

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/VV/AK/2021-22/15273]

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

In respect of

Pankaj Agarwal (PAN: AGYPA1912D)

In the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the matter of selective disclosure of unpublished price sensitive information by Manappuram Finance Ltd. (hereinafter referred to as '**MFL/ company**') for period 01/03/2013 to 20/03/2013 (hereinafter, referred to as '**investigation period**').
2. MFL in its minutes of the Board meeting held on March 13, 2013 has recorded that "*there was a probability that the company may have to report negative profit for the quarter ended 31st March 2013 contrary to the expectations of stakeholders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosures to all the stake holders.*" Therefore, the information of negative profit for the 4th quarter of FY2012-13 is deemed to be the price sensitive information. Further, when the information was made public, the price of the scrip declined by

14.25% on March 20, 2013. MFL announced its financial results for the quarter ended March 31, 2013 on May 15, 2013 at 17:45 hrs. On May 16, 2013 the price of the scrip on the BSE fell from a closing price of Rs.16.00 on 15/05/2013 to a closing price of Rs.15.00 on 16/05/2013 (i.e., a decrease of 6.25%)

3. SEBI observed that Mr. Pankaj Agarwal (hereinafter referred to as '**the Noticee**') from Ambit Capital Pvt Ltd (hereinafter referred to as '**Ambit**') had a meeting on March 18, 2013 with Mr. I. Unnikrishnan and Mr. Sachin Agrawal of MFL, wherein the Noticee allegedly procured the aforesaid unpublished price sensitive information ('UPSI') and communicated UPSI through research report in violation of Section 12A(d) and 12A(e) of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Regulation 3(ii) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**') read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015**'). Therefore, it was alleged that the Noticee did not maintain the confidentiality of the price sensitive information and has thereby violated Regulation 12(1)(e) of PIT Regulations, 1992 read with clause 2.1 and 2.2-1 of the Code of Conduct for Prevention of Insider Trading for Other Entities as specified in Part B of Schedule I of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015. Further, the act of commission of releasing research report prior to making the information public resulted in fraud on innocent investors, who are not privy to price sensitive information and dealt in the scrip of MFL during 19 and 20 March, 2013, was in violation of Section 12A(c) of SEBI Act read with Regulation 3(d) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'). In view of the above, the present adjudication proceedings were instituted against the Noticee, and if aforesaid alleged violations are established, monetary penalty may be liable under Sections 15G(ii) and (iii), 15HA and 15HB of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI, vide communique dated June 21, 2016, appointed an Adjudicating Officer under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as '**Adjudication Rules**') to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that penalty is liable upon the Noticee for the aforesaid alleged violations, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules and the provisions of Sections 15G(ii) and (iii), Section 15HA and 15HB of SEBI Act. Consequent to change in Adjudicating Officer, Shri Jeevan Sonparote was appointed as the Adjudicating Officer in the present matter vide order / communique dated October 11, 2017. Thereafter, pursuant to the transfer of Shri Jeevan Sonparote, the undersigned was appointed as the Adjudicating Officer vide communique dated August 13, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice dated May 29, 2019 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under section 15G(ii) and (iii), 15HA and 15HB of the SEBI Act for the aforesaid alleged violations.
6. The Noticee, vide his letter dated June 14, 2019, *inter alia* made the following submissions:

".... I have always been a research analyst and have no other role in Ambit Capital Private Limited or otherwise and at the relevant time also I was part of the research department of Ambit Capital Private Limited. I had been tracking the Manappuram scrip for approximately two years prior to March 2013 for the purposes of providing research reports to clients of Ambit Capital Private Limited. As such, I had participated

in a number of analyst meetings held by senior officials of Manappuram and also was known to the senior officials of Manappuram. The senior officials of Manappuram were well aware that my only role is to conduct research and prepare reports for the dissemination to the clients of Ambit Capital Private Limited and I had no other role or profile in Ambit Capital Private Limited or otherwise which would cause the senior officials of Mannapuram to disclose any unpublished price sensitive information to me. I was not informed the purpose for which the meeting was sought by the senior officials of Manappuram Finance Limited. In any event, at the meeting we had a general discussion, the details of which are submitted to SEBI and appended in Annexure G of the above referenced letter. Accordingly, I did not consider I should keep my analysis, arrived at on the basis of my own fundamental research of the scrip and the general discussion with the senior officials of Manappuram Finance Limited, confidential and refrain from communicating the same to Ambit Capital Private Limited's clients in a research report.

Notwithstanding the above, in order to resolve this matter swiftly, I will be making an application pursuant to the SEBI (Settlement Proceedings) Regulations, 2018, within the time limit provided in the said Regulations, with respect to any proceedings pertaining to the captioned subject which are initiated or to be initiated against me by SEBI. Accordingly, I humbly request that no further action be taken in respect of this show cause notice until my application pursuant to the SEBI (Settlement Proceedings) Regulations, 2018 is disposed-off in accordance with the said Regulations..."

7. I note that, the Noticee, filled a Settlement Application No. 4008/2019 in the matter of Mannapuram Finance Limited with SEBI in the present matter. *Vide* letter dated September 19, 2019, an intimation for the same was also received from the concerned department of SEBI communicating that an Application for Settlement in the prescribed "Form A" from the Noticee was received and it was requested to keep the proceedings in abeyance till disposal of the Settlement Application. Subsequently, the concerned department of SEBI intimated, *vide* email dated November 24, 2020, that the aforesaid application has been withdrawn As per Regulation 7(1) of the SEBI (Settlement Proceedings)

Regulations, 2018, “*An application may be withdrawn at any time prior to the communication of the decision of the Panel of Whole Time Members under regulation 15.*” This has been intimated by the concerned department of the SEBI by email dated December 03, 2020. Accordingly, the settlement application has been disposed of as rejected. In view of the same, the Noticee was advised, *vide* letter dated December 16, 2020, to submit response to the SCN and also granted an opportunity of hearing in the matter on January 08, 2021.

