of fair and non-discriminatory access must necessarily be balanced with considerations of feasibility and practicality. The key question is whether the right to fair and equal access to services rendered by the Noticee includes a right of a trading member to insist on services being rendered by a particular service provider and no other. At the threshold, the Noticee respectfully submits that no trading member has a right to insist that P2P connectivity are provided by a service provider of his choice. P2P Connectivity is an optional value-added service that is made available to members availing co-location services. The Noticee would necessarily have the discretion to determine whether such a request is reasonable and practical. While efforts are made to accommodate choices of trading members, this does*

*not mean that the Noticee ceases to have the discretion to refuse connectivity. The Noticee's bona-fide exercise of that discretion cannot be assailed as being unfair or discriminatory, since there is no right conferred on a trading member or a service provider to provide P2P connectivity. The question of a violation of a right arises only if a right exists.*

*Without prejudice to the above, an objective assessment of the considerations that weighed with the Noticee in dealing with requests for P2P connectivity, would lead to the inexorable conclusion that the Noticee acted fairly. It is the Noticee's case that there was no preferential treatment for the following reasons:*

*(i) W2W and GKN availed of P2P connectivity from Sampark as the connections terminated directly in their respective racks in NSE Colo which are part of the trading member's infrastructure – these are not within the purview of the Noticee, as they are not exchange provided infrastructure; (ii) When Millennium and Mansukh applied for P2P connectivity from Sampark in their own racks, the Noticee found that there was no duct space to run separate cables for each member. However, the Noticee did not outright deny P2P connectivity to Millennium and Mansukh – instead, in order to accommodate pending requests for P2P connectivity from Sampark, the Noticee explored permitting Sampark to deploy an MUX in the MMR so it could provide services to multiple members through a single cable. This was ultimately not possible due to deficiencies in Sampark's licenses (and therefore the Noticee cannot be penalized for rejecting Sampark's connectivity on these grounds); and*

*(iii) Millennium and Mansukh subsequently availed of connectivity from Reliance on August 22, 2015 and October 9, 2015 respectively and it is not the case that these trading members were denied P2P connectivity per se. Members could have also availed P2P connectivity through other service providers who have already installed MUXs in the MMR – this was also well known to members (some of whom also had connections from multiple service providers).*

*The Noticee's non-prescriptive approach in dealing with requests for P2P connectivity meant that trading members were free to avail of services, initially from a specified list of telecom service providers which was later amended to allow trading members to engage any telecom service provider. It is therefore the trading member that selects the service provider, and requests the Noticee for its permission to establish connectivity to its racks in NSE Colo. The contents of the members' racks (including the MUX installed by its service provider, if any) were the responsibility of the member. In fact, when the Noticee permitted W2W to have a Sampark MUX installed in its racks, the Noticee had clearly stated that Sampark was not permitted to install any other equipment / infrastructure in the Noticee's premises, and that the line must terminate directly to W2W's rack. Similarly, the Noticee had informed GKN that "You may proceed subject to giving undertakings + no infrastructure will be additionally setup in NSE premises. The line will be direct to your rack and NSE should not be held responsible if there are any issues with the line." [Emphasis supplied]*

*In accordance with the Noticee's policy at the relevant time, whenever a request for installation of infrastructure in the Noticee's MMR was received from a service provider, the IT Operations team would conduct a feasibility check in terms of power, space and duct availability. Subsequent to the feasibility check, since the telecom service provider would enter into contractual relations with the Noticee for renting rack space, the Noticee as a good measure would enquire into the license of the service provider to ensure that it is a duly licensed entity and has the technical competence to render the services. A telecom service provider which is licensed and regulated by either the DoT or TRAI has a legal obligation to render services on a non-discriminatory basis. In order to shorten execution timelines, a service provider would be allowed to install their infrastructure in the MMR while the licenses validation was undertaken in parallel. The Noticee's policy of distinguishing between service providers providing: (a) P2P connectivity that terminates in the trading members' rack and (b) P2P connectivity to multiple trading members by hosting a common infrastructure in the Noticee's MMR, was therefore, fair, reasonable and logical. The SCN therefore wrongly alleges that the policy was "flawed" and resulted in unfair treatment of trading members. It is also pertinent to note that SEBI has issued no directive that service providers providing infrastructure support services ought to be licensed. This was a voluntary initiative of the Noticee taken bona-fide to ensure that the entities rendering services are regulated by the relevant sectoral regulator. In fact, the May 2015 SEBI Circular also clearly states that a stock exchange should "ensure that all stock brokers and data vendors using co-location / proximity hosting experience similar latency with respect to exchange provided infrastructure." [Emphasis supplied]. Therefore, even under extant regulations, the Noticee's obligations are limited to fair access to exchange infrastructure, and the Noticee cannot be expected to govern or make prescriptive rules regarding the members' own infrastructure.*

*Even where the Noticee evaluated the license of the service provider, the Noticee only played the role of facilitator, and did not interfere in the relationship between the service provider and the members, or assume any responsibility for the quality of service that trading members may experience from a service provider. These are matters between the trading members and the service provider. The reason is simple and logical. The infrastructure for P2P connectivity is not provided by the Noticee. The configuration of the servers, the specification of the type of equipment deployed by trading members including for example whether to use a copper cable or an optic fibre cable, all of which would have a bearing on the latency and quality of service experienced by a member, are matters left to the trading members. The Noticee's obligation extends to providing connectivity to the racks of the trading member and ensure that they experience uniform latency in relation to infrastructure provided by the exchange. It is in this light that the Noticee's approach to requests for P2P connectivity through Sampark ought to be considered.*

*W2W's request for P2P connectivity*

*W2W's P2P connectivity provided by Sampark was ultimately activated only on May 28, 2015 . It is also noteworthy that contrary to claims made in the Complaints that W2W got "differential access" months ahead*

*of other trading members, W2W was not the first trading member to get P2P connectivity from Sampark. In fact, GKN's Sampark P2P connectivity was activated first.*

*GKN's request for P2P connectivity*

*The Noticee adopted an identical approach in relation to GKN's request for P2P connectivity.*

*Millennium and Mansukh's request for P2P connectivity. The record shows that the Noticee acted fairly in dealing with requests for P2P connectivity by Millennium and Mansukh. Mansukh sought permission on June 22, 2015 for provision of P2P connectivity between Mansukh's rack at NSE Colo and its office at BSE. Millennium sought P2P connectivity from Sampark on June 23, 2015, between its rack at NSE Colo and its office at BSE. However, the Noticee found that the duct carrying cables from outside the premises of the Noticee to the co-location infrastructure housed within the Noticee, had minimal space left for laying additional cables. If any additional cables were to be added to the duct, it would physically damage the existing lines. The creation of a fresh duct to accommodate more cables would also be time consuming and inter alia would require permission from external authorities/agencies. Accordingly, Millennium's and Mansukh's request for P2P connectivity was not feasible owing to lack of duct space. Therefore, the Noticee vide its email dated July 10, 2015, stated that since "Sampark MUX is not yet installed in Colo" i.e. in the*

*MMR, direct connectivity could not be provided. It may be noted that it was only on July 17, 2015 that Sampark commenced work on installing a common MUX in the MMR. Mansukh did not request provision of P2P link through a common MUX installed in the Noticee's MMR or raise any grievance.*

*Millennium vide an email dated July 15, 2015, sought a work permit for Sampark to install a common MUX in the Noticee's MMR since direct connectivity to its rack in NSE Colo would not have been possible owing to lack of duct space. Millennium was also given approval to commence "pilot testing" of the fibre optic link showing that the Noticee did not intend to deny P2P services. While Millennium's request was being considered by the Noticee, Sampark sought permission from the Noticee to host common infrastructure to provide connectivity to multiple trading members. As Sampark lacked the requisite licenses to install a MUX in the MMR and it was not practical to provide connectivity directly to Mansukh and Millennium's racks at NSE Colo, their requests for P2P connectivity from Sampark was not acceded to by the Noticee. This was also duly communicated to both the trading members. Millennium subsequently availed of dark fibre P2P connectivity from Reliance with effect from August 22, 2015 while Mansukh availed of dark fibre P2P connectivity from Reliance on October 9, 2015. Denial of Sampark's P2P connectivity to these trading members was owing to the fact that their chosen service provider did not have the requisite license, and this cannot amount to either unfair or discriminatory treatment. They were free to avail of P2P connectivity from any other service provider which they subsequently did.*

*The SCN therefore wrongly suggests that these trading members had a vested right to demand services from a service provider of their choice without regard to the other compelling considerations including telecom licenses, which the Noticee was legitimately entitled to take into account. A trading member's choice of a service provider is in any event subject to the Noticee's discretion and there is no right conferred on a trading member to insist on services being provided by a particular service provider. Moreover, there is no allegation that the Noticee's actions resulted in the trading members suffering any detriment. A routine administrative choice by the Noticee, a frontline regulator, which results in no harm or prejudice to a trading member, cannot constitute an instance of discriminatory treatment. Unfair or discriminatory treatment in these matters is not merely a state of mind. Therefore, it is submitted that since there was a reasonable and bona-fide basis for the Noticee to refuse P2P connectivity from Sampark, the same cannot be assailed as being either unfair or discriminatory.*

*The allegation made in the SCN is also self-contradictory. On the one hand, the SCN finds fault with the Noticee for allowing Sampark to render services to W2W and GKN in violation of its DoT license. Yet, on the other hand, it alleges that the Noticee's refusal to permit Mansukh and Millennium to avail of P2P connectivity from Sampark, was discriminatory and violative of norms of fair access. It is settled law that equality and non-discrimination does not imply perpetuating an alleged irregular act. Therefore, even assuming for the sake of argument that the earlier act of granting permission to W2W and GKN, as alleged in the SCN is not justified, then the Noticee cannot be held liable for the subsequent act of refusing to provide permission to Mansukh and Millennium to avail of P2P connectivity from Sampark. The SCN also wrongly charges the Noticee for allegedly failing to manage the load on its systems properly as purportedly required by Clause 4.1(i) of the 2012 SEBI Circular merely because there was no duct space available for physically laying the cables to provide direct P2P Connectivity to Millennium. It is clear that on a plain reading of Clause 4(i) of the 2012 SEBI Circular and the context in which it occurs, that it refers to the exchange's computer systems that are accessed by a broker for execution of an algo trade. A P2P Connection is not part of the exchange's system or infrastructure and in any case does not lie in the exchange's core trading path. Moreover, the systems referred to here relate to the exchange's computer systems and not the physical space in the co-location facility much less the P2P Connection that is used by a trading member for transmission of data to and from his rack at NSE colo to a location outside such as the trading member's office. Therefore, to allege that the Noticee's failure to have adequate physical duct space for laying of separate cables for each trading member to have direct connectivity to their racks from a service provider of their choice, is absurd and untenable. This constitutes an unreasonable, contrived and erroneous reading of the provisions of the March 2012 SEBI Circular. The charge is liable to be dropped on this ground alone.*

*Indeed, there is no allegation in these proceedings that not having access to Sampark P2P Connectivity deprived the trading member to place algo-trades since the P2P Connection is not one that lies in the core trading path of the exchange and there is no reasonable nexus between the ability of the member to place*

*algo trades and access to P2P Connectivity since a member can place such trades without availing of P2P Connectivity as indeed without even availing of co-location services.*

#### *The Noticee's reaction to discovery of an irregularity in Sampark's licenses*

*When the Noticee discovered Sampark did not have the requisite licenses, it made a bona-fide choice not to disconnect services. The Noticee of its own accord asked W2W to transition its P2P connectivity to any other authorized service provider, as Sampark had misled the Noticee on the nature of its licenses and had installed a MUX in the Noticee's MMR in violation of the conditions of its license. The Noticee did not ask GKN to transition its P2P connectivity, since GKN's P2P connectivity terminated directly at GKN's rack at NSE Colo and was not a violation of the Noticee's policy at the time. The Noticee acted bona-fide and dealt with an irregularity by denying permission to Sampark to provide connectivity to other trading members, barring GKN and W2W. An official of the Noticee, in his statement to SEBI dated March 5, 2018, has categorically denied asking GKN to shift from Sampark. In this regard, the Noticee also notes that it is a well recognised legal principle that "actus curiae neminem gravabit", i.e., "An act of the Court shall prejudice no man", which is a fundamental principle of equity, is founded upon justice and good sense and serves as a guide for the administration of law. Similarly, a quasi-regulator such as the exchange must also, while taking decisions, consider the impact of the same upon its constituents, and ensure that it does not prejudice any person. In this case, in the absence of any evidence of collusion between Sampark, GKN and W2W, the Noticee had to ensure that its decision qua Sampark does not prejudice the members – accordingly, it decided not to disconnect the existing Sampark P2P connectivity of W2W and GKN to ensure that they were not inconvenienced or prejudiced. In addition to the foregoing, when judging the actions of officials of the Noticee with the benefit of hindsight as the SCN have sought to, it must also be borne in mind that SEBI's investigation found that W2W and GKN did not receive any advantage as a result of Sampark's P2P connectivity.<sup>68</sup> This has been set out in further detail below in this reply. In any event, the SCN does not set out how and in what manner the Noticee's decision not to disconnect W2W's and GKN's P2P connectivity, constitutes a violation of any law, rule or regulation that warrants penal intervention.*

#### **B. NO PREFERENTIAL TREATMENT OF SAMPARK**

*SEBI alleges that Microscan was denied the ability to render services while Sampark was allowed. The allegations in the SCN are self-contradictory. On the one hand, the SCN alleges that it was wrong for the Noticee to allow Sampark to provide services to W2W and GKN in violation of its DoT license. Yet, the SCN asserts that denying Microscan permission, which too would have been ineligible as per its DoT license to provide such services, was also wrong. On July 20, 2015, a trading member of the Noticee named Shastra Securities had introduced Microscan as its vendor for providing P2P connectivity to NSE Colo and requested for its empanelment. The Noticee by its email dated July 23, 2015 informed Microscan that the Noticee did not see any reason to change its existing service providers. Further, by its email dated July 29, 2015, the Noticee informed Microscan that it did not have any feasibility to lay extra cables in the Noticee's*

ducts and that Microscan's DoT licence did not allow Microscan to sell bandwidth to end customer. On account of the same, the Noticee was unable to empanel Microscan for its colocation services. The emails dated July 20, 2015, July 23, 2015 and July 29, 2015 are annexed as Annexure 47 colly to the NSE WTM Reply.

Microscan, unlike Sampark, had at the very outset sought empanelment with the Noticee to host its common infrastructure in the Noticee's MMR. The Noticee as per its policy described above, examined the license of Microscan. After ascertaining that Microscan was not eligible to provide P2P connectivity directly to the trading member, the Noticee rejected its request for empanelment. As stated earlier, Sampark did not initially seek approval to install its infrastructure in the Noticee's MMR. In the case of both W2W and GKN, the P2P connectivity provided by Sampark terminated at their respective racks in NSE Colo and constituted part of the trading members' infrastructure. As per its policy, the Noticee did not check Sampark's license at this stage. In fact, while granting permission to W2W and GKN, the emails from the officials of the Noticee, made it clear that no additional infrastructure would be installed by Sampark and the connection would terminate directly into their respective racks at NSE Colo.

Sampark subsequently shifted the MUX at W2W's rack to the MMR and W2W was provided connectivity through the MUX. During this time, the Noticee discovered that Sampark was not authorized to provide data connectivity to trading members directly. Thereafter, no sooner than the Noticee realised this shortcoming, the Noticee did not allow Sampark to provide P2P connectivity to any other trading member through the MUX. Besides, to avoid disruption, the links to the existing clients were not terminated. As explained above, on discovering the deficiencies in Sampark's licence, Notice on July 27, 2015 restrained Sampark from providing any connectivity through its MUX to any other trading member. On August 19, 2015, the Notice was informed that Sampark handed over its infrastructure to Reliance. Therefore, in a mere 23 days, Sampark was replaced by a service provider with appropriate license and the transition was effected without disruption. Therefore, no "preferential" treatment was given to Sampark. Moreover, Sampark's MUX at the Noticee's MMR was active only for a brief period of 30 days i.e. from July 19, 2015 when Sampark installed its MUX in the MMR until July 19, 2015. The mere act of allowing Sampark to shift its MUX from W2W's rack to the Noticee's MMR cannot constitute an act which is detrimental to the securities market, when the only member availing such connection, as before, was W2W. As soon as the officials of the Noticee found that Sampark had misled the Noticee about its DoT license, Sampark was instructed not to provide connectivity through its MUX to any other trading member. This clearly belies the theory that the Noticee had colluded with Sampark

Further, and without prejudice to the foregoing, even assuming the Noticee erred in allowing Sampark to install its MUX in the MMR and / or in allowing Sampark to continue providing P2P connectivity to GKN and W2W even after discovering it did not have a valid license to do so, then this cannot form grounds to urge

that Microscan ought to have been given similar permission, even though it was also not duly licensed in this regard.

#### C. NO ADVANTAGE GAINED BY USE OF SAMPARK'S P2P CONNECTIVITY

The *raison d'être* of these proceedings was the allegation that W2W, as indeed GKN, had allegedly unduly benefitted as a result of: (a) the P2P connectivity provided by Sampark and (b) the alleged preferential treatment given to these trading members by officials of the Noticee. That narrative, advanced primarily based on the contents of complaints and the views of the SEBI External Committee, stand demolished by the findings of SEBI's own investigation and the 2018 EY Report. The Investigation Report has found that W2W and GKN, the two trading members who availed of P2P connectivity from Sampark between May 2015 and September 2015, did not receive any undue benefit. The increase in their turnover, when Sampark's P2P connectivity was being used, was marginal and de-minimis – even this marginal increase in turnover, SEBI found, was attributable to market conditions, trading strategies etc., and not to the P2P connectivity provided by Sampark. This was also confirmed by EY in the 2018 EY Report.

It may also be noted that W2W already had existing P2P connectivity between NSE Colo and its office at BSE provided by Reliance. Therefore, it would be incorrect to co-relate or attribute even the minor increase in turnover, to Sampark's P2P connectivity alone. In fact it may be noted that, with respect to quantification of gains, SEBI's own Investigation Report concludes that "It is not feasible to draw a causal relationship between the connectivity obtained from Sampark and the profits earned by the brokers. As such, the forensic auditors have not been able to quantify the unfair gains." Moreover, the material on record also shows that trading members were dissatisfied with Sampark's P2P connectivity. This was evidenced by James in his statement dated August 16, 2017 to SEBI where, in Q/A 18, he stated that clients were not happy with the services of Sampark. A copy of the statement of examination of James dated August 16, 2017 is annexed as Annexure 48 to the NSE WTM Reply. In light of these categorical findings on the absence of any undue benefit being conferred on the trading members, the allegations of preferential treatment and violating norms of fair and equitable access, are not sustainable and do not survive.

#### D. NO UNFAIR LATENCY ADVANTAGE PROVIDED TO W2W

The SCN alleges that W2W had an unfair latency advantage: (a) as the source cable for W2W's P2P connectivity first passed through W2W's rack at NSE Colo and thereafter was connected to Sampark's MUX at the Noticee's MMR (b) as the "B" end of W2W's P2P connectivity did not terminate at W2W's office at BSE but terminated at W2W's rack at BSE Colo. These allegations are not supported by any material on record. In this regard, it may be noted that these allegations are not supported by even a shred of physical evidence, and are based purely based on circumstantial evidence, which consists of a few isolated emails, which have been taken out of context and misconstrued. On this ground alone, these allegations deserve to be dismissed. Without prejudice to the same, the Noticee's responses in this regard are set out below.

### *W2W's cabling arrangement at NSE Colo*

*During the course of the investigation, the Noticee did not have a reasonable opportunity to explain the issues around the perception that the Noticee and W2W had colluded to subvert the architecture for flow of data by deployment of an MUX on W2W's rack. The perception has now found its way into the SCN purely based on a mis-appreciation of evidence. The relevant official of the Noticee has, in his statement to SEBI, denied having the purported conversation that W2W's employees have referred to in the email quoted above. The Noticee submits that the source cable in fact first passed through Sampark's MUX which was installed in the Noticee's MMR and thereafter to W2W's rack. While Sampark had initially installed its MUX at W2W's rack, it subsequently shifted the same MUX to the Noticee's MMR – consequently, there was no MUX at W2W's rack, and there was only a passive junction box with a fibre cable joint through which the fibre optic cable passed before reaching the MUX in the MMR. W2W was given connectivity through the MUX placed in the MMR (as any other member would eventually have been). This has been graphically demonstrated in the Noticee's diagram annexed at Annexure 4 to the NSE WTM Written Submissions.*

*If, as alleged, the cable was first providing connectivity to W2W before going to the Sampark MUX in the MMR, it is evident that there would have been no need to 'move' or 'shift' W2W to the new MUX / infrastructure (as actually appears to have been done, based on the correspondence set out above). It is therefore clear that the fibre optic cable did not provide connectivity to other members through W2W's connection, and was only passing through the passive junction box in the rack of W2W before reaching the MUX of Sampark at the MMR. W2W was in turn connected to the Sampark MUX – in fact at the relevant time, W2W was the only member connected to the MUX. Therefore, the question of W2W having a latency advantage does not arise since, like all other trading members who eventually took Reliance's service, it was connected to Reliance/Sampark's MUX at the MMR. There is no question of W2W's P2P Connection having lesser switching points. SEBI to have merely depicted the connectivity based on its understanding of an email between trading members reporting what they understood of a conversation which one of their representatives purports to have had with the Noticee's Colo team. The Noticee is in no position to ascertain the veracity of these claims.*

*Needless to state, an internal email exchanged between officials of a trading member about a purported conversation with officials of the Noticee, cannot be relied on to construct a hypothesis of how W2W's P2P connectivity was arranged. In any event, the email is clearly hearsay evidence which is no evidence in the eyes of law. Moreover, the SCN does not demonstrate the impact or advantage in terms of latency, if any, as a result of such a connection by W2W. Even to the extent that the Investigation Report analyses the turnover / gains of W2W, such analysis does not consider whether there was any change in the turnover / gains of W2W during the period where such cable routing allegedly existed as compared to the period where such routing did not exist. In the absence of any physical evidence of the facts alleged, or any*

*evidence of gains alleged to have been made, the case against the Noticee in this respect is premised on a single email which constitutes hearsay evidence, and is therefore entirely circumstantial in nature. It is submitted that SCN does not take into the facts set out above (which is completely contrary to the allegations made), and that therefore, the burden of proof in this regard has not been discharged.*

#### *Cross-connect at BSE Colo*

*The SCN alleges that W2W's P2P connectivity from Sampark terminated at W2W's rack in BSE Colo, rather than at W2W's office at BSE. This was attributable to a cross-connect between Sampark's rack at Netmagic MMR (the third party to whom BSE had outsourced its Colo operations) and W2W's rack at BSE Colo, and allegedly resulted in W2W having an unfair latency advantage. The SCN further alleges that this was facilitated by the Noticee's "contributory negligence" and that the Noticee allegedly colluded with W2W and Sampark and did not conduct a site visit and exercise proper due diligence, and thereby facilitated W2W's P2P connectivity in this purportedly advantageous manner. These allegations fly in the face of the record, which unequivocally establishes that the Noticee was diligent in this regard, and that there is not even a shred of evidence to suggest 'fraud' by the Noticee. Against this backdrop it is also noteworthy that there is nothing on record to positively demonstrate that W2W's P2P connectivity indeed terminated at the W2W rack in the BSE Colo. Therefore applying the standard of preponderance of possibility to an allegation of collusive fraud, it is inexorable that no finding of fraud on part of the Noticee can ever be reached in any reasonable manner.*

*The material referenced above also demonstrates that W2W and Sampark had provided false undertakings to the Noticee with regard to the termination of the P2P connectivity. In fact, the Investigation Report firmly concludes that "it is observed that W2W deliberately misled NSE by terminating the link at the W2W rack at BSE co-location though they had undertaken to terminate the P2P link at their BSE office." [Emphasis supplied]. In view of the foregoing, the allegations of collusion and / or fraud cannot be sustained. Further, it is submitted that by obtaining the declaration from both W2W and Sampark, and also following up regularly with W2W regarding the termination point of the fibre connection, the Noticee had performed its due diligence, and was not negligent. The Noticee cannot be labelled as negligent merely because it did not undertake a physical inspection of the W2W's connection. It is in fact a common practice for regulators to obtain certain confirmations from constituents by way of self-declarations, without further independent verification. The Noticee cannot be held liable on account of a false or misleading statement made to it by a constituent, particularly absent any evidence of mala fides or collusion. No latency advantage. Without prejudice to the foregoing, it is submitted that the SCN substitutes proof with assumptions inasmuch as it assumes a latency advantage instead of establishing it. In fact, the 2018 EY Report which the SCN relies on, far from finding any purported latency advantage, in fact states:*

*"Latency impact if any on account of above connectivity (W2W's connectivity at BSE Colo and NSE Colo) that appears to have fewer hops at both A end and B end for W2W cannot be ascertained". The 2018 EY*

*Report also stated that “members did not maintain logs of the latency measurements (between NSE and BSE) for the P2P connectivity from Sampark”. Therefore, it is not clear on what basis the SCN arrives at the conclusion that W2W had an unfair latency advantage. Neither the SCN nor the Investigation Report allude to any additional material or evidence that would warrant transforming a hypothesis theory of latency advantage to positive proof of a latency advantage. The mental distance between “may be” and “must be” cannot be supplied by conjectures and surmise. There is also a fundamental and fatal flaw in the SCN that draws hypothesis of a latency advantage. It begins with the incorrect assumption that all trading members located outside NSE Colo would experience similar latency, which allegedly has been disturbed by the cross-connect established by W2W through Sampark. A P2P connection as stated earlier is not part of the infrastructure provided by the exchange. Since this is part of a trading member’s infrastructure and is not standardised since members are free to decide the type of infrastructure they wish to deploy, not all trading members will experience identical latency. Indeed, they are bound to experience different latencies depending on the type of hardware used, the type of cable that is used, the distance between the co-location centre and the member’s systems etc.*

*Therefore, the SCN wrongly assumes that all trading members located for example in the BSE building would experience similar latency in relation to their P2P connectivity. For a latency advantage to be established, it needs to be shown that a packet of data would be transmitted significantly faster on W2W’s P2P connectivity as compared to another trading member’s P2P connectivity and such an advantage must be attributable to the cross-connect established by W2W. Apart from guesswork and suppositions, the SCN makes no endeavour to prove what are purely factual questions based on data. Moreover, SEBI’s own investigation belies any latency advantage. If hypothesis of a latency advantage as alleged in the SCN was correct, it would have enabled W2W to react faster than the rest of the market. It would have deployed huge amounts of capital to benefit from such information. In fact, W2W received no benefit from the P2P connectivity provided by Sampark. Moreover, the cross-connect was in place for just over a month – between May 28, 2015 and July 9, 2015. The turnover of W2W during this period did not witness any significant increase and does not support SEBI’s hypothesis of an unfair advantage.*

*Consequently, the allegations of an unfair latency advantage lack any basis, and therefore the allegations must fall.*

#### **E. NO DELAY IN PROCESSING REQUESTS FOR P2P CONNECTIVITY**

*As explained earlier, P2P Connectivity is distinct from co-location services and in fact, it is not necessary for a trading member desirous of availing colocation services to avail of P2P Connectivity. Accordingly, the charge of breach of Clause 3.6, Clauses 3.1 (provide colocation/proximity hosting in fair, transparent and equitable manner) and Clause 3.2 (fair and equal access to facilities and data feeds provided by the exchange) of the May 2015 SEBI does not stand. It is clear that the allegations in the SCN which in turn are based on the Investigation Report are based on a complete misreading and misunderstanding of the*

*May 2015 SEBI Circular. Further, even assuming for the sake of argument that that the May 2015 SEBI Circular applies to requests for P2P Connectivity, the SCN and the Investigation Report are vitiated by yet another glaring factual error. In the third column of the table at para 13(b) of the SCN, the SCN has wrongly treated the "Date of the Decision" by the Noticee to approve P2P Connectivity as the date on which the connection was activated. The two are completely different. Accordingly, if, on a demurrer, accepting that the May 2015 SEBI Circular applies to P2P Connectivity, circular requires requests for P2P Connectivity to be processed within 15 days – it does not require the connection to be activated within 15 days. The reason is simple and logical – the actual activation of P2P Connectivity involves numerous steps which are not within the control of the Noticee – commercial arrangements to be entered between the member and the telecom service provider, examining feasibility and actual physical laying of cables and testing – all of which are substantially dependent on the trading member and its service provider and cannot be subject to a rigid timeframe much less a timeframe to which the Noticee must be held to account. The allegations of a delay are therefore plainly erroneous and contrary to the record.*

*The charge in the SCN ought to be dropped.*

#### **F. NO PREFERENTIAL TREATMENT ON CONDUCT OF SITE-VISITS**

*The Noticee's policy at the relevant time did not allow direct connectivity between NSE Colo and BSE Colo. Therefore, when P2P connectivity requests were made by trading members between NSE Colo and a trading member's office at BSE, the membership department of the Noticee used to initiate a site inspection. The site inspection involved officers from the membership team visiting the trading member's office at BSE. The purpose of the site-visits was to ensure: (a) the trading member had an actual office space and (ii) the P2P connectivity was not terminating at the member's rack at BSE Colo. However, a site inspection was not done when the trading member had an existing P2P Connection at the same location, or if the member sought termination at the BSE Edge router. The Noticee did not believe that the extant regulatory framework permitted direct connectivity between a member's server at NSE Colo and its server at BSE Colo.*

*It may be noted that in any event, a direct connectivity between a member's server at NSE Colo and its server in BSE Colo, does not confer any advantage. In fact, SEBI vide its circular dated December 1, 2016 and the Noticee vide circular dated December 9, 2016 has expressly allowed direct connectivity between servers of a stock broker placed in NSE Colo and servers of the same stock broker placed in colocation facility of another recognized stock exchange. A site visit of W2W's office at BSE was not undertaken as W2W had an existing P2P connection from Reliance and had an office at BSE. A site visit for GKN was not undertaken as, at the time that GKN's P2P connectivity was approved, the Noticee had been informed that the connection would terminate at the BSE Edge router – it was only belatedly (post approval), by way of an email dated April 22, 2015 that GKN intimated the Noticee that it would be terminating the connection in its office within BSE. The Noticee's officials inspected the offices of GRD Securities ("GRD") and SMC Global Securities ("SMC") at BSE as they were availing of P2P connectivity from NSE Colo to their offices*

at BSE for the first time. As regards Millennium, it may be noted that the office address provided by it was identical to the address provided by GRD. This naturally led to doubts about whether two trading members who were asking for two separate P2P Connections, had the same office. Consequently, officials of the Noticee decided to undertake a siteinspection. In fact, even the 2018 EY Report comes to the same conclusion, and states that, "Based on select internal emails identified between NSE employees, it appears that inspection for Millennium was conducted as NSE had found similar office address for several members... Since multiple brokers (GRD and Millennium) had similar addresses NSE may have taken additional steps to confirm the B end address." . An extract from the 2018 EY Report, containing emails dated July 1, 2015 exchanged between the Noticee's officials in this regard, is annexed as Annexure 46 to the NSE WTM Reply.

SEBI did not require exchanges to conduct site visits when permitting P2P connectivity. Therefore, it is not correct to find fault with the Noticee for pro-actively undertaking site-visits when SEBI itself did not specify that such visits ought to be undertaken. A departure from a voluntary initiative of the Noticee for good reasons, cannot become grounds for regulatory intervention by SEBI.

As any regulator would no doubt be aware, the degree of scrutiny and checks required may vary from case to case, depending on the specific facts and circumstances. For example, a regulator may perform certain standard checks for a regular case, but where a regulator finds or suspects something questionable or unusual, it may well decide to undertake additional steps or investigations. If the exercise of such discretion by the regulator is termed as discriminatory, then this would stifle the regulator's ability to perform additional checks when the situation demands. There are over 5000 brokers registered with SEBI and over 1400 brokers registered with the Noticee. Some brokers are subject to inspections and site-visits for various reasons by both SEBI, and the Noticee, while others may not be. Equality and nondiscriminatory access cannot mean that a trading member can claim immunity from site-visits because a fellow trading member's office was not the subject of one. Each case would depend on facts.

The Noticee's obligation to provide fair and transparent access extends to services provided by the Noticee. A right to access services on a fair and transparent basis, cannot be a ground to claim parity of treatment when it comes to site-visits or inspections. As a frontline regulator, the Noticee has the discretion to decide when site-visits ought to be undertaken especially in the absence of any regulatory framework prescribed by SEBI. That discretion was exercised bona-fide and based on a rational and intelligible criteria consistently followed by the Noticee. It is unclear as to how undertaking site-visits can be detrimental to trading members or amount to granting preferential treatment to those trading members whose offices were not subject to site-visits. These allegations lack any foundation, are vague, and therefore have to be dropped.

No contradictory information provided by the Noticee

The SCN also alleges that the Noticee provided contradictory information on when the policy for conducting site-visits was formulated as it contends that Nagendra in his statement to SEBI dated March 1, 2018 stated that site visits were conducted in 2014 but the Noticee in an email dated April 13, 2018 and May 2, 2018 to SEBI, stated that the policy of conducting site-visits commenced from May 2015.

(i) Apart from the allegation being factually erroneous, the charge that Regulation 47 and 48 of the SECC Regulations have allegedly been violated is also untenable. Regulation 47 deals with the power of SEBI to call for information and Regulation 48 deals with the power of SEBI to undertake an inspection. It is not clear how these provisions are at all attracted and consequently this charge is ex-facie untenable and liable to be dropped.

#### G. THE NOTICEE HAD NO ROLE IN THE ARRANGEMENTS BETWEEN SAMPARK AND RELIANCE

The material on record makes it clear that the Noticee did not recommend Reliance to any brokers, or facilitate arrangements between Sampark and Reliance. . it is clear that the Noticee did not recommend Reliance to Sampark, or facilitate their relationship – in fact, at best, the Noticee gave Sampark a list of possible options that it may consider to ensure that it operated in compliance with law. It is Sampark that volunteered to work with Reliance and since it was an existing vendor of Reliance. The fact that Sampark has collaborated with Reliance in the past is also evident from an agreement Sampark had entered with Reliance on July 1, 2014.<sup>113</sup> Further, Sampark's sales representative Netaji was a former employee of Reliance.

The decision of Sampark to partner with Reliance may also be attributable to the similarity in the type of infrastructure deployed by Sampark and Reliance at the Noticee's MMR. Sampark deployed fibre optic cables to provide connectivity. Other service providers had copper cables and were yet to upgrade their infrastructure. In the past, the Noticee had received requests from a number of trading members for a "fibre-hand-off" i.e. a connector that connects the fibre optic cable to the trading member's system. Reliance upgraded its infrastructure between July 17, 2015 and July 19, 2015 at the Noticee's MMR.<sup>114</sup> The Noticee sent emails to other service providers which did not meet with a positive response. When Reliance commenced work on upgrading its infrastructure, Sampark had also commenced work on installation of its MUX in the Noticee's MMR. It is in this context that Deviprasad Singh had vide email dated July 17, 2015, written to Nagendra Kumar informing him that "Sampark and Reliance are starting work today"<sup>115</sup> with the subject "Fibre and MUX laying activity". This email was a reference to the work that was being undertaken by Reliance and Sampark (separately but simultaneously) at the Noticee's MMR - this is demonstrated by other emails forming part of Annexure 39 of the WTM SCN, which indicate that the activities undertaken by Reliance and Sampark were separate and distinct processes (although co-incidentally carried out over the same period). The SCN has misunderstood the context in which the email was sent and has erroneously sought to establish a non-

*existent link between this email and the unrelated hand-over of Sampark's infrastructure to Reliance which took place much later.*

*In view of the foregoing, it is submitted that, the Noticee neither instructed nor "facilitated" any arrangement between Reliance and Sampark. This was a commercial decision taken by two independent entities influenced perhaps due to Sampark's past association with Reliance, the fact that Sampark's sales representative was a former employee of Reliance and the similarity in the type of infrastructure deployed in the co-location centre. Further, it may be noted that since Sampark was an IP-I service provider, it was permitted to establish and maintain assets such as dark fibre and qualified to lay fibre optic cables, and lease them to licensed telecom services providers. Therefore, there would be no legal infirmity if Sampark leased its dark fibre to a telecom services provider, who was duly licensed to provides services to, and raise bills on, the end customer. The Noticee's role was to only satisfy itself that the telecom operator to which Sampark was handing over its infrastructure was eligible and in a position to provide fair and equitable access, which it did. Reliance was duly authorized and at this time was providing P2P connectivity to a number of trading members. The SCN does not explain how a bona-fide decision of the Noticee to transition provision of services to a licensed telecom service provider is contrary to law or is in violation of norms of fair and equitable access. There was nothing unusual or unprecedented about the Noticee's actions. SEBI has routinely transitioned services from one market intermediary to another. If SEBI finds that a market intermediary such as a stock broker or a Registrar or Share Transfer Agent rendering services is no longer a "fit or proper person", in order to ensure a smooth transition, it directs the intermediary to transition services to any duly licensed market intermediary. It would be incorrect to describe such actions as conferring post-facto legitimacy or constituting violative conduct.*

#### **H. NO PENALTY FOR ALLEGED BREACH OF SMAC RECOMMENDATIONS**

*The SCN at multiple places refers to the Noticee have violated the SMAC Recommendation. Apart from the fact that the SMAC Recommendation required fair and equal access to co-location services to be provided, which the Noticee had admittedly adhered to, it is not clear how denial of P2P Connectivity from a particular telecom service provider who was found to be not appropriately licensed, can at all be said to be a breach of fair and equal access to co-location services. Be that as it may, a purported SMAC Recommendation is not "law" even assuming that there was a violation (which there was not). A policy recommendation of a committee can never be elevated to the status of an act made by Parliament, much less a rule, regulation or direction of SEBI and warrant penal action. Lest there be any doubt, Section 15HB of the SEBI Act and Section 23H of the SCRA envisage a penalty for contravention of an Act, rule, regulation or directions of SEBI – obviously recommendation of the SMAC does not fall under any of these categories that render a breach of its recommendations, punishable by law. Consequently, the question of penal action being taken for purported breach of the SMAC Recommendation does not arise.*

## I. ALLEGATIONS OF COLLUSION AND FRAUD UNDER PFUTP REGULATIONS ARE DEVOID OF MERIT

*The voluminous record does not bear out the allegations set out in the SCN. On the contrary, any reasonable reading of the record points to the contrary. The material on record demonstrates that despite repeatedly finding no evidence / conclusions by external experts to support a finding of 'collusion' or 'fraud', the SCN has nevertheless alleged violations of the PFUTP Regulations by the Noticee. Exculpatory evidence including SEBI's own findings in the Investigation Report that trading members did not derive any advantage have been ignored and not even referred to in the SCN. The charge of breach of the PFUTP Regulations is based merely on account of alleged preferential treatment of certain trading members for example in relation to denial of P2P connectivity from Sampark to some trading members while allowing others to avail of P2P connectivity from Sampark. The SCN does not adduce any evidence to show how these administrative decisions were incompatible with the presumption of honesty and good faith given the reasons that weighed with the Noticee in taking these decisions.*

*It is clear that allegations of fraud in the SCN have been made on nothing more than vague inferences based on conjecture, surmise and suspicion. This is contrary to well settled law that allegations of fraud must be specifically pleaded and shown. It is therefore well settled that where fraud and collusion are alleged, it would be incumbent on the authority to set out the nature of the fraud along with full particulars. The SCN is also lacking in material particulars since the charges of fraud are made entirely based on a selective reproduction of the contents of the Investigation Report without an independent appraisal of the material on record. In view of the above, the charges under the PFUTP Regulations in the SCN are vague, incomprehensible and unexplained. It is submitted that the test of preponderance of probabilities cannot be so dilutive that it allows levelling of charges on mere guess-work and conjectures. Such an evidentiary standard, if adopted, would shake the very foundation of the business of the entity in question and may adversely affect the same. Even though the test for fraud under the PFUTP Regulations is that of preponderance of probabilities, the Hon'ble SAT has held that in the absence of "reasonably strong evidence", even in a civil proceeding, a person cannot be held guilty and awarded punishment. While there is no mathematical test to determine the preponderance of probabilities, the test certainly excludes "a trivial or a merely possible doubt". The preponderance must be borne out of a "fair doubt based upon reason and common sense" and "evidence in the case". Further, the Hon'ble SAT in KSL & Industries Ltd. v. SEBI held that "A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence are not sustained. Fraud cannot survive on mere conjecture and surmises."*

### Submissions of Ms. Chitra/Noticee no.2

- i. *Noticee No. 3 assumed the position of Managing Director and CEO of NSEIL on 1 st April 2013 and was acting in the capacity as a Managing Director and CEO until 2nd December 2016, when she resigned from the said position. Noticee No. 3 is therefore only dealing with those aspects*

of the SCN which have transpired between the years 2013 to 2016. Noticee No. 3 at all times acted with high standards of integrity and fairness and has discharged her functions as Managing Director in the manner consistent with her position.

- ii. SEBI has charged Noticee No. 3 as the Managing Director and CEO of NSEIL with alleged failure to ensure fairness and transparency at NSEIL in dealing with matters related to providing equitable access to its stock brokers and unduly benefitting certain stock brokers to the detriment of the interest of other stock brokers.
- iii. Noticee No. 3 has honestly relied on the judgment, information and advice of the functional heads, employees as well as experts and had no reason to suspect the integrity, skill and competence of these persons or to doubt their motives. Not a single instance to the contrary has been pointed out in the SCN or the Investigation Report. It would be absurd to assume that Noticee No. 3, as Managing Director, ought to have distrusted these persons and/or that she was constantly required to be on her guard against the possibility of fraud being committed by all these persons of every degree. Moreover, one can't expect the Managing Director and Chief Executive Officer to be aware of any and every singular activity happening within the organisation and a fraud cannot be presupposed at every juncture.
- iv. With reference to paragraph no. 2 of the SCN, Noticee No, 3 submits that the anonymous complaints did not make any allegation in respect of the issues in the present SCN. Further, barring the singular reference to the complaints in the para under reply, the SCN or the Investigation Report do not deal with the contents of the complaint. It appears from the SCN that after investigation, SEBI has not been able to obtain any material against Noticee No. 3 which will prove any of these allegations against Noticee No. 3. The complaints are therefore irrelevant for the purposes of the present SCN and consequent inclusion of the same in the Show Cause Notice is completely misplaced and of no consequence in any nature whatsoever, Noticee No. 3 does not admit any of the allegations made therein.
- v. Noticee No. 3 submits that there is no finding in the SCN and Investigation Report that Noticee No. 3 was involved in the process of issuance of this circular or that she

*overlooked any issue in respect of the same. In any event, without prejudice to aforesaid.*

- vi. With respect to paragraph 7 of the SCN and paragraphs 17 of the Investigation Report, and paragraph 11 of the SCN read with paragraph 25 of the Investigation Report, Noticee no. 3 denies all allegations that Noticee No. 3 failed to ensure that fair practices and policies were followed by NSEIL in providing access to its members as incorrectly alleged or otherwise. As aforesaid, the facts narrated in the said paragraphs show that the functional heads of various departments would consider the requests of members as well as ISPs as per the roles assigned to them in NSEIL. In the SCN and Investigation Report, there is no allegation that any of the events highlighted in these paragraphs were ever escalated to or brought to the notice of Noticee No. 3 at the relevant time or that she could have otherwise become aware of the same,*
  
- vii. With reference to paragraph 8 of the SCN read with paragraph 18 of the Investigation Report, Noticee no. 3 states that none of the statements or communications referred to by the SEBI in the said paragraphs make any reference to Noticee No. 3 and/or attribute any action taken by her. They relate to Colo Support team and the third parties. Noticee No. 3 is not privy to the information and/or contents of the same as these issues were never escalated to the Noticee No. 3, nor is any evidence produced by the SEBI proving such escalations. The findings in these paragraphs pertain to the arrangement between the Reliance and Sampark. The Noticee No. 3 had no role to play in the transaction and had no relation of whatsoever with either Sampark no Reliance. As no reference of any nature whatsoever has been made out with regards to the Noticee no. 3, this itself demonstrates that there cannot be any nexus between the Noticee No. 3 and the transaction/ arrangement between Sampark and Reliance. It is also submitted that a wrong doing of any member and/or its alleged misuse of the NSEIL system cannot be blamed on Noticee No. 3 and no responsibility would attach on her on account of the same. These bald allegations have been made without any foundation and without demonstrating how the Noticee No. 3 was in position to effect an arrangement between Sampark and Reliance. In the absence of such particulars, such a charge cannot be made against Noticee No. 3 at all. In any event, Mr Deviprasad (annexure 21 to the Investigation Report) has accepted that the issue mentioned in the said paragraphs was only escalated to the business team and not Noticee No. 3. He further stated that the*

*Colo Support team and the Business team decided that it was inappropriate for the exchange to disrupt services of the member without providing them alternative. The Noticee No. 3 was not consulted for this at all. These issues were operational decisions taken by the functional heads based on their experience and knowledge. As stated above, these issues were never escalated to the Noticee no. 3 and SEBI in the present Show Cause Notice has not provided in material to present and/or demonstrate any actions by the Noticee no. 3.*

- viii. With respect to paragraph 9 of the SCN read with paragraph 20 of the Investigation Report, Noticee No 3 submits that no charge is levied against the Notice No 3. In any event, there is no material on record to show that Noticee No 3 was aware of the Sampark connection for W2W and refused to or neglected to act when the issue was escalated to her. Further, all the third parties are, if at all, responsible for the alleged misuse of the liberty and / or policies of NSEIL, which was shared with them in a bona fide manner. Paragraphs 20.5 and 20.12 of the Investigation Report clearly demonstrate that W2W were, by their own admission, in breach of NSEIL's policy, had deliberately suppressed that fact and had misled NSEIL. Paragraph 20.7 of the Investigation report concludes that W2W had established the connection in contradiction of the declaration to NSEIL. In this regard, Noticee No. 3 states that SEBI is merely attempting to impute and pass off responsibility of the misdoings of the third parties/entities on inter alia Noticee No. 3, without any just cause and merely because Noticee No. 3 was in charge of NSEIL at the given point in time.*
- ix. With respect to paragraph 10 of the SCN read with paragraph 22 of the Investigation Report, Noticee No. 3 denies all allegation and/ or statements made in the said paragraphs. Noticee No. 3 repeats and reiterates all that is stated in the above paragraphs. SEBI's conclusion that, the W2W and Sampark had arranged cabling in the co-location rack in such manner that W2W was at advantage in comparison with other traders members connected to Sampark and that such an arrangement was made in collusion and connivance between Sampark, NSE and W2W, is frivolous, unfounded in facts and grossly misplaced and baseless. The Show Cause Notice does not refer to any such instance and/or occurrence which would even remotely attribute liability*

*towards the Noticee No. 3. In this regard, Noticee No. 3 states that SEBI is merely attempting to impute and pass off responsibility of the misdoings of the third parties/entities on inter alia Noticee No. 3, without any just cause and merely because Noticee No. 3 was in charge of NSEIL at the given point in time.*

- x. No case of any nature, including breach of the any statutory or regulatory provisions, is made out against Noticee No. 3. Noticee No 3 has acted in compliance with the SECC Regulations and applicable SEBI Circulars. Therefore, there is no question of imposition of penalty under sections 15HA and 15HB of the SEBI Act and section 231-1 of the SCRA as alleged or at all.*
- xi. In light of the aforesaid, Noticee No. 3 denies that she has committed any violations of Section 12A of the SEBI Act, 1992, Regulations 3(d) and 4(1) of the PFUTP Regulations SEBI Circulars, Regulation 26 (1) and 26 (2) of the SECC Regulations read with the Code of Conduct specified under Part A and Part B of Schedule II of SECC Regulations and the SECC Regulations, the SCRA, 1956 and therefore no penalty ought to be imposed under sections 15HA and 15HB of the SEBI Act and section 23H of the SCRA. The allegations that these provisions have been violated have been made without any explanation as to how any of the provisions have been breached by Noticee No. 3. None of the ingredients necessary to demonstrate that Noticee No. 3 has acted in breach of the aforesaid provisions or regulations have been disclosed. It is not permissible in law to simply allege violation without demonstrating which action attributable to Noticee No. 3 amounts to the violation alleged. In absence of such identification, Noticee No. 3 is not in a position to effectively respond to these allegations and is presently just making general submissions.*
- xii. It is also significant to note that these allegations have been made against Noticee No. 3 in her individual capacity and it is not alleged that Noticee No. 3 is in any manner vicariously liable for the acts of NSEIL. Thus, there can be no question of any violation by Noticee No. 3. In any event, and without prejudice to the aforesaid, Noticee No. 3 fails to understand how any case of under the Section 12A of the SEBI Act, 1992, alleged violation of PFUTP Regulations, 2003, SECC Regulations 2012 and the SCRA respectively as alleged or at all is made out against Noticee No. 3.*

- xiii. *Noticee No. 3 states that she has had an unblemished career and no allegations have ever been made against her by SEBI or any other regulator. The present proceedings have caused tremendous harm and damage to Noticee No. 3's reputation and stature in society. Noticee No. 3 states that even if SEBI were to conclude that there were some lapses or indeed even some mischief by any subordinate staff and or a third party, the same cannot justify any directions as mentioned against Noticee No. 3 in the SCN. Noticee No. 3 has always discharged her duties to the best of her ability, with integrity and in the best interest of the entire organisation, the securities market and the investors at large. It was Noticee No. 3's endeavour to encourage and ensure fair, equal, equitable and transparent treatment of all concerned, by everyone in the organization. It is respectfully submitted that some stray events/ incidents, if any, cannot be allowed to tarnish the reputation of Noticee No. 3.*
- xiv. *In an organisation of the size and complexity of the NSEIL, some operational issues are bound to arise from time to time and have to be remedied and/or rectified. However, while all systems have been upgraded and modified from time to time based on the experience and subsequent events, merely because, by benefit of hindsight, one can change or improve or modify systems and procedures, it is no ground to penalize or punish parties for not having foreseen such unknown future events, or deliberate illegal acts of third parties. In light of the above, Noticee No. 3 repeats and reiterates that she is being unfairly proceeded against without any foundation in the Show Cause Notice to even demonstrate as to how the Noticee no. 3 is responsible for contravention of these provisions. You will appreciate that these provisions deal with wrongful and fraudulent acts committed in trading of securities.*

Submissions to 11B proceedings.

- xv. *The Noticee assumed the position of the Managing Director (hereinafter referred to as "MD") and Chief Executive Officer (hereinafter referred to as "CEO") of NSE on April 1, 2013 and continued in her post till she resigned on December 2, 2016. Thus, the Noticee No. 2 was acting in the capacity as MD & CEO of NSE during the relevant period of time when it was alleged that NSE allowed W2W and GKN to avail P2P connectivity from Sampark, an unauthorized telecom service provider. In her reply dated February 23, 2019 and written submission received on March 26, 2019, Noticee has explained her case by advancing various arguments and explanations which are summarized as below:*

- xvi. *SCN has sought to make Noticee No.2 responsible only in her capacity as a MD and CEO of NSE. The SCN in its narration of events does not point out any particular act which shows the involvement of Noticee No. 2 in any of the matters forming subject matter of the SCN. The Noticee No.2 being a MD and CEO was not involved in the day to day operations of the NSE Colo facility.*
- xvii. *The decision with respect to providing access to brokers to Colo system was taken by a business team of NSE in consultation with the technology team and the Colo support team. There were individual functional heads for each of the division to oversee the day to day activities of their respective teams and the Noticee No.2 was dependent upon the reports provided by the functional heads of the respective departments for carrying out her duties as the MD & CEO of NSE.*
- xviii. *The Noticee No. 2 had no specific role in the matter of permitting members to select their ISP providers, permitting the ISP to setup any equipment in the NSE Colo premises, or scrutinizing the eligibility of the ISP etc. which were handled by the functional heads and none of the issues which formed allegations against her in the SCNs had ever been escalated to her level. NSE has a well organized corporate structure with several verticals and 450 employees. The day to day operations and implementation of NSE's policies were handled entirely by respective functional heads and if required, the matters were escalated to level of senior management including the Noticee No. 2.*
- xix. *Noticee No.2 had honestly relied on the judgment, information and advice of the functional heads and there was no occasion for her to distrust the functional heads or to take guard against any possibility of a fraud being committed by them. None of the functional heads responsible for the issues raised in the SCN had brought to the Noticee No. 2's attention any problem with regard to the Colo facility. At the relevant time only Mr. Ravi Varanasi was directly reporting to the Noticee No. 2. NSE always ensured that competent persons are appointed to various departments and it was her duty to have overall supervision of the technically qualified persons appointed for respective task. In terms of delegations power approved within NSE very few issues were to be dealt with by Noticee No.2, directly, in her capacity as MD & CEO while for other issues other responsible person within NSE had the authority to take the decision.*
- xx. *As regard the charge of fraud against her the Noticee No.3 states that no element of fraud can be pre-supposed against her without providing any particulars of role in the alleged fraud either*

*by commission or deliberate omission. Noticee No. 3 was not involved directly or indirectly in any of the events narrated in the SCN and has no connection with the members who have allegedly derived benefit from the alleged preferential treatment.*

*Dealing with the various paragraphs of SCN the Noticee No. 2 has further argued that:*

- xxi. The findings of SEBI expert committee were not accepted by the NSE Standing Committee on Technology which did not find any violation of policy, or favoritism towards any trading member.*
- xxii. Regarding non transparent mode of communication, the Noticee No.2 submits that the policy of NSE provides that non- regulatory Circulars may be communicated through updates on websites. The amendment made to the Circular of August 31, 2009 was not with her approval which was done by Mr. Nagendra Kumar, who was in charge of membership department. In any case, there is no finding that Noticee No.2 was involved in the process of issuance of this Circular or that she overlooked any issue in respect of the same.*
- xxiii. On the Sampark issue, Noticee No. 2 states that she has neither the qualification nor expertise to probe into pure technology issues which was left up to the competent and qualified personnel in the organization. Further, the technology team was well equipped to ensure that fair and equitable access is inbuilt in the technology proposed by them. Stray instances of wrong doings by a particular employee or a member cannot be portrayed as a systemic failure.*
- xxiv. The SCN fails to identify the specific preventing and curative measures that could have been taken by the Noticee No.2 as alleged therein. During her tenure, no functional head brought any issue of preferential treatment to her knowledge. The requirement of checking the license of Sampark was duty of relevant functional head which has been taken care of and sorted out. Therefore, nothing was brought to her knowledge with regard to any lack of due diligence or any issue with the license provide by the Sampark.*
- xxv. SEBI's allegations that W2W and Sampark had arranged the cabling in the NSE Colo rack in such a manner in collusion with NSE that W2W has advantage in comparison with other members is frivolous, unfounded in facts and baseless. The Noticee No. 2 cannot be blamed for any illegal act of 3rd parties in the event it is assumed that W2W and their employees were aware that they were acting contrary to their declaration made to NSE while applying to P2P connectivity.*

- xxvi. *Reiterating her point that she always believed in the judgment of technological team and had no reason to doubt their honesty and integrity, Noticee No.2 has argued that there is no evidence in the SCN to suggest that she has committed any act described in Section 12A of SEBI Act, 1992 or has committed violation of other provisions of the Act or any Regulations including PFUTP Regulations, 2003, as have been alleged in the SCN.*
- xxvii. *SEBI Act, 1992 and the regulations framed thereunder do not empower SEBI to presume vicarious liability of any officer of a company under investigation. The only exception is provided in Section 27 of the SEBI Act, 1992 which presumes such vicarious liability for offences under SEBI Act, 1992. No allegations of any offence committed by the Noticee No.2 under the SEBI Act, 1992 has been raised in the SCN and in the absence of the same, SEBI cannot presume that Noticee No.2 merely as the Managing Director/CEO or Joint Managing Director (JMD) was automatically liable for actions of NSE. In this regard, Noticee No.2 has relied upon certain case laws such as Sunil Bharti Mittal V/s Central Bureau of Investigation and Aneeta Hada vs. Godfather Travels and Tours (P) Ltd. & its employees.*
- xxviii. *Serious allegation like fraud cannot be made as a matter of course and it is necessary for SEBI to identify the fraudulent act specifically attributable to Noticee No. 2. A charge of fraud necessarily requires inherent dishonest intention of which there is no allegation in SCN itself. The charge of fraud has been levied on the basis of conjectures and surmises. There is no material in the SCN to demonstrate even prima facie action of Noticee No.2 which is contrary to prohibition set out in Regulation 3 and 4 of PFUTP Regulations, 2003. The provisions of PFUTP Regulations, 2003 primarily deal with wrongful or fraudulent acts committed in trading of securities or in course thereof. Noticee No.2 has not traded in the securities and there is no observation to that effect in the show cause notice.*

Submissions of Mr. Anand/Noticee no.3

- i. *The SCN and Annexure 2 to the SCN i.e., the Investigation Report proceeds on the false and presumptive premise and basis that the Noticee is a KMP under the provisions of the SECC Regulations and on account of being a KMP, failed to ensure that the practices and policies followed by the NSE were fair to its members. Further, by virtue of purportedly being a supervisor of the officials and personnel who committed the offences at the Co-Location Facilities (such as Mr. Nagendra/Mr. Ravi Varanasi/ Mr. Devi Prasad) failed to ensure prevention of irregularities by the Co Lo support department.*

- ii. *It is evident that the Noticee is not a KMP Thus, the SCN is bad in law and ought to be quashed and set aside on this ground in time. In any event and without prejudice to the aforesaid, the allegations pertaining to the Noticee being a KMP against Order dated 11th February 2022 in the matter of issues at NSE relating to (i) appointment of Mr. Anand Subramanian as Chief Strategic Advisor and his Re-designation as 'Group Operating Officer and Advisor to MD' and (ii) Sharing of confidential information of NSE with unknown person by Ms. Chitra Ramkrishna has been challenged by the Noticee in Appeal No. 211 of 2022 before the Hon'ble Securities Appellate Tribunal. Thus, since the issue as to whether the Noticee can even be held to be a KMP is sub-judice and accordingly the SCN cannot proceed on the assumption that the Noticee is a KMP.*
- iii. *SCN is unfounded and meritless and cannot be decided until decisions are rendered on connected issues by relevant courts/ tribunal. The SCN fails to acknowledge that the Co-Location Facilities were started by the NSE in the year 2010 much prior to the appointment of the Noticee with the NSE. Such corporate lapses, preferential treatments and access to certain select stock brokers, non-transparent and wrong practices with respect to the Co-Location Facilities were being undertaken by the NSE even in 2012 long before the appointment of the Noticee. Since the SEBI has itself accepted that Noticee is unconnected to the Colocation facility issue, as a natural consequence, the current SCN issued to the Noticee with respect to compliance issues and irregularities occurring in the Co-Location facilities, can by no stretch of imagination be issued and maintained against the Noticee and thus the SCN is contrary, unfounded and meritless. Further, other Noticees have also filed appeals against the Co-Lo Order as well as the Order dated 30th April 2019 passed by the SEBI in the matter of Dark Fibre Leased Line connectivity allowed to certain Stock Brokers by NSE ("Dark Fibre Order"). Thus, all the issues in the current matter are sub-judice and accordingly the SCN cannot be decided upon till final disposal of the proceedings, Without prejudice and in any event, even if any orders are to be passed, for reasons set out herein, the Noticee ought to be exonerated.*
- iv. *No case having been made out against the Noticee in respect of each of the allegations set out in para 1.2 above and the SCN and the Investigation Report has miserably failed to make out neither a direct or indirect nexus to any of the allegations against the Noticee. The Noticee had no role to play with respect to Co-Location Facilities and in any event allegations in the SCN for the offences committed, if any, have been made out against the NSE and the following other Noticees*

*Mr. Nagendra Kumar — (Vice President, Membership Department NSE)  
(b) Mr. Devi Prasad — (Vice President, IT Operations) (c) Mr, Avdhut Gharat —(Head of Colo Support -NSE)*

*Mr. Nilesh Thote —( Co-Lo Support NSE)  
Ms. Chitra Ramkrishnan - (MD and CEO of NSE)  
Mr. Ravi Varanasi — (Head of Business Development Function*

- v. *The SCN sets out that Mr. Devi Prasad, Mr. Nagendra and Mr. Ravi Varanasi were communicating with Sampark and thus had knowledge about the events occurring in the Co-Location Facilities at the NSE, the dark fibre issue and leased line connectivity. The Noticee states that none of the personnel ever reported to the Noticee. Mr. Nagendra Kumar reported to Mr. Ravi Varanasi, who directly reported to the MD and CEO. Mr Devi Prasad reported to NSE-TECH CTO and Mr Urnesh Jain and did not report to Noticee. There is no finding in the SCN or the Investigation Report which records any allegation that the Noticee has derived any benefits or advantage due to certain purported irregularities and preferential treatment happening at the Co-Location Facilities and thus the Noticee ought not to be penalized.*
- vi. *In any event, the SEBI ought to appreciate that this is an extremely technical and advanced issue. The Noticee is only a Consultant and has no technical knowledge with respect to the same. The Noticee has never even visited the Co-Location Facility. The Noticee reiterates that the Noticee was merely a consultant who was appointed on a contractual basis by the NSE vide the Offer Letter. The Noticee did not even sit in the NSE for all the days of the week and was a part time consultant with the NSE, so the question of the Noticee supervising the Co-Location Facility at NSE, Bombay, failing to manage the load on systems and monitoring the cables and verifying the license of Sampark cannot and does not arise. Thus, the Noticee ought not to be held responsible or liable for the corporate lapses, governance issues and offences committed by other officials of the NSE. In view of the above the Noticee humbly prays that the SCN against him be dropped.*

*Submissions of Mr. Ravi/Noticee no.4/ Mr. Nagendra/Noticee no.5 and Mr. Devi Prasad*

*Submissions of Mr. Ravi*

- i. *Noticee No. 4 was the head of the Business Development team during the relevant point in time and he was not concerned either with the setting up of the Colo facility of the NSE or the day-to-day management thereof. The requests from members for all forms of connectivity to the Exchange, were first lodged with his team (i.e. the Business Development team) and his team would then pass on the said requests to the concerned department of NSE for further processing. There was no preferential treatment granted to any trading member in any manner whatsoever, as alleged or otherwise. He was the head of the department and hence trivial issues were never escalated to him at any point in time.*

- ii. *The P2P connectivity between the rack of a trading member at NSE premises to its office was not under his purview and/or within his job profile. As per the policy of NSE, P2P connections were terminated to trading member's offices or BSE Edge router and not at the Colo facility offered by BSE. The process of site visit started from May, 2015 and was conducted as most of the members were seeking lines that were terminating to a common point at BSE in spite of members having an existing connection to their office address in BSE building or an Edge router connection. W2W's site was not inspected as they had an existing connection terminating in their office*
- iii. *The allegation of not verifying licenses of Sampark is outside the scope of his role and responsibilities, hence the allegation of not verifying licenses of service providers does not arise in any manner whatsoever and is completely unfounded and baseless. The decision not to disconnect W2W and GKN was internally discussed and as the head of Business Development function, he suggested for continuation of the connections till alternative arrangements are made with an intention not to disrupt operational and control services of the members. Moreover, P2P connectivity was not in the main trading path and it was only a back-office connection. If the connection provided to W2W and GKN were disconnected, the same would have caused operational and control disruptions which could have resulted in grave monetary losses. Hence, a prudent commercial decision was taken in bona- fide to not disconnect these trading members, rather request them to shift to another service provider, having the requisite license. Sections 12A(c) of the SEBI Act, 1992 and Regulations 3(d) and 4(1) of the PFUTP Regulations, 2003 relate to fraud or unfair trade practices in securities or dealing in or issue of securities and therefore, none of the said provisions can at all apply to the allegations in the SCN of 2018. The allegations of violation of the SEBI Act, 1992 and PFUTP Regulations, 2003 are mere conjectures and surmises and without any evidence or proof. An act alleged to be fraudulent should have an element of some motive or ill-conceived idea or design, but there is no such allegation against the Noticee No.5 in the SCN. In this regard, the Noticee No. 5 has cited various judgments to support his argument.*
- iv. *P2P connection is a back office connection from members' rack to their offices outside Colo. This connection is not in the order/trade/ data dissemination path from the exchange to member's rack. It is essentially for the members to have operational control over their systems in the Colo. The October, 2013 amendment was an operational amendment and not regulatory in nature. NSE posted the October, 2013 amendment on its website and NSE's actions cannot be faulted when SEBI has endorsed the very same medium of communication in the May, 2015. NSE transparently communicated the 2013 amendment by posting the amendment on its website. The line termination related issues are under the purview of the Colo team and he and business development team have*

*no role to play in such matters. However, as business development team interfaces with the trading members, it is possible that his team members would have communicated the status to the trading members as part of their routine job function.*

***Submissions of Mr. Nagendra***

- i. He was not in charge of verification of licenses of service providers / vendors. As the Head of Membership Department he was not required to verify licenses of service providers/vendors providing connectivity to trading members from NSEIL's Co lo facility to the offices of the trading members. The SCNs do not quantify any gain made or loss suffered by any party as a result of the baseless allegations made against him. The Noticee No.6 was not concerned either with the setting up of the Co lo facility of the NSEIL or the day-to-day management thereof. The requests of members for all forms of connectivity to the exchange, were at first lodged with Business Development team, of which he was a part. The Business Development team would then pass on the same to the concerned department of the NSEIL for further processing.*
- ii. The Noticee had no role to play as regards the verification of licenses of service providers and licenses provided by service providers are verified by the Infrastructure team. The changes to NSEIL's website was not at all strategic in nature and was in the normal discharge of his duties. It was due to the continuous termination of connections at BSE's office at PJ Towers and other similar concerns being raised by the Colo team in 2014, it was decided to commence process of inspection of sites. The process for inspection of sites was implemented in May, 2015. As a sample measure, a site visit of a trading member, Shaastra was conducted in December, 2014. Once the policy of carrying out site visits was implemented in May, 2015, the relevant teams once again visited Shaastra's office when they had applied for a P2P connection.*
- iii. W2W's site was not inspected as they had an existing connection terminating in their office. There was nothing unusual about W2W's request, except for connectivity through Sampark, for which confirmation had been sought from the Colo support team, there was no reason to suspect W2W and therefore no site inspection was carried out. As regards GKN, the connection sought by GKN was to the BSE Edge Router and not at BSE Colo and NSE used to allow connections terminating at BSE's Edge Router without conducting any inspection. P2P connections and end to end connectivity were being handled only by Colo support team and the Membership team, of which he was the head, had no role to play whatsoever.*

- iv. *He did not exercise any discretion in granting permission to W2W. The allegation of verifying licenses of W2W is outside the scope of his role and responsibilities. With regard to the request from GKN seeking permission for fibre connectivity from NSEIL's Colo facility to BSE Edge Router, since the vendor was Sampark (Colo team had approved the connectivity in the case of W2W), based on the discussions with Colo team, they approved the request made by GKN. Millennium, vide email dated June 24, 2015, requested for getting connectivity at its BSE office. Since the principal office of the broker was situated at Kolkata, he forwarded the request to the Head of Business Development, of NSE, Kolkata office, who suggested for site inspection after discussing with representative of Millennium.*
- v. *The site visit of Millennium's premises was completed by the Membership team on July 7, 2015 and the same was intimated to him vide mail dated August 4, 2015. Prior to this, he had no knowledge of completion of the site visit. Based on the confirmation email received from the Colo support team that Sampark was ready or 'a fibre hand off', he sent a WhatsApp message to Millennium, informing Millennium of the same. Mr. K. K. Daga of Millennium informed him via WhatsApp message on July 22, 2015 that Millennium's work permit for Sampark was still not being processed by the Colo team. There were no prior emails exchanged between Millennium and him on the stated subject. The Colo team informed him that Sampark's licenses were pending and instead of mentioning that Sampark had not provided the licenses, he sent the message that "Sampark has some issues on the regulatory documents. They are getting it sorted. Reliance has started doing their work for other members". Millennium was advised to apply through Reliance vide WhatsApp messages on July 22, 2015 and on July 29, 2015.*
- vi. *The installation of MUX in the Colo rack of W2W and GKN was being directly handled by the Colo team and he had no role to play in the same. W2W and GKN were instructed to install their MUX directly in the rack based on the advice received from Colo support team. The instructions were issued by the Membership team after receiving a go-ahead from the Colo support team. As per his recollection, the meeting of June 25, 2015 was technical in nature and it appeared to be related to Sampark wanting to become an authorized service provider and provide connectivity to other members. NSE had no role to play as regards termination of W2W's connection in the BSE building and W2W had misled them while confirming that their line terminated at their office in the BSE building. As per the statements given on behalf of W2W, it is obvious and apparent that W2W had fraudulently connected the line to their rack in BSE and BSE failed to check the same. The decision not to disconnect the trading members from the P2P connection provided by Sampark was only with a bona fide view to not disrupt the services of trading members until the trading members were*

transferred to a service provider with requisite licenses. In the event connectivity provided by Sampark to the trading members had been disrupted / disconnected, then such trading members would have incurred losses.