8. I note that Noticee, *vide* letters dated January 7, 2021 and January 9, 2021, has submitted his reply to the SCN. The Noticee has *inter alia* made the following submissions in the said letters:

(a) *At the threshold, it should be noted that:-*

- (i) *There is no trade in securities by me;*
- (ii) *My role in the meeting was as a junior of Mr. Mukherjee and there is nothing attributed to me specifically in terms of my conduct that could even remotely be alleged to be violative;*
- (iii) *I have conducted by services as a professional bona fide to ACPL;*
- (iv) *I am not a service provider or advisor to the Company; and*
- (v) *There is no basis to suggest that I would have had access to the information discussed at the Company's Board Meeting of March 13, 2013 or that the results would be negative by any crystallised material metric; and*
- (vi) *I was of the bona fide belief that whatever information was discussed at the meeting on March 18, 2013 between the Company and ACPL was not in the nature of placing me in possession of any UPSI or casting any duty of confidentiality on me, or a need to know principle.*

(b) *I understand from the Notice that the Company in its board meeting dated March 13, 2013 (the minutes of which were made available to me with the Notice) noted that:*

‘the meeting also discussed the expected financial results for the year and observed that the company may have to report negative profits for the quarter

ending 31 March 2013 contrary to the expectation of stake holders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosure to all stakeholders’.

ACPL is a stock broker, portfolio manager and depository participant and, as such it is not in the business of providing professional advise to listed companies on its legal responsibilities to make disclosures to stakeholders / shareholders. I am not aware why the Company approached the research analyst wing of ACPL for a meeting and every reasonable inference can be drawn to show that what the minutes reflected was the Company's desire to get professional advice from appropriate sources, which can never be research analysts.

- (c) On March 18, 2013, Unnikrishnan and Sachin Agrawal of the Company called at 8:30AM and sought a meeting with ACPL. The Company would have been free to get any professional advice from any other source, but no stretch of imagination can these minutes be linked to the meeting sought with the research team at ACPL.*
- (d) It will therefore be seen that neither did the Company reach out to me nor did I initiate the meeting to be held with the Company, pursuant to the decision recorded in the Board Meeting of March 13, 2013. Therefore, to allege that I “procured” UPSI is untenable and it cannot be established with any reasonable prospect that I had the intention to extract any UPSI about the Company at the meeting.*
- (e) At the relevant time, I was a junior research analyst at ACPL and had never held any other position other than research analyst with ACPL and nor had a role in any other entity of the group companies of ACPL. Historically, there had been meetings between me and senior officials of MFL (including Unnikrishnan) who could, consequently, be expected to be aware that I and my senior Saurabh Mukherjea, being part of ACPL's equity research team, are research analysts. Their meeting the research wing is akin to meeting a journalist who is covered by free speech and expression. There is no fiduciary duty owed by a research analyst to a listed company since there is no relationship of advisor, or sharing of confidential and*

privileged information. When a listed company meets an analyst, from the analyst's perspective, it is a dissemination and publication being made by the company.

(f) Therefore, there can be no inference that the meeting was planned or conducted with a view to procure UPSI, or that the Company desired to share UPSI with me for that it was reasonable for me, being a research analyst, to expect that the meeting was not aimed at communicating UPSI.

(g) Equally it is not reasonable to infer that senior officials of the Company would seek out to research analyst for communication of adverse UPSI since research analysts conduct research and disseminating their research to a wider audience based on research analysis of publicly available information.

(h) Further, it is the Company's responsibility not to disclosure any UPSI to research analysts. In relation to a listed company's interaction with research analysts, Schedule II to the 1992 PIT Regulations on the Code of Corporate Disclosure Practices for Prevention of Insider Trading, provides the following guidelines that a listed company is required to follow while dealing with analysts and institutional investors:

Only public information to be provided - Listed companies shall provide only public information to the analyst / research persons / large investor like institutions. Alternatively, the information given to the analyst should be simultaneously made public at the earliest.

Therefore, it appears to me, that it was the obligation of listed company (i.e., of MFL) to disclose only information available in public domain to me. Accordingly, I was of the view that the information provided to me, in the capacity of representative of ACPL, a research analyst, was information that the Company was able to legally provide and generally available.

(i) In any event, during the meeting on March 18, 2013, I Unnikrishnan and Sachin Agrawal of the Company, and my senior Saurabh Mukherjea (as representative of ACPL's equity research team) and I, had a general discussion regarding the Company's past public disclosure(s) and current market phenomenon, both of

which are generally available and not confidential or unpublished. At no point during the discussion, did the Company disclose any information of a precise or specific nature or hard numbers regarding the quarter results to me nor I was informed about the likely results for the quarter ending March 31,2013.

- (j) The discussion between me and my senior Saurabh Mukherjea (representatives of ACPL's equity research team) and the Company (represented by its senior officials, I Unnikrishnan and Sachin Agarwal) focused on the wider facets of falling gold prices. A summary of the discussion during the meeting on March 18, 2013 has already been provided to SEBI and is attached hereto as Exhibit A which indicates that no UPSI was disclosed to me during the meeting.*
- (k) The mere references in the title of the Research Report viz. takeaways from the meeting with the management, i.e., "we met Mr. Unnikrishnan, ED of Manappuram finance etc...." is not sufficient to hold that UPSI was disclosed to me during the meeting. It should be shown from the content that they constitute UPSI. SEBI has erroneously relied on I Unnikrishnan's conference call conversation (with one of the market participants) to come the conclusion that the UPSI was selectively disclosed to me and my senior Saurabh Mukherjea by the Company. The conference call transcript does not specifically provide for admission of disclosure of figures or number by I Unnikrishnan to ACPL. I Unnikrishnan is merely acknowledging that he has held discussion with an analyst.*
- (l) Allegations as grave as insider trading merit a strong and substantial evidence that the allegations are true and that the case for insider trading has to be established beyond reasonable doubt and not on preponderance of probabilities. SEBI has failed to establish that the UPSI was in fact disclosed by the Company to me during the meeting of March 18,2013 beyond reasonable doubt. SEBI has itself acknowledged that "in the absence of concrete records", "the evidence of alleged selective disclosure is the transcript of the conference call held on March 19 2013 provided by Spark Capital Advisors (P) Limited, organizer of the conference call". Therefore, in the absence of any material evidence establishing, beyond reasonable doubt, that UPSI was disclosed to me by the Company, SEBI's*

erroneous conclusion falls in the realm of conjecture and surmise, which can never constitute acceptable inferential evidence.

(m) I could not have known (and did not know) that the information and matters discussed with me during the meeting on March 18, 2013 was being provided to, and discussed only with, me representing ACPL's analyst wing to the exclusion of all other analysts. Further, I would like to state that the matters discussed with me and my senior Saurabh Mukherjea (representatives of ACPL) during the meeting was either generally in the public domain or could be concluded basis information which was generally in the public domain. Therefore, the statement in paragraph 16.12 of the Notice that ACPL was well aware that the information was not public is misconceived and does not flow from the facts.

(n) The Research Report was based on the above general discussion and was elaborating upon themes mentioned in ACPL's previous research reports on the Company and not stating any new facts which ACPL had not previously already expressly stated or alluded to. Moreover, the Research Report that was circulated had a specific disclaimer which expressly stated that "the recommendations, opinions and views contained in this Research report reflect the view of the research analyst named in the Research Report and are based upon publicly available information and rates of taxation at the time of the publication, which are subject to change from time to time without any prior notice."

(o) Besides, the research report is consistent and actually tallies with the conference call of the Company and the research report already published as early as February 8, 2013, which is in the public domain and can never be UPSI. Please see below extracts of ACPL's research report on the Company dated February 8, 2013 and the Research Report (attached hereto as Exhibit C) which are both propounding similar arguments:

<i>Extract from February 8, 2013 report by ACPL post 3Q FY12-13 conference call by management</i>	<i>Extract from March 19, 2013 Research Report</i>
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<i>“As per the management, company auctioned ~2.0 tones jewellery during the quarter against a delinquent loan portfolio originated mostly in Aug '11 with principal outstanding of ~Rs3.6bn. As some part of this portfolio had LTV ratio of ~90% at the time of origination, the proceedings from the auction of jewellery was not enough to cover the principal and accrued interest on this portfolio (a shortfall of R390mn). Since the annualised interest charged on such loans was ~32% (including penal interest), the accumulated interest on these loans over the five quarters was ~40% of the initial outstanding principal. Given that the LTV was as high as 90% at the time of origination and gold prices increased only by ~10% between August 2011 and December 2012, the proceedings from the auction were not enough to cover the principal and accrued interest on this loan portfolio of ~Rs2bn (~2%o of the disbursements made in 2QFY12). The management expects another hit of ~Rs350mn during the next quarter from this legacy high LTV portfolio but expects no additional hits from 1QFY14 onwards. Note that the company's peak LTVs have dropped to ~75% from 4QFY12 onwards due to an LTV cap by the regulator”</i>	<i>“During 3QFY13 earnings conference call management had guided towards further under recoveries of ~Rs400-500mn spread over 4QFY13 and 1QFY14 on the higher LTV portfolio originated between Aug'11- Jan'12. However, with gold prices falling by a further 5% over the last two months, the quantum of interest income reversal could increase vs the earlier guidance given by management. Moreover, on some portions of the loan portfolio originated in Nov-Dec'11 the company seems likely to have to stop booking income during the current quarter as the collateral value associated with these loans would be less than principal plus accrued interest ”</i> <i>(With gold prices falling 5% between January 2013 to March 2013, and as reflected in ACPL's February 8, 2013 research report about a troubled Rs360 crore portfolio, another Rs 20 crore hit (5% of Rs. 360 cr) was a straightforward conclusion. Both Rs 360 crore troubled portfolio and further 5% decline in gold prices was in public domain.)</i>
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<i>(Management was already talking about income reversals in 4Q FY13 due to high LTV, high interest rates and only 10% increase in gold prices.)</i>	
<i>Whilst interest income reversals are a part of the gold lending business because of agreed tenure of the loans being ~12months and bullet payment nature of the re-payments, it's impact was not visible in the profitability of MGFL historically because: (i) the loan book was doubling every year and hence the disbursements made a year ago were a smaller part of the total loan book, (ii) gold prices were rising rapidly and hence were enough to cover the principal and thus it accrued interest despite higher LTVs, and (iii) the auctioning process was much easier for the company. However, the company's loan book has been declining over the past one year, gold prices are stagnating, and the RBI has made auctioning more cumbersome and hence, the impact on profitability has been more pronounced." (We, in the capacity of research analysts at ACPL were already convinced that changed regulatory regime and gold price movement would have more pronounced impact on company's profitability.)</i>	<i>"However, over the past year, MGFL's loan book has been declining (in wake of the company trying to adjust to the new LTV restrictions imposed by RBI), gold prices have stagnated, and the RBI has made auctioning more cumbersome. This triple whammy has resulted in the impact of interest income reversals becoming more pronounced."</i> <i>(ACPL have made similar commentary in the February 8, 2013 note as well.)</i>

<i>"Whilst we do not share the management's optimism (on 3Q earnings call) on 25% loan growth, 4% RoA and ~22% RoE in FY14, the company has the potential to deliver RoAs of ~3.0 - 3.5% and RoEs of 18-20% from FY15 onwards once the liability side eases and loan growth returns. Our earnings estimates and target price in this note are our last published estimates on the stock. We may reduce our earnings estimates by 5-10%, which could result in a similar reduction in our target price for the company."</i>	<i>"Given that interest reversal / interest lost on the loan portfolio originated prior to Feb 2012 is expected to be higher than earlier estimated, we put our earnings estimate and valuation under review as we try to get further colour from the management. '</i> <i>(ACPL concluded that under recoveries should be higher but did not know the quantification and hence put its estimates and stance under review.)</i>
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(p) On a perusal of the research report dated February 8, 2013 and of the Research Report (dated March 19, 2013), it is apparent that the differences between the two are emerging from revised fact patterns (e.g. the fall in gold prices by 5% over the period between February 8, 2013 and March 19, 2013). Therefore, reflecting ACPL's consistent stance on the Company's shares. There are only two factual differences stated in the Research Report which are different from the February 8, 2013 research report and which could, arguably, be information gleaned from the Company during the meeting on March 18, 2013, which are:

- (i) on some portions of the loan portfolio originated in of Nov-Dec 2011, the Company seems likely to have stopped booking income during the current quarter; and
- (ii) around 5-10% of such loans are still to be repaid.