- vii. *As per emails dated July 15, 2015 and July 17, 2015 of Colo, apart from Sampark, Reliance was the only available alternative to trading members for fibre hand-offs at the relevant period. After Colo team's confirmation on the lack of appropriate licenses by Sampark, the matter was internally discussed and it was decided to inform trading members to move their connection from Sampark to Reliance, as they were the only available alternative. As soon as it was concluded that trading members could not operate from the MUX of Sampark in MMR, on August 7, 2015, he attempted to reach out to certain trading members informing them of the aforesaid decision taken by NSEIL.*
- viii. *On August 12, 2015, an email was addressed informing trading members about shifting to Reliance from Sampark. He was never aware of the arrangement between Sampark and Reliance till August 19, 2015 when Sampark's team met NSE's team. If he had known the arrangement before August 19, 2015 then there would have been no need for him to write to W2W on August 12, 2015 to change his vendor. Even if SEBI were to conclude that there were some lapses by any subordinate staff or any third party, the same cannot justify issuing any directions against him as indicated in the SCN of 2018. The allegations of violation of the SEBI Act, 1992 and PFUTP Regulations, 2003 are mere conjectures and surmises and without any evidence or proof. An act alleged to be fraudulent should have an element of some motive or ill-conceived idea or design, but there is no such allegation against the Noticee No,6 in the SCN.*

#### ***Submissions of Mr. Devi Prasad***

- i. *On August 12, 2015, The Noticee has filed a written submission on March 18, 2019, in which he has stated that he adopts the written reply dated February 25, 2019 filed by the NSE and also reiterates his contentions made in his reply dated February 28, 2019. The Noticee has been working in NSE since the year 1996 and has been in charge of IT operations team since April 2013 which included Colo support team.*
- ii. *As regard Colo operations, the role and responsibility of Noticee was general administrative governance of the Colo support team and to provide guidance in case of any technical issues. The Colo support team is an administrative team that coordinated with the members who have presence in the NSE Colo facility for dealing with their issues and reporting to the business team on a day to day basis. The functions of the Colo support team included help desk support for member's*

*infrastructure installed in the Colo facility, preparing work permits to allow members' authorized service providers to provide services and assisting such service providers to do path survey for the purpose of cable lane, from the cable landing point outside NSE premises up to the members' respective racks in NSE Colo facilities. The Noticee in his written submission has explained his position on various aspects of Colo facility at NSE. His submission are briefly presented below:*

*Permission to W2W & GKN to avail connectivity of Sampark without verifying license:*

- iii. The SCN fails to consider that P2P connectivity provided to W2W and GKN by Sampark was part of the member's infrastructure and not in violation of NSE's policy at the time. The SCN fails to take into account that P2P link between members rack and their offices does not lie on the trading/data dissemination path of NSE. Further, P2P links are not within the purview of NSE as the same are procured by and maintained by member itself. NSE does not regulate or provide any support for the hardware or software that the trading members use or the service provider they use to connect their respective rack located in Colo center to their offices for P2P connectivity. The mere passing of the wire through a duct with the permission of NSE does not require any checking of the eligibility of the vendor selected by the trading member.*
- iv. NSE does not enquire into the eligibility or the license of the telecom service provider employed by trading member for their P2P connectivity P2P connectivity is authorized by NSE business teams and the Colo support team does not initiate any action till they get approval for such connectivity from NSE's business team. In the line of the same, when NSE received request from Way2Wealth on March 26, 2015 and from GKN on April 16, 2015 to allow Sampark to lay cable for their P2P connectivity after submitting necessary undertaking, the Noticee had given go ahead for conducting path survey to the Colo support team, in terms of this practice.*

*Permission to Sampark to place its MUX in MMR without verifying license:*

- v. In June 2015, Sampark approached NSE to host their infrastructure at NSE Colo facility to provide connectivity to multiple trading members, from that infrastructure. In the meeting held with them on June 24, 2015, Sampark told NSE that they had been licensed by DoT to provide connectivity. Sampark assured that they had requisite licenses in compliance of all legal requirements which they would submit in due course. Noticee states that merely allowing Sampark to shift its MUX from W2W to NSE's MMR cannot be called an act detrimental to the securities market. As soon as the Noticee learnt about lack of license with Sampark, it was instructed not to provide connectivity through its*

*MUX in MMR to any other trading member. The violation of DoT license by Sampark is a matter between the DoT and Sampark.*

- vi. *On the allegation as to why the P2P connectivity of Sampark provided to W2W and GKN was allowed to continue even after learning about its ineligibility, the Noticee states that the business team decided that it would be improper for NSE to disrupt services of any member without providing an alternative solution. On the point of denying another trading member, viz. namely Millennium from availing P2P connectivity of Sampark by installing a MUX in its rack while allowing the same to GKN & W2W, the Noticee has argued that the Colo facility had minimal space for laying any additional cable and the fact that by the time the request of Millennium was received Sampark was under the radar for not having requisite DoT license and therefore, no new P2P connectivity line from the Sampark MUX in NSE's MMR were allowed.*

*On the allegation of latency advantage:*

- vii. *The Noticee states that the connectivity provided by the Sampark was not dark fibre/near dark fibre since the fibre terminated at Sampark's equipment from which an Ethernet Hand-off was provided to W2W at both ends of P2P line. Sampark line was not used for trading by W2W and was used to take market data from W2W servers posted at NSE Colo facility to their office. The diagrammatic presentation of the P2P connectivity as depicted in SCN is flawed. The Noticee has provided another diagrammatic representation of the existing P2P connectivity in his submission to suggest that after the installation of Sampark MUX in NSE MMR there was no MUX equipment in the Colo rack of W2W. The earlier MUX in the rack remained in the shape of a passive junction box. There was no preferential treatment when W2W was the only trading member connected to Sampark's MUX and no other trading members were connected to this said MUX to experience any latency disadvantage.*

*Submissions of Sampark/Noticee no 7.*

- i. *The aforesaid SCN which is issued on the basis of investigation conducted by SEBI and the role of involvement/ participation of various entities/ persons have been narrated/ elaborated in detail. However, we have no information about the activities carried out by other entities and we have absolutely no relationship except as a service provider with the said entities. The entire SCIN is concentrated on the allegation that Sampark arranged the cabling in the co-location rack such that W2W has lower latency compared to other trading member connected to Sampark MUX (Ref. Para 6 on Page No. 4 of SCN)*

- ii. *We had provided services as per the plans and requirements and needs of the clients. We have no knowledge of intention and purpose of their usage of the infrastructure and nature of activity of the client. We are internet and Infrastructure service provider Company. We are not aware about the systematic procedures and process of trading of securities market or how the securities market operates. Pertinently, we are not any intermediaries and/or person associated with securities market. In fact, we are not even concern with the structure of the data center or the premises of the customer. The only role of Sampark is to lay cables as per Customers instruction till customer's premises. Apart from the aforesaid we do not have any knowledge about the utilization of the cable/ the few is no role post the laying of cables. It is pertinent to mention that we (Sampark) were a vendor of Reliance Communication Ltd. ("Reliance") and our role was limited to laying cables as per Reliance instructoris. The entire responsibility towards W2W is. with Reliance as W2 W is the customer of Reliance.*
- iii. *Our Company provided the service to the W2W i.e. W2W's connectivity continued from 28.05.2015 to 09.09.2015. During the said period, we provided services which were agreed upon and no wrong doing was done by us. W2W disconnected our services and switched to other service provider i.e. Reliance communication, - this action/ activity is part of normal course of business. On 19.08.2015 Reliance informs NSE that we have handed over our infrastructure to Reliance and the leased line services through the said infrastructure of Sampark would be provided by Reliance from 21.08.2015. The service was provided as per the rules and norms of NSE and Market Regulator, SEBI. We provided services to the brokers after prior permission of the primary regulator i.e. Stock Exchange (NSE). NSE did not take any objection to provide the colocation facility to the broker. Dark fibre is not some sinister piece of technology which allows backdoor access to the vault. It is just unused fibre unused overcapacity. India has 1000s of • KMs of overcapacity of fibre due to the telecom revolution. Before a fibre is used, equipment needs to be installed to control the transmission of waves. Fibre that is available without such equipment is dark fibre. World over optical fibres-both dark and lit are being bought and leased by trading firms. - In fact, world has now moved on to transmitting data via microwave links and line of sight laser links. And this was 5 years ago. There are already discussions of using lower earth orbit satellites to transmit trading data. World over exchanges encourage members to 'build their: own networks. So, building a fast personal network is neither new for FIFT firms nor for exchanges. Hence this service/ action are a part and parcel of regular business. No alleged wrong doing can be alleged against us while providing any services to the client.*

- iv. *Additionally, under Para 22.3 to 22.5 on Page No. 52 and 53 of Investigation Report (Ref. Annexure 2 of the SCN), complete details of a brief depiction of the connection of W2W through us between NSE and BSE is provided. On observation of the same is alleged that we had installed 'a MUX at NSE which was connected to W 2 W 's M UX on -one end and to the other stock Broker's rack on the other hand. Hence, Brokers (except W2W) who availed connection from us were at disadvantage due to additional hops as the connection to other brokers passed through W2 W M UX to our MUX and then to their respective racks. It is humbly submitted that, we have no role with respect to services allowed by NSE or services or trading carried out by trading members and apart from the aforesaid we have no relation with W 2 W expect from having a service provider Client relationship.*
- v. *In response to the aforesaid allegation, we state that, our main aim of business is to provide satisfactory service to our customer. We further state that W 2 W is having same customer status like other customers. No rules were omitted or waived during providing services to this broking companies. No violations have been committed by our side. Further, we submit that there was no malafide intention and ulterior motive behind providing services to the specific trading members as mentioned in the SCN. We further state that there is no financial interest apart from the charges of rendering the service to specific trading member. Hence, there was no collusion between the NSE, W2W and Sampark.*
- vi. *Further, we would like to state that on similar caption matter, 11B proceedings vide Show Cause Notice dated 03.07.2018 was initiated by Enforcement Department, SEBI against various entities.' Thereafter, SEBI vide order dated 30.04.2019 passed an order on the subject matter of present proceedings. •An appeal against the said order has been filed by many entities before Hon'ble Securities Appellate Tribunal. In light of the above, it is submitted that the principle laid down by the Hon 'ble Supreme Court in' Gorkha Security Services v. Govt. of NCT of Delhi & Ors. are well settled and in accordance with Article 141 of the Constitution. The said principles are to mandatorily be followed by all subordinate courts including SEBI. It is therefore submitted that SEBI must clarify the exact measure it is contemplating; to enable the Noticee to make effective submissions, failing which these proceedings would be violative of natural justice and therefore infirm. The submissions made herein are without prejudice to the fundamental failure in the SCN.*

*In summary, we would like to submit as under:*

- (i) *While offering our services, we had followed and complied with all the procedures and requirements as statutorily required.*

(ii) We state, declare and assert that we were not party to any alleged 'wrongdoing' or 'game plan' or 'modus operandi' as alleged or otherwise.

We would like to submit that we are a law-abiding Company and we have always complied with Rules/ Regulations as applicable to us. Any adverse inference drawn as a result of the caption matter will cause loss of goodwill, credibility; market standing and reputation which we have painstakingly build over the years. The same shall have a cascading effect on our business without any fault of ours. Thus, we humbly request that we may be discharged from present proceedings at the earliest.

Submissions of Mr. Prashanth D'souza/Noticee no.8

- i. The Noticee states that the connectivity (i) The aforesaid SCN which is issued on the basis of investigation conducted by SEBI and the role of involvement/participation of various entities/persons have been narrated/ elaborated in detail. However, I have no information about the activities carried out by other entities and the prime fact of the matter is that I was not even associated with the company when Sampark had provided connection to W2 W. The entire allegation that I (COO of Sampark) and Sampark acted in collusion with W2W and NSE in such a way that W2W has Lower Latency compared to other trading members connected to Sampark MUX placed in NSE MMR is based on erroneous consideration of facts as I was not involved in the said In fact, even when I joined the company I was not involved in the operations of laying out fibre and giving connectivity to the customer. My role was to look after the sale activity of the company. Pertinently, Mr. Netaji was handling the work in relation to the connectivity at the relevant point in time as he was the business head of the company. Additionally, at the relevant time Late Mr. Prakash Dsouza was in charge of the company, Hence, nothing adverse can be alleged against me :
- ii. I vehemently deny that I was involved in destroying information, if any. In fact, I have no knowledge about the same in any manner whatsoever, hence I have requested for Inspection of Mr. Jayant's submission dated 30.03.2018 and an opportunity to cross examine him to bring out the correct facts on record. Further, I state that:
- iii. I have never hidden/deleted any information from the Ld. Investigation Tem/Department/Officer, SEBI and have always co-operated by providing all the details in a timely manner.

- iv. *In fact, I have given all the access of Emails of Sampark (now as I am the CEO of Sampark), Laptops and Mobile Phone which itself indicates that I have always co-operated with SEBI.*
- v. *Further, I state that I do not re — collect the message as alleged by SEBI to be received from Mr. Netaji and I with utmost assurance state that I have in no manner whatsoever directly) indirectly instructed/conveyed to Mr. Jayant to delete any mails as I had no idea about. In fact, even as on date I do not have any idea as to which emails SEBI is indicating which were alleged deleted by Mr. Jayant.*
- vi. *In totality, I submit that I may not be able to provide the exhaustive reply in respect to the said allegation unless an opportunity for inspection of documents and cross examination is not provided to me.*

Submissions of Mr. Netaji Patel/Noticee no.9

- i. *The entire allegation against me in the Show Cause Notice is based on a single WhatsApp message sent by me wherein I am alleged to have stated that I have ‘reviewed’ PSTs and not even ‘destroyed’ or ‘deleted’ the said PSTs or any information whatsoever. Further the WhatsApp message goes to state that if Prashant D’Souza “had any issues he was free to delete mails without any further discussion. Any prudent man would interpret this message to mean that the intention to delete mails, if any, lied with Mr. Prashant D’Souza/Noticee No. 2, and I being a subordinate to Noticee No. 2 asked him to do whatever he wishes, without discussing with me. While I had maintained all the data available with me in order, I had no power to control what Noticee No. 2 desired to do.*
- ii. *The Show Cause Notice fails to demonstrate its interpretation to the impugned WhatsApp message, or at least explain how the message justifies the allegation of destruction of information by me, if any. Based on such single finding, without corroborating the same with any actual evidence or even attempting to investigate further, strong and inaccurate conclusions are directly drawn against me.*
- iii. *Without prejudice to the above, I further submit that there is no reason for me to delete or destroy any material that may be relevant to SEBI, even more because I am not concerned in any manner with any of the core concerns of SEBI in the Show Cause Notice. I understand that SEBI had approached me merely with an intent to corroborate and substantiate its suspicions against Noticees No. 1 and 2 and accordingly, I had endeavored to submit all the data that was*

available with me and gave my statement as well. I have no close association/relation with my ex-employer Noticee No. 1 and 2, with whom I had worked merely for a period of 4 months, that would motivate me to violate the provisions of evidence laws merely to protect their interests, if any.

Submissions of W2W/Noticee no.10

- i. *The Noticee as the first preliminary objection, it is respectfully submitted on behalf of Noticee No. 1 that the subject matter of the instant Notice is currently sub judice before the Hon'ble Securities Appellate Tribunal. As the next preliminary objection, it is respectfully submitted that, by its conduct, the case of imposition of monetary penalty in these instant proceedings have been waived off by SEBI, rendering these proceedings non est.*
- ii. *It is submitted that the Notice fails to clearly and specifically identify the charges against Noticee No.1. It is a fundamental principle of natural justice that charges levelled in a show cause notice must be precise and unambiguous, in order to enable the noticee to satisfactorily respond to the charges raised. Vagueness in the contents of a show cause notice must be treated as fatal to the case itself. In the present case it is submitted that the Notice is bereft of any clarity regarding the case being made out against W2W. It is humbly submitted that these fundamental anomalies in the Notice strikes at the heart of the Notice and does not meet the core principles of equity and natural justice that all administrative proceedings must comply with. On this ground alone, it is submitted that the present proceedings must stand wholly vitiated.*
- iii. *It is submitted that W2W had at all times acted in good faith and accessed co- location facilities of the stock exchanges in a fair and transparent manner. Neither did NSE provide any preferential treatment to W2W nor did W2W seek any preferential treatment from NSE while accessing its co- location facility. It is denied that W2Wcolluded with any officials of NSE and Sampark or any other party towards receiving any unfair access or advantage while accessing the co-location services provided by NSE. It is relevant to mention that even SEBI recognizes that the service providers providing such connectivity services are considered to be agents of the stock exchange and therefore, liability for actions of the servie provider will vest with the principal, i.e., the stock exchange. As such, due diligence, if any, with respect to the qualifications of a vendor are the prerogative of the party appointing and contracting with them, i.e., the concerned stock exchange and not the user of the connectivity services. In this regard, reference is made to the Circular dated December 1, 2016 bearing ref. no.*

*SEBI/HO/MRD/DP/CIR/P/2016/129, which ex facie is clarificatory in nature. The Noticee craves leave to produce, refer to and reply upon the same, if required.*

- iv. In 2015, W2W had existing circuits between the NSE colocation facility of NSE and its office at PJ Towers, i.e. the BSE building, through Reliance which was providing a bandwidth of 45 mbps and TCL which was providing a bandwidth of 100 mbps. At this time, W2W was actively pursuing both these service providers to provide lower latency solutions. It is relevant to note that at no point of time during, the aforesaid communication between NSE and W2W did NSE mention anything regarding the issues with respect to Sampark's license. Even at this stage, W2W was not aware that the Sampark did not possess the requisite regulatory licenses required for providing its services. W2W was of the belief that there may be some technical issues with Sampark and since NSE as the frontline regulator had specifically sought W2W to shift from Sampark to Reliance, it had no other option but to change its service provider.*
- v. It was only in 2016 through media articles which mentioned the whistleblower letters that W2W began to suspect that there may have been certain issues with respect to colocation facilities at NSE and it was in course of subsequent investigations that W2W was made aware of the fact that Sampark purportedly did not have the requisite license to provide its services. It is also submitted that W2W had cooperated through the investigation process and has provided the investigating agencies with all the required data and information. In light of the above, it is submitted that W2W has acted in good faith while seeking services of Sampark and had not sought any preferential access or undue gain through or by reason of its services.*
- vi. It is submitted that W2W had availed the services of Sampark without the knowledge that Sampark did not have the requisite license or was otherwise ineligible to provide leased line connectivity at the colocation facility of NSE. As aforesaid, it was only in 2016-17 that W2W became aware of the licensing or eligibility issues of Sampark. It is submitted that there is neither any concrete or circumstantial evidence which suggests that W2W had any prior knowledge of the fact that Sampark did not have the adequate licenses to provide its services at the co-location center of NSE nor was W2W made aware of this issue during the time it availed services of Sampark. Therefore, it is submitted that the allegations contained under the Notice that W2W had prior knowledge that Sampark did not have requisite license and it continued to avail services of Sampark, is contrary to the findings of the various investigations carried out by SEBI and is completely false, baseless and vehemently denied.*

- vii. *W2W acting in good faith sought prior permission from NSE before Sampark was allowed to carry out any activities in the colocation facility at NSE. Since NSE was the frontline regulator and it permitted the access to the service provider, it was reasonable for W2W to hold the bonafide belief that there were no irregularities in relation to services provided by Sampark. It is relevant to note that in October 2011, Transaction Network Services (“TNS”) had been added as a vendor by NSE for providing connectivity with its co-location facility to international direct market access clients. However, no circular had been issued by NSE for informing its members about the empanelment of TNS as a vendor. Therefore, W2W had availed the services of Sampark on its bona fide belief that the list of service providers mentioned in the 2009 NSE Circular was not exhaustive.*
- viii. *It is submitted that W2W did not enjoy or sought to enjoy any latency advantage over other trading members while availing the co-location facilities for undertaking its algorithm based HFT. In this regard, it is relevant to submit that no material has been brought on record to demonstrate that a testing of the actual latency was ever done. In the absence of such material, it becomes apparent that these allegations are not backed by any evidence, and it is simply based on conjectures and surmises. It is submitted that the allegations with respect to irregularities in the wiring connections are technical and mechanical in nature without any material impact on the latency received by W2W. The specific allegations with respect to the cabling irregularities, even if found to be true, were mere technical irregularities and at best can be classified as bonafide mistakes made unknowingly or unintentionally. No action of W2W was geared towards gaining any unfair latency advantage over other trading members.*
- ix. *The allegations of any collusion or fraudulent scheme devised between NSE, Sampark and W2W is devoid of any truth and is in fact contrary to the findings of the forensic reports commissioned by SEBI to investigate potential collusion between trading members, stock exchange and other service providers. For collusion to exist there must be meeting of minds between different parties and there must be an agreement (explicit or implicit) to obtain something which is otherwise illegal. It is submitted that there was no understanding or agreement entered into by W2W with employee of NSE, Sampark or any other third party to gain any unfair or illegal gain. The forensic investigations have sieved through the entire set emails, telephonic communications along with other documents/ information of W2W with both NSE and Sampark and have not found a single communication which points towards any potential collusion to achieve any unfair advantage or preferential treatment. It is settled law that*

*to prove collusion between parties a higher degree of proof must be submitted by regulatory agencies and should not be alleged casually.*

- x. It is submitted that charges of fraud may be proved even on the test of preponderance of probability, which is to mean that charges can be sustained only when on the basis of admitted and proven set of facts, a reasonable or prudent person would view the set of facts to be fraudulent. Further, in cases of grave charges of fraud, there must be convincing and higher degree of preponderance of probability to support the allegation of fraud and fraudulent practice. It is submitted that none of the investigation reports or facts produced under the Notice points towards fraudulent conduct by W2W. It is submitted that in the facts of the present case, there is no allegation or evidence that W2W induced any person to deal in securities. In absence of any cogent facts or inferences which can lead to the conclusion that any action or omission of W2W led any person to deal in securities, the charge of fraud cannot hold its ground.*
- xi. At the outset it is submitted that since no violation of the SEBI Act or the PFUTP Regulations, as alleged, can be demonstrated in light of the submissions made hereinabove, the facts of the case do not warrant any imposition of monetary penalty. It is respectfully submitted that the Ld. AO should consider the following submissions which would demonstrate a bonafide use of the Co-location Facility by W2W. You may appreciate that as a registered Stock Broker, W2W always have accessed the Co-location facility in a fair and transparent manner.*
- xii. As of 2015, as already submitted above, there was already an existing circuit within the Colocation facility which was being availed by W2W. Such existing circuits were being provided through Reliance which was providing a bandwidth of 45mbps and TCL which was providing a bandwidth of 100 mbps. At this time, W2W was actively pursuing both these service providers to provide lower latency solutions. It is relevant to note here that Co-location facility is accessed in order to reduce latency and access information at a better speed. It is further submitted that the charges of collusion would also be dropped as there is nothing on record to indicate that W2W had colluded with the Exchanges. The above factors would clearly demonstrate that W2W had carried out adequate due-diligence and accordingly availed services of Sampark. At the outset, it is important to refer to the diagram below (which is based on the pictorial representation mentioned in the Ld. WTM's Order) which would demonstrate that the charges levied are not sustainable ;*

xiii. *It is evident that the Notice and the allegation made out therein, is without any basis in law or under equitable considerations and as such, no case has been made out justifying the allegations made against the Noticee No. 1 imposing penalty under the SEBI Act. Therefore, any finding by SEBI upholding the allegations made against the Noticee in the present instance would be inconsistent with the relevant provisions of law and regulations and facts and circumstances of the case. Under the given facts and circumstances, we would like to state that there are no justifiable grounds or basis to issue any direction against W2W in violation of the SEBI Act and PFUTP Regulations or the Stock Broker Regulations. In view of the foregoing, applying the adjudicatory framework to the conduct of Noticee No. 1 as is evident from the material on record, it would follow that there is no case at all to be made against the said Noticee. It is humbly requested that the proceedings against W2W may be disposed of without any adverse finding or imposition of penalty.*

Submissions of M R Shashibhushan/Noticee no.11

- i. *It is clear that Mr. Shashibhushan could not have possibly been involved with everyday functioning of all these divisions. In such situations, the role of the CEO is that of providing guidance and resolution on matters escalated to him. Given that the technology expense per annum for the relevant business used to be around INR 6 crores on an average, which did not require escalation, the expenses related to Sampark were relatively small and did not require any exceptional approval from Mr. Shashibhushan.*
- ii. *In view of the above, it is respectfully submitted that the Noticee role vis-à-vis in the organisation was more of oversight and supervision at the macro level. His role was managerial in nature and he did not (and could not be) personally involved in every decision making at W2W, especially those which did not cross the relevant thresholds for escalation. However, the Noticee does discharge his duty of providing support and guidance to the team as and when critical issues are flagged for his consideration and his opinion is sought.*
- iii. *Both in terms of the emails of officials of W2W and their statement under oath before SEBI on March 09, 2018, it was submitted that since the physical circuit first came to W2W's office in the BSE Building, and from there went to Netmagic data centre/colocation facility, it was W2W's understanding at the time of availing the circuit that the W2W's office would be considered as the terminating end of the circuit. It is submitted that W2W did not make any misrepresentations*

to NSE with respect to the P2P connectivity as W2W did not make any misleading assertions with the intent to deceive NSE. However, post phone conversations with NSE in early July 2015, Noticee No. 5 came to the conclusion that NSE might not construe W2W's office as the terminating end of the circuit since there was no switch in tile office, and therefore, Noticee No. 5 vide an email dated July 07, 2015 brought the same to the knowledge of the senior management of W2W, including the Noticee. The Noticee promptly took note of the email and directed that immediate action should be taken to install the switch in the office and this direction was carried out promptly.

- iv. *At the outset, it is respectfully submitted that there are no specific averments in the Notice against the Noticee to illustrate his role or involvement in the alleged violations of W2W. Thus, it appears that SEBI has proceeded against the Noticee only on account of him being the CEO of W2W at the relevant time under the principle of vicariously liability. It is submitted that the Noticee is premature and does not attribute any wrongdoing. Given that there was no lapse on the part of the Noticee of his responsibilities towards W2W as alleged in the Notice, no liability can be imputed upon the Noticee. It is respectfully submitted that there is no evidence (documentary or oral) in the Notice or the Forensic Reports that point a finger at, or hints at, any act or omission which would lead to the conclusion of any wrongdoing by the Noticee.*
- v. *It is submitted that a show cause notice should very clearly point out the facts that the regulatory authority has relied upon to hold each and every notice liable for committing an offence. If a violation of any particular provision of law is alleged against a Noticee, then the facts leading to the apprehension of such violation having been committed, should demonstrate all ingredients of such violation as required in law and, in fact, every piece of evidence that is being used to allege the offence against the notices should find a clear mention in the show cause notice. This is necessary to ensure that the Noticee is completely aware of the charges levelled against him and is able to prepare its reply accordingly. Failure to do so results in violation of natural justice. In the present case, the Notice is not only vague but is completely bereft of any specific averments against the Noticee.*
- vi. *It is submitted that the Noticee has neither derived any benefit or advantage from the alleged contraventions by W2W. No such allegation of profit has been averred by SEBI in the Notice either. Further, the Forensic Reports also do not conclude that any wrongful profits or monetary benefits were being derived by W2W. Thus, no allegation of wrongful financial gains has also been made out against the Noticee. It is respectfully submitted that any findings by SEBI*

*upholding the allegations against the Noticee in the present instance would be inconsistent with the relevant provisions of law and regulations and facts and circumstances of the case and would irreversibly damage his reputation which he has painstakingly built over many years.*

- vii. In view of the submissions made in the Detailed Response read with the paragraphs above, it is abundantly clear that there is no case that has been made out justifying the allegations made against the Noticee*

*Submissions of Ms. Rima/Noticee no.12*

- i. It is submitted that the Noticee was CTO of Retail Business of W2W. The Noticee has not personally witnessed the laying of the cables / leased lines and has had no conversations with any other person from the exchange or the vendor beyond the official email and telephone correspondences. Therefore, it is submitted that there was no possibility for the Noticee to have any knowledge of any alleged preferential treatment to W2W.*
- ii. It is submitted that the Noticee has not only appeared before SEBI upon being called for examination, but has also provided all information that was available with them. It should be noted that there is no physical evidence of the actual laying of cables at NSE Colo and BSE Colo and the allegations in the SCN are based on statements of certain persons, which are either non-existent (Madan Shinde's statement) or contradictory (Nilesh Thote's statement).*
- iii. Therefore, it is submitted that despite the Noticee having cooperated through the entire investigation process and providing SEBI all the required data and information to the best of her knowledge and belief, the Noticee has been wrongly arraigned in the present matter based on incorrect assumptions drawn from the evidence on record, without any basis.*
- iv. It is submitted that the SCN completely fails to show any contradictory statement made by the Noticee before SEBI and the contents of the internal emails of W2W referred in the IR. With respect to the P2P connectivity of W2W between NSE Colo and BSE Colo, the IR purportedly relies on the March 24, 2014 and July 07, 2015 emails sent by the Noticee to allege that the connection of W2W was from their rack in NSE Colo to W2W rack at BSE Colo and not to their office at BSE*
- v. there is no contradiction between the findings of SEBI based on the emails referred above and the statements made before SEBI, as shown above. Further, it is submitted that the extracts of the statement of Mr. Madan Shinde "As of now we have only found Way2Wealth Brokers cross connect to Sampark in the period 2014-2016" referred to in paragraph 20.7 of the IR appear to be contradictory to the actual statement made by Mr. Madan Shinde (Annexure 71 of the IR and Annexure 25 of the Reply), wherein in fact, the latter has stated that "it is a standard practice to extend cross connect from service provider*

device in MMR to customer rack at BSE Colo”, which is further supported by the list of entities availing cross-connect provided by Netmagic to SEBI vide letter dated May 28, 2010.

- vi. *With respect to the cable path of W2W at NSE MMR, it is alleged that the Noticee provided false information to SEBI by stating that they were not aware of W2W’s cable path at NSE MMR prior to April 01, 2016 and had no knowledge of any preferential connectivity offered to W2W.*
- vii. *It is submitted that prior to March 08, 2019, there was no provision under the SEBI Act for imposition of monetary penalty for furnishing of false information and SEBI could impose monetary penalty for failure to furnish information or delay in furnishing the information. It was only vide amendment dated March 08, 2019 that Section 15A(a) of the SEBI Act was amended to include monetary penalty for furnishing false, incorrect or incomplete information.*
- viii. *As the Noticee has provided all information when sought and had also appeared before SEBI when called upon for examination, and there is no allegation of violation of any other securities laws, the Noticee is not in violation of Sections 11(2)(i), 11C(3) or 11C(5) of the SEBI Act. Therefore, as there is no violation of Section 11(2)(i), 11C(3) or 11C(5) of the SEBI Act on part of the Noticee, no penalty can be imposed by SEBI under Section 15HB of the Act and the allegations in the SCN are liable to be dismissed.*
- ix. *It is submitted that the Noticee is a bonafide individual who has provided all information to SEBI to the best of her knowledge and belief. Before recording the statement, the Noticee was not sent any pre-questionnaire by SEBI so that Noticee could have come prepared with the answers and as such the Noticee had made sincere efforts to answer the question related to events that happened about three years ago out of her memory to the best of her ability. The Noticee has further duly cooperated through all stages of the investigation process and has provided the investigating agencies with all the required data and information and has gone beyond her call of duty to do so. It is submitted that the Noticee has served as the CTO of Retail Business of W2W for more than 14 years and has had a spotless track record in her entire career. Thus, it is submitted that the Noticee has acted in good faith while providing information to SEBI. Therefore, the allegations in the SCN are completely baseless and devoid of any merit.*
- x. *Therefore, in the interest of equity and justice, we request SEBI to take into consideration the above submissions together with the reply and additional submissions, prior to the issuance of any order in the present matter. In light of the above facts and legal submissions, we request SEBI to discharge the Noticee from the present proceedings and accordingly pass a reasoned order to that effect.*

Submissions of Mr. Prashanth/Noticee no.13

- i. *It is submitted that the Noticee was never an officer or director of W2W at the time of the alleged violations, but was acting as the director of Alphagrep, which was merely a client of W2W. Further, the Noticee has not personally witnessed the laying of the cables / leased lines nor was in contact with the relevant people at NSE Colo, BSE Colo or Sampark who were involved in such activities. The scope of the allegations in the present SCN is limited to that of alleged violations of Section 11(2)(i), 11C(3) and 11C(5) of the SEBI Act, i.e., with respect to providing of false statements on oath. Although SEBI has conducted a detailed investigation in the matter, no charges have been levied against the Noticee with regard to any wrongdoing or any involvement in any fraudulent activity or collusion with any other entity in relation to the matter. The Noticee has not been charged with violation of any provision under the PFUTP Regulations. Further, there is no allegation of any undue financial benefit accruing to the Noticee and no fund trails have been unearthed by SEBI against the Noticee. It is submitted that there is no reason for SEBI to assume that the Noticee would lie on oath before SEBI, nor does the SCN provide any reasons to show that the Noticee had any incentive to mislead the investigation of SEBI.*
- ii. *It is submitted that the SCN completely fails to show any contradictory statement made by the Noticee before SEBI and the contents of the internal emails of W2W referred in the IR. In this regard, reliance is placed on the submissions made at paragraphs 94 to 124 of the Reply. With respect to the cable path of W2W at NSE MMR, it is alleged that the Noticee provide false information to SEBI by stating that they were not aware of W2W's cable path at NSE MMR prior to April 01, 2016 and had no knowledge of any preferential connectivity offered to W2W.*
- iii. *It should be noted that SEBI has not provided any evidence to show that the Noticee was either not cooperating in the investigation, have not provided any document / information sought or defied any summons or requests made by SEBI and other forensic agents deployed by SEBI. In absence of any of the above, a mere inconsistency between the information provided by the noticee and the findings of the investigation agencies cannot be a ground for penal actions by SEBI. It cannot be the case of SEBI that any statement made by an individual which is inconsistent with the finding of its investigation is liable for penal actions. It is submitted that SEBI would need to showcase a pattern of lies and non-cooperation to make grave allegations such as that of perjury, and penal actions cannot be based on mere interpretation of a statement or two in a long, multiparty and technical investigation carried out by SEBI in the colocation case. Thus, the allegation that the Noticee had furnished any false statement on oath is completely baseless and without any merit.*
- iv. *It is submitted that prior to March 08, 2019, there was no provision under the SEBI Act for imposition of monetary penalty for furnishing of false information and SEBI could impose monetary penalty for failure to furnish information or delay in furnishing the information. It was only vide amendment dated March 08, 2019 that Section 15A(a) of the SEBI Act was amended to include monetary penalty for furnishing false, incorrect or incomplete information. As the Noticee has provided all information when sought and had*

also appeared before SEBI when called upon for examination, and there is no allegation of violation of any other securities laws, the Noticee is not in violation of Sections 11(2)(i), 11C(3) or 11C(5) of the SEBI Act. Therefore, as there is no violation of Section 11(2)(i), 11C(3) or 11C(5) of the SEBI Act on part of the Noticee, no penalty can be imposed by SEBI under Section 15HB of the Act and the allegations in the SCN are liable to be dismissed.

- v. *It is submitted that the Noticee is a bonafide individual who has provided all information to SEBI, to the best of his knowledge and belief. The Noticee has further duly cooperated through all stages of the investigation process and has provided the investigating agencies with all the required data and information. Thus, it is submitted that the Noticee has acted in good faith while providing information to SEBI.*
- vi. *Therefore, in the interest of equity and justice, we request SEBI to take into consideration the above submissions together with the reply and additional submissions, prior to the issuance of any order in the present matter. In light of the above facts and legal submissions, we request SEBI to discharge the Noticee from the present proceedings and accordingly pass a reasoned order to that effect.*

#### Submissions of Mr. Mohit /Noticee no. 14

- i. *It is submitted that the Noticee was never an officer or director of W2W at the time of the alleged violations, but was acting as the director of Alphagrep, which was merely a client of W2W. Further, the Noticee has not personally witnessed the laying of the cables / leased lines nor was in contact with the relevant people at NSE Colo, BSE Colo or Sampark who were involved in such activities.*
- ii. *The scope of the allegations in the present SCN is limited to that of alleged violations of Section 11(2)(i), 11C(3) and 11C(5) of the SEBI Act, i.e., with respect to providing of false statements on oath. Although SEBI has conducted a detailed investigation in the matter, no charges have been levied against the Noticee with regard to any wrongdoing or any involvement in any fraudulent activity or collusion with any other entity in relation to the matter. The Noticee has not been charged with violation of any provision under the PFUTP Regulations. Further, there is no allegation of any undue financial benefit accruing to the Noticee and no fund trails have been unearthed by SEBI against the Noticee. It is submitted that there is no reason for SEBI to assume that the Noticee would lie on oath before SEBI, nor does the SCN provide any reasons to show that the Noticee had any incentive to mislead the investigation of SEBI.*
- iii. *It is submitted that the Noticee has not only appeared before SEBI upon being called for examination, but has also provided all information that was available with them. It should be noted that there is no physical evidence of the actual laying of cables at NSE Colo and BSE Colo and the allegations in the SCN are*

*based on statements of certain persons, which are either non-existent (Madan Shinde's statement) or contradictory (Nilesh Thote's statement).*

- iv. Therefore, it is submitted that despite the Noticee having cooperated through the entire investigation process and providing SEBI all the required data and information to the best of his knowledge and belief, the Noticee has been wrongly arraigned in the present matter based on incorrect assumptions drawn from the evidence on record, without any basis. It is submitted that the SCN completely fails to show any contradictory statement made by the Noticee before SEBI and the contents of the internal emails of W2W referred in the IR. In this regard, reliance is placed on the submissions made at paragraphs 90 to 123 of the Reply. With respect to the P2P connectivity of W2W between NSE Colo and BSE Colo, the IR purportedly relies on the March 24, 2014 and July 07, 2015 emails sent by Noticee No.5 to allege that the connection of W2W was from their rack in NSE Colo to W2W rack at BSE Colo and not to their office at BSE.*
- v. Thus, there is no contradiction between the findings of SEBI based on the internal emails and the statements made before SEBI, as shown above. Further, it is submitted that the extracts of the statement of Mr. Madan Shinde referred to in paragraph 20.7 of the IR appear to be contradictory to the actual statement made by Mr. Madan Shinde (Annexure 71 of the IR and Annexure 25 of the Reply), wherein in fact, the latter has stated that it is a standard practice to extend cross connect from service provider device in MMR to customer rack at BSE Colo, which is further supported by the list of entities availing cross-connect provided by Netmagic to SEBI vide letter dated May 28, 2010.*
- vi. With respect to the cable path of W2W at NSE MMR, it is alleged that the Noticee provide false information to SEBI by stating that they were not aware of W2W's cable path at NSE MMR prior to April 01, 2016 and had no knowledge of any preferential connectivity offered to W2W. Further, it should be noted that SEBI has not provided any evidence to show that the Noticee was either not cooperating in the investigation, have not provided any document / information sought or defied any summons or requests made by SEBI and other forensic agents deployed by SEBI. In absence of any of the above, a mere inconsistency between the information provided by the noticee and the findings of the investigation agencies cannot be a ground for penal actions by SEBI. It cannot be the case of SEBI that any statement made by an individual which is inconsistent with the finding of its investigation is liable for penal actions. It is submitted that SEBI would need to showcase a pattern of lies and non-cooperation to make grave allegations such as that of perjury, and penal actions cannot be based on mere interpretation of a statement or two in a long, multiparty and technical investigation carried out by SEBI in the colocation case.*
- vii. Thus, the allegation that the Noticee had furnished any false statement on oath is completely baseless and without any merit.*

- viii. *It is submitted that prior to March 08, 2019, there was no provision under the SEBI Act for imposition of monetary penalty for furnishing of false information and SEBI could impose monetary penalty for failure to furnish information or delay in furnishing the information. It was only vide amendment dated March 08, 2019 that Section 15A(a) of the SEBI Act was amended to include monetary penalty for furnishing false, incorrect or incomplete information.*
- ix. *As the Noticee has provided all information when sought and had also appeared before SEBI when called upon for examination, and there is no allegation of violation of any other securities laws, the Noticee is not in violation of Sections 11(2)(i), 11C(3) or 11C(5) of the SEBI Act. Therefore, as there is no violation of Section 11(2)(i), 11C(3) or 11C(5) of the SEBI Act on part of the Noticee, no penalty can be imposed by SEBI under Section 15HB of the Act and the allegations in the SCN are liable to be dismissed.*
- x. *It is submitted that the Noticee is a bonafide individual who has provided all information to SEBI, to the best of his knowledge and belief. The Noticee has further duly cooperated through all stages of the investigation process and has provided the investigating agencies with all the required data and information. Thus, it is submitted that the Noticee has acted in good faith while providing information to SEBI. Therefore, in the interest of equity and justice, we request SEBI to take into consideration the above submissions together with the reply and additional submissions, prior to the issuance of any order in the present matter. In light of the above facts and legal submissions, we request SEBI to discharge the Noticee from the present proceedings and accordingly pass a reasoned order to that effect.*

*Submissions of GKN Securities/Noticee no.15/Mr. Om Prakash/Noticee no.16/ Mr. Rahul/Noticee no.17/ Ms. Sonali/Noticee no.18*

- i. *During Pursuant to oral hearings that were conducted before Shri S.K. Mohanty, Learned WTM, an order dated April 30, 2019 was passed by the Learned WTM (“WTM Order”), and the Noticees have filed an appeal bearing no. 183/2019 before the Hon’ble Securities Appellate Tribunal (“SAT”) challenging the WTM Order. In the said appeal, the Hon’ble SAT after hearing parties, has passed the following order on May 6, 2019 –*
- “...., the effect and operation of the impugned order insofar as its relates to the appellants shall remain stayed ...”*
- ii. *The said appeal is coming up for hearing on June 10, 2022 when the parties would be heard. We, therefore, request you to keep the present proceedings in abeyance and not to proceed further till the appeal is finally adjudicated / decided with reference to the WTM Order. It is submitted that continuation of the present SCN at this stage, i.e., when the same issues are for*

consideration before the appellate court, would be unwarranted and amount to duplication of proceedings on the same issues. Accordingly, it is urged that these proceedings ought not be continued till the time a final order is passed by the Hon'ble SAT.