With respect to (i) above, I would like to state that it was a well-known fact in public domain that MFL was issuing gold loans at LTV as high as 85% LTV. It was also a well-known fact that base interest rate on such high yielding loans was 24% and was inching up to 30% with late payment charges. And it was a well-known fact in public domain that the Company was booking income on loans accrual basis till 18

months since origination despite not receiving cash interest. So, loans given at 85% LTV in November-December 2011 and not repaid till March 2013 would have had principal plus accrued interest of more than collateral value by March 2013 due to stagnation in gold prices and hence it was obvious that MFL had to stop booking income on these loans and reverse income already booked on such loans. With respect to (ii) above, I would like to state that the Company has said it in multiple forums in the past that up to 90% of the loans are repaid within 1 year of origination and 10% of the loans go beyond 1 year. Hence it was not difficult to estimate that 5%- 10% of the loans originated between August 2011 and January 2012 would still not be repaid by March 2013. The conclusion that collateral value would be less than principal plus accrued is based on the fact that LTV was 85% and accrued interest was 25% to 30% and gold prices were stagnated during this period.

On a comparative study of the information stated in the above table and the explanation provided regarding the differences between the research report of February 8, 2013 and the Research Report (dated March 19, 2013), it is clearly established that information published through the Research Report was not price sensitive information but in fact a combined analysis of the then prevalent market conditions and discussions with the management of the Company, the core of which discussion was about the impact of falling gold prices on loan origination going forward and asset quality.

- (q) The information communicated via the Research Report, does not fall under any of the categories specified in Regulation 2(ha) (Definition of price sensitive information) of the 1992 PIT Regulations. In particular, the Research Report does not contain any information of 'periodical financial results of the Company' - that is, information regarding negative profits of Q4 2013 (which was in fact the UPSI and was discussed in the board meeting of the Company) was not disclosed to me or my senior Saurabh Mukherjea (representatives of ACPL's equity research team) in the meeting with the Company and was first disclosed by I Unnikrishnan during the analyst conference call organised by the Company on March 19, 2013).

- (r) *It is pertinent to note that SEBI disregarded the disclosure that ‘...there is going to be an under recovery of revenue to the extent of 250 crores and as a result this quarter's numbers will be impacted to that extent, so this quarter we may end-up reporting 0 to 50 crore loss as against 90 crore profit which he had indicated' during the conference call and the disclosure regarding “reduction in profit numbers for the 4th quarter ending March 31 2013” (disclosure by the Company to BSE on March 19, 2013 at 6:17PM) as a disclosure of price sensitive information.*
- (s) *As per SEBI, it was only on March 20, 2013 at 3:36 PM when the Company again disclosed to BSE that “it expect a onetime hit of INR 250 crore during this quarter either by way of crystallised income not received or expected to be not received resulting in a Q4 loss up to 50 crore” that the SEBI considered that UPSI has been made public. Therefore, concurring with my stance that in the absence of the disclosure of specific and real numbers regarding the quarter results, any general discussion between a Company's insider and research analyst(s) like me in the March 18, 2013 meeting, regarding a company's stocks and performance would not amount to disclosure of UPSI because for information to be qualified as UPSI warrants that such information should be specific, accurate, precise and definite and not in the form of generic and vague statements as was made by the Company.*
- (t) *Similarly, discussions held in ordinary course as would have between a Company and a research analyst including discussion around prevailing market conditions and its impact on the growth of a company could not be termed as disclosure of UPSI.*
- (u) *The Company did not disclose any UPSI to me is underscored by the fact that the information provided by Unnikrishnan during the analysts call on 19 March 2013 is not reflected in any manner in, and is different from, the information published in the Research Report. Please see below the relevant extract of the conference call transcript, wherein the unpublished price sensitive information regarding Q4 results were disclosed and the extract of Research Report:*

Extract from the Con-Call Transcript	Extract from Research Report
<i>So there is going to be an under recovery of revenue to the extent of 250 crores and as a result this quarter's numbers will be impacted to that extent. So this quarter we may end-up reporting 0 to 50 crore loss as against 90 crore profit which we had indicated'</i> <i>'...I am not talking about any under recovery of principle. What I am saying is you know instead of realizing around 30% interest for 15-month period we will be realizing something like 15% interest so there is going to be under recovery of interest. So, earnings on this pool will be only 15% instead of 30%. So, there will be an under recovery of interest to the extent of 250 crores on this pool. So, we strongly believe that this will be a one-time hit affecting this quarter number in spite of this hit we will be able to report roughly 300 crore of profit for the year and for the next year..."</i>	<i>"During 3QFY13 earnings conference call management had guided towards further under recoveries of ~Rs400-500mn spread over 4QFY13 and 1QFY14 on the higher LTV portfolio originated between Aug'11-Jan'12. However, with gold prices falling by a further 5% over the last two months, the quantum of interest income reversal could increase vs the earlier guidance given by management. Moreover, on some portions of the loan portfolio originated in Nov-Dec'11 the company seems likely to have to stop booking income during the current quarter as the collateral value associated with these loans would be less than principal plus accrued interest."</i> <i>However, over the past year, MFL's loan book has been declining (in wake of the company trying to adjust to the new LTV restrictions imposed by RBI), gold prices have stagnated, and the RBI has made auctioning more cumbersome. This triple whammy has resulted in the impact of interest income reversals becoming more pronounced. Given that interest reversal / interest lost on the loan portfolio originated prior to Feb 2012 is</i>

	<i>expected to be higher than earlier estimated, we put our earnings estimate and valuation under review as we try to get further colour from the management. '</i>
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(v) I submit that the Research Report is a 'foreseeable analysis' and a conclusion based on ACPL's officials own analysis based on publicly available information. The Company's stock gradually had moved from Rs. 20 on May 31, 2012 to Rs 45 between on January 16, 2013. However, the stock gradually declined from Rs 45 on January 16, 2013 to Rs. 34 on March 18, 2013, around 24% decline in in 2 months. From this I can ascertain that other market participants had also come to the same conclusion as stated in the Research Report in the months from January 2013 to March 18, 2013.

(w) During the course of the documents reviewed during Ambit's inspection of SEBI's investigation reports in connection with this matter, I note that a variety of reasons (none connected with the Research Report) were provided by various market participants for transacting in the securities of the Company. None of the below-mentioned persons are recipients of Research Report and nor are they clients of ACPL - their trades and their explanations demonstrate that the content of the Research Report can never be said to be UPSI inasmuch as the expectations were widespread and publicly well known:

28.1 Arnawaz Rohinton Aga: Rohington sold 6,13,000 MFLs shares on March 19, 2013. The decision to sell the shares was based on the recommendation of the Investment Committee of Enam Asset Management Co. Private Limited (Discretionary Portfolio Manager) dated March 19, 2013. The highlights of the report mentioned are as follows:

"Asset Under Management (AUM) is expected to de-grow from INR1150 crore as on March 2012 to INR 1000 crore by March 2013, lower than our earlier estimates. This is primarily because RBI has restricted LTV to 60% from earlier 75%. We believe with gold prices declining, Company will see MTM hit on its portfolio which

was originated and higher LTV. This will result in sharp drop in profitability forcing rating agencies to downgrade their ratings. We believe, falling gold prices will have an impact on AUM growth and profitability going forward, therefore we recommend selling MFL for clients"

28.2 Hamon Asian Funds Asian Market Leaders ("AMLF"): AMLF sold 10,00,000 MFL shares between March 1, 2013 to March 19, 2013 because of the following reasons:

"There were 2 redemptions of units of AMLF on 1st March 2013 and 4th March 2013. Accordingly, in order to meet the redemptions, shares of MFL were sold on 5th March 2013 and 7th March 2013. Since the budget announced by the Indian government on 28th February 2013 did not show any substantial reform or benefits, Hamon Asset Management Limited has decided to reduce the Indian weighting in the portfolio of AMLF and has especially reduced the interest rate sensitive exposure in the portfolio including MFL; and the Indian gold price dropped significantly during February 2013. Since MFL engages in providing gold loan services, Hamon Asset Management Limited reduced the positions of MFL in March 2013."

28.3 Goldman Sachs Investment (Mauritius) Limited: Goldman Sachs sold 17,56,830 MFL shares between March 1, 2013 to March 20, 2013. The reason for the sale given by Goldman Sachs is as follows:

"All of the trades were for the purpose of hedging the firm's economic exposure to offshore derivatives issued by GSIMI's affiliates to Goldman Sachs clients. As such, the decision to sell the shares was driven by the clients unwinding their position in MFL through derivatives. In relation to the trades based on our reasonable inquiries, we do not believe the clients informed us of the reasons for their trades.

We would also like to reiterate that the decision made by GSIMI to enter into the trades was driven by client's trading activities and were not made by the relevant personnel influenced by any other source of information."

28.4 DB Fund Mauritius Limited: DB Fund sold 19,70,223 MFL shares between February 13, 2013 to March 5, 2013, stating the following reason:

"The decision to sell the entire position held by DB fund Mauritius Limited in MFL was made by Deutsche Asset Management India Private Limited on 12th February 2013. The position was sold as a block order with partial daily executions during the period starting from 12 February 2013 and ending on 5th March 2013. Based on the recommendation of Deutsche Asset Management India Private Limited on 12th February 2013, portfolio management decided to sell the entire position of MFL shares within the DB Fund Mauritius Limited."

Therefore, it is evident that the market had many means to analyse the information which was already publicly available, including statements made by the Company on March 19, 2013 during the analysts' conference call, to arrive on a view on selling the shares of the Company. So, attributing the fall in market price to ACPL's Research Report is totally incoherent and disjointed in as much as it is not the ACPL's Research Report which is the prime driver or decision to sell.

The various entities which have sold the shares have done so over a wider period of time in March and therefore linking volumes of sale to ACPL's Research Report circulated on March 19, 2013 is also incoherent and arbitrary.

- (x) *It is widely known that the stock market is highly volatile and time sensitive and any leakage of information can have a great impact on the stocks within few minutes of such information reaching the public, the fact that Company made an announcement to hold a conference call with the investors on 1:20 p.m. (during the trading hours) and also the fact that Company has sensitized the investors on March 19, 2013 through the conference call (also during the trading hours) had created panic among the investors and therefore Company's stock price fell 14% below its previous day closing price. Thus, the fact that ACPL had published the Research Report on the same day as Company made the Q4 results public (through conference call) only added to the domino effect of investors' panic and consequent price fall and thus publication of the Research Report and circulation of the same could not be said to be selective disclosure of UPSI. SEBI has also neglected the possibility of any other source of leakage of news of Q4 financial results among the investors by the insiders of the Company or that, other than the*

Research Report, the Company might have consulted other professional or research analysts in this regard.