- iii. *At the heart of these submissions, lies a fundamental fact that GKN did not receive any preferential treatment in any manner, whether alleged or otherwise and that GKN acted in a manner like any normal and prudent person would act in similar circumstances. In other words, there was nothing amiss in the decision taken by GKN to avail the services of Sampark. SCN does not contain any adverse remarks on the characteristics of the connections or the connections itself which were provided by Sampark. All that is expressed as a concern in the matter is the entity which provided such connection. This is also clear from the fact that when Reliance took over the activities of Sampark, the same connectivity was continued without any changes whatsoever. Even the basis facts on what was the undue benefit derived by GKN or the differentials in latencies, if any, is not mentioned while alleging that GKN gained advantage.*
- iv. *We respectfully submit that SEBI has failed to appreciate the fundamental rule of evidence viz. incumbent probation qui dicit, non qui negat, which means that the burden of proving a fact rests on the party who substantially asserts the affirmative in any issue and not upon the party who denies it; for a negative is usually incapable to proof. It is humbly submitted that grave prejudice is caused to the Noticees in responding to the SCN absent any specific allegation or any observation which would have been easier to deal with and address.*
- v. *The findings mentioned above would have put GKN on notice of the exact charges and allegations and would have enabled it to deal with such allegations. However, SEBI has chosen to provide its assumptions and expects the Noticees to prove that such assumptions are incorrect which strikes at the root of the matter and the procedural infirmities are writ large in such an action of SEBI. The decision to avail the services of Sampark was taken only after all the due and required permissions were granted by NSE. It is a fact that at the time when NSE was considering the application filed by GKN in this regard, various other brokers were in discussions with Sampark regarding their connection.*
- vi. *There was no reason for GKN to again do its due diligence on the issue. GKN proceeded on the basis of NSE's approval to Way2Wealth and NSE also similarly approved GKN's application. Moreover, it was a well-known fact that Sampark was already servicing various stock brokers on the BSE. There was no reason for any prudent broker to again check the veracity of the*

*representations made by Sampark especially when the regulator (NSE) of GKN had already approved connectivity through Sampark. There was no such requirement / expectation from the stockbrokers. Accordingly, there are no allegation / proceedings initiated against any other brokers who had also applied for a Sampark connection, when their applications too did not contain / enclose any information regarding the DoT license held by Sampark.*

- vii. Be that as it may, the entire infrastructure and leased lines used by GKN via Sampark are same even after Reliance took over the management of the said firm. There is no change in leased lines and the same fibres exist even today in between NSE and BSE offices. Only the operation aspect in respect of invoicing in the name of Reliance has changed. This proves that there was nothing illegal or illegitimate in the services provided by Sampark. At best it can be called a human inadvertent oversight but to term it as fraudulent activity by GKN is unfair and arbitrary. It may kindly be noted that GKN was under the impression that the switch from Sampark to Reliance was technical in nature and no change to leased line/wire/fibre or any system infrastructure.*
- viii. GKN being a regular market participant relied on the judgement and integrity of NSE to conduct the due diligence of all the service providers that use the exchange services. As elucidated hereinabove, GKN has no way of knowing that Sampark or for that matter any other ISP did not possess the requisite license. As a normal broker, with basic diligence expected of it, GKN understood that Sampark had IP-1 license from DoT (as enumerated in SCN itself) which enabled it to provide ISP services. If NSE, with all its might and infrastructure, came to know only in July 27, 2015 that Sampark did not have the subset of requisite license then to expect a normal individual trader like GKN to pre-empt the same is unfair, arbitrary and unwarranted. Further, since all the requisite procedure was followed and complied with while obtaining the leased line connectivity from Sampark there is no question of any understanding or foul play. Neither does the Show Cause Notice allege or elucidate that we had any prior meeting of mind with Sampark. Thus, if this leg of the chain is disproven there is no question of taking a forward step and sweepingly allege that GKN had 'colluded' with NSE or its officials.*
- ix. Even when GKN availed the services, it was using the services from its existing ISP, TATA. Sampark was only an additional service provider selected by GKN so as to base its business on two vendors which can help mitigate risk during the time of disconnections/disruptions in service. We state, declare and assert that in the entire episode GKN had acted as any prudent businessman would act in like circumstances and there was nothing amiss in its conduct. All the*

*acts were done in good faith and there was no undue access/advantage received by GKN while availing the dark fibre services from Sampark.*

- x. GKN did not have any latency or advantage while availing the Sampark's network. There is no evidence to conclude any latency or trading advantage due to the alleged preferential connectivity to any trading member. There is no quantifiable figure arrived at in the entire SCN or Investigation Report elucidating that there was any latency advantage gained by GKN. In fact, the EY Report submitted in the WTM Proceedings, fairly concludes, after a thorough forensic audit, that there was no consequential gain in trading or volume of GKN.*
- xi. We contend that no advantage accrued to GKN while using the leased line provided by Sampark. The Sampark line in any event, was only being used for feeding parameters / daily obligation files such as scrip masters and contract files, etc., into GKN's servers at the NSE racks and the same was not being used for transmission of any trade orders. A P2P line is a simple connectivity between the NSE building, where the trading servers are kept to the Noticee's office. The trading servers, from where the trade orders are fired are placed in the NSE building itself and has no connection with the impugned P2P leased line.*
- xii. As per the statements of NSE employees (Mr. Nagendra and Mr. Deviprasad), decision of not disconnecting the existing Sampark's connectivity (of Way2Wealth and GKN) after identification that Sampark did not have required licenses was discussed and approved by Mr. Ravi Varanasi (Head – Business Development, NSE) so as to not disturb any of the existing services to these two members. Mr. Ravi Varanasi in his statement to SEBI with respect to services being continued for GKN mentioned that "General principle is to avoid disruption to members trading activity. I would have advised them accordingly". Even during the WTM Proceedings, NSE and other noticees therein fairly stated that NSE unilaterally decided to allow Sampark to provide services to GKN since they did not wish to disrupt the services of any investor in the transition period. Be that as it may, without any undue waste of time, GKN made a transition of the contractual terms from Sampark to Reliance immediately after they received direction from the first level regulator i.e. NSE.*
- xiii. At the relevant time, when GKN applied for colocation service, there was no rule, regulation, circular and bye law that provided for an exact procedure to be followed for laying leased line cables. There was nothing on the public domain available to the trading members which specified what kind of DOT license was desired to be availed from the service provider that*

brokers ought to check before taking the connectivity. There was no list of empanelled service providers for setting up colocation racks on the Exchange. As a necessary corollary to the aforesaid, the provisions of Section 12 A (c) of SEBI Act are not applicable in the present case. The Noticees have sold and purchased securities/contracts in the open market. There is no allegation of synchronization, wash trades, reversal trades, circular trades or any kind of manipulative trading in the market. Thus, it is respectfully submitted that the provisions of these sections have wrongly been applied in the present case. In addition to the above, the issuance of SCN is erroneous in as much as it is only a belated coercive use of power / action in terms of which power is sought to be used now.

- xiv. *GKN have always maintained high standards of integrity, promptitude and fairness in all its dealings as a stock broker. SEBI has applied the provisions of Clauses A(1)of Brokers Regulation in a generic way without clearly specifying as to how GKN has violated any code. A mere accusation and generic application of a legal provision would not substantiate the requirement of proof. In other words, presumptions however strong, would not replace the proof. A mere mention of a generic clause without any plausible explanation is therefore arbitrary and patently illogical.*
- xv. *In the present proceedings, it is apparent that the principles of natural justice have been violated by the SEBI. Despite having specifically asked for all the relevant documents pertaining to the matter, SEBI has not provided the same. While we understand that SEBI had conducted an investigation in the matter and thereafter the present proceedings are initiated against us, we fail to understand the reservations of SEBI in providing us the access to such documents which SEBI has gathered during the investigation especially when there is no specific allegation against us in the SCN. Thus, the proceedings are conducted in violation of fair play.*
- xvi. *The SCN alleges that the Noticee made a false/incorrect submission with a view to mislead the proceedings before SEBI. This allegation is vehemently denied by the Noticees. It is once again submitted that GKN had agreed to engage Sampark's services on a trial basis for 3 (three) months against a fee of Rs. 7.25 lakhs. GKN had even made a partial payment of a total of Rs. 6.25 lakhs as advance. Since the amount of Rs. 1 lakh was pending, payment for the same was made in the month of November 2015. It may kindly be noted that Reliance took over the Sampark line on August 28, 2015 and ever since then we have been using the Reliance connection., GKN was asked to issue the line acceptance email on on September 10, 2015, which appears to have caused the misunderstanding in the SCN. Therefore, it is humbly*

*submitted that the Noticee has not made any incorrect statement that GKN discontinued Sampark's line after July, 2015, as soon as it was asked to do so by NSE.*

*xvii. The Noticees submit that a legal provision is authoritarian and authoritative which should contain the essential requisites to be considered as such. Imposition of penalty must necessarily be preceded by formulation and publishing of a substantive law in express terms. Such law must lay down the ingredients of the offence and for circumstances like the present one; a threshold for triggering the punishment must also be provided. Moreover, the law must also provide a detailed procedure for compelling the obedience thereof and must identify the authority that will hold the power of imposing penalty in cases of its violation.*

*xviii. Absent any specific violation in the proceedings or any violation of a legal provision and lack of regulatory framework underlying the leased line connectivity, the present proceedings are unwarranted, arbitrary and misdirected towards the Noticees. The usage of the dark fibre leased line pertain to the period when the NSE systems were still evolving and ridden with multiple problems. In view of the submissions made hereinabove, it is respectfully submitted that the Noticees have not violated any of the provisions of securities law. GKN has always conducted its business in a fair and transparent manner without any collusions, as alleged or otherwise. GKN has acted in bona-fide and diligent manner in conduct of its broking activities and thereby the Noticees have erroneously been roped into the captioned proceedings.*

*xix. The entire dark fibre episode is based on some unsubstantiated whistle blowers' letter which lacks credential and thereby it is gross abuse of quasi-judicial process. It is respectfully submitted that the media trail and frenzy resulting from the WTM Proceedings has already blown this episode out of proportion without being backed by facts, substance, merits and evidence. The Noticees have already tremendously suffered as a result. It is therefore, most humbly prayed that the captioned proceedings be disposed-off without imposing any monetary penalty against the Noticees.*

12. As mentioned earlier, parallel proceedings under Section 11 against Noticees 1 to 8, 10,11, 15 to 18 were also initiated and WTM order ref WTM/SKM/EFD1-DRAIII/16/2019-20 dated April 30, 2019 was passed against such Noticees and specific directions were also issued by the WTM against them. Aggrieved by the aforesaid order, some of the Noticees filed appeals before the Hon'ble SAT. In this regard, I note that the Hon'ble SAT in respect of the aforesaid WTM Order dated April 30, 2019, held

the following:

***“In GKN Securities vs SEBI, Hon’ble SAT vide order dated May 06, 2019 inter-alia held:***

*“..Having heard the learned senior counsel for the parties, we find that prima facie the contentions raised requires consideration which cannot be decided at the admission stage and requires a reply and detailed hearing. The fact whether the appellants had benefited and / or made profits from the large quantity of data twas transmitted at a faster speed and therefore, had faster access to the market data compared to other brokers is a question which requires determination.*

*Further, the disgorgement made against the appellants on gross income or net income is also required to be considered. We further find that investigations have been going on since 2015 and stopping the business activity of the appellants with immediate effect by the impugned order prima facie appears to be unjustified.*

*We are therefore of the opinion that balance of convenience requires that an interim order be passed. We accordingly direct the respondent to file a reply within six weeks. Three weeks hereafter is allowed to the appellants to file a rejoinder.*

*In the meantime, the effect and operation of the impugned order insofar as it relates to the appellants shall remain stayed provided the appellants deposit a sum of Rs. 2.5 crore before the respondent on or before May 20, 2019 which amount shall be kept in an interest bearing account by the respondent and would be subject to the result of the appeal. If the amount is not deposited within the stipulated period, the interim order will stand vacated automatically.”*

13. Further, from various other orders passed by the Hon’ble SAT in respect of the appeals filed by the entities against the aforementioned order dated April 30, 2019, I note that the Hon’ble SAT had held the ratio of the judgment of the aforesaid *GKN Securities vs SEBI* order dated May 06, 2019 and stayed the effect and operation of the order in as far as it relates to the appellants.

14. It is observed that some of the Noticees quoted the aforementioned judgment of Hon’ble SAT orders, since the WTM order dated April 30, 2019 in respect of parallel Section 11 proceedings and the instant adjudication proceedings are based on the similar facts and circumstances and requested to keep the instant adjudication proceedings in abeyance. While I do agree with the fact that in the instant matter, Section 11 proceedings and the adjudication proceedings are based on the same set of facts, it is noted that there is no stay that has been imposed in the instant Adjudication proceedings, by Hon’ble SAT in its judgements. In view of the above, I am inclined to proceed in the matter.

## **CONSIDERATION OF ISSUES AND FINDINGS**

15. I have carefully perused the allegations leveled against the Noticees in the SCN, the replies of the Noticees and the documents/evidence available on record. The issues that arise for consideration in the present case are discussed in following paragraphs. Before proceedings further, the provisions of the SEBI Act and the regulations/circulars issued thereunder at the relevant point of time, allegedly violated by the Noticees are mentioned as under: -

### **SEBI Act**

#### **CHAPTER IV POWERS AND FUNCTIONS OF THE BOARD**

##### **11. Functions of Board.**

*(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—*

*(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;*

##### **11C. Investigation**

*(2). Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.*

*(3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation*

...

*(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*

***Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.***

***12A.*** No person shall directly or indirectly—

*(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

**PFUTP Regulations**

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

No person shall directly or indirectly—

*(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.*

#### **4. Prohibition of manipulative, fraudulent and unfair trade practice**

*(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

### **SECC Regulations**

#### **Code of Conduct for directors and key management personnel.**

**26. (1)** *Every director of a recognised stock exchange and a recognised clearing corporation shall abide by the Code of Conduct specified under Part–A of Schedule–II of these regulations.*

**(2)** *Every director and key management personnel of a recognised stock exchange and a recognised clearing corporation shall abide by the Code of Ethics specified under Part– B of Schedule– II of these regulations.*

#### **Equal, fair and transparent access.**

**41. (2)** *The recognised clearing corporation and recognised stock exchange shall ensure equal, unrestricted, transparent and fair access to all persons without any bias towards its associates and related entities.*

#### **Power to call for information.**

**47.** *The Board may from time to time call for any information, documents or records from the recognised stock exchange or the recognised clearing corporation, or their governing board or any shareholder thereof.*

#### **Power of inspection.**

**48. (1)** *The Board may at any time undertake inspection, conduct inquiries and audit of any recognised stock exchange or recognised clearing corporation, any*

associate of such exchange or clearing corporation, any shareholder of such stock exchange or clearing corporation or any associate and agent of such shareholder.

### **Stock Broker Regulations**

*Liability for monetary penalty.*

**26.** A stock broker or a sub-broker shall be liable for monetary penalty in respect of the following violations, namely—

*(xi) Indulging in fraudulent and unfair trade practices relating to securities.*

*(xvi) Failure to exercise due skill, care and diligence*

*(xx) Violations for which no separate penalty has been provided under these regulations.*

## **CODE OF CONDUCT FOR STOCK BROKERS**

### **[Regulation 9]**

#### **A. General.**

*(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*

*(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*

*(3) Manipulation: A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.*

*(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

**SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012,**

**Guidelines to the stock exchanges and the stock brokers**

4. Stock exchanges shall ensure the following while permitting algorithmic trading:

(i) The stock exchange shall have arrangements, procedures and system capability to manage the load on their systems in such a manner so as to achieve consistent response time to all stock brokers. The stock exchange shall continuously study the performance of its systems and, if necessary, undertake system upgradation, including periodic upgradation of its surveillance system, in order to keep pace with the speed of trade and volume of data that may arise through algorithmic trading.

**SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015,**

**3. In order to ensure fair and equitable access to the co-location facility, stock exchanges shall:**

3.1. provide co-location / proximity hosting in a fair, transparent and equitable manner.

3.2. ensure that all participants who avail co-location / proximity hosting facility have fair and equal access to facilities and data feeds provided by the stock exchange.

3.3. ensure that all stock brokers and data vendors using co-location / proximity hosting experience similar latency with respect to exchange provided infrastructure.

3.4. ensure that the size of the co-located / proximity hosting space is sufficient to accommodate all the stock brokers and data vendors who are desirous of availing the facility.

3.5. provide the flexibility to avail rack space in the co-location / proximity hosting so as to meet the needs of all stock brokers desirous of availing such facility.

3.6. expeditiously decide on the request of the desirous stock brokers / data vendors for availing co-location / proximity hosting and communicate the decision

*within fifteen working days from the receipt of the request from the stock brokers / data vendors. In case of a rejection, stock exchanges shall also provide reasons in writing to the stock brokers / data vendors.*

*3.7. facilitate stock brokers to receive data feeds from other recognised stock exchanges at the co-location facilities and allow routing of orders to other recognised stock exchanges from the co-location facilities.*

*3.8. make available on their websites description of the co-location / proximity hosting, including requirements to be fulfilled by stock brokers / data vendors who avail the facility, details on fees / charges associated with the facility, etc.*

*3.9. publish on their websites suitable quarterly reports on latencies observed at the exchange. 3.10. be able to identify orders emanating from the co-located servers of stock brokers and the resultant trades. Suitable statistics relating to relating to such orders and trades shall be disseminated by the stock exchanges*

**Clause (v) of the minutes of the Secondary Market Advisory Committee (herein after referred to as 'SMAC') meeting dated November 11, 2011 which was communicated to NSE vide email dated November 28, 2011**

*(v) "Denial of Service may be a cause for concern which is further compounded with the availability of Colocation services offered by the exchanges. It was suggested that fairness and equal opportunity for all should be the premise going forward".*

16. Before discussing the matter in detail, the meaning of certain technical terms which are used in this order are given in detail below. These meaning and their implication are derived on the basis of Investigation report, submissions of the Noticee and also from the WTM order dated April 30, 2019.

<b>Term</b>	<b>Meaning</b>
<b>Co-Location Facility</b>	Colo or co-location facility is the data centre facility offered by exchanges to the stock brokers. Co-location facilities provide space, power, cooling, and physical security for the server, storage, and

	<p>networking equipment of the users and also connect them to a variety of telecommunications and network service providers.</p> <p>In the instant case, NSE Co-location allows stock brokers to take on rent specific racks designated for this purpose and co locate their servers and systems within the exchange premises, in order to have a low latency connection to the exchange. The servers and systems placed in these racks would receive the live market data feed disseminated by the exchange, process the data, and accordingly place their orders to the exchange.</p> <p>NSE's infrastructure for co-location, therefore, consists of the dissemination architecture (including the primary dissemination centre, point-of presence servers and ports on the point-of presence servers to which stock brokers are connected), and the colocation racks of individual stock brokers where the trading systems and equipment of the stock brokers was located.</p> <p>The primary objective of co-location services of NSE is to reduce latency for connectivity to the exchange's trading systems for Direct Market Access (<b>DMA</b>), Algo trading and Smart Order Routing (<b>SOR</b>).</p> <p>NSE has framed various rules and guidelines to monitor, screen and restrict access to the Colo facility, including physical access to the datacentre. Stock brokers are allowed physical access to their racks in the colocation facility only for the purpose of setting up of connectivity and maintenance related work.</p>
<b>P2P connectivity</b>	<p>P2P relates to the point-to-point connectivity between two points i.e. in the instant case, connectivity between a stock broker's rack at NSE colocation and that stock broker's rack at BSE colocation. The objective of having a P2P connectivity for a stock brokers is to receive live market data feed disseminated by the two exchanges, viz: NSE &amp; BSE simultaneously as fast as the latency of the connectivity would permit, process the data, and accordingly, place their orders to either or both the exchanges, as per their trading strategy.</p>
<b>Dark fibre</b>	<p>A dark fibre or unlit fibre, with respect to network connectivity, refers to an already laid but unused/ passive optical fibre, which is not connected to active electronics/equipments and do not have other data flowing through them and available for use in fibre-optic communication.</p> <p>DoT recognizes 'Dark Fibre' as part of the telecommunication infrastructure and categorizes it as 'passive' infrastructure or 'inactive elements' of the telecom network. As per DoT, companies which have Infrastructure Provider Category – I (IPI) registration can provide assets such as Dark Fibres, etc. for the purpose to grant on</p>

	lease / rent / sale basis to the licensees of Telecom Services licensed under Section 4 of Indian Telegraph Act, 1885 on mutually agreed terms and conditions
<b>MUX</b>	MUX is the abbreviation of 'multiplexer'. It's an equipment, like a junction box, used in the network system for connecting multiple users to the network line of the service provider (say, MTNL or Airtel). For NSE co-location facility, the network line of the service providers usually terminated at the MMR from where it used to be connected to multiple stock brokers' facility/ racks through MUX. It can also be installed directly in a stock broker's rack to connect multiple servers of the stock broker to a common network line.
<b>MMR</b>	MMR is abbreviation of 'meet-me-room'. MMR is a place where telecommunications companies physically terminate their own infrastructure in the MUX. At NSE MMR, connectivity is provided to stock brokers with the network service providers through the MUX installed by the network service providers.
<b>Colo Rack</b>	In the Colo facilities, the exchange provides rack space, called Colo rack, for keeping servers and other allied infrastructure. In the instant case, NSE leases the Colo rack space to the brokers availing Colo facilities on an annual fee basis. The brokers were provided one or more rack space in the Colo as per their request.
<b>Cross Connect</b>	Cross connect, connects broker's equipment at Colo to the MUX in the MMR. In the instant case, a cross connect was used to connect a broker's rack in colocation to the MMR.
<b>Edge Router</b>	An edge router is a specialized router residing at the edge or boundary of a network. This router provides the connectivity with external networks. In the instant case, the edge routers were used by BSE to provide P2P connectivity to the brokers between NSE and BSE. The fibre connections from NSE Colo can terminate at the BSE edge router, from which the brokers get connectivity to the rack in BSE Colo.

17. The investigation in the instant matter revolves around alleged preferential treatment meted out by NSE to W2W and GKN by allowing them to utilize the services of Sampark for laying of Dark Fibre cable for P2P connectivity despite Sampark not having the requisite license from Department of Telecommunication (hereinafter referred to as 'DoT'). Further, the cable was laid by Sampark in such a manner (directly at the rack of broker at the exchange) that it resulted in W2W and GKN having a latency advantage over other brokers which were not availing the services of Sampark or who when

applied to NSE for allowing them to engage Sampark for providing P2P connectivity were denied by NSE. Such an unfair advantage available with certain Stock Brokers is in contradiction to various regulations, recommendations and circulars issued in relation to the Colo facility emphasize on providing equal, unrestricted, transparent and fair access to all the brokers and all the participants without any bias or favor. The reason for initiation of instant proceedings against the Noticees are based on the findings that the acts of the Noticees resulted in certain Stock Brokers having an unfair advantage over others while accessing the Colo facility provided by NSE. All the allegations made in the SCNs are based on the evidence and findings indicating breach of the aforesaid requirement of equal, unrestricted, transparent and fair access. As mentioned earlier 4 sets of SCNs were issued to the Noticees, who were grouped according to the violations committed by them. The table given below summarizes the allegations made in the 4 SCNs against the Noticees:

Sr. no.	Noticee name	Violations Alleged
1	NSE / Noticee1	<ul style="list-style-type: none"> <li>• Denial of services to certain stock brokers resulting in discrimination and non-adherence to principle of fairness and equal opportunity by allowing W2W and GKN to terminate the connections directly in the rack placed inside NSE Colo, which was contrary to normal practice followed by NSE. However, in case of Millennium and other brokers, Sampark was asked by NSE to install the MUX in NSE MMR.</li> <li>• Non verification of license by NSE, where the connection is through broker's rack, was unfair since this resulted in certain stock brokers obtaining service while others were denied the same even though in both cases, the service provider was same namely, Sampark.</li> <li>• Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</li> <li>• W2W and GKN were allowed to establish P2P connectivity through Sampark while many stock brokers (e.g. Mansukh Securities, Shaastra Securities) who desired to lay P2P connectivity through service providers other than the four service providers mentioned in the NSE circular dated August 31, 2009, were denied permission by NSE staff. While both the</li> </ul>

		<p>service providers did not have requisite DoT license.</p> <ul style="list-style-type: none"> <li>• Lack of clear documented policy for conducting due diligence of services providers (a) by checking the license of service provider while allowing P2P connectivity; (b) by granting permission to Sampark to place infrastructure in NSE MMR without verifying Sampark's license</li> <li>• Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other stock brokers (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.</li> <li>• Preferential treatment of stock brokers by: <ul style="list-style-type: none"> <li>○ NSE facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers</li> <li>○ Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.</li> <li>○ Conducting site inspection of offices of Millennium, GRD &amp; SMC for connectivity while not following the same procedure for W2W and GKN.</li> <li>○ Granting permission to Sampark to place MUX in NSE MMR without verification of license</li> <li>○ Granting permission to W2W and GKN to avail connectivity of Sampark without verifying license of Sampark.</li> </ul> </li> <li>• NSE facilitated the arrangement between Sampark and Reliance in an attempt to regularize the connectivity provided by Sampark to give post facto legitimacy to an unauthorised activity of Sampark.</li> <li>• Contributory negligence on the part of NSE that facilitated W2W and Sampark establishing connectivity to provide unfair latency advantage to W2W.</li> <li>• Inconsistent and Contradictory information and reply to SEBI.</li> <li>• Non adherence to the timeline in taking decision on the request of stock brokers and delay in processing the applications.</li> </ul>
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2	Chitra / Noticee 2	<ul style="list-style-type: none"> <li>• Denial of services to certain stock brokers resulting in discrimination and nonadherence to principle of fairness and equal opportunity by allowing W2W and GKN to terminate the connections directly in the rack placed inside NSE Colo, which was contrary to normal practice followed by NSE. However, in case of Millennium and other brokers, Sampark was asked by NSE to install the MUX in NSE MMR.</li> <li>• Non verification of license by NSE where the connection is through broker's rack was unfair since this resulted in certain stock brokers obtaining service while others were denied the same even though in both cases, the service provider was same namely, Sampark.</li> <li>• Preferential treatment of stock brokers by: <ul style="list-style-type: none"> <li>○ NSE facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers.</li> <li>○ Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.</li> <li>○ Conducting site inspection of offices of Millennium, GRD &amp; SMC for connectivity while not following the same procedure was for W2W and GKN.</li> </ul> </li> <li>• Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other stock brokers (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.</li> <li>• Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</li> <li>• W2W and GKN were allowed to establish P2P connectivity through Sampark while many stock brokers (e.g. Mansukh Securities, Shaastra Securities) who desired to lay P2P connectivity through service providers other than the four service providers mentioned in the NSE Circular dated August 31, 2009, were denied permission by NSE staff. While both the service providers did not have requisite DoT license.</li> <li>• Lack of clear documented policy for conducting due diligence</li> </ul>
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		<p>of service providers (a) by checking the license of service provider while allowing P2P connectivity; (b) by granting permission to Sampark to place infrastructure in NSE MMR without verifying Sampark's license.</p>
3	Subramanian / Noticee 3	<ul style="list-style-type: none"> <li>• Denial of services to certain stock brokers resulting in discrimination and nonadherence to principle of fairness and equal opportunity by allowing W2W and GKN to terminate the connections directly in the rack placed inside NSE Colo, which was contrary to normal practice followed by NSE. However, in case of Millennium and other brokers, due to lack of duct space, Sampark was asked by NSE to install the MUX in NSE MMR</li> <li>• Non verification of license by NSE where the connection is through broker's rack was unfair since this resulted in certain stock brokers obtaining service while others were denied the same even though in both cases, the service provider was same namely, Sampark.</li> <li>• Preferential treatment of stock brokers by: <ul style="list-style-type: none"> <li>○ NSE facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers.</li> <li>○ Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.</li> <li>○ Conducting site inspection of offices of Millennium, GRD &amp; SMC for connectivity while not following the same procedure was for W2W and GKN.</li> </ul> </li> <li>• Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</li> <li>• W2W and GKN were allowed to establish P2P connectivity through Sampark while many stock brokers (e.g. Mansukh Securities, Shaastra Securities) who desired to lay P2P connectivity through service providers other than the four service providers mentioned in the NSE Circular dated August 31, 2009, were denied permission by NSE staff. While both the service providers did not have requisite DoT license.</li> <li>• Lack of clear documented policy for conducting due diligence of service providers (a) by checking the license of service provider while allowing P2P connectivity; (b) by granting</li> </ul>

		permission to Sampark to place infrastructure in NSE MMR without verifying Sampark's license.
4	Ravi / Noticee 4	<ul style="list-style-type: none"> <li>• Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</li> <li>• W2W and GKN were allowed to establish P2P connectivity through Sampark while many stock brokers (e.g. Mansukh Securities, Shaastra Securities) who desired to lay P2P connectivity through service providers other than the four service providers mentioned in the NSE Circular dated August 31, 2009, were denied permission by NSE staff. While both the service providers did not have requisite DoT license.</li> <li>• Lack of clear documented policy for conducting due diligence of service providers (a) by checking the license of service provider while allowing P2P connectivity; (b) by granting permission to Sampark to place infrastructure in NSE MMR without verifying Sampark's license</li> <li>• Decided to allow W2W and GKN to continue to avail Sampark connection even after finding out that Sampark did not have the requisite license to provide P2P connectivity.</li> <li>• No site visit for W2W and GKN was conducted while in case of Millennium, NSE conducted site visit. The above approach points towards differential treatment meted out to stock brokers by NSE. Nagendra and Ravi Varanasi were responsible for the differential treatment.</li> <li>• Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other stock brokers (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.</li> </ul>
5	Nagendra / Noticee 5	<ul style="list-style-type: none"> <li>• No site visits for W2W and GKN was conducted while in case of Millennium, NSE conducted site visit. The above approach points towards differential treatment meted out to stock brokers by NSE. Nagendra and Ravi Varanasi were responsible for the differential treatment.</li> <li>• Granted permission to W2W and GKN to avail connectivity of Sampark without verifying license of Sampark</li> <li>• Decided to allow W2W and GKN to continue to avail Sampark</li> </ul>

		connection even after finding out that Sampark did not have the requisite license to provide P2P connectivity.
6	Deviprasad / Noticee 6	<ul style="list-style-type: none"> <li>• Permission granted to Sampark to place infrastructure in NSE MMR, without verifying the license of Sampark.</li> <li>• Granted permission to W2W and GKN to avail connectivity of Sampark without verifying license of Sampark</li> <li>• Decided to allow W2W and GKN to continue to avail Sampark connection even after finding out that Sampark did not have the requisite license to provide P2P connectivity.</li> <li>• Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other stock brokers (GKN and W2W) were allowed the same by NSE.</li> <li>• W2W through Sampark arranged the cabling in the Colo rack such that W2W had the lower latency compared to other stock brokers connected to the Sampark MUX placed in NSE MMR. NSE issued the work permits through Sampark and the cabling was through NSE's MMR. The aforesaid arrangement could not have taken place without collusion of W2W, Sampark and staff of NSE It was the responsibility of Colo Support team of NSE to monitor the cabling and ensure fair and equitable access to all its stock brokers. However, NSE failed to carry out the necessary due diligence and oversight, as warranted under their own Colo framework</li> </ul>
7	Sampark / Noticee 7	<ul style="list-style-type: none"> <li>• Sampark acted in collusion with W2W and NSE to lay the cabling in such a way that W2W had lower latency compared to other stock brokers connected to the Sampark MUX placed in NSE MMR.</li> </ul>
8	Prashanth / Noticee 8	<ul style="list-style-type: none"> <li>• Sampark acted in collusion with W2W and NSE to lay the cabling in such a way that W2W had lower latency compared to other stock brokers connected to the Sampark MUX placed in NSE MMR.</li> <li>• Destroyed information</li> <li>• Misled SEBI by furnishing false information on oath</li> </ul>
9	Netaji / Noticee 9	<ul style="list-style-type: none"> <li>• Destroyed information</li> </ul>
10	W2W / Noticee 10	<ul style="list-style-type: none"> <li>• While applying for point to point connectivity through Sampark, W2W did not carry out proper due diligence to ensure that Sampark had the requisite DoT license to carry out the activity.</li> <li>• W2W was direct beneficiary of preferential treatment by NSE,</li> </ul>

		<p>since NSE allowed W2W to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE &amp; W2W points towards collusion between W2W and NSE to provide benefit to W2W.</p> <ul style="list-style-type: none"> <li>• W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.</li> <li>• Sampark's connectivity at NSE to other stock brokers was from Sampark's MUX placed at MMR Room. The Sampark's MUX was connected to BSE Colo through W2W rack. The above situation was rectified in April, 2016. W2W through Sampark arranged the cabling in the Colo rack such that W2W had the lower latency compared to other stock brokers connected to the Sampark MUX placed in NSE MMR</li> <li>• W2W deliberately misled NSE by terminating the link at the W2W rack at BSE Co-location though they had undertaken to terminate the P2P link at their BSE office.</li> </ul>
11	Shashibhushan / Noticee 11	<ul style="list-style-type: none"> <li>• W2W was direct beneficiary of preferential treatment by NSE, since NSE allowed W2W to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE &amp; W2W points towards collusion between W2W and NSE to provide benefit to W2W.</li> <li>• W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.</li> <li>• Sampark's connectivity at NSE to other stock brokers was from Sampark's MUX placed at MMR Room. The Sampark's MUX was connected to BSE Colo through W2W rack. The above situation was rectified in April, 2016. W2W through Sampark arranged the cabling in the Colo rack such that W2W had the lower latency compared to other stock brokers connected to the Sampark MUX placed in NSE MMR</li> </ul>
12	Rima / Noticee 12	<ul style="list-style-type: none"> <li>• It is observed that W2W link terminated at their rack in BSE Colo instead of their office in BSE. When queried, Rima, Mohit and Prashant have tried to mislead the investigation by providing false information in their statement dated March 09, 2018.</li> <li>• It is also observed that Rima, Mohit and Prashant provided false</li> </ul>

		<p>information regarding P2P connectivity by stating that they did not know about the cable path at NSE Colo and had no knowledge of what Sampark did with their MUX. Thus they have provided false statement under oath.</p>
13	Parshant / Noticee 13	<ul style="list-style-type: none"> <li>• It is observed that W2W link terminated at their rack in BSE Colo instead of their office in BSE. When queried, Rima, Mohit and Prashant have tried to mislead the investigation by providing false information in their statement dated March 09, 2018.</li> <li>• It is also observed that Rima, Mohit and Prashant provided false information regarding P2P connectivity by stating that they did not know about the cable path at NSE Colo and had no knowledge of what Sampark did with their MUX. Thus they have provided false statement under oath.</li> </ul>
14	Mohit /Noticee 14	<ul style="list-style-type: none"> <li>• It is observed that W2W link terminated at their rack in BSE Colo instead of their office in BSE. When queried, Rima, Mohit and Prashant have tried to mislead the investigation by providing false information in their statement dated March 09, 2018.</li> <li>• It is also observed that Rima, Mohit and Prashant provided false information regarding P2P connectivity by stating that they did not know about the cable path at NSE Colo and had no knowledge of what Sampark did with their MUX. Thus they have provided false statement under oath.</li> </ul>
15	GKN / Noticee 15	<ul style="list-style-type: none"> <li>• While applying for point to point connectivity through Sampark, GKN did not carry out proper due diligence to ensure that Sampark had the requisite DoT license to carry to carry out the activity.</li> <li>• GKN was direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE and GKN points towards collusion between GKN and NSE to provide benefit to GKN.</li> <li>• GKN continued to avail the services of Sampark till September 10, 2015, in spite of knowing that Sampark did not have the requisite license.</li> <li>• Misled the investigation team by mentioning that the Sampark connection was discontinued in July 2015. However, the same was only discontinued and shifted to reliance line on September</li> </ul>

		10, 2015.
16	Om Prakash Gupta Noticee 16	<ul style="list-style-type: none"> <li>• GKN was direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE and GKN points towards collusion between GKN and NSE to provide benefit to GKN.</li> <li>• Misled the investigation team by mentioning that the Sampark connection was discontinued in July 2015. However, the same was only discontinued and shifted to reliance line on September 10, 2015.</li> </ul>
17	Sonali Gupta Noticee 17	<ul style="list-style-type: none"> <li>• GKN was direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE and GKN points towards collusion between GKN and NSE to provide benefit to GKN.</li> <li>• Misled the investigation team by mentioning that the Sampark connection was discontinued in July 2015. However, the same was only discontinued and shifted to reliance line on September 10, 2015.</li> </ul>
18	Rahul Gupta Noticee 18	<ul style="list-style-type: none"> <li>• GKN was direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE and GKN points towards collusion between GKN and NSE to provide benefit to GKN.</li> <li>• Misled the investigation team by mentioning that the Sampark connection was discontinued in July 2015. However, the same was only discontinued and shifted to reliance line on September 10, 2015.</li> </ul>

18. I note that Noticees have raised their contention on some common issues such as issue of dealing in securities, vicarious liabilities, inspection of documents etc. I will first deal with the common issues raised by the Noticees.