- (y) I would like to state that the difference in price of the MFL scrip between March 18, 2013 and March 19, 2013 is 14% (and not 20% as stated in the Notice) if it is calculated, as it should be, on the basis of volume weighted average price. The MFL scrip has historically been a volatile stock due to changing regulatory landscape for gold loan companies, volatile gold prices, and promoters of MFL being reprimanded by the Reserve Bank of India for raising unauthorised deposits from the public using infrastructure of MFL. The table below shows that there are a number of other days in the period between April 1, 2012 and July 31, 2013 on which the MFL scrip had more than 10% movement in single day:

Sr. No.	Date	% change in price of MFL scrip on the Date
1	09-May-12	-14%
2	14-May-12	11%
3	25-Jun-12	14%
4	26-Jun-12	12%
5	03-Jan-13	16%
6	04-Jan-13	10%
7	19-Mar-13	-14%
8	20-Mar-13	-17%
9	06-Apr-13	-10%
10	24-Jun-13	-10%
11	25-Jun-13	-14%
12	19-July-13	13%

Accordingly, a change of price of 14.2% in a single day is not completely out of the norm for a scrip such as MFL.

- (z) Further, the difference in price of the MFL scrip between March 19, 2013 and March 20, 2013 is 17% (and not 14.25% as stated in the Notice) if it is calculated, as it should be, on the basis of volume weighted average price. The decline of 17% in the price between March 19, 2013 and March 20, 2013 shows that the impact on the price of the MFL scrip was more pronounced after the Company's

conference call announced at 1:20PM and held between 2:30PM and 3:45PM on March 19, 2013 rather than the distribution of the Research Report.

(aa) I would like to additionally state that, the purported theory of insider trading is totally unfounded and unsustainable, and I vehemently deny and dispute the fact that the publication of the Research Report resulted in fraud on innocent investors. The Research Report was not published with the mala fide intention of causing fraud or deceit upon any investors, but infact the intention was to give, as near as possible (and backed by extensive and reliable research material) a true picture of Company's future performance to ACPL's clients and potential clients, who rely heavily on ACPL market predictions, forecasts, publications and analyses before taking any investment decision. I, as a research analyst of ACPL, have a duty to help ACPL's clients to take informed investment decisions and therefore the same cannot be given the colour of committing fraud on innocent investors who do not receive research reports of ACPL. Publication of information in ACPL's research reports and circulating the same to ACPL's clients and potential clients was well within my ordinary course of business as a research analyst of ACPL and my bona fide actions cannot be said to be manipulative and deceptive of other investors simply because the prices of Company's shares fell on the same day as the release of the Research Report owing to Company's conference call announcement of negative profits in Q4.

(bb) The test of whether I (as an analyst of ACPL) had disclosed UPSI turns on an objective criterion, i.e., whether the insider receives a direct or indirect personal benefit from the disclosure, such as a pecuniary gain or a reputational benefit that will translate into future earnings. There is no allegation of MFL's officials being rewarded for parting with the alleged UPSI. In the absence of a breach by the Company's insiders there can be no derivative breach by me in the capacity of ACPL's analyst. Further, SEBI in the Notice has failed to establish that my reason (in the capacity of research analyst of ACPL), to commission and publish the Research Report is fraudulent. SEBI has erroneously taken a stance that mere disclosure of information (which was, allegedly, improperly made available to it) itself can be said to have deceived, manipulated, or defrauded the investors even

where there is no investigation finding that would allude to any other motive or benefit pecuniary or otherwise against me.

(cc) Finally, I was a junior analyst in ACPL's research team. As a junior analyst in ACPL's research team it was not in my power or job description to release a research report to ACPL's clients or otherwise. These decisions are taken by the head of the research team and other senior members of the research team. I could not have decided to release the Research Report by myself and nor did I have the power or to restrain the prohibit the release of the Research Report by ACPL once a decision to do so was taken by senior members of ACPL's research team.

9. I note that the Noticee has also availed of the hearing opportunity before the undersigned on January 7, 2021, wherein the Authorized Representatives of the Noticee reiterated the written submissions made by the Noticee. An opportunity to make further submissions in the matter was also provided to the Noticee, vide email dated October 13, 2021. The Noticee, vide email dated October 20, 2021, stated that he had no further submissions to make in the matter.
10. In view of the above, I now proceed further in the matter. I note that the Noticee has submitted his reply to the SCN and he has also availed of the hearing opportunity in the matter. I am of the view that principles of natural justice have been complied with in the present matter and, therefore, I now proceed further in the matter on the basis of available documents and the submissions of the Noticee.

CONSIDERATION OF ISSUES

11. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are :

(a) Whether the Noticee has violated the following provisions of:

- (i) Sections 12A(d) and 12A(e) of SEBI Act read with Regulation 3(ii) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.
- (ii) Regulation 12(1)(e) of PIT Regulations, 1992 read with Clause 2.1 and 2.2-1 of Part B of Schedule I read with Regulation 12(2) of PIT Regulations, 2015.
- (iii) Section 12A(c) of SEBI Act read with Reg. 3(d) of PFUTP Regulations.
- (b) Do the violations, if any, attract monetary penalty under Sections 15G(ii) and (iii), 15HA and 15HB of SEBI Act?
- (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

SEBI Act 1992

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;*

(d) *engage in insider trading;*

(e) *deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder*

PFUTP Regulations 2003

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 there under

PIT Regulations 1992

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

3. No insider shall—

(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities:

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

SCHEDULE I

[Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

2.0 Preservation of “Price Sensitive Information”

2.1 Employees/directors shall maintain the confidentiality of all Price Sensitive Information. Employees/Directors shall not pass on such information to any person directly or indirectly by way of making a recommendation for the purchase or sale of securities.

2.2 Need to know

2.2-1 Price Sensitive Information is to be handled on a “need to know” basis, i.e., Price Sensitive Information should be disclosed only to those within the company who need the information to discharge their duty.

PIT Regulations 2015

Repeal and Savings.

12.(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, —

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege,

obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations

13. I note from the documents on record that on March 19, 2013, the price of the scrip of MFL declined by 20% from Rs. 34.00 to Rs. 27.70 (lower circuit filter rate). Several newspapers on March 20, 2013 had alleged that on March 18, 2013, MFL had selectively given guidance pertaining to Q4 FY13 (Jan - Mar, 2013) results of the company to certain analysts of Ambit.