19. One of the contentions raised by some of the Noticees is that they were denied opportunity of inspection of all the documents including the documents pertaining to

other Noticees and statements recorded from all the persons. In this regard, it is observed that that all the Noticees, who were part of the Section 11 proceedings have been granted inspection of all the documents, records, investigation reports which have been relied upon in the Section 11 proceedings and which are relevant to the issues raised in the SCNs pertaining to them. The materials relevant to their case and relied upon by the SCNs during the parallel Section 11 proceedings have been allowed to the Noticees for inspection as evident from the records. In view of the above, such Noticees who were common in the instant adjudication proceedings and the parallel Section 11 proceedings and who had already availed the inspection of relied upon documents, were denied the opportunity of same, as it would lead to the duplication of the proceedings of the inspection of documents. Further, it is also observed that during the course of the instant proceedings, the request for inspection of documents, of relevant documents, of the Noticees who were not part of the Section 11 proceedings were considered and they were granted the opportunity of inspection of documents. and the same was availed by them on May 05, 2022.

20. Further, a few Noticees also submitted their requests for granting of opportunities for cross –examination of other entities in relation to the findings of Investigation report and the SCNs issued to them. I have perused such request for cross-examination submitted before me. I note that the requests of cross examination made by these entities cannot be agreed upon. I note from the SCNs that although several statements have been referred to in the SCN, the final allegations against the Noticees are made on the basis of documentary evidence in the form of emails, etc, which have been included as part of the SCN. Further, Noticee have not furnished any plausible reason as to how their interest is prejudiced for want of cross examination. In this regard, Hon'ble Supreme Court in Transmission Corpn. of A.P. Ltd. and other Vs. Shri Rama Krishnan Rice Mill (2006) 3 SCC 74 held that a party is required to show as to why cross examination is necessary. In the instant matter, all the Noticees have appeared for hearing before me, advanced their arguments in their defense and also made their written submissions covering all the issues and allegations made against them in the SCNs. I find that rejection of cross-examination has not resulted in constraining any of the Noticee in submission of their response to the SCN. Therefore, I am of the view that

such general requests of Noticees for availing the opportunity for cross examination cannot be acceded to.

21. It is noted that some of the Noticees (Noticee no.1, 4, 5 and 6 etc) have contended that they cannot be charged with the violation of PFUTP Regulations as their respective acts do not fall in the definition of “dealing in securities”. To deal with this contention, it is necessary to have a look at the definition of “dealing in securities” as given under Regulation 2 (1) (b) of the PFUTP Regulations and extracted hereunder:

*“(b) “dealing in securities” includes an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.*

22. In this regard, I would like to refer to the Order of Hon’ble Supreme Court in the matter of *SEBI Vs. Kanaiyalal Baldevbhai Patel (2017) 15 SCC 1*, wherein Hon’ble Supreme Court observed as under:

*“24.....The definition of ‘dealing in securities’ acquires some importance as charge under regulation 3 completely depends on the aspect whether the tippee was dealing in securities in the first instant or not. For a transaction to be termed as dealing in securities, following ingredients need to be satisfied-*

- 1. Includes an act of buying, selling or subscribing pursuant to any issue of any security, or*
- 2. Agreeing to buy, sell or subscribe to any issue of any security, or;*
- 3. Otherwise transacting in any way in any security by any person as principal, agent or intermediary referred to in Section 12 of the Act.*

*25. The definition of ‘dealing in securities’ is broad and inclusive in nature. Under the old regime the usage of term ‘to mean’ has been changed to ‘includes’, which prima facie indicates that the definition is broad. Moreover, the inclusion*

*of term 'otherwise transacting' itself provides an internal evidence for being broadly worded so as to include situations such as the present one.....”*

23. Thus, as can be noted from the plain language of the definition and as observed by the Hon'ble Supreme Court, the definition of “dealing in securities” is inclusive definition and is not confined only to the acts of buying, selling or subscribing to securities. In the present case, the allegations levelled against the Noticees are in respect of P2P connectivity between NSE and BSE Colo. Such connectivity is for the purpose of making available the data which helps in dealing in securities through Algo trading, Direct Market Access or Smart Order Routing. Therefore, the acts alleged against the Noticees fall in the definition of dealing in securities and accordingly they can be charged with the violations of PFUTP Regulations, 2003.

24. Further it is noted that some of the Noticees such as Sampark and its Directors have contended that as they are not “person associated with securities market” and as they are not in any way connected to the securities market, the violations as alleged in the SCN-Sampark cannot be made against them. In this connection, I place my reliance on the judgment of the Hon'ble Bombay High Court in Price Waterhouse & Co. & Ors. Vs. SEBI [2010]160CompCas324(Bom), wherein, while dealing with the contention that the auditors of a listed company cannot be treated as persons associated with securities market, the Hon'ble High Court observed as under:

*“.....27. In so far as the submission of Mr. Dwarkadas that the petitioners are not directly associated by the securities market is concerned, it is true that the petitioners may not have any direct association with the securities market since they were performing their duties as Auditors of the Company and were associated with the preparation of the balance-sheets of the Company. It is however required to be noted that normally an investor would like to invest his money in the shares of a Company on the basis of reflection of Company's financial health as disclosed in the balance-sheet of the Company and he may consider that it is safe to invest money in a particular company, if the balance sheets have been certified by reputed Chartered Accountants and it reflects that the financial position of the Company is sound. An investor is likely*

*to be guided by the audited balance-sheet of the Company and would presume that the facts incorporated in the balance-sheet are true and correct. Considering the said aspect, even though the petitioners may not have direct association in the share market activities, yet the statutory duty regarding auditing the accounts of the Company and preparation of balance-sheets may have a direct bearing in connection with the interest of the investors and the stability of the securities market. In our view, the petitioners in their capacity as auditors of the Company Satyam, which was at one point of time considered to be a blue chip company who had a defining influence on the securities market, can be said to be persons associated with the securities market within the meaning of the provisions of the said Act.....”*

25. In view of the above, applying the same analogy and logic as adopted in the aforesaid judgment to the facts of the instant adjudication proceedings, it can be understood that the Noticees (i.e. Sampark and its Director) are the persons who are associated with securities market since they have provided infrastructure support and telecom services for P2P connectivity with lower latency which was availed by the stock brokers for Algo trading, DMA or SOR while dealing in the securities market. Thus, any such service provided by them certainly have an impact on the securities market. Accordingly, other Noticees also can be termed as *person associated with securities market* rendering them as liable for penalty under the provisions of SEBI Act and SCRA, if found guilty under these laws.

26. Further, some of the Noticees (Noticee no. 2, 10, etc) by referring to the judgment of Hon'ble Supreme Court in Sunil Bharati Mittal Vs. CBI (2015) 4 SCC 609, that they cannot be held vicariously liable for the acts of the Company in which they were directors unless certain specific acts are attributed to them or there is a specific statutory provision creating such vicarious liability. In this regard, it is observed that in the aforementioned matter, the Hon'ble Court was confronted with the question of whether the doctrine of *alter ego* can be applied to hold directors liable for criminal prosecution for the acts of the company. The Hon'ble Court held that doctrine of *alter ego* can be applied to hold the company liable for the acts of its directors and not vice versa. The Hon'ble Court further held that under criminal law vicarious liability can be

imposed on the directors if there is any specific statutory provision creating such liability. In view of the above, I hold that the reliance by the Noticees is misplaced as the facts and circumstances in law pertaining to the instant adjudication proceedings are civil proceedings in nature.

27. Now I shall deal with the allegations made against each of the Noticee in the SCNs, one by one and record my findings as under:

**A. NSE / Noticee 1**

**I. Allegation pertaining to non-transparency in communication by NSE while modifying circular:**

28. It is alleged that the mode of communication adopted by NSE for making changes to the existing circulars violates the principle of transparency. I note that the NSE issued Circular No. 693 dated August 31, 2009 (hereinafter referred to as '**2009 Circular**'), inter alia, stating "*Members may take one or more leased line to the Colo facility from MTNL, TATA, Bharti or Reliance for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads.*"

29. NSE, further issued Circular No. 712 dated March 4, 2010 and NSE Circular No. 736 dated on April 21, 2011 in connection with Colo facility. The Circular No. 712 referred to Circular No. 693 and inter alia, stated that the Circular is in continuation to NSE's earlier Circular No. 693. Further, the Circular No.736 also referred to both Circular No. 693 and Circular No. 712. The aforesaid provision regarding telecom vendors was reiterated in the NSE Circular No. 712 dated March 4, 2010 and NSE Circular No. 736 dated on April 21, 2011.

30. Thereafter, in October 2013, NSE made modification to the above provision by making the following change, "..."*Members may take one or more leased line to the Colo facility from different telecom service providers for the purpose of setting up or modifying parameters, trading related activities and hardware, software, network related access, software download / upload and monitoring and data downloads.*"

31. The above amendment made in 2013, was communicated to the stock brokers by

posting the same on NSE website and did not provide any reference to the earlier requirement mentioned in its Circular dated August 31, 2009 – “Members may take one or more leased line to the Colo facility from MTNL, TATA, Bharti or Reliance...” and did not state that such requirement is being amended through the said website publication.

32. Thus, NSE amended its 2009 circular merely by way of publishing it on the website without making any reference to the 2009 circular. Further, no formal communication was made by NSE regarding the changes being made in the circular through website publication. In its reply NSE has contended the aforesaid allegations and submitted that it was transparent in communicating the changes made in 2013 by posting the amendment on its website. NSE has further stated that the amendments that were made in 2013, were non-regulatory in nature and therefore were communicated by publishing on website. NSE has also submitted that it had published the changes in circular in 2013, in line with the SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015. I am not in agreement with the aforesaid contentions of the Noticee. I am of the view that without providing cross-reference in its 2013 circular to the provisions of 2009 Circular, NSE created ambiguity as there were two set of separate instructions on the same subject matter (availing P2P connectivity through telecom service providers), one in the form of circular and the other in the form of a website announcement. Further, NSE had already amended its August 2009 Circular twice, viz. on March 4, 2010 and April 21, 2011 by issuing amended circulars and providing cross-reference to its 2009 circular. However, in 2013, when it amended the aforesaid circular, it merely published it on the website without any rational. In my view, it was not at the discretion of NSE to consider the instructions regarding the eligibility of empaneled service providers as insignificant or non-regulatory. As a result of this, it is seen that the amendments in the 2009 circular of SEBI were not noticed by the stock brokers and also internal Colo support team of NSE. This is also evident from the statements of Ms. Rima Srivastava of W2W (statement dated July 04, 2017), Mr. Rahul Gupta of GKN (statement dated June 21, 2017), Mr. Deviprasad Singh (Head of Colo support, NSE) (statement dated March 1, 2018). It is inferred from the aforesaid statements given by these persons before SEBI, that they were not aware of the amendment done to the 2009 circular of NSE regarding service providers in 2013.

33. I am also not in agreement with the submission of NSE that the SEBI circular dated May 13, 2015 itself endorses publishing the amendments related to Circular on the stock exchange website. I have perused the aforesaid circular of SEBI and find that it mandates stock exchanges to provide Colo / proximity hosting in a fair, transparent and equitable manner. The aforesaid SEBI Circular also mandates stock exchanges to frame guidelines on access and conduct of the personnel of stock brokers / data vendors in the premises of the stock exchange, including in the co-located space.

34. Thus, I conclude that NSE adopted a very casual approach in disseminating the information regarding amendment in its 2009 Circular. I have already explained how it resulted in ambiguity regarding the eligible service provider, as far as P2P connectivity at NSE Colo facility is concerned. I cannot accept the argument put forth by NSE that the amendments that were made in 2013 by it in the 2009 Circular were not regulatory. I am of the view that the changes that were made were of high significance and it was not at the discretion of NSE to consider them as non-regulatory and merely publish them on its website for communicating to the stakeholders. I am of the view that hosting the information on the website may not be generally seen by the Stock Brokers in the normal course of business. It is only through a circular that market participants are made aware of the regulatory instructions issued by the Stock Exchange. After issuing the circular, the same are published on the website of the Stock Exchange for the benefit of other stake holders viz. issuer companies / banks / lenders/ investors in general, etc.

35. In view of the above, I am of the view that the above mode of communication adopted by NSE violated the principle of transparency and consistency therefore the Noticee was in violation of regulation 41 (2) of SECC Regulations, 2012 and Clause 3 of the SEBI Circular CIR/MRD/DP/07/2015 dated May 13, 2015. Further, in view of the conduct of NSE stated above, NSE has failed to implement the Clause (v) of the decisions taken by SMAC in its meeting dated November 11, 2011

## **II. Allegations pertaining to preferential treatment shown by NSE by allowing Sampark to provide P2P connectivity services**

36. Another allegation against the NSE is that during the year 2015, it allowed Sampark to install their MUX in the NSE MMR directly, without verifying the eligibility of Sampark. Thus, NSE allowed an ineligible entity to install MUX in their MMR in violation of its own policies. Further, while NSE allowed Sampark to install MUX in NSE MMR, it rejected the application of Microscan Computers Private Limited (hereinafter referred to as '**Microscan**') to install a similar facility at NSE MMR apparently due to the fact that Microscan lacked license from DoT.
37. It is further alleged that NSE did not have a clear documented policy for verifying the license of the service provider while allowing P2P connectivity. While, W2W and GKN were allowed to use the services of Sampark to connect to their respective racks in NSE co-location without verification of the license of Sampark, the request of other stock brokers such as Millennium and Mansukh Securities and Finance Limited (hereinafter referred to as '**Mansukh**') to avail the services of Sampark to establish a connection similar to W2W and GKN was denied.
38. It is alleged that the above practice of NSE was, prima facie, unfair as this resulted in certain trading members obtaining service while others were denied the same even though in both cases, the service provider was same namely Sampark, which itself was an ineligible entity.
39. NSE has submitted in its replies that the Colo services provided by it are on a "best efforts basis". Therefore, considerations of fair and non-discriminatory access must necessarily be balanced with considerations of feasibility and practicality. Further, as the P2P connectivity availed by W2W and GKN from Sampark, terminated directly in their respective racks in NSE Colo, they were part of the trading member's infrastructure and not within the purview of NSE. NSE further stated that due to the lack of duct space to run separate cables for each member viz. Mansukh and Millennium, NSE permitted Sampark to deploy an MUX in the MMR so that it could provide services to multiple stock brokers through a single cable. However, as per the submission of NSE, Sampark was not allowed to install the MUX in NSE MMR as deficiencies were observed in the Sampark's license. Subsequently, Mansukh and

Millennium availed connectivity from Reliance on August 22, 2015 and October 9, 2015, respectively. Further, in order to shorten execution timelines, a service provider would be allowed to install their infrastructure in the MMR while the licenses validation was undertaken in parallel. It was when NSE sought the license of Sampark, it discovered that Sampark had an Infrastructure Provider- I (IP-1) license which did not allow it to render services directly to end customers and it could provide infrastructure support services only to other telecom service providers. Further, NSE has also stated that SEBI had issued no directive that service providers providing infrastructure support services ought to be licensed. This was a voluntary initiative of the Noticee taken bona-fide to ensure that the entities rendering services are regulated by the relevant sectoral regulator.

40. NSE has further submitted that to obviate the need for service providers to lay new cables for each stock broker, it permitted telecom service providers to deploy the MUX as part of the infrastructure in NSE MMR. NSE had a policy of distinguishing between service providers which provide connectivity that terminates in the stock brokers rack with the service providers which provide P2P connectivity to multiple stock brokers by installing MUX at NSE MMR. As per the submission of NSE, in the case of W2W and GKN, NSE was requested to allow connection from Sampark to the Stock Brokers own rack at NSE Colo and therefore, it was not part of NSE infrastructure.

41. As regards the allegation against the Noticee of not disconnecting the services of Sampark, even after discovering the it does not hold the requisite license, Noticee submitted the following:

- a. The P2P connectivity that was initially provided to W2W and GKN by Sampark was part of their infrastructure and not NSE's infrastructure, and was not a violation of the Noticee's policy at the time.
- b. When Sampark's MUX was shifted to the Noticee's MMR to cater to demands made by stock brokers for connectivity from Sampark, on the strength of assurances made by Sampark that they had the requisite licenses, W2W's P2P connectivity was through the MUX installed in the MMR. No other trading

member was allowed to connect to the Sampark MUX to prevent further perpetuation of Sampark's wrongful conduct. GKN's connectivity was directly through an MUX installed in its rack.

- c. Since Sampark's common infrastructure was not being shared by multiple stock brokers, NSE did not believe that it ought to have disconnected the P2P connectivity, especially when these stock brokers were availing of Sampark's services since May 2015 i.e. for two months.
- d. As an IP-I service provider, Sampark was duly licensed by the DoT to establish and maintain assets such as dark fibre and qualified to lay fibre optic cables, and lease them to the licensees of Telecom Services licensed under Section 4 of Indian Telegraph Act, 1885. Therefore, the Noticee's objection was limited to the fact that Sampark could not provide services directly to stock brokers in violation of the conditions of its license.

42. I am not in agreement with the various submissions made by NSE in this regard. First of all, NSE has failed to produce any written document and policy regarding verification of eligibility of service providers. Therefore, it is clear that in absence of a documented policy for verification of service providers, discriminatory policies were adopted w.r.t. different entities by NSE, which is discussed in detail in following paragraphs.

43. The submissions of NSE regarding allowing Sampark to allow MUX in NSE MMR, without holding proper license, are not acceptable. NSE failed to verify the eligibility of Sampark in the case of W2W and GKN, despite the fact that Sampark was not one of the 4 authorized Telecom Service Providers mentioned in the 2009 circular of NSE. As per their own policy, NSE was supposed to check the license of Sampark before allowing it to install MUX in its MMR. However, NSE allowed Sampark to install MUX in its MMR during the period July 17, 2015 to July 19, 2015, without verifying its license. NSE sought license of Sampark subsequently on July 22, 2015 for verification which was shared by Sampark with NSE on July 27, 2015. Thus, it is clear that NSE failed to carry out necessary due diligence and allowed an ineligible entity to install MUX in its MMR in violation of its own policies. As mentioned earlier, despite

becoming aware of Sampark not holding the requisite license, NSE allowed W2W to connect through the MUX installed by Sampark in the NSE MMR. Therefore, NSE not only allowed an ineligible service provider to install MUX in its MMR, but also allowed a stock broker to connect through such MUX.

44. I find that the submission of the NSE that the P2P connectivity availed by a broker which directly terminates at the Colo rack of the broker forms part of the trading member's infrastructure over which NSE does not have any control, is contradictory to the documents available on record. NSE had issued 2009 Circular, which prescribed various terms and conditions for compliance by the brokers whoever desired to have connectivity to the NSE Colo. The said circular also allowed the stock brokers to avail lease line connectivity from amongst the four empaneled telecom service providers. Thus, it is clear that NSE had issued circulars in relation to the connectivity availed by the Stock Brokers without differentiating between the manner in which the connection is availed. Therefore, I do not agree with the submissions of NSE that in the cases where the P2P connectivity terminated at the broker's racks, NSE had no control as they were not part of NSE infrastructure and only when the service provider wanted to install MUX in the NSE MMR, NSE considered it to be part of NSE infrastructure and was required to verify various compliances by the service providers.
45. The very fact that NSE rejected application of stock brokers viz. Mansukh and Millennium from accessing the P2P connectivity to their Colo rack through Sampark, contradicts the submission of the Noticee that it does not have any control over P2P connectivity in cases when such connectivity terminates at the brokers Colo rack. In case NSE did not have any control over the P2P connectivity so long as the connectivity terminated directly at the Colo rack, then it did not have any right to deny some stock brokers to avail the P2P connectivity to their racks while allowing the same to a few others. Therefore, NSE cannot escape from the responsibility of providing fair and equitable access to the exchange infrastructure by taking the plea that the P2P connections taken directly to the racks of brokers are not within their jurisdiction. It is also pertinent to note here that Mansukh and Millennium were denied the P2P connectivity through Sampark, *inter-alia*, on the ground that Sampark did not

have the requisite license and the said facts came to the notice on June 22 and 23, 2015. Therefore, it is clear that NSE was aware of the fact that Sampark does not have requisite license by June 22-23 of 2015. However, Sampark was allowed to continue to provide services to W2W and GKN even after June 22 and 23 of 2015. Thus, it is clear that NSE was giving a preferential treatment to W2W and GKN when compared with other Stock Brokers.

46. As per records, it is observed that not many brokers during the relevant period of time had taken connectivity directly to their racks by installing separate cable path. Since, as per the contention of NSE, brokers had freedom to take direct connectivity to their own racks as per their own choice of service providers, it is assumed that NSE would have made provision for adequate duct space, so that the brokers could exercise their discretion. However, in this case it is noticed that immediately after allowing W2W and GKN to install direct connectivity to their racks, when similar requests were made by Millennium and Mansukh, they were promptly denied on the ground of lack of duct space.

47. Further, it has been submitted by NSE that even in the cases where stock brokers had engaged a service provider for installing connectivity directly to their Colo racks, the stock brokers were required to take NOC from NSE. Thus, it shows that NSE was having control even when the infrastructure was put up by stock brokers directly to their Colo rack. The fact that nobody could have got any access to the Colo facility where the brokers racks are located without prior approval of NSE proves that even for taking a connection directly to the stock brokers' rack, NSE approval was mandatory. The 2009 circular also states that physical access to the Colo data center would be available only with prior permission from NSE.

48. It is also observed that while the request of W2W and GKN were promptly processed and their Sampark P2P connectivity was activated in less than a month's time, the request for Millennium was pending before NSE since June 23, 2015 and was not being considered on pretext of various reasons. On July 10, 2015, Mr. Avadhut Gharat of NSE informs Millennium that Sampark MUX is not yet installed and Sampark is not their authorized vendors for P2P links. On July 17, 2015, Sampark

informs Millennium that NSE is not allowing them to work. On July 22, 2015, Millennium receives a message from NSE that Sampark has some regulatory issues and Reliance has started doing their work for other stock brokers. On July 29, 2015, Millennium gets another message from NSE that they should go with any other service provider and should not go with Sampark. On July 30, 2015, Millennium sends a message to Mr. Nagendra of NSE stating that some stock brokers are still working on low latency and Millennium is losing a lots of business to which Mr. Nagendra responded stating that all are at par now. Millennium counter responds to NSE asking whether at par means that no other stock broker is on Sampark circuit? On August 12, 2015, Mr. KK Daga of Millennium writes an email to Mr. Ravi Varanasi of NSE with his grievance highlighting the abnormal delay by NSE for the P2P connectivity.

49. Thus, the above sequence of facts suggests that while W2W and GKN got their connectivity from Sampark without any hassle and delay, Millennium had to continuously chase after NSE for Sampark connectivity till it was given connectivity by Reliance on September 05, 2015, after Sampark sold its infrastructure to Reliance. It is also seen that on July 10, 2015, Mr. Gharat of NSE had already informed Millennium that Sampark is not their authorized vendor. However, despite this finding, Sampark was permitted to install its MUX at NSE MMR during July 17-20, 2015. Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other stock brokers (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.

50. NSE has also argued that SEBI has not issued any directives about engaging service providers and it is NSE who had taken voluntary initiative to ensure that only such service providers who have been licensed by the sectoral regulators provides the services. NSE is the frontline regulator that has been given the responsibility of performing statutory function of a stock exchange. The pertinent issue here is that NSE by violating its own circulars and guidelines had given an unfair advantage to two of its brokers viz. W2W and GKN. Therefore, it is not open to NSE to issue a

regulatory Circular in the interest of the market and then commit violation thereof and take a defense stating that it has violated its own Circular hence, it does not lead to any adverse consequences. The 2009 Circular of NSE was issued in the interest of securities market and therefore it was the regulatory duty of NSE to ensure that only the licensed service providers can provide connectivity to the Colo facility.

51. NSE has submitted that although BSE had refused to empanel Sampark, W2W and GKN managed to take Sampark connectivity into the MMR of BSE Colo center managed by Netmagic and yet no action was taken against BSE except for issuing administrative warning. Hence, the action proposed against NSE is disproportionate. I find that during the relevant period of time BSE had outsourced its Colo centre to Netmagic, a third party vendor which was managing and renting out rack spaces to stock brokers in Colo centre. Unlike NSE which had consciously adopted a policy of not permitting its registered stock brokers to establish direct connectivity from its Colo facility to their racks in BSE Colo as a matter of their own regulatory reasons, BSE did not have any such policy. As alleged in the SCN, there were numerous instances of concerns regarding preferential treatment with regard to access to NSE Colo, discriminatory treatment with regard to site visit for some brokers and not for others, rejecting the application of Microscan to provide service to Shaastra Securities while at the same time allowing Sampark to provide connectivity to W2W & GKN, arranging the cabling within its Colo facility to provide unfair advantage to W2W, etc. indicating fraudulent conduct on the part of NSE and its officials. I do not find any such concerns found in the investigation with respect to BSE Colo center. Therefore, it will be erroneous to suggest that the facts in the case of NSE's Colo facility and the facts pertaining to BSE Colo center are comparable. Therefore, given the nature of allegations against the Noticee, I do not agree with the contention of the Noticee that the actions proposed against the Noticee are disproportionate.

52. NSE has also contended that the SCN is self-contradictory as on the one hand, the SCN finds fault with allowing Sampark to render services to W2W and GKN, while on the other hand, it alleges that NSE has refused to permit Mansukh and Millennium to avail service from Sampark. I am not in agreement with the aforesaid argument of the Noticee as the basis of allegations made in the SCN is the discriminatory

approach exhibited by NSE by favoring two stock brokers and disfavoring others, the SCN only emphasizes on the fact that the NSE has not conducted its services in a fair and equitable manner and resorted to unfair mode by providing preferential treatment to only two stock brokers.

53. Therefore, in view of the discussions above, I conclude that Noticee has given preferential treatment to W2W and GKN by allowing them engage a non-eligible entity Sampark from providing P2P connectivity at NSE Colo, NSE has violated the provisions of Regulation 41(2) of SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 and clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012. NSE also failed to implement the Clause (v) of the decisions taken by SMAC in its meeting dated November 11, 2011

### **III. Latency advantage to W2W**

54. It is alleged that W2W through Sampark arranged the cabling in the co-location rack such that W2W had the lower latency compared to other trading members connected to the Sampark MUX placed in NSE MMR. It is observed that NSE issued the work permits through Sampark and the cabling was done through NSE's MMR. It is observed that NSE did not allow direct P2P connectivity between NSE Colo and BSE Colo. However, it is alleged that NSE contributed towards the negligence on its part as it, prima facie, facilitated W2W and Sampark establishing connectivity to provide unfair latency advantage to W2W. It was the responsibility of NSE to monitor the cabling and ensure fair and equitable access to all its trading members. However, it is alleged that NSE failed to carry out the necessary due diligence and oversight, as warranted under their own colocation framework. By not monitoring the cabling, NSE has, allegedly, failed to ensure fair and equitable access to all its trading members. It is also alleged that the aforesaid cabling arrangement for W2W had taken place with collusion of employees of NSE, W2W and Sampark.

55. In this regard, NSE has submitted that there are no clear positive exculpatory findings in the SCN in relation to unfair latency advantage purportedly conferred on W2W or allegedly increased turnovers of W2W as a result of availing of Sampark's P2P

connectivity. There is no evidence to show that W2W and GKN received any advantage as a result of Sampark's P2P connectivity. NSE has further stated that a direct connectivity between a stock broker's server at NSE Colo and its server in BSE Colo, does not confer any advantage. Further, SEBI vide its circular dated December 1, 2016 and the NSE vide circular dated December 9, 2016 has allowed direct connectivity between servers of a stock broker placed in NSE Colo and servers of the same stock broker placed in Colo facility of another recognized stock exchange. NSE further submitted that the source cable, in fact, first passed through Sampark's MUX which was installed in the NSE MMR and thereafter to W2W's rack. While Sampark had initially installed its MUX at W2W's rack, it subsequently shifted the same MUX to the NSE MMR.

56. It is further noted from the email of Mr. Sudipta (Manager IT, Alphagrep, subsidiary of W2W) dated April 01, 2016 addressed to Noticee 14 / Mr. Mohit Mutreja (Director, AlphaGrep) and Noticee 13 / Mr. Prashant Mittal (Director, AlphaGrep) with copy to Noticee 12 / Ms. Rima Srivastava (CTO, W2W) wherein it was stated that

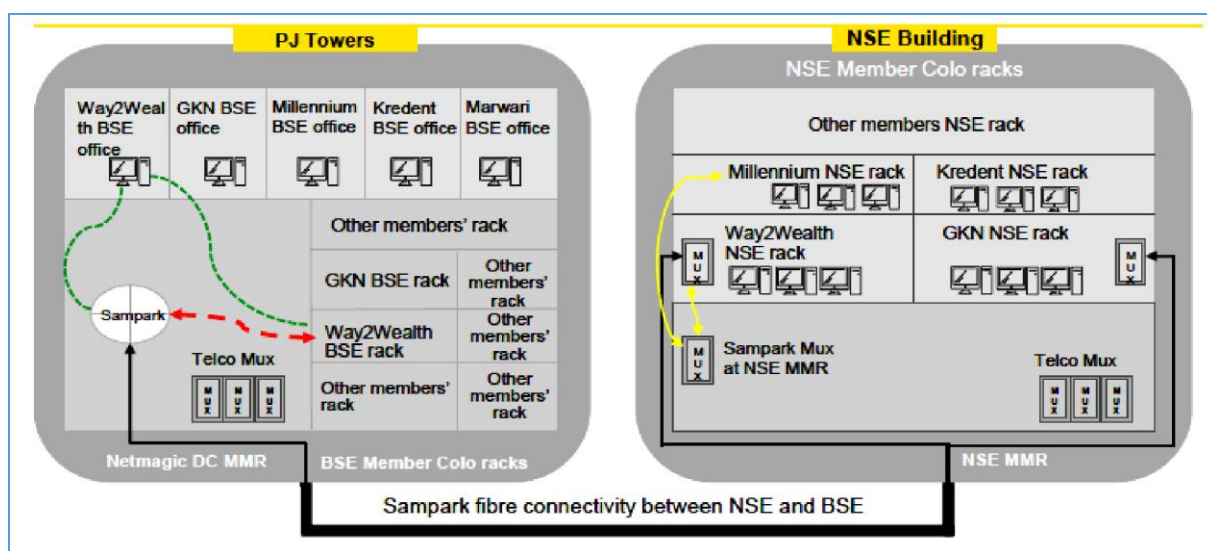
*“NSE asked Sampark to change the cable path at the NSE Colo. Have spoken to NSE Colo as well regarding this and they are telling that the source cable is passing through our rack to the Mux room and instead of going to the mux room first. And if there is a cut at our Rack then connectivity to Mux will be interrupted for other members, so they are asking Sampark to lay cable to the mux room first and then to our Rack....”*

57. Further, as per the submissions of NSE, the relevant official of NSE has, in his statement to SEBI, denied having any conversation with W2W's employee which has been referred to in the email dated April 01, 2016.

58. It is observed that W2W, while applying to NSE, as a requirement of making application for seeking permission for Sampark to lay the cabling, had given an undertaking that the P2P connection would be from their rack at NSE to its office at 213, PJ tower, BSE Building. This is because NSE, as a matter of policy, did not allow its brokers to establish direct connectivity from its Colo facility to the BSE Colo center. The connectivity from NSE Colo had to be first terminated at the office of the Broker

and then from the office, the connectivity was taken to BSE Colo. However, during the investigation, it was noted that the P2P connectivity of W2W was terminated directly at W2W rack in BSE Colo instead of terminating at their office at 213, PJ Tower, BSE Building in violation of NSE's policy. On account of this arrangement, W2W had gained advantage of at least one lesser hop/switch which enabled W2W to reduce the latency in terms of the receipt of data flow from NSE Colo.

59. Further, it was observed during investigation that when Sampark had installed its MUX at NSE MMR, it was installed in such a manner that the source cable was first connected to W2W's MUX and from thereon it went to other stock brokers' racks through the Sampark MUX in the NSE-MMR. In case of GKN, the connectivity was direct and not through the MUX of Sampark. The following diagram illustrate the connectivity:



60. It is noted from the above that W2W, through Sampark, had arranged the cabling in its NSE Colo rack in such a manner that W2W had lower latency compared to other stock brokers connected to Sampark MUX placed in NSE MMR. Thus, NSE by allowing such connectivity to W2W failed in conducting due diligence and providing level playing field to all its stock brokers which is also evident from the statement of NSE staff viz. Noticee 6 / Mr. Deviprasad Singh, Mr. Avadhut Gharat and Mr. Nilesh

dated March 26, 2018, wherein they admitted that they were not aware about such connectivity.

61. Thus I find that the allegations made above with the support of diagrammatic representation about the P2P connectivity availed by W2W, clearly suggests that W2W had arranged its connectivity on both the ends (NSE Colo and BSE Colo) in a manner that it enjoys the advantage of minimum latency as compared to other brokers who were connected to Sampark fibre. The diagram is also supported by documentary evidence from the email addressed by Mr. Sudipta of W2W to his CTO stating that the source cable is passing through their rack in NSE to the Sampark MUX in (MMR) instead of going to the MUX first. This evidence is further strengthened by his apprehension expressed in his same email that if there is a cut at W2W rack, then connectivity to Sampark MUX will be interrupted for other stock brokers. Mr. Sudipta in his submissions to SEBI sent vide email dated May 9, 2018 has stated that decision regarding the path of the fibre inside the NSE premises and outside their rack was out of their purview, implying thereby the involvement of Sampark with NSE in deciding the path of the source cable which went through W2W MUX to MMR MUX and not vice versa. This action in effect shortened the length of the connectivity to benefit W2W with lower latency. NSE's contention that the emails exchanged among the employees of W2W cannot be relied upon as evidence is not tenable since this email was addressed in due course of business by the officials of W2W and there was no reason as to why the contents of this email can be called as having no evidence value.

62. Therefore, it is seen from the above that W2W and Sampark had arranged the cabling in the Colo rack in such a manner that W2W was at advantage in comparison to other trading stock brokers who were connected to the Sampark MUX placed in MMR of NSE. It is also noted that NSE had issued the work permit through Sampark and the cabling was done through NSE MMR and therefore, NSE failed in its responsibility to monitor the cabling and ensure fair and equitable access to all its stock brokers by not carrying out the necessary due diligence, oversight and periodical supervision.

63. It is further observed that in the email dated July 7, 2015 from Noticee 12 / Ms. Rima

Srivastava (CTO, W2W) to Noticee 11 / Mr. Shashibhushan (CEO – W2W) and Noticee 14 / Mr. Mohit Mutreja (Director, AlphaGrep), it was stated that *“As you are aware, the point to point leased circuits (TCL, Reliance, Sampark) were terminated directly to Way2Wealth rack in BSE Colo instead of BSE office space by giving verbal instructions to the respective service providers. However please note that we are not in compliance with NSE permission or policy on the issue since permission was taken on records for Office No. 213, whereas links were terminated in BSE Colo - Way2Wealth’s Rack... In the event, NSE does a physical inspection or establishes that the links are terminated in BSE Colo, we are highly likely to be levied a penalty. I would request you and Mohit to consider the situation and let me know what corrective action, if any is to be taken to address the potential risk.”*

64. It is further noted that Mr. Shashibhushan (CEO – W2W) through an email dated July 8, 2015 addressed to Ms. Rima Srivastava (CTO, W2W) marking a copy to Mr. Mohit Mutreja (Director, AlphaGrep) stating that *“Action is very important now!! Please coordinate with Vendor & ensure that we get the cable loop completed (to our office & from office to Colo).”* Mr. Shashibhushan (CEO – W2W) through an email dated July 8, 2015 having subject ‘plan of action – BSE unit’ addressed to Ms. Rima Srivastava (CTO, W2W) and Gentil Augustine (Head – H.R Department) stated that *“Rima to coordinate with Sampark for the needful cabling work immediately. Once the cable is completed, we shall convert the space as functional branch. Gentil to post few people to display a functional branch”*.

65. I also note that in the year 2014, while taking approvals from Mr. Ramachandra (COO – W2W) for purchasing the office space in BSE building on March 24, 2014, Ms. Rima Srivastava (CTO, W2W) in her email had stated that *“We’re looking to establish a direct connectivity between NSE Colo to BSE Colo. However, NSE as a policy has not been allowing brokers to do this. NSE however cannot decline permission to the members to establish connectivity from their Colo to their own office premises (in this case the BSE office being considered). We have shown this office as a branch office of W2W Brokers which will be used for monitoring purposes.”*

66. From the above communications, it is noted that employees of W2W were aware that

the P2P connection of W2W was from their rack in NSE Colo to W2W rack at BSE Colo and not to their office at BSE. It is also noted from the email of W2W dated March 24, 2014 that they had deliberately misled NSE that P2P connectivity would be terminating at their office at BSE whereas the same was terminated at their rack at BSE. As NSE failed to conduct a site inspection of W2W it failed to verify the P2P connectivity of W2W in the manner, explained above.

67. As stated earlier, NSE had not conducted site inspection of W2W connectivity at BSE office. In this respect, Mr. Nagendra Kumar (Head of Membership Department - NSE) in his statement dated March 1, 2018, stated that, in case of P2P requests, they used to initiate site inspection and officers from the membership team used to visit stock broker's office at BSE office building, PJ towers if the stock broker's end point connectivity was with BSE office building. It was also stated that during 2014, based on the concerns raised by the Colo team that they were getting requests for termination at PJ Tower, it was decided to do a site-visit to ensure that the stock broker had an actual office space and that the line was not terminating at any rack space/BSE Colo.

68. However, in this respect, Ms. Rima Srivastav (CTO, W2W), Mr. Mohit Mutreja (Director, AlphaGrep) and Mr. Prashant Mittal (Director, AlphaGrep) in their statement dated March 9, 2018 stated *"based on their knowledge NSE did not carry out any physical inspection of their office in BSE"*.

69. Similarly, on the other end of P2P connectivity terminating at BSE Colo, it is mentioned by Ms. Rima Srivastava (CTO of W2W) in her email dated July 7, 2015, to her CEO, Mr. Shashibhsushan that the point to point lease circuits were terminated directly to W2W rack in BSE Colo instead of terminating at their BSE office space. She has also mentioned that this was done by giving verbal instructions to their service providers. She has also expressed concern in her email that in case NSE does physical inspection and find that the links are terminated in BSE Colo, W2W is likely to be levied a penalty. The statements and expression used in the aforementioned email clearly supports the diagrammatic representation of the P2P connectivity arrangement made by W2W both at NSE Colo and BSE Colo ends with

the support of Sampark. Further, the implicit support of NSE in such arrangement cannot be ruled out when it is noticed that NSE waived its policy of making physical on-site inspection of the P2P connectivity at BSE end despite the fact that W2W took such connectivity from a new vendor namely Sampark. Moreover, Mr. Madan Kumar Shinde of Netmagic (Managing BSE Colo) in statement dated February 6, 2018, has stated that 'when a connectivity comes from stock broker's office at PJ Towers (BSE) to BSE Colo centre then there is no requirement of a cross connect between Netmagic MMR to customer rack at BSE Colo centre.' This implies that there was no cross connect through which the connectivity of W2W had reached their rack in BSE Colo, thereby it was successful in avoiding any switch / hop for its connectivity to BSE Colo.

70. The above observation gets further strengthened by the email which Mr. Shashibhushan (CEO of W2W) has addressed on July 8, 2015, in response of email of Ms Rima Srivastava in which he has, *interalia*, directed Gentil to post few people to display it as a functional branch." Such a response from the CEO of W2W shows that the office space of W2W in the BSE tower was not a functional one and it was taken only for the purpose of displaying to NSE that they have a office at BSE which will be connected to the Colo facility of NSE but in reality they had no intention of terminating any connection at the office space and instead had an intention from the beginning to directly connect their Colo rack at BSE with their Colo rack at NSE. The objective of such arrangement cannot be anything but to gain latency advantage vis-a-vis other stock brokers who, in compliance with NSE's stated policy, had taken their P2P connectivity from NSE Colo to BSE Colo through their office.

71. I noticed from the submissions of W2W made during the course of current proceedings that Sampark had promised them that through their dark fibre connectivity, W2W will be able to get a latency less than 1 millisecond (which was much less than what they were obtaining from the existing service provider) and a bandwidth of 1 Gigabyte (was much more than a bandwidth of 45 mbps that they getting from their existing service provider). Thus, the objective of W2W from the very beginning was to achieve latency as low as possible and to fulfill this objective, with the connivance of Sampark, they have arranged their P2P connectivity in a manner

that they derive the maximum advantage of latency as compared to other brokers.

72. The on the basis of the discussion above, I conclude that NSE facilitated the laying of cables for the P2P connectivity of W2W, through Sampark, in such a manner that it provided preferential latency advantage to W2W at the cost of other stock brokers. Therefore, in view of the above, I conclude that NSE is in violation of the provisions of Regulation 41(2) of SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 and clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012. NSE also failed to implement the Clause (v) of the decisions taken by SMAC in its meeting dated November 11, 2011
73. Once it is established that W2W had a lower latency advantage due to the manner in which P2P connectivity was provided through Sampark, the other issue to deal with is the connivance of the employees of NSE and W2W for the same. The same will be dealt in later paragraphs of this order while dealing with the charges of fraud.

#### **IV. Continuation of Sampark Connectivity by W2W and GKN**

74. As stated earlier, GKN and W2W obtained Sampark connectivity by installing a MUX directly in their rack at NSE Colo. From the evidence on record, it is observed that GKN's P2P connectivity through Sampark got activated on May 7, 2015. Similarly, the P2P connectivity through Sampark for W2W got activated on May 28, 2015. At the time of allowing Sampark to install MUX in the racks of W2W and GKN, NSE did not verify Telecom licenses of Sampark. From the evidence available on record, it is observed that GKN continued to use the P2P connectivity provided by Sampark till September 10, 2015. W2W's P2P connectivity continued from May 28, 2015 to September 9, 2015 until the existing P2P connectivity of Sampark was shifted to Reliance/new connectivity was taken.
75. At the time of providing P2P connectivity to W2W and GKN, Sampark had only Infrastructure Providers Category I (IP-I) license. As per the DoT norm, as an IP1 license holder is not permitted to work and operate or provide telegraph service including end to end bandwidth either to any service provider or any other customer.

76. During the course of investigation, it is observed that even after discovering that Sampark did not have the required licenses, Noticee 6 / Mr. Deviprasad Singh (Head of Colo support - NSE) in his email dated July 27, 2015 to Mr. Prashant Dsouza (CEO of Sampark) stated that *“This is an ISP license (Internet Service Provider) and as per my knowledge you can provide internet based services through the last mile bandwidth. Our COLO is not connected to Internet. You send me the hard copies...we will have a look and come back to you. Till we clear no services will be provided from your mux installed in COLO.”*
77. It was noted from the above email of Noticee 6 / Mr. Deviprasad Singh (Head of Colo support - NSE) that despite noting the fact that Sampark was not having the requisite license, no action was initiated for disconnecting the existing P2P connectivity of Sampark for W2W and GKN.
78. It is also noted from the email dated August 12, 2015, August 18, 2015 and August 20, 2015 sent by Mr. Nagendra Kumar (Head of Membership Department - NSE) that NSE, instead of taking action for disconnecting, advised W2W to change its connectivity from Sampark to Reliance.
79. From the above, it is observed that NSE did not want to disconnect Sampark P2P connectivity of GKN and W2W even after identifying that Sampark did not have the required telecom licenses and, rather advised W2W to move their P2P connectivity provisions by Sampark to Reliance. It is noted that W2W's P2P connectivity continued from May 28, 2015 to September 9, 2015 and GKN's P2P connectivity was continued from May 08, 2015 to September 10, 2015.
80. It is alleged that there appears to be a collusion between NSE, W2W, GKN and Sampark wherein NSE allowed W2W and GKN to avail the Sampark connectivity without verifying its license and further, despite knowing the fact that Sampark did not have the requisite license and NSE allowed W2W and GKN to continue with the unauthorized activity of Sampark connectivity.
81. As regards the allegation that NSE allowed W2W and GKN to continue to avail Sampark connection even after finding out that Sampark did not have the requisite license, the primary submission of NSE is that it did not disconnect the Sampark P2P

connectivity to avoid any disruption to these stock brokers. NSE has also submitted that as a quasi-regulator it had to take decision so that it does not prejudice any person. I am not in agreement with the aforesaid argument of NSE because as a quasi-regulator, it was the primary responsibility of NSE that once a malpractice had come to its notice that results in undue advantage to certain brokers, it was its responsibility to ensure that such malpractice are immediately stopped for the sake of equality and fairness.

82. I also note that GKN was already being served by Tata as their existing service provider and they had engaged the services of Sampark only on a trial basis in addition to their existing leased line connectivity. Similarly, W2W was also availing leased line connectivity from Reliance prior to engaging Sampark. Thus, it is clear that alternative connectivity options were available with these two brokers and therefore no disruptions would have been caused on directing these brokers to discontinue with the P2P connectivity provided by Sampark and move to alternatives available. I also note that on one hand NSE allowed W2W and GKN to continue with the connectivity provided by Sampark but at the same time it kept the request of Millennium pending despite their repeated reminders. I note that although NSE claims that it was Sampark that had misled them, but it took no action against Sampark by allowing it to continue providing their services to W2W & GKN, while denying other stock brokers to avail Sampark connectivity during that time. The judicial decisions relied upon by the Noticee including the case of A.R. Antulay Vs R.S. Nayak and Anr (1998) 2 SCC 602, to argue that while taking the decision, the Noticee was required to consider the impact of such decision upon its constituents, and to ensure that it does not prejudice any person, have no relevance with the way the Noticee has acted and hence do not apply to the facts of the case. Therefore, NSE's action of allowing Sampark connectivity to continue was unjustified and shows that the officials of NSE had unfairly favoured Sampark, W2W and GKN when compared to their dealings with other stock brokers and service providers.

83. Therefore, in view of the above, I conclude that the NSE is in violation of the provisions of Regulation 41(2) of SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. NSE also failed to implement the Clause

(v) of the decisions taken by SMAC in its meeting dated November 11, 2011

**V. Allegations pertaining to the site visit of members by NSE:**

84. During the course of investigation, it was noted that Millennium had applied for P2P connectivity between their office at BSE Building and their rack at NSE Colo through Reliance on April 16, 2015, before applying for connectivity through Sampark. In this respect, Millennium in the email dated April 24, 2018, inter alia, informed that NSE had conducted two inspections of their premises at BSE Building. Similarly, the inspection of addresses of SMC Global Securities and GRD Securities were also conducted before permitting these entities to avail the P2P connectivity between their respective offices at BSE Building and their respective racks at NSE Colo. However, the same procedure was not followed in the case of W2W and GKN as no site inspection was conducted for these two brokers, while permitting the P2P connectivity for GKN and W2W. Therefore, by not conducting the site inspection of GKN and W2W, NSE had adopted discriminatory approach towards other stock brokers and provided preferential treatment to GKN and W2W.

85. I am not in agreement with the submissions of NSE in response to the allegation of selectively doing site visits of its members applying for connectivity at Colo facility. NSE has itself admitted that it conducted site inspection to ensure: (i) the trading member had an actual office space and (ii) the P2P connectivity was not terminating at the member's rack at BSE Colo. Further, NSE did not conduct site inspection in cases where (i) the trading member had an existing P2P Connection at the same location; or (ii) the P2P connectivity sought by the member terminated at the BSE Edge router.

86. The objective of the said policy of NSE of conducting physical inspection was to ensure that no trading member establishes connectivity directly between NSE Colo to BSE Colo. However, it is clear that the above policy of site inspection was not followed in the case of W2W and GKN. NSE as a regulator is required to apply the same standards and procedures in the cases of all the brokers. Otherwise, a

regulator would be accused of bias and unfair and inequitable in its treatment of the trading members.

87. If the concern of NSE was that the P2P connection should not terminate in BSE Colo then the same would have called for an inspection of address of GKN office at BSE Building, when GKN intimated NSE that its P2P connectivity would be terminating in its office instead of BSE Edge router. If NSE was of the view that site inspection would not be required for a P2P connection at a location where an existing connection for the same member is terminating, then, the site inspection was not required in case of Millennium.

88. Deviation from its own policy to safeguard its own Colo facility on various pretexts is not expected from a regulator like NSE. This also shows NSE was not managing its Colo facility in fair and transparent manner. Therefore, in view of the above, I conclude that the NSE is in violation of the provisions of Regulation 41(2) of SECC Regulations and Clause 3 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015. NSE also failed to implement the Clause (v) of the decisions taken by SMAC in its meeting dated November 11, 2011

**VI. Allegations regarding recommendation of NSE to its members to move from Sampark to Reliance Communications Limited:**

89. It is alleged that NSE employees viz, Nagendra and Deviprasad, had discussed the matter of license of Sampark with Reliance post which the infrastructure of Sampark was handed over to Reliance. Therefore, it is alleged that NSE has facilitated the arrangement between Sampark and Reliance in an attempt to give post facto legitimacy to an unauthorised activity of Sampark.

90. It is noted that Noticee 9 / Netaji (former employee of Sampark), in his statement dated September 6, 2017 stated that "*Mr. Deviprasad Singh suggested Sampark to approach Reliance Communication to takeover the existing infrastructure of Sampark as Sampark was a vendor of Reliance Communication.*" Netaji (former employee of Sampark) further in his statement dated March 30, 2018 stated that "*After Prashanth*

*D'souza's discussion with Devi (Tentatively, July end) Prashanth D'souza confirmed to Devi that Sampark is existing vendor of RCom. Hence, Prashanth D'souza told to Devi, Sampark can do with RCom (note during this discussion I was not part of this). Prashanth D'souza updated me entire issue happened & then I called to Praveen Shinde to meet him and understand opportunity of business for RCom too".*

91. It is also noted that Mr. Deviprasad Singh (Head of Colo support - NSE) vide email dated July 17, 2015 had informed Mr. Nagendra Kumar (Head of Membership Department - NSE) with subject which read as "Fibre laying and MUX installation activity"; and stating that "Reliance and Sampark are starting work today." Further, prior to the formal handing over email received from Reliance to NSE dated August 19, 2015, Mr. Nagendra Kumar (Head of Membership Department - NSE) vide email dated August 12, 2015, had instructed Noticee 14 / Mr. Mohit Mutreja (Director, AlphaGrep subsidiary of W2W) with the subject captioned "*Please change your fibre vendor from Sampark to Reliance. Pls. cheers*". Further vide email dated August 18, 2015 Mr. Nagendra Kumar (Head of Membership Department - NSE) had again stated "*Have you shifted your line from Sampark. Pls confirm. Cheers.*" On August 20, 2015 again, Mr. Nagendra Kumar (Head of Membership Department - NSE) had sent an email to W2W stating that "*looks like there is an issue with Reliance and Sampark. You need to cancel the current set up with Sampark and speak to Shailesh of Reliance to move. However, Reliance is ready to work with Sampark, we are fine with what you have.*" It is also noted that Mr. Nagendra Kumar had sent a WhatsApp message to Mr. K K Daga (Business Development, Millennium) on July 22, 2015 stating that "*Sampark has regulatory issues. Reliance has started doing their work for other members*".

92. The above communications made by Mr. Nagendra was also confirmed by Ms. Rima Srivastav, Mr. Mohit Mutreja and Mr. Prashant Mittal in their statements dated March 9, 2018 wherein they stated that, on or before 12th August 2015, NSE had informed them that they would no longer support Sampark as a vendor and asked them to move the circuit to Reliance and that Sampark has tied up with Reliance.

93. From the above, it is observed that NSE employees namely Noticee 5 / Mr. Nagendra Kumar (Head of Membership Department - NSE) and Mr. Deviprasad Singh / Noticee 6 (Head of Colo support - NSE) had discussed the matter with Reliance pursuant to which the infrastructure of Sampark was handed over to Reliance and, therefore, it was observed that NSE had facilitated the arrangement between Sampark and Reliance in an attempt to regularize and give ex post facto legitimacy to an unauthorised activity of Sampark carried out to benefit certain brokers.
94. Under the circumstance, it is alleged that NSE was acting under a fraudulent scheme of arrangement with other Noticees wherein it not only allowed W2W and GKN to take Sampark connectivity without any verification of license but also facilitated an arrangement to regularize and give ex post facto legitimacy to an unauthorised activity of Sampark and thereby NSE failed in ensuring fair, equal and transparent access to all its members in providing Colo facility.
95. In this regard, I note that Sampark had prior relationship with Reliance and one of its employees had worked with Reliance. NSE gave a list of telecommunication companies who were giving services in NSE to Sampark. Further, the decision of Sampark to partner with Reliance may be due to the similarity in the type of infrastructure deployed by Sampark and Reliance at the MMR of NSE.
96. It is also observed that Nagendra sent a WhatsApp message to K K Daga (Director, Millennium) on July 22, 2015 stating that "*Sampark has some issues on regulatory documents. They are getting it sorted. Reliance has started doing their work for other members*". Employees of W2W in their statement dated March 9, 2018 stated "*on or before 12th August 2015, NSE had informed W2W to move to Reliance and that Sampark has tied up with Reliance.*" Reliance, vide email dated August 19, 2015, informed Nagendra that Sampark had handed over its infrastructure installed in NSE to Reliance.
97. The fact that Mr. Deviprasad Singh (NSE) suggested Sampark to approach Reliance to take over the existing infrastructure is not contested. Thus, it is clear that even

after becoming aware of lack of license with Sampark, NSE supported Sampark by not discontinuing their services immediately and suggesting Sampark to approach Reliance.

98. The coincidence of timing between July 17-19, 2015, during which Sampark was installing its MUX in NSE MMR and also Reliance was supposedly upgrading its infrastructure in NSE MMR raises a bonafide suspicion that during that period Sampark and Reliance had already engaged with each other for integrating and aligning their infrastructure in NSE Colo. It is observed that on July 10, 2015, itself Mr. Avadhut Gharat (NSE) had already intimated Millennium that Sampark was not an authorized vendor for P2P link and notwithstanding this realization Sampark was allowed to proceed with installing its MUX in NSE MMR with a purpose of providing multiple connectivity to different trading members in NSE Colo. Therefore, it appears that permitting Sampark to install its MUX in NSE MMR was a conscious decision by NSE officials despite knowing that it was an unauthorized vendor. Nevertheless even assuming that NSE did not know about the insufficiency of license with Sampark till they install the MUX in their MMR, the fact that Reliance was also upgrading its infrastructure at that point of time and the statement of Netaji that Mr. Deviprasad Singh suggested Sampark to approach Reliance gives rise to a strong preponderance of probability that the officials of NSE had an active role to play in facilitating the deal between Sampark and Reliance so that W2W and GKN continue to enjoy the connectivity of Sampark under the banner of Reliance without any loss to their latency advantage. This also explains the reason as to why even after discovering about Sampark's license deficiency, NSE waited for long till Sampark found solution to its problem.

99. In view of the above observations, the explanation of NSE that they were merely suggesting alternatives to Sampark and not suggesting them to collaborate with Reliance is not found satisfactory and rather all the circumstantial evidences including the WhatsApp messages dated July 22, 2015 to K K Daga and the evidence found from the statement dated September 06, 2017 of Netaji and the statement dated

March 09, 2018 of employees of W2W clearly point out that NSE wanted to facilitate the handover of assets by Sampark to Reliance so as to regularize the unauthorized connectivity provided by Sampark o W2W and GKN.

100. Incidentally, from the records I observed that Sampark has handed over its infrastructure to Reliance by addressing an undated letter to Reliance Communications Limited without executing any valid transfer / lease agreement or by any other enforceable instrument for handing over its infrastructure at NSE Colo which further strengthened the allegation that the handover of infrastructure by Sampark to Reliance was facilitated by NSE in a manner not to prejudice the commercial interest of Sampark.

**VII. Allegations pertaining to delay in processing the requests of the Members:**

101. In terms of clause 3.6 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015, NSE is required to expeditiously decide on the request of the desirous stock brokers / data vendors for availing co-location / proximity hosting and communicate the decision within fifteen working days from the receipt of the request from the stock brokers / data vendors. Further, in case of a rejection, stock exchanges shall also provide reasons in writing to the stock brokers / data vendors. It is alleged that in several of the cases NSE did not adhere to the prescribed time line and did not expeditiously decide on the request of the stock brokers:

Sl. No	Name of the Stock Broker	Date of application	Date of Decision	No. of working days taken	Delay in no. of working days
1	GRD	July 04, 2015	Sep 02, 2015	41	26
2	Quadeye	Aug 28, 2015	Sep 29, 2015	21	6
3	Millennium	July 23, 2015	Sep 05, 2015	53	38
4	Kredent	May 25, 2015	Sep 12, 2015	79	64
5	Marwadi	July 28, 2015	Sep 5, 2015	28	13
6	KIFS	Nov 26, 2015	Dec 22, 2015	19	4

102. In this regard, NSE has submitted that P2P connectivity is distinct from Colo services and it is not necessary for a trading member desirous of availing colocation services to avail of P2P Connectivity. Noticee has further submitted that the allegation made in the SCN regarding delay in processing the requests of trading member is incorrect as the SCN has wrongly treated the "Date of the Decision" by NSE to approve P2P Connectivity as the date on which the connection was activated. I have considered the reply of NSE and observe that Clause 3.1 and 3.2 of the said circular point out that NSE shall ensure a level playing field for all the stock brokers availing the Colo facility. This can be ensured by a stock Exchange by ensuring that all the requests filed by the members are dealt in a timely manner and there is no delay in approving request of any broker. Clause 3.6 of the aforesaid circular prescribes a timeline for processing such requests of the members. Therefore, I am not in agreement with the submission of NSE that the provisions of Clause 3.1, 3.2 and 3.6 are not applicable in the instant manner. Further, as regards the submission of NSE that the SCN has wrongly mentioned date of activation as date of decisions. I note that although NSE has raised question on the veracity of data provided to it, no contradictory evidence has been put forth by it before me in support of its that the 'Date of decisions' in the abovementioned table is actually date of activation of P2P connectivity. Therefore, I am not in agreement with the contentions of the NSE and conclude that NSE is in violation of provisions of Clauses 3.1, 3.2 and 3.6 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015, as far as allegation of delay in processing the request of Stock Broker is concerned.

**VIII. Allegation regarding Inconsistent and contradictory information and reply given to SEBI**

103. NSE, vide email dated April 13, 2018 and May 2, 2018, *inter alia*, stated that the process to conduct site visits of member offices in BSE building was implemented from May, 2015. However, it is also observed that during November - December

2014, a site visit was conducted by NSE when a P2P link request (between BSE and NSE) was given by Kumar Goradia (Tower Research – Shaastra Securities Private Limited). Therefore, it appears that the submission of NSE that the process to conduct site visits was implemented from May, 2015 is factually incorrect.

104. In this regard, it has been submitted by NSE that site visit conducted by the officials of NSE in December 2014 in the case of Shastra Securities Private Ltd.(hereinafter referred to as '**Shastra**'), as concerns were raised by the NSE Colo team that the "B" end of the P2P Connectivity was terminating at the BSE. As NSE began receiving numerous requests from trading members for P2P Connectivity to their office at BSE– including from Millennium, GRD and Marwadi – it was decided to implement a policy in May 2015 of undertaking site-visits in all cases where the P2P Connection terminated at the trading member's office at BSE and where the member did not have an existing P2P Connection at BSE. Therefore, as per the submission of NSE, need for a policy which was put in place in May 2015, was traceable to a request from Shaastra Securities received in December 2014.

105. I am of the view that the submission made by NSE that site visit in December 2014 for Shaastra was done based on the concerns raised by the Colo team to ensure that (a) the member had an actual office space and (b) the line was not terminating at any rack space with BSE Colo, in contradiction to the submission of Nagendra stating that the site visit of Shaastra in December, 2014 was done on a sample basis. Therefore, the NSE claim about visit to premises of Shaastra in December, 2014 on the basis of concerns raised by Colo team is not acceptable. I also note that the NSE's submission that the policy for site visit of the offices of trading member was adopted from May, 2015, is a deliberate attempt to exclude the actions that took place with respect to Sampark connectivity vis-a-vis W2W and GKN in the month of April, 2015 during which both these trading members were permitted to establish P2P connectivity without any site visit of their office premises at BSE building.

106. Further, I note that the Regulation 48(2) of the SECC Regulations is applicable in this case as NSE has not cooperated with SEBI by providing contradictory statement related to the policy for site visits. Therefore, I conclude that NSE has violated the provisions of Regulation 48(2) of the SECC Regulations.

**IX. Allegation regarding Fraudulent conduct of NSE.**

107. It has been alleged that the acts of NSE, which have been discussed in previous paragraphs viz. facilitating laying of cable for W2W to provide latency advantage, not verifying the license of Sampark, allowing W2W and GKN to avail Sampark connectivity even after finding out that Sampark does not have the requisite license and not conducting site inspection of W2W and GKN, are fraudulent in nature. In this regard I would like to reproduce the test of Regulation 2(1)(c) of the PFUTP Regulation which stipulates that

*Regulation 2 (1) (c) of PFUTP Regulations, 2003 defines Fraud as under:*

*“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*

- (5) *a representation made in a reckless and careless manner whether it be true or false;*
- (6) *any such act or omission as any other law specifically declares to be fraudulent,*
- (7) *deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) *a false statement made without reasonable ground for believing it to be true.*
- (9) *the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

*And "fraudulent" shall be construed accordingly;*

108. In this regard, I would also like to refer to the Order of Hon'ble Supreme Court (hereinafter referred to as '**SC**') in the matter SEBI vs Kanaiyalal Baldevbhai Patel and Ors., where it has been held by the Hon'ble Supreme Court that:

*"the definition of fraud which is an inclusive definition and therefore has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly the definition expands beyond what can be normally understood to be a fraudulent act or a conduct amounting to fraud."*

Thus, the definition includes even a mere expression or omission to act without having any intention to deceit or collude, if such act or omission or expression or concealment leads to inducement of another person to deal in securities irrespective of whether there is any wrongful gain or avoidance of loss in dealing with such securities.

109. Further, in the matter of SEBI Vs Rakhi Trading Private Ltd 2018, (SCC online Sc 101), Hon'ble SC held that

*".....35 having regard to the fact that the dealings in the stock exchange are*

*governed by the principles of fair play and transparency, one does not have to labour much on the meaning of unfair trade practices in securities. Contextually and in simple words, it means a practice which does not conform to the fair and transparent principles of trades in the stock market. In the instant case, one party booked gains and the other party booked a loss. Nobody intentionally trades for loss. An intentional trading for loss per se, is not a genuine dealing in securities. The platform of the stock exchange has been used for a non-genuine trade. Trading is always with the aim to make profits. But if one party consistently makes loss and that too in preplanned and rapid reverse trades, it is not genuine; it is an unfair trade practice. Securities market, as the 1956 Act provides in the preamble, does not permit “undesirable transactions in securities” The Act intends to prevent undesirable transactions in securities by regulating the business of dealing therein. Undesirable transactions would certainly include unfair practices in trade. The SEBI Act, 1992 was enacted to protect the interest of the investors in securities. Protection of interest of investors should necessarily include prevention of misuse of the market. Orchestrated trades are a misuse of the market mechanism. It is playing the market and it affects the market integrity”.*

110. In the context of the above definition of the term fraud, it has to be seen if any of the acts, expressions or omissions or concealment on the part of NSE falls into the definition of fraud in so far it has led to inducement of any person in dealing with securities. While dealing with various allegations in the preceding paragraphs, I have already observed that the Noticee is at fault in making a non-transparent communication to the stock brokers about its amended policy pertaining to its Colo facility by merely making a website publication. I have already pointed out the preferential treatment granted to W2W and GKN by permitting them to establish P2P connectivity through an unauthorized service provider and harbouring discriminatory approach towards some other stock brokers. NSE has also been found to be at fault in violating its own regulatory instructions by not verifying the eligibility of Sampark and by consistently permitting Sampark to connect first to W2W and GKN directly to their racks in NSE Colo and then permitting Sampark to install its MUX in NSE Colo

MMR and again allowing them to continue to provide their services even after discovering their ineligibility to be a service provider. It has also been pointed out how due to intentional negligence on the part of NSE by waiving physical inspection of the office site of W2W, the trading member had circumvented the stated policy of NSE and established direct connectivity between their racks at NSE Colo and BSE Colo, thereby enjoying added latency advantage as compared to other trading members who were complying with the NSE's policy of routing the connection through their offices.

111. After having examined the various acts, omissions, expressions through email correspondences and the overall conduct of NSE in the entire matter which helped an unauthorized service provider to access to their Colo facility to lay dark fibre connectivity on behalf of two trading members so as to provide them with higher speed and lower latency that would helped them in trading in securities in a more efficient and profitable manner, it leaves no doubt that the Noticee has actively supported and helped W2W and GKN to gain faster access to the market data feeds by means of a irregular connectivity which was certainly a major inducement for the two trading members to engage Sampark and to circumvent all policies and guidelines so as to achieve their goals. I am therefore of the view that the actions and conduct of NSE appropriately fall into the inclusive definition of fraud under Regulation 2 (1) (c) of PFUTP Regulations.

112. Therefore, I am of the opinion that NSE has conducted its business in a manner which involved unfair trade practice and also amounted to deceit on its trading members who were discriminated against because of the fraudulent acts committed by it in allowing its own policy / circulars to be violated with the active connivance of its own officials, with Sampark, W2W and GKN. Therefore, I conclude that NSE has violated the provisions of Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12 (A)(c) of the SEBI Act.

113. Therefore, on the basis of the findings above, I conclude that NSE has violated Regulation 41 (2) of SECC Regulations, 2012 and clause 3 of the SEBI circular

CIR/MRD/DP/07/2015 dated May 13, 2015 on account of the following:

- a) NSE adopted a non-transparent mode of communication to stock brokers, wherein, an existing Circular was modified by NSE by way of a website change in October, 2013;
- b) NSE allowed W2W and GKN to establish P2P connectivity through Sampark while stock brokers viz. Mansukh which also wanted Sampark connectivity and Shaastra which desired to lay connectivity at NSE Colo through Microscan (a service provider similar to Sampark) were denied permission by NSE.
- c) NSE did not have a transparent policy for conducting due diligence of service providers (i) at the time of allowing P2P connectivity and (ii) at the time of granting permission to Sampark to place infrastructure in NSE MMR.
- d) Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other members (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.
- e) NSE provided preferential treatment to stock brokers by:
  - (i) Facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers
  - (ii) Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.
  - (iii) Conducting site inspection of Millennium. GRD & SMC office for connectivity while not following the same procedure was for W2W and GKN.
  - (iv) Granting permission to Sampark to place MUX in NSE MMR without verification of license.

(v) Granting permission to W2W and GKN to avail P2P connectivity of Sampark without verifying the license of Sampark.

f) NSE facilitated the arrangement between Sampark and Reliance in an attempt to regularize the same to give post-facto legitimacy to an unauthorized activity of Sampark.

g) NSE did not allow direct P2P connectivity between NSE Colo and BSE Colo. However, from the scheme of things as emerged from the analysis above, indicate towards contributory negligence on the part of NSE that facilitated W2W terminating the Sampark link at the W2W rack at BSE colocation though W2W had undertaken to terminate the P2P link at their BSE office.

114. NSE is also found to have violated regulation 41 (2) of SECC Regulations, 2012 and clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015 and clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012 on account of the following:

a) In case of W2W and GKN, NSE allowed the connections to terminate directly in the racks placed inside NSE co-location center which was contrary to normal practice followed by NSE. However, for providing connectivity to Millennium and other brokers, on the ground of lack of duct space, Sampark was asked by NSE to install the MUX in NSE MMR. It should have been obvious to NSE that if other brokers also choose to take Sampark line, then the duct space would run out hence, NSE ought to have made adequate arrangements in advance. This indicates that NSE either did not manage the load on their systems properly or did not want to give duct space to other brokers.

b) NSE did not verify the license of the service provider where the connection is through broker's rack was unfair since this resulted in certain trading members

obtaining service while others were denied the same even though in both cases, the service provider was same.

115. Further, NSE has also violated the provisions of Regulation 3(d) read with 4(1) of PFUTP Regulations read with Section 12 (A) (c) of SEBI Act on account of granting preferential treatment to two stock brokers namely, W2W and GKN and depriving the same to other stock brokers:

- a) by facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers;
- b) by allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license;
- c) by conducting site inspection of Millennium. GRD & SMC office for connectivity while not following the same procedure was for W2W and GKN;
- d) by granting permission to Sampark to place MUX in NSE MMR without verification of license.
- e) by granting permission to W2W and GKN to avail P2P connectivity of Sampark without verifying the license of Sampark.

## **B. Chitra / Noticee 2**

116. The allegations against Noticee 2/Chitra are that she was the Managing Director & Chief Executive Officer of NSE at the relevant time and therefore is also liable for violations committed by NSE, discussed in earlier paragraphs.

117. I have examined the submissions of Chitra in this regard. The primary contention of Chitra is that she was not involved in the matters involving P2P connectivity. However, I note that Chitra was the MD and CEO of the NSE during the relevant period of time and therefore, was in-charge of day to day functioning of NSE. As MD & CEO of NSE,

she was having the responsibility of all the decisions that were taken in the departments which were reporting to her. I am of the view that being MD and CEO of NSE, she cannot absolve herself from the liability arising out of malpractices, fraudulent activities and lacunae pertaining to such a sensitive matter such as Colo facility. I also note that Chitra has also made submissions in support of the steps taken by the Colo team of NSE in relation to the P2P connectivity of Sampark and GKN. I find this to be in contradiction with her other statements wherein she has pleaded ignorance as far day to day functioning of Colo team of NSE is concerned. As stated above, the control which Chitra had over NSE as its MD and CEO cannot be questioned. The MD & CEO of the company is a key managerial person (hereinafter referred to as '**KMP**') within the meaning of Section 2(51) of the Companies Act, 2013 and is included in the definition of 'Officers in default' as provided under Section 2(60) of the Companies Act, 2013. Thus MD & CEO has to be responsible for the acts committed in its organization and therefore has much higher liability and responsibility than other directors. Therefore, I cannot accept the submissions of Chitra for absolving herself from the liability arising out of the irregularities and the fraudulent acts committed in the matter of allowing P2P connectivity in the Colo facility of NSE.