14. The sequence of events leading up to the official announcement on March 20, 2013 of the anticipated loss in Q4 of FY12-13, as submitted by MFL to SEBI is as under:

Sl. No.	Date	Time (approx.)	Nature of event	Persons involved from the company
1.	First week of March, 2013	Not Applicable	Routine review of loan portfolios and the level of recoveries	1. Mr. Bindhu A.L. 2. Mr. Bikash Mishra 3. Mr. I. Unnikrishnan 4. Mr. V.P. Nandakumar 5. Mr. B.N. Raveendra Babu 6. Mr. Raju N. 7. Mr. Rajesh Kumar K.
2.	March 13, 2013	10:00 a.m. to 05:00 p.m.	Board meeting	1. Mr. Jagdish Capoor 2. Mr. E.A. Kshirsagar 3. Mr. P. Manomohanan 4. Mr. V.M. Manoharan 5. Mr. Shailesh J Mehta 6. Mr. Ramachandran V.R.

				7. Mr. Rajiven V.R. 8. Mr. Gautam Saigal
3.	March 18, 2013	04:00 p.m.	Discussions between Mr. Unnikrishnan, ED & Dy. CEO and Ambit (Analyst wing)	1. Mr. I. Unnikrishnan 2. Mr. Sachin Agarwal
4.	March 19, 2013	8:30 a.m.	Ambit releases the contents of the discussion with Mr. Unnikrishnan as 'Ambit Insights'	
5.	March 19, 2013	1:20 p.m.	Investors conference call announced by MFL on its website	1. Mr. I. Unnikrishnan 2. Mr. Sachin Agarwal
6.	March 19, 2013	2:30 p.m. to 3:45 p.m.	Conference call with investors	1. Mr. Unnikrishnan 2. Mr. Rajesh Kumar K. 3. Mr. Vipin G.S.
7.	March 20, 2013	3:30 p.m.	Official public announcement to the stock exchanges	1. Mr. Unnikrishnan 2. Mr. Rajesh Kumar K.
8.	March 20, 2013	6:00 p.m.	Clarification on official public announcement to the stock exchanges	1. Mr. Unnikrishnan 2. Mr. Rajesh Kumar K.

15. From the above sequence of events, it is observed that the company reviewed its loan portfolios and level of recoveries during the first week of March 2013. Therefore, price sensitive information came into existence on March 1, 2013. MFL on March 19, 2013 @18:17 informed BSE about the '*reduction in profit numbers for the 4th quarter ending March 31, 2013*'. It was only on March 20, 2013 @15:36 through a clarification to the stock exchanges MFL informed that it '*expect a one-time hit of Rs. 250 cr. during this quarter either by way of crystalised income not being received or expected to be not received resulting in a Q4 loss up to Rs. 50 cr.*'.

16. Before proceeding further, it is essential that we discuss few points:

(i) **What was the UPSI:** In terms of Regulation 2 (ha), periodical financial

results of the company shall be deemed to be price sensitive information and the information remain as UPSI till the information is not published by the company or its agents and is not specific in nature. MFL in its minutes of the Board meeting held on March 13, 2013 has recorded that *".....there was a probability that the company may have to report negative profit for the quarter ended 31st March 2013 contrary to the expectations of stakeholders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosures to all the stake holders."* Therefore, the information of negative profit for the 4th quarter of FY2012-13 is deemed to be price sensitive information. Further, when the information was made public (in the stock exchanges), the price of the scrip declined by 14.25% on March 20, 2013. MFL announced its financial results for the quarter ended March 31, 2013 on May 15, 2013 at 17:45 hrs.

(ii) **When the UPSI was made public:** I note that on March 18, 2013, Mr. Unnikrishnan met at analysts of Ambit including the Noticee at Ambit's Office at 4:00 p.m. and a research report was prepared by the Noticee along with other analysts at Ambit between 7:30 p.m. to 9:00 p.m. After a consultation with MFL on March 19, 2013 around 8:30 a.m. for 5 minutes, the research report was distributed to all clients (institutional and non-institutional). Email was sent to 2194 email addresses. Thereafter a conference call was organized between 2:30 p.m. to 3:40 p.m. along with analysts/ investors where Mr. Unnikrishnan told the call participants that instead of profit of '85-90 crore, there could be losses of '50 crore during Q4FY13 due to under recoveries on a ' 1500 crore portfolio.

(iii) I also note that on March 19, 2013, the Research Report was flashed on Bloomberg portal at 8:48 a.m and CNBC TV 18 throughout the day had run several news reports on the change of RBI's policy on "Loan to Value' norms for gold loans and its specific impact on market players

including MFL. Further, reference was also made on the Research Report and the ongoing management call.

- (iv) Finally on March 19, 2013 at 6:17 p.m. MFL informed BSE about the “reduction in profit numbers for the 4th quarter ending March 31, 2013”. It was only on March 20, 2013 at 3:36 p.m. through a clarification to the stock exchanges MFL informed that it *“expect a one-time hit of Rs. 250 crore during this quarter either by way of crystalised income not being received or expected to be not received resulting in Q4 loss upto Rs. 50 crore.”*

17. From the above sequence of events, I find that although the UPSI was disclosed to the stock exchanges after trading hours of March 20, 2013, the information was already in the public domain before that. As soon as the research report was distributed to 2194 email addresses on March 19, 2013, the information ceased to be unpublished. Bloomberg portal flashed the Research Report before market hours at 8:48 a.m on March 19, 2013 and CNBC TV 18 was covering the news of MFL since morning 9: 22 a.m on that day indicating that there were some concerns about the income reversal issue in the third quarter and MFL is under pressure.