118. I note that Chitra has referred to the case of *In re Denham & Co.* 1883 LR 25 Ch. D, 752 and *Dovey and the Metropolitan Bank (of England and Wales) Ltd. Vs. John Cory* 1901 A.C. 477 regarding liability of directors and the judgment of the Hon'ble Supreme Court in the matter of *Chintalapati Srinivasa Raju & Ors. Vs. SEBI* (2018) 7 SCC. I find the order of Hon'ble Supreme Court not relevant to the present case as the aforesaid matter is related to the liability of a nonexecutive director which cannot be compared with the liability of MD and CEO of a company. In this regard, I would like to refer to the Order of Hon'ble SC in the matter of *N. Narayanan Vs. Adjudicating Officer, SEBI* (2013) 12 SCC 152, wherein, Hon'ble Supreme Court has observed as under:

*"Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with*

*utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”*

119. Further, in the matter of S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Ors. (2005) 8 SCC 89 Hon'ble SC held that the Managing Director or Joint Managing Director would be admittedly in-charge of the company and responsible to the company for conduct of its business. When that is so, holders of such positions in a company become liable under Section 141 of the Act. By virtue of the office they hold as Managing Director or Joint Managing Director, these persons are in-charge of and responsible for the conduct of business of the company. Thus, the aforesaid Order of Hon'ble SC clearly establishes the liability and responsibility of a MD of a Company. Chitra being the MD of NSE, was in-charge of the NSE and responsible of conduct of its business. By merely stating that professionals were appointed to handle technical matter and she was not aware of the technicalities of processes involved around such activities, Chitra cannot absolve herself from the liabilities of NSE. Chitra has not shown what steps were taken by her to ensure that the Colo facilities were being offered to all the stock brokers in a fair and equitable manner. If this argument of MD and CEO of an organization, such as NSE, which is a key part of market infrastructure, is accepted, it will tantamount to allow a situation where there will be no control of board over highly technical and complex matters of the exchange. In today's times, the functionality of stock exchanges world over has become highly complicated and technology intensive. Under such scenario, a MD and CEO of stock exchange stating that she does not have the understanding of complex technical issues and such functions were totally being handled at the discretion of subordinates cannot be accepted. In this regard, I would like to refer to the order of SC in the matter of J.K

Industries Limited v. Chief Inspector of Factories (1996) 6 SCC 665 wherein it was held by Hon'ble SC that the directors being in control of the company's affairs cannot get rid of their managerial responsibility by nominating a person as the occupier of the factory. A proper degree of delegation and division of responsibility is permissible but not a total abrogation of responsibility. A director might be in breach of duty if he/she left to others the matters to which the Board as whole had to take responsibility. Directors are responsible for the management of the company and cannot divest themselves of their responsibility by delegating the whole management to agent and abstaining from all enquiries. If the latter proves unfaithful, the liability is that of the directors as if they themselves had been unfaithful.

120. Therefore, in view of the aforementioned orders of Hon'ble SC, I conclude that Chitra being the MD & CEO of NSE cannot escape from the responsibilities of any fraudulent action or lack of action or any activities committed by the subordinate officers which lacks integrity and due diligence on their part. The pleas taken by Chitra in this regard, such as: - she is not aware of such activities or actions, that the subordinates have not escalated the matter to her, that she has appointed competent people to perform their specialized functions hence her job as far as discharge of function of such specialized divisions is discharged, etc. is absurd and cannot be accepted.
121. It is noted that every director of a stock exchange is bound by code of conduct and code ethics as specified under Part-A and Part-B of Schedule II of SECC Regulations, 2012. As MD of NSE, Chitra was duty bound to administer the stock exchange with professional competence, fairness and impartiality. Being a KMP of the exchange, she was under obligation to deal with matters relating to the stock exchange with fairness and transparency. Therefore, I am of the view that Chitra is equally liable for violations that were committed by NSE which have been discussed in earlier paragraphs of this report.
122. I have already held that NSE is liable in terms of the various provisions on the basis of allegations discussed in this order. Therefore, as the MD and CEO of NSE, Chitra is also in violation of Part A & B of schedule II of SECC Regulations, 2012 read with

Regulations 26(1) and 26(2) of SECC Regulations, 2012 read with SEBI Master Circular dated December 31, 2010 due to the following violations committed by NSE:

- a. In case of W2W and GKN, NSE allowed the connections to terminate directly in the racks placed inside NSE co-location center which was contrary to normal practice followed by NSE. However, in case of Millennium and other brokers, on the ground of lack of duct space, Sampark was asked by NSE to install the MUX in NSE MMR. It should have been obvious to NSE that if other brokers also take this Sampark line, then the duct space would run out and NSE ought to have made adequate arrangements in advance. This indicates that NSE did not manage the load on their systems properly.
- b. NSE did not verify the license of the service provider where the connection was through broker's rack which was unfair since this resulted in certain trading members obtaining service while others were denied the same even though in both cases, the service provider was same.
- c. NSE adopted a non-transparent mode of communication to stock brokers, wherein, an existing Circular was modified by NSE by way of a website change in October, 2013;
- d. NSE allowed W2W and GKN to establish P2P connectivity through Sampark while stock brokers viz. Mansukh which desired to lay Sampark connectivity and Shaastra which desired to have connectivity from Microscan (a service provider similar to Sampark) were denied permission by NSE.
- e. NSE did not have a transparent policy for conducting due diligence of service providers (i) at the time of allowing P2P connectivity and (ii) at the time of granting permission to Sampark to place infrastructure in NSE MMR.
- f. Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other members (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed

P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.

123. Chitra is also in violation of Regulation 3(d) read with 4(1) of PFUTP Regulations read with Section 12 (A) (c) of SEBI Act, 1992 and Part A & B of schedule II of SECC Regulations read with Regulations 26(1) and 26(2) of SECC Regulations read with SEBI Master Circular dated December 31, 2010 on account of the act that NSE followed a policy of preferential treatment of stock brokers by:

- a. facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers
- b. allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.
- c. not conducting site inspection of for W2W and GKN, while the procedure of conducting inspection was followed for Millennium, GRD & SMC office for such connectivity.

### **C. Subramanian / Noticee 3**

124. The allegations against Noticee 3 / Subramanian is that he was the Group Operating Officer and advisor to the MD of NSE at relevant point of time and therefore, he is also responsible for the violations committed at NSE.

125. I note that the primary contention of Subramanian is that he was not a KMP of NSE and he had joined NSE as a consultant on April 1, 2013. However, I note that he was re-designated as 'Group Operating Officer and Advisor to MD' w.e.f. April 1, 2015 by, then MD & CEO, Chitra, thereby placing him at par with Job grade M 13 i.e. equivalent to Group president, just next to MD & CEO. In the annual report for the year 2015-16 of NSE, Subramanian has been indicated as part of the 'Management Team' in the capacity of a Group Operating Officer. It is seen from the report of the Nomination and Remuneration Committee (hereinafter referred to as '**NRC**') of NSE, dated November

22, 2017 that the re-designation of Subramanian was not tabled to the then NRC despite the fact that as per the provision of the Companies Act, 2013, he would have been a KMP and his re-designation would have needed an approval from the NRC. Further, I find that Board of NSE, in its meeting held on August 11, 2015, further delegated substantial power of management akin to the power granted to MD and CEO to Subramanian, in order to smoothen the day-to-day conduct of business operations of the exchange. Therefore, it is established from the facts mentioned above that as Group Operating Officer & Advisor to MD during relevant time, he was a KMP with the powers co-terminus with the powers & functions of the MD & CEO of NSE. Further, a large number of Departments/Divisions including the business heads, CTO-Operations were reporting to him after his elevation as Group Operating Officer and Advisor to MD.

126. It has been already established in the earlier paragraphs that the MD & CEO of NSE is equally liable for the acts of violation of provisions of law committed by NSE. Therefore, considering the fact that Subramanian was 'Group Operating Officer and Advisor to MD', a large number of Departments/Divisions including the business head, CTO-Operations were reporting to him. Therefore, considering the report of the NRC of NSE referred t above, I am of the view that Subramanian is equally liable for the actions and inactions on the part of NSE and the MD & CEO of NSE with respect to P2P connectivity.

127. I also find that every KMP of a stock exchange is bound by code of ethics as specified under Part-B of Schedule II of SECC Regulations, 2012. On account of this, Subramanian is under obligation to deal with matters relating to the stock exchange with fairness and in a transparent manner. In the previous paragraphs, I have dealt in detail how NSE failed to conduct itself in a fair and transparent manner while dealing with issues relating mode of communication regarding the amendment of 2009 Circular of NSE, allowing brokers to avail P2P connectivity from a unauthorized service provider in an unfair manner, lack of clear documented policy for conducting due diligence of service providers, deciding to allow W2W and GKN to continue to

avail Sampark connection, decision to not conduct site visit for W2W and GKN in violation of its own policy, flawed policy regarding allowing P2P connectivity to W2W and GKN by installing MUX in their rack and denying the same to Millennium, etc. I find that while performing his role as a Group Operating Officer in connection with the above matters, Subramanian did not adhere to the code of ethics as specified under Part-B of Schedule II of SECC Regulations, 2012.

128. Keeping the foregoing discussions and my observations about the Noticee, I find that his culpability is undeniably the same as that of the MD & CEO of NSE as far as violations in the P2P connectivity is concerned. I have already held that NSE and the MD & CEO are liable in terms of the aforesaid provisions on the basis of various allegations made against them in the SCN. In view of my observations in the foregoing paragraphs about the role and responsibility of Subramanian, I hold Subramanian Anand in violation of Part B of Schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 read with SEBI Master Circular dated December 31, 2010 on account of the following:

- a) In case of W2W and GKN, NSE allowed the connections to terminate directly in the racks placed inside NSE co-location center which was contrary to normal practice followed by NSE. However, in case of Millennium and other brokers, on the ground of lack of duct space, Sampark was asked by NSE to install the MUX in NSE MMR. It should have been obvious to NSE that if other brokers also take this Sampark line, then the duct space would run out and NSE ought to have made adequate arrangements in advance. This indicates that NSE did not manage the load on their systems properly.
- b) NSE did not verify the license of the service provider where the connection was through broker's rack which was unfair since this resulted in certain trading members obtaining service while others were denied the same even though in both cases, the service provider was same.

- c) NSE adopted a non-transparent mode of communication to stock brokers, wherein, an existing circular was modified by NSE by way of a website change in October, 2013;
- d) NSE allowed W2W and GKN to establish P2P connectivity through Sampark while stock brokers viz. Mansukh which desired to lay Sampark connectivity and Shaastra which desired to have connectivity from Microscan (a service provider similar to Sampark) were denied permission by NSE.
- e) NSE did not have a transparent policy for conducting due diligence of service providers (i) at the time of allowing P2P connectivity and (ii) at the time of granting permission to Sampark to place infrastructure in NSE MMR.
- f) Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other members (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.

129. In view of the foregoing discussions, I further hold Subramanian in violation of regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read with section 12 (A) (c) of SEBI Act, 1992 and Part B of schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 read with SEBI Master Circular dated December 31, 2010 on account of the act that NSE followed a policy of preferential treatment to stock brokers by:

- a) facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers;
- b) allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license;

- c) not conducting site inspection of W2W and GKN while the procedure of conducting inspection was followed for Millennium, GRD and SMC office for such connectivity.

**D. Ravi Varanasi / Noticee 4**

130. I find that allegation against Ravi Varanasi is that he was the Head of business development function and was the supervisor of Noticee 5/ Nagendra and at relevant point of time and therefore, he is responsible for the violations committed by NSE:
131. I have perused the submissions made by Ravi Varanasi in response to the SCN. I note that the primary contentions of Ravi Varanasi in his support are similar to the submissions made by the NSE. I have already dealt with those arguments are the same are not repeated here for the sake of brevity.
132. Ravi Varanasi was the head of Business Development at NSE at the relevant point of time and the Colo support team was directly reporting to him. Therefore, he was the person who was looking after the operational activities relating to Colo requests during the relevant period of time and has to be held accountable for all the acts, omissions and commissions by the Colo support staff who were functionally reporting to him. Therefore, I am not in agreement with the contention of the Noticee that issues related to Sampark's license were not part of his role and responsibility. Further, admittedly, it was the decisions of Ravi Varanasi to continue the connectivity of W2W and GKN through Sampark despite being aware of the deficiencies in such connectivity. As discussed earlier, there were alternate options of connectivity available with W2W and GKN and therefore, the argument that such connectivity would have caused disruption in the business of the brokers is not acceptable.
133. I find that on the one hand Ravi Varanasi has submitted that he was not concerned either with the setting up of the Colo facility or its management and the P2P connectivity between the rack of the trading member at NSE Colo and its office in BSE Building was not within his purview, but on the other hand it was he who had taken

the decision of allowing W2W and GKN to continue with the connectivity provided by Sampark. As per the reporting structure that was prevalent at NSE during the relevant time, the Colo support team and also the membership department was reporting to the Head of Business Development. Therefore, the Head of Business Development cannot disassociate himself from the approval granted to Sampark connectivity.

134. As stated above, Ravi Varanasi was in charge of Business Development and operational activities relating to Colo requests at the relevant time. Therefore, Noticee is a KMP in terms of regulation 2(i) of SECC Regulations, by virtue of the position the Noticee held at the exchange during the relevant period of time. The SCN, inter alia, alleged that he has violated Part B of schedule II of SECC Regulations, 2012 and thereby violated Regulation 26(2) of SECC Regulations read with SEBI Master Circular dated December 31, 2010.

135. Therefore, Ravi Varanasi as a KMP of NSE was bound by code of ethics as specified under Part-B of Schedule II of SECC Regulations and was under obligation to deal with matters relating to the stock exchange with fairness and in a transparent manner. Therefore, in light of the discussions above, I conclude that Ravi Varanasi, as a KMP, did not adhere to the code of ethics as required, thereby violating the provisions of Part B of schedule II of SECC Regulations, 2012 and thereby violated regulation 26(2) of SECC Regulations read with SEBI Master Circular dated December 31, 2010 on account of the following:

- a) NSE adopted a non-transparent mode of communication to stock brokers, wherein, an existing circular was modified by NSE by way of a website change in October, 2013;
- b) NSE allowed W2W and GKN to establish P2P connectivity through Sampark while stock brokers viz. Mansukh which desired to lay Sampark connectivity and Shaastra which desired to have connectivity from Microscan (a service provider similar to Sampark) were denied permission by NSE.

- c) NSE did not have a transparent policy for conducting due diligence of service providers (i) at the time of allowing P2P connectivity and (ii) at the time of granting permission to Sampark to place infrastructure in NSE MMR.
- d) Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other members (GKN and W2W) availed the same benefit. This was on account of flawed policy on the part of NSE, which allowed P2P connectivity to W2W and GKN by installing a MUX in their rack and denying the same to Millennium thereby following discriminatory policies.

136. Further, due to his position in NSE and the role played by him as Head of business development and functional supervisor to the Colo team, I further hold Ravi Varanasi in violation of regulation 3(d) read with 4(1) of PFUTP Regulations read with section 12 (A) (c) of SEBI Act, 1992 and Part B of schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 read with SEBI Master Circular dated December 31, 2010 on account of the act that NSE followed a policy of preferential treatment of stock brokers by:

- a) Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.
- b) Conducting site inspection of Millennium. GRD and SMC office for connectivity while not following the same procedure for W2W and GKN.

#### **E. Nagendra / Noticee 5**

137. I note that the Noticee 5 / Nagendra was the head of Membership department of NSE. It is observed that it was Nagendra who directed W2W to shift operations from Sampark to Reliance. It is further seen that Nagendra had conveyed the approval of P2P connectivity to W2W and GKN. Further, vide email dated April 6, 2015, Rima Srivastava (CTO- W2W) requested the Nagendra *"to allow Sampark info to lay fibre upto our rack (rack no. 18, phase 2) and install their MUX to provision the said connectivity"* which was referred by the Noticee to Deviprasad / Noticee 6 (Head Colo

support Team, NSE) with the remark "*please confirm?*" to which Deviprasad responded stating "*can be permitted*".

138. As per the reporting structure that was prevalent at NSE during the relevant point of time, the Colo support team and also the membership department were reporting to the Head of Business Development. Therefore, just like the Head of Business Development (Ravi Varanasi), the Head of Membership Department (Nagendra) also cannot disassociate himself from the act of granting approval to Sampark connectivity and therefore cannot escape from his responsibility having communicated the approval on behalf of NSE to Sampark. Under the circumstances, all the three Noticees namely Shri Deviprasad Singh (head of Colo support team), Nagendra (as Head of Membership team) and Shri Ravi Varanasi (as Head of Business Development to whom Deviprasad and Nagendra were reporting) are collectively and also individually responsible for processing the application of W2W and GKN and for not verifying the eligibility of Sampark before permitting Sampark to lay P2P connectivity for trading members at NSE Colo facility. Therefore, for all the acts of omission and commission of NSE which have led to granting permission to Sampark and allowing it to continue to provide services to W2W and GKN in a discriminatory manner thereby causing prejudice to the interest of other trading members in gross violation of the policy and circulars of NSE, Nagendra is equally accountable and liable.

139. The submission made by Nagendra stating that the site visit of Shaastra in December, 2014 was done on a sample basis is contrary to his submission in the statement under oath dated March 1, 2018, wherein, he has *inter alia*, stated that during 2014, based on the concerns raised by the Colo team it was decided to do a site visit to ensure that (a) the member had an actual office space and (b) the line was not terminating at any rack space with BSE Colo. Therefore, Nagendra's claim about visit to premises of Shaastra in December, 2014 on a sample basis is an afterthought without any basis. I also note that the Nagednra's claim that the policy for site visit of the offices of trading member was adopted from May, 2015, is a deliberate attempt to exclude the actions

that took place with respect to Sampark connectivity vis-a-vis W2W and GKN in the month of April, 2015 during which both these trading members were permitted to establish P2P connectivity without any site visit of their office premises at BSE building.

140. With regard to GKN, it has been submitted by Nagendra that since the connection sought by GKN was to the BSE Edge Router, no site visit was conducted, in line with the NSE practice at the relevant time. It is observed from the submission made by NSE that initially GKN had informed that the connection would terminate at the BSE Edge router. Post approval of the said connection, it was intimated by GKN on April 22, 2015 that it would be terminating the connection in its office within BSE. Therefore, I am of the view that when GKN had intimated NSE that its P2P connectivity would be terminating in its office instead of BSE Edge router, a site visit should have been conducted by NSE.

141. Further, the submission of Nagendra that site visit was waived in respect of W2W since, as it already had an existing connection from Reliance from its office at BSE building, is unacceptable. I note that in the case of Millennium, which was also having similar connection through Reliance, a site visit was conducted. Further, in the case of Shaastra site inspection was done twice - once in December, 2014 and again in the year 2015 at the time of processing its application for P2P connectivity. Thus, I observe that the above practice of not doing a site visit was not in line with the existing policy of NSE at the relevant point of time.

142. Therefore, from the above, it is seen that Nagendra has played an equally important and active role in granting permission to an unauthorized service provider to lay fibre connectivity at the NSE Colo facility on behalf of W2W and GKN, and in not pursuing the site visit policy in case of GKN and W2W. Under the circumstances, Nagendra is equally culpable for not exercising appropriate due diligence and actively cooperating with the request of the trading members by facilitating their P2P connectivity with the help of an unauthorized service provider. Therefore, I uphold all the allegations made against the Noticee in the SCN.

143. Therefore, I hold that Nagendra has violated the provisions of Regulation 3(d) read with 4(1) of PFUTP Regulations read with section 12A (c) of SEBI Act, 1992 on account of:

- a. granting permission to W2W and GKN to avail connectivity of Sampark without verifying the license of Sampark.
- b. allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.
- c. not conducting site inspection of W2W and GKN while the procedure of conducting inspection was followed for Millennium, GRD & SMC office for such connectivity

#### **F. Noticee 6 / Deviprasad**

144. It is observed that Deviprasad was the head of Colo-support team and was involved in various functions related to Colo facility provided by NSE. He was reporting to Shri Ravi Varanasi who was the head of the business development team that was looking after P2P connectivity and other matters relating to the Colo facility of NSE. I note that Deviprasad has made submissions indicating that NSE did not have any control on the matters pertaining to P2P connectivity of members however, at the same time, he has stated that the P2P connectivity is authorized by NSE business team and as the head of the Colo support team he allowed Sampark to lay cable for their P2P connectivity after taking necessary undertaking from Sampark. Further, I also note that it was Deviprasad who, on reference received from Nagendra, vide email dated April 6, 2015, had confirmed to him that Sampark may be permitted to lay fibre upto the rack of W2W and install their MUX at NSE Colo. Thus the active involvement of Deviprasad in the matter of allowing Sampark to provide P2P connectivity to W2W and GKN is evident from the above facts.

145. I note that the submission of Deviprasad that NSE does not regulate the service provider when a trading member takes its service for establishing P2P connectivity

directly to their rack in NSE Colo and that NSE does not enquire into the eligibility or the license of such telecom service provider employed by trading member for their P2P connectivity is contradicted by the fact that Deviprasad, on July 29, 2015, had rejected the request for authorisation of Microscan citing Microscan lacking requisite DoT licenses as one of the reason. Further, when W2W sought permission to allow Sampark to lay fibre up to their rack in NSE Colo and to install their MUX for the P2P connectivity, Deviprasad permitted the same without seeking any license or raising any objection regarding eligibility of Sampark. As discussed earlier, while dealing with Shaastra, the approach adopted by Deviprasad was entirely the opposite and it proactively rejected their P2P connectivity proposal. Therefore, I am not in agreement with the submission of Deviprasad in this regard.

146. I am also not in agreement with the submission of Deviprasad that the connectivity provided by Sampark was not a dark fibre and the term “dark fibre” itself is a misnomer as I find that Sampark itself, in their proposal to W2W for providing P2P connectivity have termed it as Dark Fibre and marketed it as a fibre that provide low latency benefit. Deviprasad has also submitted that Sampark line was not used for trading by W2W and was used to take market data from W2W servers posted at NSE Colo facility to their office, I find that P2P connection was used for transferring market data from NSE and BSE Colo, which was then used for algo trading.

147. I note that the Deviprasad has played a pivotal role in facilitating laying of dark fibre by Sampark in the Colo facilities of NSE. I am of the view that Deviprasad acted in an arbitrary and irregular manner in discharge of his duties only to help and facilitate W2W and GKN to establish P2P connectivity through Sampark, an unauthorized service provider. In view of the above, I conclude that Deviprasad is in violation of regulation 3(d) read with 4(1) of PFUTP Regulations read with section 12 (A) (c) of SEBI Act, 1992 on account of:

- a. allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.

- b. permitting to place infrastructure without verifying the Sampark capabilities.
- c. permitting W2W and GKN to avail connectivity of Sampark without verifying license of Sampark
- d. denying Millennium to avail P2P connectivity of Sampark by installing MUX directly in its rack while other members (GKN and W2W) availed the same benefit.
- e. allowing W2W to arrange cabling through Sampark in the Colo rack in a manner that W2W had the lower latency compared to other trading members/stock brokers connected to the Sampark MUX placed in NSE MMR. The aforesaid arrangement could not have taken place without collusion of W2W, Sampark and officials of NSE. It was the responsibility of Colo Support team of NSE to monitor the cabling and ensure fair and equitable access to all its trading members. However, NSE failed to carry out the necessary due diligence and oversight, as warranted under their own colocation framework.

**G. Noticee 7 / Sampark**

**Noticee 8 / Prashant D'Souza**

**Noticee 9/ Netaji**

148. I find the issue raised by Sampark with regard to the jurisdiction of SEBI to issue any direction against it, is unwarranted and irrelevant. There is no dispute that Sampark is regulated by DoT with respect to its license as a service provider for network infrastructure but in the instant proceedings the question being dealt with is not why it did not possess the requisite ISP license but why it laid the cabling for trading members in a manner detrimental to the other brokers which were availing Colo facility at NSE Therefore, the Noticee is artificially trying to create confusion by bringing a hypothetical conflict of jurisdiction between SEBI and DoT.

149. It is alleged that Sampark acted in collusion with W2W and NSE to lay the fibre in such a way that W2W had lower latency compared to other trading members connected to the Sampark MUX placed in NSE MMR and therefore violated provisions of SEBI Act, 1992 and PFUTP Regulations. Therefore, the issue before me is whether Sampark is in violation of the said regulations and not on the issue of its License.
150. I find that Sampark has contended that it had carried out the cabling instruction at the behest of its customer namely W2W and the building owner i.e. NSE. I find no merit in such submissions. I have already dealt at length on how the cabling was clearly disadvantageous to other stock brokers and benefitted W2W. It is also not in dispute that the cabling was laid down by Sampark as it was the owner of the dark fibre and had the necessary technical expertise and was well versed with intricacies of cable path. The manner in which the cable was laid could not have been possible without the active connivance and collusion of Sampark.
151. Keeping the foregoing discussions and observations in view, it can be concluded that Sampark had actively colluded with W2W, and NSE to provide P2P connectivity in an unauthorized and irregular manner so as to help and induce them in their dealing in securities market. Similarly, being the COO of Sampark at the relevant part of time who was driving the business of Sampark and was actively engaged with W2W and GKN throughout the transactions with them and also with NSE, Prashanth D'Souza is equally culpable and liable for the actions and fraudulent conduct on the part of Sampark. The culpability of Prashanth D'Souza also arise due to the fact that during the review of mobile data of Prashanth D'Souza, a WhatsApp conversation dated December 13, 2017 was found between Netaji and Prashanth, wherein, Netaji had stated that he had "*reviewed all the PSTs before handing it over*" to Prashanth D'souza and now if Prashanth D'souza "*had any issues he was free to delete mails without any further discussion*". Therefore, it is clear that Prashanth and Netaji were involved in destroying email information
152. Further, I observe that during recording of his statement before Investigating Authority on August 16, 2017, Prashanth submitted that

- i. Sampark has not provided Point to Point connectivity to the said GKN and W2W. The connection was an IPsec connectivity over internet on demo purpose.
- ii. Way2Wealth and GKN securities approached Sampark through Netaji Patil, one of Sampark's employee.
- iii. Sampark installed switches and MUX inside NSE Colo Meet Me Room and from there laid fibre cable till the duct outside NSE premises. These switches and MUX were used as a single point to provide the connectivity service to both the brokers i.e. W2W and GKN Securities (hereinafter referred to as 'GKN').
- iv. Sampark never installed any MUX in customer rack. It was installed in NSE provided rack in Meet Me Room.
- v. No payments have been made to Tekzi India by brokers in relation to Sampark or Reliance connectivity/link.

153. However, I find the aforesaid submission of Prashanth is incorrect as Crosseas Capital Services Private Limited and KIFS Securities Private Limited have made payments for the P2P connectivity provided by Sampark to Tekzi India.

154. Under the circumstances, in line with the allegations made in the SCN, I hold Sampark and Prashanth D'Souza in violation of regulation 3(d) read with 4(1) of PFUTP Regulations read with section 12 (A) (c) of SEBI Act, 1992.

155. Further, I also hold Prashanth D'souza and Netaji Patil in violation of Section 11C(2) of the SEBI Act for their act of destroying evidence by deleting emails. I also find that Prashanth D'souza had violated provisions of Sections 11(2)(i), 11C(3) and 11C(5) of the SEBI Act, as it misled SEBI investigation by submitting false information on oath.

#### **H. W2W / Noticee 10**

156. I have perused the submissions made by W2W in relation to availing P2P connectivity through Sampark. In this regard, I note from the material available on record and the submissions made by the Noticees that Sampark was engaged by W2W for providing services as Sampark had given presentation to them with evidence of providing lower latency. Thus it is an undisputed fact that the connectivity provided by Sampark was unique in the manner that it was offering lowest latency compared to other service providers. The existing service provider of W2W was Reliance to whom Sampark, as a IP-1 licensed Vendor, was already providing on lease, fibre cable network

infrastructure, so as to provide the last mile connectivity to the customer Brokers. W2W was well conversant with one of the employee of Sampark viz. Netaji Patil, who was a former employee of Reliance. W2W engaged Sampark for P2P connectivity and paid them Rs. 19 Lakh subject to Sampark providing a latency of less than one millisecond.

157. Further, as discussed when Sampark had installed its MUX at NSE MMR and connected W2W with the MUX, it was installed in such a manner that the source cable was first connected to W2W's MUX and from thereon it went to other stock brokers' racks through the Sampark MUX in the NSE-MMR as evident from the email dated April 1, 2016 addressed by Mr. Sudipta (Manager IT, Alphagrep, subsidiary of W2W) to Noticee 14 / Mr. Mohit Mutreja (Director, AlphaGrep) and Noticee 13 / Mr. Prashant Mittal (Director, Alpha Grep) with copy to Noticee 12 / Ms. Rima Srivastav (CTO, W2W) wherein it was stated that "*NSE asked Sampark to change the cable path at the NSE Colo. Have spoken to NSE Colo as well regarding this and they are telling that the source cable is passing through our rack to the Mux room and instead of going to the mux room first. And if there is a cut at our Rack then connectivity to Mux will be interrupted for other members, so they are asking Sampark to lay cable to the mux room first and then to our Rack....*"

158. As per the extant policy of NSE, the other end (B end) of the P2P connectivity of W2W was required to terminate at the office W2W in BSE tower and from there it could have been connected to the Colo facility of BSE which was offered by third party vendor, viz: Net Magic. However, as discussed in length in earlier paragraphs, the connectivity did not terminate at W2W's office at BSE tower and instead the fibre cable only passed through the office of W2W and directly got connected to broker's rack in BSE Colo and from thereon to Sampark MUX in MMR of BSE through a cross connect.

159. This is supported by email dated July 7, 2015 from Ms. Rima Srivastav (CTO, W2W) to Shashibhushan (CEO – W2W) and Mr. Mohit Mutreja (Director, AlphaGrep), wherein it was stated that "*As you are aware, the point to point leased circuits (TCL, Reliance, Sampark) were terminated directly to Way2Wealth rack in BSE Colo instead*

*of BSE office space by giving verbal instructions to the respective service providers. However please note that we are not in compliance with NSE permission or policy on the issue since permission was taken on records for Office No. 213, whereas links were terminated in BSE Colo - Way2Wealth's Rack..... In the event, NSE does a physical inspection or establishes that the links are terminated in BSE Colo, we are highly likely to be levied a penalty. I would request you and Mohit to consider the situation and let me know what corrective action, if any is to be taken to address the potential risk."*

160. The direct connectivity established by the Noticee to their rack in BSE Colo in non-compliance with the NSE policy is evident by the submission of W2W wherein it has stated that

a) *"on July 09, 2015, Noticee No.8 has installed a switch in their office at BSE building which resulted in the termination of the circuit at their office"*

b) *"it is submitted that the alleged inconsistencies in the actual cable path of Noticee no.8 was for a brief period and was rectified immediately upon being cognizant of them"*

161. Thus, Noticee was having the benefit of lower latency due to lesser hop at NSE Colo and also due to direct connectivity at BSE Colo by bypassing its office for P2P connectivity. It is only on July 9, 2015 the Noticee installed a switch in their office which resulted in the termination of circuit in their office and from there the Noticee was connected to the rack at BSE Colo.

162. The aforesaid manner of connectivity was achieved by W2W deliberately with the assistance of Sampark and the same is evident from the email of Noticee 1 / Mr. Shashibhushan (CEO – W2W) dated July 8, 2015 addressed to Ms. Rima Srivastav (CTO, W2W) marking a copy to Mr. Mohit Mutreja (Director, AlphaGrep) in which he has responded to Rima's concern by stating that stated that *"Action is very important now!! Please co-ordinate with Vendor & ensure that we get the cable loop completed (to our office & from office to Colo)."* Shashibhushan (CEO – W2W) through an email

dated July 8, 2015 having subject 'plan of action – BSE unit' addressed to Ms. Rima Srivastav (CTO, W2W) and Gentil Augustine (Head – H.R Department) stated *“Rima to coordinate with Sampark for the needful cabling work immediately. Once the cable is completed, we shall convert the space as functional branch. Gentil to post few people to display a functional branch”.*

163. I note that W2W has disputed the contents of both the emails cited above. On the email of Sudipta Kumar, W2W states that it merely refers to an arrangement and does not provide any evidence that the cable terminated at W2W's rack before being terminated to Sampark MUX at NSE MMR. I note that Mr. Sudipta Kumar had sent the email just after a few months after the connectivity was taken over by Reliance in September, 2015 and based on his direct knowledge and interaction with NSE and Sampark officials. Therefore, the email carries the strength of a contemporary evidence whose contents cannot be dismissed by W2W after a gap of 3 years. Similarly, the email of Ms. Rima Srivastava expressing her concern about the direct connection made by W2W with their Colo rack in BSE in violation of NSE's P2P connectivity policy clearly portrays that W2W had also tried to take advantage of its Sampark connectivity by circumventing the policy of NSE in a manner so that it gets further benefit of latency by avoiding one level of switch/hop at the BSE end. Therefore, in view of the above, I conclude that W2W has not only engaged Sampark consciously with the expectation of more bandwidth and less latency resulting in higher data speed, but also to arrange the cable path on both NSE & BSE ends in a manner that it gives maximum latency benefits from the said connectivity in an unfair manner.

164. As regards the issue of engaging Sampark for the P2P connectivity is concerned, I am not inclined to accept the submission of W2W that it was an oversight on their part and that they had no knowledge about the license status of Sampark till even the day when NSE instructed them to shift from Sampark to Reliance.

165. The Noticee has also submitted that the August 2009 circular of NSE did not specify about verifying the eligibility of service providers at the Colo center of NSE. I do not

agree with the aforesaid submission for the reason that the said circular did specify the names of service providers that could be engaged for availing connectivity at the Colo center. Therefore, when W2W went ahead with engaging the services of a service provide other than the stipulated 4 (as it was not aware of the amendment to the 2009 circular of NSE), it was expected that it will do the basic due diligence regarding the license held by such service providers.

166. Further, on the issue of advantage which W2W achieved by engaging the services of Sampark for P2P connectivity and the manner in which such connectivity was achieved, I am of the view that W2W had a significance latency advantage over other brokers. The basis of W2W engaging Sampark is, admittedly, the latency advantage it was offering to it. Therefore, the submission of the Noticee that the path for P2P connectivity was not used for trading and there was no benefit for its trading business due to such connectivity is not acceptable. As already explained, such connectivity was used by the broker for data which was used for algo trading by W2W.
167. W2W has vehemently opposed the allegation of fraud, collusion, market manipulation or any other fraudulent activity or has caused any inducement to trade, that have been alleged against it in the SCN. Citing an array of case laws W2W has argued that the allegation made against Noticee under Section-12 A(c) of SEBI Act, 1992 read with regulation 3(d) and 4(1) of the PFUTP Regulations, 2003 are based on mere suspicion and not on any material evidence. It is the contention of W2W that although SEBI is not required to prove mensrea or to prove a fraud beyond reasonable doubt under the above provisions of SEBI Act, 1992 and PFUTP Regulations, 2003 but still it has to prove allegation of fraud based on the test of preponderance of probabilities based on proven and admitted facts.
168. One of the Supreme Court decisions relied upon by W2W to support its case is SEBI & Ors. Vs. Kanaiyalal Baldevbhai Patel and Ors, in which the Hon'ble Supreme Court has observed that "The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expensive, contemplates even an action or omission, as may be committed, even without any deceit if such act or

omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the security must, therefore, be on the meaning that must be attributed to the word 'induce'." Thus as the apex court has rightly held that the definition of fraud under the PFUTP Regulations, 2003 is quite comprehensive to the extent of covering an action or omission to act under its fold in the same as effect of inducing another person to deal in securities.

169. In this case the direct P2P connectivity that W2W had taken with the help of an unauthorized leased line service provider so as to gain advantage of latency and speed more than the other brokers was certainly an inducement to W2W and the clients of W2W to deal in security with an expectation of better result and profitability. One has to ask, what is the ultimate objective of W2W to obtain leased line connectivity from an unauthorized service vendor when W2W was already being provided with P2P connectivity by another authorized vendor. The answer lies in the fact that W2W wanted to have advantage of bandwidth and latency which no other empanelled vendor was able to provide (which is an admitted position) and more the latency advantage in the P2P connectivity, better would be the data speed and more efficient would be the execution of trading strategy leading to more profitable transaction in securities. So there could not have been better inducement to deal in security for the Algo trading clients of W2W than trading faster with better and more execution.

170. As regards the W2W's contention that it cannot be implicated with a charge of fraud under PFUTP Regulations on the basis of preponderance of probabilities based on set of admitted facts, I have already outlined a set of admitted facts in which I have set out the facts and the admitted position which W2W itself has brought to the fore in its written submission. Therefore, the allegations of violation of PFUTP Regulations cannot be said to be without any factual foundation. The sequence of events, the manner in which W2W engaged an unauthorized service provider to avail P2P

connectivity, the manner in which W2W had laid down the cable path way at both NSE and BSE so as to establish direct connectivity between NSE Colo and BSE Colo, NSE waiving its policy of site inspection and W2W 's action of continuing with Sampark even after it was found to be lacking the requisite license, go on to suggest that W2W had arranged the entire P2P connectivity in a premeditated manner so as to have an upper hand with respect to having access to market data and use the same for its beneficial use. Under the circumstances, I do not find any merit in the explanation of W2W that its actions do not attract invocation of provisions of PFUTP Regulations against it. Similarly, W2W is also liable for its misconduct under the provisions of the code of conduct as specified in Schedule -II of Regulation 9 of Stock Broker Regulation in so far as it did not perform due skill and care and diligence in the conduct of its P2P connectivity activity. W2W also lacked necessary integrity as expected of a stock broker under the code since its P2P connectivity with the support of Sampark is certainly falling in the category of a fraudulent and deceptive act/transaction for making personal gains.

171. In view of the discussions above, I hold W2W in violation of regulation 3(d) read with 4(1) of PFUTP Regulations read with section 12 (A) (c) of SEBI Act, 1992 and Clause A(1), A(2), A(3) and A(5) of Code of Conduct stipulated under regulation 9 of the Stock Brokers Regulations on account of the following:

- a) W2W was direct beneficiary of preferential treatment by NSE, since NSE allowed W2W to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE and W2W points towards collusion between W2W and NSE to provide benefit to W2W. W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.
- b) Sampark's connectivity at NSE to other stock brokers was from Sampark's MUX placed at MMR Room. The Sampark's MUX was connected to BSE co-location through W2W rack. The above situation was rectified in April, 2016.

W2W through Sampark arranged the cabling in its co-location rack both at NSE and BSE ends in such a manner that W2W had the lower latency compared to other trading members connected to the Sampark MUX placed in NSE MMR.

#### **I. Mr. Shashibhushan / Noticee 11**

172. I note that the primary contention of Noticee 11 / Shashibhushan is that he was not involved with every functioning of all these divisions and his role in the organization was more of oversight and supervision at the macro level. He has further submitted that he was not involved in every decisions making at W2W I have examined the contentions of Shashibhushan submitted in this matter. However, I am not in agreement with the same. Shashibhushan was the Chief Executive Officer (CEO) of W2W as such was the head in-charge of day to day affairs and operational decisions making in the company i.e. W2W. Under the provision of Companies Act, 2013, the CEO falls within the ambit of definition of KMP and he shall be held responsible, inter alia, as an officer in default for any non-compliance with the provisions of the Companies Act. The CEO stand at par with the Managing Director of a company and has a fiduciary responsibility to manage the whole or substantially the whole of the affairs of the company to ensure that all the functions of the company are discharged as per law. As per his own submission Shashibhushan was in charge of 10 business and 4 nonbusiness divisions which included operations of HO and RO back office and both business head and technology head were reporting to him. Thus, Shashibhushan was in complete command and control of the company's operations. The contention of Shashibhushan that he was in-charge of overall operations and did not involve himself in every decision making is not a valid argument as all the decisions are ultimately taken on his behalf and no division head is permitted to exceed his limits and do something irregular or deviated from the extant policy without his prior consent.
173. The CEO may repose faith in and delegate works to other subordinates but for any act of omission or commission which is against law, the CEO cannot get rid of his

ultimate managerial responsibility by hiding behind the arguments that the work related to technology or the lower officials did not bring the matter to his attention in time. In this regard, while dealing with the submissions of Chitra, I have already dealt with how the CEO of an organization cannot escape from his accountability and responsibility with respect to the day to day operations of various functional divisions of the organizations in the name of having delegated his powers to various functional heads. I have also referred to decisions of Supreme Court to support my observations with respect to the role and responsibility of the Noticee in a company. For the sake of brevity I am not repeating here my observations in the above stated paragraphs made with respect to Chitra, however I hold that those observations are equally applicable to the case of Shashibhushan as well.

174. In the instant case, the CEO has to get himself identified with and take full responsibility for the alleged irregular actions and fraudulent transactions that had been executed by the company (W2W) as have been pointed out earlier in the discussion pertaining to W2W. Therefore, all the allegations that have been leveled against W2W will pari-pasu apply to the Noticee since he was the executive head during the relevant period of time when W2W engaged itself with Sampark and fraudulently established direct P2P connectivity with the support of dark fibre services of an unauthorized service provider.
175. It may be noted that switching over from one authorized telecom service provider to another service provider which is not authorized to provide the services of P2P connectivity is a major decision which could not be possible without the tacit approval of the CEO, who not only must have approved the proposal but also made financial sanctions for allowing the P2P connectivity to be established with the help of Sampark. Therefore, the CEO not only is liable for displaying gross lack of due diligence and independent judgment but also is equally responsible for all the acts of W2W involving manipulation of cable path ways on the both sides of the P2P connectivity at NSE Colo & BSE Colo respectively in a manner that assured it enhanced advantage of latency over and above the latency advantage that the company enjoyed by engaging

the unauthorized service provider in violation of the policy of NSE.

176. Moreover, in this case there is a clear cut evidence of direct involvement of the CEO in the matter of engaging Sampark for establishing P2P connectivity which is coming from the email correspondences between CTO of W2W and CEO himself which have been referred to several times in earlier paragraphs. It has already been noted how in the response to the email of Ms. Rima Srivastava (CTO) in which she has expressed her apprehension that their action of directly taking the P2P connectivity from NSE Colo to BSE Colo instead of taking it through their office may attract penalty, the Noticee has sent an email to her stating that "*Rima to coordinate with Sampark for the needful cabling work immediately. Once the cable is completed, we shall convert the space as functional branch. Gentil to post few people to display a functional branch*". These correspondences belies the innocence and ignorance being displayed by Shashibhushan in his contentions and instead shows that he was very much involved in the P2P connectivity and engagement of Sampark and also the benefit that was accruing to his company because of the Sampark connectivity. Further, the email dated July 7, 2015 from Ms. Rima Srivastav (CTO, W2W) to Shashibhushan (CEO – W2W), starts with an expression '*as you are aware*' which indicates that the Shashibhushan was already aware that

177. W2W's connectivity directly terminated at their BSE Colo rack instead of terminating at their office. Therefore, I am convinced that the Shashibhushan was fully aware of the acts committed by W2W in the matter of establishing Sampark connectivity

178. Under the circumstances, I am convinced that the CEO of a company is an integral part of all actions and inaction of the company and cannot be treated in isolation under the shield of delegation of duties, lack of technical knowledge, wider span of control or less frequency of visits to Mumbai etc. as have been expressed by Shashibhushan to be the reasons for holding him not responsible for the alleged activities of his company. Shashibhushan has cited some case laws on vicarious liability including the Supreme Court decision in the case of Sunil Bharti Mittal vs CBI, however, I find these cases are factually distinguishable and same has been explained above. Considering

these and the aforesaid observations, I hold Shashibhushan liable for all the actions of and all the allegations made in the SCNs against the company W2W of which he was the CEO during the relevant period of time.

179. In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold Shashibhushan in violation of regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read with section 12A (c) of SEBI Act, 1992 on account of the following:

- a. W2W was direct beneficiary of preferential treatment by NSE, since NSE allowed W2W to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity.
- b. The above conduct of NSE and W2W points towards collusion between W2W and NSE to provide benefit to W2W. W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.
- c. Sampark's connectivity at NSE to other stock brokers was from Sampark's MUX placed at MMR Room. The Sampark's MUX was connected to BSE co-location through W2W rack. The above situation was rectified in April, 2016. W2W through Sampark, arranged its cabling in its co-location racks both at NSE & BSE ends in such a manner that W2W had the lower latency compared to other trading members connected to the Sampark MUX placed in NSE MMR.

**J. Ms. Rima Srivastava / Noticee 12**

**Mr. Parshant Mittal / Noticee 13**

**Mr. Mohit Mutreja / Noticee 14**

180. During the course of investigation, Ms. Rima Srivastava / Noticee 12, Mr. Parshant Mittal / Noticee 13 and Mr. Mohit Mutreja / Noticee 14 were called for recording their statements. In this regard, the allegations pertaining to the P2P link of W2W

terminating at their own rack in BSE Colo instead of their office in BSE are already discussed and found to be established. However, when Rima, Prashant and Mohit were queried about the same during their statement recording, they tried to mislead the investigation by providing false information in their statement dated March 09, 2018. It is also observed that Rima, Prashant and Mohit also provided false information regarding P2P connectivity by stating that they did not know about the cable path at NSE Colo and had no knowledge of what Sampark did with their MUX.

181. I have perused the submissions made by Rima, Prashant and Mohit and found them to be contradictory when compared with the evidence available on record. I note that Noticee 12, 13 and 14 have submitted that SCN completely fails to show any contradictory statement made by the Noticee before SEBI and the contents of the internal emails of W2W referred in the IR. Further, they have also submitted that it is not shown in SCN how they have not cooperated with the investigation. I note that the issue for consideration here is that whether Rima, Prashant and Mohit were aware of the layout of cable

182. I note that Rima, Prashant and Mohit in their joint statement dated March 9, 2018 , stated that *“On May 28 2015 (Sampark link went live) there was no switch in our BSE office till July 7, 2015. We were connected to the rack in BSE Colo through a cross connect from Netmagic. The cross connect was connected through a switch in our rack. In July 2015 (after 7th July’ 15), we laid our cables between our BSE office and netmagic MMR and connected the circuit to the switch”*. As per W2W, their understanding on B end termination (at BSE) was *“Since the Sampark cable came to our office, our office can be considered as B end for the circuit”*. Also on enquiring with W2W whether they have any evidence for Sampark’s P2P line looping through their office in BSE, W2W mentioned that *“We do not have any evidence with us. We have not witnessed the laying of lines”*.

183. Thus, I note from the above, that vide their abovementioned submission, Rima, Prashant and Mohit have portrayed that that they were not aware that the cable at BSE Colo end is directly connected NSE Colo. Rima, Prashant and Mohit have also

submitted that that the statement given by them was to the best of their knowledge and understanding. However, I note that there are ample evidences to show that Rima, Prashant and Mohit were aware of the fact that it is against the policy of NSE to allow direct connection between NSE Colo and BSE Colo and that the connection of W2W is in violation of said policy of NSE. However, I note that Rima in her email dated March 24, 2014 addressed to Ramachandra (COO-W2W) had stated that *"We're looking to establish a direct connectivity between NSE Colo to BSE Colo. However, NSE as a policy has not been allowing brokers to do this. NSE however cannot decline permission to the members to establish connectivity from their colo to their own office premises (in this case the BSE office being considered). We have shown this office as a branch office of W2W Brokers which will be used for monitoring purposes."*

184. It is further observed that in the email dated July 7, 2015 from. Rima Srivastava to Noticee 11 / Mr. Shashibhushan (CEO – W2W) and Mohit, it was stated that *"As you are aware, the point to point leased circuits (TCL, Reliance, Sampark) were terminated directly to Way2Wealth rack in BSE Colo instead of BSE office space by giving verbal instructions to the respective service providers. However please note that we are not in compliance with NSE permission or policy on the issue since permission was taken on records for Office No. 213, whereas links were terminated in BSE Colo - Way2Wealth's Rack... In the event, NSE does a physical inspection or establishes that the links are terminated in BSE Colo, we are highly likely to be levied a penalty. I would request you and Mohit to consider the situation and let me know what corrective action, if any is to be taken to address the potential risk"*.

185. It is further noted that Mr. Shashibhushan (CEO – W2W) through an email dated July 8, 2015 addressed to Rima marking a copy to Mohit stating that *"Action is very important now!! Please co-ordinate with Vendor & ensure that we get the cable loop completed (to our office & from office to Colo)." Mr. Shashibhushan (CEO – W2W) through an email dated July 8, 2015 having subject 'plan of action – BSE unit' addressed to Rima (CTO, W2W) and Gentil Augustine (Head – H.R Department)*

stated that *“Rima to coordinate with Sampark for the needful cabling work immediately. Once the cable is completed, we shall convert the space as functional branch. Gentil to post few people to display a functional branch”*.

186. As can be seen from the above email communications that Rima, Mohit and Prashant were fully aware of the situation regarding the connectivity at the BSE Colo rack. I note from the aforesaid emails that Rima has clearly raised issue regarding the connectivity and mentioned that *“However please note that we are not in compliance with NSE permission or policy on the issue since permission was taken on records for Office No. 213, whereas links were terminated in BSE Colo - Way2Wealth’s Rack.”* This shows that she was well aware of the fact that the cabling done on behest of W2W is not in compliance with the policy of NSE. Thus, I am of the view that the email communication among the employees of W2W itself shows that there were issues with respect to the manner in which cable has been laid at their rack in BSE Colo. Therefore, I find them liable for penalty for their act of providing false information to SEBI during the course of investigation
187. In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold that Ms. Rima Srivastava / Noticee 12, Mr. Parshant Mittal / Noticee 13 and Mr. Mohit Mutreja / Noticee 14 have violated the provisions of Section 11(2)(i), 11(c)(3) and 11C(5) of the SEBI Act by misleading the SEBI investigation by providing false information pertaining to the P2P connectivity of W2W.

#### **K. GKN / Noticee 15**

188. GKN has placed reliance on case laws such as K.P. Varghese Vs. Income Tax Officer, Ernakulam and Anr.[AIR 1981 SC 1922], Sarbananda Sonowal Vs. Union of India (UOI) and Anr. [AIR 2005 SC 2920], Shri Gabriel Fernandes Vs. Deputy Director of Panchayat, Director of Panchayats and Ors. [2009 (3) Bom C R 768] and Council of the Institute of Chartered Accountants of India Vs. C.H. Padliya and Co. and Ors. [1979] 49 Comp Cas 478 (MP) to make the point that it is easy to prove positive and

not the negative. Since, the SCNs has not made any positive allegation against GKN, therefore, it is difficult for him to defend his case by proving the negative. The proposition of law laid down in these case laws is not disputed. However, the observations made in these judgments have no application in the present case, as the SCNs in the present case puts forth the whole case GKN is supposed to answer and the discussions w.r.t the P2P connectivity of GKN in previous paragraphs clearly brings out the specific allegation made against each of the Noticee including GKN.

189. After a careful perusal of the explanation and arguments advanced by GKN, I find that its contentions are somewhat similar to the explanations offered by W2W. It is an admitted fact that GKN also accepted the offer of Sampark on the ground that its proposed connectivity offered more speed and efficiency in terms of latency. GKN has claimed that they have exercised adequate due diligence while accepting the offer of Sampark, who claimed before them that they had the regulatory and legal approval from the stock exchange. After due inquiry about the worthiness of Sampark from the stock broking community they had engaged Sampark to establish P2P connectivity for them, only on a trial basis.

190. I find the submission of GKN is inconsistent with the evidence available on record. I fail to understand that what kind of due diligence was conducted by GKN when it did not take consideration of the basic fact that the service provider which they are engaging for availing P2P connectivity does not hold the valid license from DoT. In my view the availability of proper license from concerned regulators is the first and foremost criteria for selecting service provider by any broker. It cannot be the case of GKN that it was not aware of such requirements. Further, on the one hand, they have claimed that they had taken Sampark connectivity as an additional connectivity on a trial bases in addition to their existing connectivity operating with the leased line provided by TATA while on the other hand it is being explained that they could not disconnect the Sampark connectivity immediately after receiving communication from NSE on the grounds that it would have caused inconvenience to their existing clients. The explanation does not justify the reason provided by GKN for not disconnecting

Sampark line even after being told by NSE to shift from Sampark to other ISP. In fact GKN never took any step to shift from Sampark and continued to have the Sampark MUX in its Colo rack and availed data connectivity from Sampark till the Sampark infrastructure was taken over by Reliance and the Noticee got Reliance connectivity officially on September 11, 2015.

191. From the Sampark's invoice dated November 2, 2015 as well as from Ravi Varanasi's statement dated April 19, 2018, it is clear that GKN got preferential treatment and was allowed to avail Sampark's connectivity even though Sampark did not have the requisite license. This also contradicts the GKN 's contention that it had taken Sampark connectivity as an additional connection on a trial basis.

192. GKN has made a vague claim that Sampark was already servicing various other stock brokers at BSE without providing any particulars thereof. It may be a fact that Sampark was providing its cable infrastructure to the ISP vendors on leased basis since it was only an IP-1 vendor and could be a familiar player in the P2P connectivity market. That does not provide any justification on the part of GKN to take direct P2P connectivity services from them without checking with them about their license status. GKN has further stated that NSE had already approved the application of W2W even before GKN had applied for the said line. GKN proceeded on the basis of NSE's approval to W2W and NSE also approved GKN's application. Hence, there was no reason to check the veracity of representation made by Sampark. This contention is factually not correct as records indicate that GKN had applied to NSE on April 16, 2015 i.e. even before NSE approved the W2W application on April 21, 2015. In any case, GKN was required to exercise its own independent due diligence before applying to NSE and cannot evade its responsibility merely by following action of other stock brokers. In my assessment, the explanations given by GKN that the Sampark connectivity was only on trial basis and Sampark was already providing services in NSE Colo are mere afterthoughts to cover up for engaging a non-eligible entity (Sampark) for P2P connectivity.

193. In fact, the record shows that Sampark activated its connectivity for GKN on May 7,

2015 prior to activating the P2P connectivity for W2W on May 28, 2015. Moreover, even after the W2W shifted its MUX from its rack in the NSE Colo to the Sampark MUX in the NSE Colo MMR in July, 2015, GKN continued to maintain its P2P connectivity with a Sampark MUX in its own rack till September 10, 2015 when the connection was taken over by Reliance. The aforesaid activities of GKN show that GKN continued to take P2P connectivity from an unauthorized vendor like Sampark without even paying any heed to the instruction of the NSE to shift to another ISP when NSE discovered that Sampark was not possessing the requisite license. The GKN's attempt to down play its action by taking a defense that Sampark's disability was merely a technical disability to the extent that it cannot provide direct services and raised invoices on the customers directly but had to route its infrastructure through a TSP shows that GKN was aware about the lapses of Sampark and despite that it went ahead and took P2P connectivity from them. Further, it also reveals that for reasons best known to it, GKN did not pay any attention to the disability of Sampark and did not consider it to be a regulatory violation to take direct P2P connectivity from a service provider who did not possess capabilities/requisite approvals to provide such a service. Similarly, it is observed that GKN, vide email dated April 22, 2015, had intimated NSE that it would be terminating the connection in its office within BSE Building (instead of edge router, as indicated earlier). However, as discussed earlier, NSE did not conduct a site inspection of GKN indicating favorable treatment by NSE which shows the collusive nexus between NSE and GKN in the matter of P2P connectivity to the detriment of several other rule abiding stock brokers.

194. GKN 's contention is that there is no evidence to suggest that because of the Sampark connectivity its turnover increased manifold or it gained any advantage in terms of business vis-a-vis other brokers. This is not the sound argument since it is not alleged anywhere that the Sampark connectivity would necessarily lead to more business turnover. The entire issue is about gaining more speed and accuracy in executing its trades as per its trading strategy, resource allocation, view on market price, etc. It is nobody's contentions that more speed and latency will necessarily result in more trading volume. Further, the allegation under the SCNs is about engaging an act or

practice in deviation of the laid down guidelines, resulting in preferential treatment to GKN and deprivation of the other stock brokers regardless of whether or not it leads to actual increase in turnover or profit.

195. GKN disputes that their transactions with Sampark can be called a fraud or deceit upon any person in connection with or in order to induce others to deal in securities or as a manipulative, fraudulent or unfair trade practice in terms of PFUTP Regulations. According to GKN, it is not the case of SEBI that the trade executed by it where deceptive in nature or had any impact on the investment decision of investors. Undoubtedly, GKN established direct P2P connectivity between its racks located in NSE Colo & BSE Colo center with the help of dark fibre or near dark fibre provided by an unauthorized service provider which assured more speed and low latency thereby assuring faster data transmission and assuring GKN of faster access to the market data disseminated by NSE in comparison to the other high frequency trading brokers located in the Colo facility of these two exchanges. This early view of market data certainly benefited GKN in executing its high frequency trade in a more efficient manner thereby depriving the same facility to the other co-located brokers who, in good faith and in compliance with the NSE guidelines did not take dark fibre services from any unauthorized vendors and instead, stuck to their regular telecom service providers. Thus, the action of GKN certainly led to, covertly and also overtly, advantages and other benefits in terms of better execution of trading facility in securities market at the cost of other rule abiding brokers. Therefore, it would be wrong on the part of GKN to state that its action involving transaction with Sampark was not deceptive in nature or it did not adversely affect the investment decision of other brokers. Under the circumstances, I consider the actions and transactions of GKN involving its P2P connectivity with the support of dark fibre services from Sampark falling under the definition of fraud and fraudulent activities in terms of Section 12 A(c) of SEBI Act and other provisions of PFUTP Regulations as have been rightly alleged in the SCNs. Similarly, the allegations for violation of provision of Stock Broker Regulations made in the SCNs holds to its ground against GKN in view of the misconduct, lack of due diligence and lack of integrity displayed by GKN in the

transactions and its actions and inactions vis-a-vis its dealing with Sampark as well as NSE.

196. I also note that GKN has submitted that it did not make a false statement before SEBI when it stated that Sampark connection was discontinued and shifted in July 2015. However, as per the SCN, the connectivity of Sampark was discontinued and taken over by Reliance on September 10, 2015. As per the submission of GKN, it was asked to issue the line acceptance email on September 10, 2015, which appears to have caused the misunderstanding in the SCN. Further, GKN has also submitted that the payment of 1 lakh done to Sampark by it in the month of November 2015 was the balance payment for the services availed by it on trial basis. However, even if I agree with the submission of GKN that the payment of Rs. 1 lakh done by GKN in the month of November 2015 was balance payment of services availed by them earlier, I find that the other submission of GKN that it did not give false information during investigation is in contradiction with the facts presented by it before me. GKN has itself submitted that Reliance took over the Sampark line on August 28, 2015. Thus, it is inferred that Sampark was providing connectivity to GKN till August 28, 2015. I also note that in its submission before me, GKN has reiterated the submission of Mr. Nagendra and Deviprasad of NSE that the decision to allow GKN to continue its services with Sampark was taken by Mr. Ravi Varanasi. Therefore, by its own submission, it is clear that the Sampark connectivity for GKN did not terminate in July 2015, as submitted before the Investigating Authority of SEBI.

197. In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold GKN in violation of regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read with section 12A (c) of SEBI Act, 1992 and Clauses A(1), A(2), A(3) and A(5) of Code of Conduct stipulated under Regulation 9 of the Stock Broker Regulations read with Regulation 26(xi), 26 (xvi) and 26 (xx) of the Stock Broker Regulations on account of the following:

a) While applying for P2P connectivity through Sampark, GKN did not carry out proper due diligence to ensure that Sampark had the requisite DoT license to carry out activity.

b) GKN was direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity.

c) The above conduct of NSE & GKN points towards collusion between GKN and NSE to provide benefit to GKN. GKN continued to avail the services of Sampark till September 10, 2015, in spite of knowing that Sampark did not have the requisite license.

198. Further, I also hold GKN liable for penalty for violation of Section 11C(5) of the SEBI Act read with Regulation 26 (xx) of the Stock Broker Regulations for giving false information to SEBI stating that the connectivity of Sampark was terminated in the month of July 2015.

**Noticee No. 16, 17 and 18 (Sonali Gupta, Om Prakash Gupta and Rahul Gupta)**

199. The Noticees 16, 17 and 18 have argued that their role as partners should be severed from the role played by GKN in the instant matter. However, I don't find any merit in this argument of the Noticees 16, 17 and 18. Under the Partnership Act, 1932 Partners are jointly and severally responsible for all the acts of the Partnership Firm and their personal liability to the Partnership Firm is unlimited. In this regard, Section 4 read with Section 25 of the Partnership Act, 1932 fastens liability on the partners of the firm. Section 4 of the Partnership Act, 1932 states that persons who have entered into partnership with one another are called individually, "partners" and collectively "a firm", and the name under which their business is carried on is called the "firm-name", whereas Section 25 of the Partnership Act, 1932 imposes liability by providing that every partner is liable jointly with all the other partners and also severally, for all acts of the firm done while he is a partner. It is trite that the business of Partnership Firm is conducted by the Partners. Unless otherwise stated in the partnership deed, all partners are actively associated with the business affairs of the Firm and the profit/loss of the partnership firm directly devolve upon the partners as per their shares stated in

the partnership deed.

200. As mentioned in the SCNs, being the partners of GKN, it was their responsibility to ensure that GKN maintained high standard of integrity and fairness, act with due skill, care and diligence in conduct of its business and also not to indulge in manipulative, fraudulent or deceptive transaction or scheme and abide by all the regulatory provisions. The partners cannot escape from their liability for the action of their partnership firm. Therefore, the GKN and its partners have to be jointly and severally liable for the role played by GKN in the instant P2P connectivity matter involving Sampark dark fibre. Hence, for the same reasons as recorded by me while discussing the submissions of GKN and holding GKN as liable for violation of the provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, as mentioned in the SCNs, I hold the Noticees 16, 17 and 18, who were the partners of GKN at the relevant point of time are equally liable for the violation of the provisions of SEBI Act, 1992 and PFUTP Regulations as per the SCNs served upon them. In this regard, I also find that the decisions referred to by the Noticees 16, 17 and 18 in their common written submission dated April 05, 2019 are not relevant, factually distinguishable as the same do not deal with the liability of partners.

201. I also note that GKN has submitted that it did not make a false statement before SEBI when it stated that Sampark connection was discontinued and shifted in July 2015. However, as per the SCN, the connectivity of Sampark was discontinued and taken over by Reliance on September 10, 2015. As per the submission of GKN, it was asked to issue the line acceptance email on September 10, 2015, which appears to have caused the misunderstanding in the SCN. Further, in reply to the summon issued by SEBI, Rahul Gupta during his statement recording on March 09, 2018 had stated the following.

*““We had agreed for POC with Sampark for 7.25 lac. Earlier we had paid him 6.25 lac as advance. He told me to release balance payment as he said he is in loss and I had done commitment so I said them to raise a bill for balance amount and I paid*

*them the balance amount in good terms and did not notice period mentioned and the bill and release the payments.”*

In absence of any evidence to contradict the above submission, I am inclined to give benefit of doubt to Rahul Gupta for his above statement and accept it as correct. However, even if I agree with the submission of Rahul Gupta that the payment of Rs. 1 lakh done by GKN in the month of November 2015 was balance payment of services availed by them earlier, I find that the other submission of GKN that it did not give false information during investigation is in contradiction with the facts presented by it before me. GKN has itself submitted that Reliance took over the Sampark line on August 28, 2015. Thus, it is inferred that Sampark was providing connectivity to GKN till August 28, 2015. I also note that in its submission before me, GKN has reiterated the submission of Mr. Nagendra and Deviprasad of NSE that the decision to allow GKN to continue its services with Sampark was taken by Mr. Ravi Varanasi. Thus, by its own submission, it is clear that the Sampark connectivity for GKN did not terminate in July 2015, as submitted before the Investigating Authority of SEBI and therefore hold Noticee 16, 17 and 18 liable for providing wrong information to SEBI.

202. In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold Om Prakash Gupta, Sonali Gupta, and Rahul Gupta in violation of regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read with section 12 (A) (c) of SEBI Act, 1992 on account of the following:

- a. GKN was direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark line even after knowing that Sampark did not have the requisite licenses to provide such connectivity. The above conduct of NSE & GKN points towards collusion between GKN and NSE to provide benefit to GKN. GKN continued to avail the services of Sampark till September 10, 2015, in spite of knowing that Sampark did not have the requisite license.

203. Further, I also hold Om Prakash Gupta, Sonali Gupta, and Rahul Gupta liable for

penalty for violation of Sections 11(2)(i) of the SEBI Act for giving false information to SEBI stating that the connectivity of Sampark was terminated in the month of July 2015.

204. Therefore, in the facts and circumstances of this case, I am of the view that such default by the Noticees, as discussed above attract the liability to pay penalty as prescribed under Sections 15HA and 15 HB of the SEBI Act and Section 23H of the SCRA, which existed at the relevant time, which provides as follows: -

### **SEBI Act**

#### **PENALTIES AND ADJUDICATION**

*Penalty for contravention where no separate penalty has been provided.*

**15HB.** *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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

**15HA.** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher*

### **SCRA**

***Penalty for contravention where no separate penalty has been provided.***

**23H.** *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

205. For the purpose of adjudication of the penalty under SEBI Act, it is relevant to mention

that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to Section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in Section 15J of the SEBI Act, which reads as under: -

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

- a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as 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.

*Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”*

206. Similarly, for deciding the penalty under SCRA , the factors mentioned under Section 23J of the SCRA are to be considered, which are reproduced below:

**Factors to be taken into account while adjudging quantum of penalty.**

*23J. While adjudging the quantum of penalty under section 12A or section 23-I, the Securities and Exchange Board of India or 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.*

207. Having regard to the factors listed in Section 15J of the SEBI Act and Section 23 J of the SCRA, it is now established that W2W and GKN, in collusion with the employees of NSE and Sampark made significant profit due to unfair latency advantage available with them. It is also observed that in view of the aforesaid illicit gains made by W2W and GKN in connivance with Sampark and NSE, SEBI directed for disgorgement against the Noticee vide Order dated April 30, 2019 passed under Section 11 of the SEBI Act. One cannot lose sight of the fact that such an act on the part of the Noticees had a huge impact on the market. Stock Brokers like W2W and GKN made unfair gains at the cost of other stock brokers who had complied with the guidelines and circulars of NSE, in this regard. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} –wherein the Hon'ble Supreme Court of India held that “...In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”

### **ORDER**

208. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose monetary penalties on the Noticees according to the details given in table below. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

<b>Sr. No.</b>	<b>Entity name/Notice e no.</b>	<b>Provision of law/regulation violated</b>	<b>Charging Provisions</b>	<b>Penalty imposed</b>
1.	National Stock Exchange Ltd	Regulations 3(d) and 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.  Clause 4(i) of SEBI circular CIR/MRD/DP/09/2012 dated March 30, 2012	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 5,00,00,000/- (Rs. Five Crore only)  Rs. 1,00,00,000/- (Rs. One crore only)

		<p>Non implementation of decisions taken by the Secondary Market Advisory Committee in its meeting dated November 11, 2011 which was communicated to NSE vide email dated November 28, 2011.</p> <p>Clause 3 of the SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015</p> <p>Clause 3.1, 3.2 and 3.6 of SEBI circular CIR/MRD/DP/07/2015 dated May 13, 2015.</p> <p>Regulations 41 (2), 47 and 48 of the SECC Regulations</p>	Section 23H of the SCRA	Rs. 1,00,00,000/- (Rs. One crore only)
2.	Ms. Chitra Ramakrishna	<p>Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act</p> <p>SEBI Master circular dated December 31, 2010.</p> <p>Part A &amp; B of schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of SECC Regulations</p>	<p>Sections 15HA of the SEBI Act</p> <p>Section 15HB of the SEBI Act</p> <p>Section 23H of the SCRA</p>	<p>Rs. 3,00,00,000/- (Rs. Three Crore only)</p> <p>Rs. 1,00,00,000/- (Rs. One crore only)</p> <p>Rs. 1,00,00,000/- (Rs. One crore only)</p>
3.	Mr. Subramanian Anand	<p>Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act</p> <p>SEBI Master circular dated December 31, 2010.</p> <p>Part A &amp; B of schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of SECC Regulations</p>	<p>Sections 15HA of the SEBI Act</p> <p>Section 15HB of the SEBI Act</p> <p>Section 23H of the SCRA</p>	<p>Rs. 3,00,00,000/- (Rs. Three Crore only)</p> <p>Rs. 1,00,00,000/- (Rs. One crore only)</p> <p>Rs. 1,00,00,000/- (Rs. One crore only)</p>
4.	Mr. Ravi Varanasi	<p>Regulations 3(d) and 4(1) of PFUTP Regulations read with Section 12A(c) of SEBI Act</p> <p>SEBI Master circular dated December 31, 2010.</p> <p>Part A &amp; B of schedule II of SECC Regulations read with Regulation 26(1) and 26(2) of SECC Regulations</p>	<p>Sections 15HA of the SEBI Act</p> <p>Section 15HB of the SEBI Act</p> <p>Section 23H of the SCRA</p>	<p>Rs. 3,00,00,000/- (Rs. Three Crore only)</p> <p>Rs. 1,00,00,000/- (Rs. One crore only)</p> <p>Rs. 1,00,00,000/- (Rs. One crore only)</p>

5.	Mr. Nagendra Kumar SRVS.	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
6.	Mr. Deviprasad Singh	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)
7.	M/s Sampark Infotainment Pvt. Ltd	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act	Rs. 3,00,00,000/- (Rs. Three crore only)
8.	Mr. Prashanth D'souza	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.  Sections 11(2)(i), 11C(2), 11C(3) and 11C(5) of the SEBI Act	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)  Rs. 10,00,000/- (Rs. Ten lakh only)
9.	Mr. Netaji Patil	Section 11C(2) of the SEBI Act.	Section 15HB of the SEBI Act	Rs. 10,00,000/- (Rs. Ten lakh only)
10.	Way2Wealth Brokers Private Ltd	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act  Clauses A(1), A(2), A(3) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of the Stock Brokers Regulations read with regulation 26(xi), 26(xvi) & 26(xx) of the Stock Brokers Regulations	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 5,00,00,000/- (Rs. Five crore only)  Rs. 1,00,00,000/- (Rs. One crore only)
11.	M R Shashibhushan	Regulations 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act.	Section 15HA of the SEBI Act.	Rs. 1,00,00,000/- (Rs. One crore only)
12.	Ms. Rima Srivastava	Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.	Section 15HB of the SEBI Act.	Rs. 10,00,000/- (Rs. Ten lakh only)
13.	Mr. Parshant Mittal	Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.	Section 15HB of the SEBI Act.	Rs. 10,00,000/- (Rs. Ten lakh only)
14.	Mr. Mohit Mutreja	Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.	Section 15HB of the SEBI Act.	Rs. 10,00,000/- (Rs. Ten lakh only)
15.	GKN Securities	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act  Clauses A(1), A(2), A(3) and A(5) of Code of Conduct as specified in Schedule II of Regulation 9 of the Stock Brokers Regulations read with regulation 26(xi), 26(xvi) & 26(xx) of the Stock Brokers Regulations	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 4,00,00,000/- (Rs. Four crore only)  Rs. 1,00,00,000/- (Rs. One crore only)

		Section 11C(5) of the SEBI Act read with Regulation 26(xx) of the of the Stock Brokers Regulations		
16.	Mr. Om Prakash Gupta	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act  Section 11(2)(i) of the SEBI Act.	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)  Rs. 10,00,000/- (Rs. Ten lakh only)
17.	Ms. Sonali Gupta	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act  Section 11(2)(i) of the SEBI Act.	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)  Rs. 10,00,000/- (Rs. Ten lakh only)
18.	Mr. Rahul Gupta	Regulation 3(d) & 4(1) of the PFUTP Regulations read with Section 12A(c) of the SEBI Act  Sections 11(2)(i), 11C(3) and 11 C(5) of the SEBI Act.	Sections 15HA of the SEBI Act  Section 15HB of the SEBI Act	Rs. 1,00,00,000/- (Rs. One crore only)  Rs. 10,00,000/- (Rs. Ten lakh only)

209. Noticees shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI- *Penalties Remittable to Government of India*”, payable at Mumbai, or by following the path at SEBI website [www.sebi.gov.in](http://www.sebi.gov.in), ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>. In case of any difficulties in payment of penalties, the Noticees may contact the support at [portalhelp@sebi.gov.in](mailto:portalhelp@sebi.gov.in).

210. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA- II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

1. Case Name:	
2. Name of 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)	

211. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: June 28, 2022**

**Place: Mumbai**

**Suresh B Menon**

**ADJUDICATING OFFICER**