18. It has been alleged in the SCN that the Noticee with other Ambit official procured unpublished price sensitive information during the said meeting on March 18, 2013 with MFL officials and thereafter, communicated the same by way of a research report to the clients of Ambit. Further, the act of commission of selectively disclosing price sensitive information allegedly resulted in fraud on investors, who are not privy to UPSI. In this respect, I note that SEBI also sought comments from Ambit regarding selective disclosure of UPSI by MFL to Ambit and Ambit, vide email dated March 22, 2013 and November 15, 2013 provided the following sequence of events on March 18 - 19, 2013 and other information:

Time	Event
March 18, 2013	
Around 12:30 p.m.	Call from Mr. Unnikrishnan seeking appointment with Ambit's research analyst.
4:00 p.m. – 5:15 p.m.	Meeting with the management of MFL at Ambit's office
7:15 p.m. – 7:30 p.m.	Internal meeting by Ambit's team to review the meeting with the management of MFL.
7:30 p.m. – 9:00 p.m.	Preparation of research report and internal review
March 19, 2013	
Around 8:30 a.m. for about 5 minutes	Call by Ambit to MFL management intimating them of the publication of the research report. Since Ambit was putting the stock "under review" from "buy", Ambit suggested MFL management to hold a call with investors.
8:30 a.m. onwards	Distribution of Ambit research report through email to all clients (institutional and non institutional). The report included research report on MFL and analyst report on the impact of rate cut in BFSI sector.
Around 10:00 a.m.	Email from Ambit to MFL management requesting them to hold a conference call with all market participants (analysts / investors etc.) and offering Ambit's help in organizing the call.
Around 10:15 a.m.	Reply from MFL management saying that they are organizing a conference call through M/s Spark Capital.
Around 11:00 a.m.	Email and phone conversation between Ambit's sales team member and Mr. Unnikrishnan reiterating that MFL to do an investor call through Ambit. Mr. Unnikrishnan informed that they have already agreed to an investor call with M/s Spark Capital but post that was willing to give some time for further discussions with investors.
2:30 p.m. to 3:40 p.m.	Participation in conference call organized by MFL along with other analysts / investors. During the conference call, Mr. Unnikrishnan told the call participants that instead of profit of Rs. 85-90 cr., there could be losses of Rs. 50 cr. during Q4FY13 due to under recoveries on a Rs.1500 cr. portfolio.

19. I note that the Noticee in his submissions has *inter alia* stated that the matters discussed during the meeting with MFL representatives was either generally in the public domain or could be concluded basis information which was generally in the public domain. The Noticee has stated that the Research Report was based on the above general discussion and was elaborating upon themes mentioned in ACPL's previous research reports on the Company and not stating any new facts which ACPL had not previously already expressly stated or alluded to. Moreover, the Research Report that was circulated had a specific disclaimer which expressly stated that *"the recommendations, opinions and views contained in this Research report reflect the view of the research analyst named in the Research Report and are based upon publicly available information and rates of taxation at the time of the publication, which are subject to change from time to time without any prior notice."*

20. The Noticee has also stated that the research report is consistent and actually tallies with the conference call of the Company and the research report already published as early as February 8, 2019, which is in the public domain and can never be UPSI. The Noticee has stated that information published through the Research Report was not price sensitive information but in fact a combined analysis of the then prevalent market conditions and discussions with the management of the Company, the core of which discussion was about the impact of falling gold prices on loan origination going forward and asset quality.

21. The Noticee has also submitted that the Research Report is a 'foreseeable analysis' and a conclusion based on ACPL's officials own analysis based on publicly available information. The Company's stock gradually had moved from Rs. 20 on May 31, 2012 to Rs 45 between on January 16, 2013. However, the stock gradually declined from Rs 45 on January 16, 2013 to Rs. 34 on March 18, 2019, around 24% decline in in 2 months. The Noticee has stated that it can be ascertained from this that other market participants had also come to the same conclusion as stated in the Research Report in the months from

January 2013 to March 18, 2013. The Noticee has further stated that the difference in price of the MFL scrip between March 18, 2013 and March 19, 2013 is 14% if it is calculated on the basis of volume weighted average price. the difference in price of the MFL scrip between March 19, 2013 and March 20, 2013 is 17% if it is calculated on the basis of volume weighted average price. The Noticee has submitted that the decline of 17% in the price between March 19, 2013 and March 20, 2013 shows that the impact on the price of the MFL scrip was more pronounced after the Company's conference call announced at 1:20PM and held between 2:30 PM and 3:45 PM on March 19, 2013 rather than the distribution of the Research Report.

22. In this regard, I note that Ambit in its email to SEBI had stated that they had *"Internal meeting by Ambit's team to review the meeting with the management of MFL"* during 7:15 p.m. - 7:30 p.m. on March 18, 2013 and thereafter prepared a research report and internal review during 7:30 p.m. - 9:00 p.m. From the above, it is apparent that the research report was prepared on the basis of meeting with management of MFL. The research report *inter-alia* has stated that - *".... Given that interest reversal/ interest lost on the loan portfolio originated prior to Feb'12 is expected to be higher than earlier estimates, we put our earnings estimates and valuations under review...."* Thereby, Ambit downgraded the scrip of MFL from "buy" to "under review". Ambit has circulated the research report to its clients through email on March 19, 2013 at around 08:30 hrs,

23. I note that the Noticee in his submissions has *inter alia* stated that the research report was a combined analysis of the then prevalent market conditions and discussions with the management of the Company, the core of which discussion was about the impact of falling gold prices on loan origination going forward and asset quality. The Noticee has himself stated in his reply that the matters discussed during the meeting was either generally in the public domain or could be concluded basis information which was generally in the public

domain. However, I also note that this research report was prepared as direct consequence of the meeting of Ambit analysts including the Noticee with MFL representatives and the research report itself mentions this. I also note that the prevalent conditions in the gold loan market had been ongoing for quite some time before this meeting and no additional negative news on the day of the said meeting in respect of the gold loan market is on record. If no UPSI was discussed during the meeting, then I fail to see the trigger for suddenly putting the stock of MFL to “under review” from “buy” recommendation.

24. I also note from the transcripts of the conference call held on March 19, 2013 provided by Spark Capital Advisors (P) Ltd., organizer of the conference call, it is observed that a particular market participant had specifically queried Mr. Unnikrishnan regarding alleged selective disclosure of information before the conference call on March 19, 2013. The relevant extracts of the question asked by the particular market participant and Mr. Unnikrishnan’s reply is given below:

“Question of market participant: Sir, my second question which is more about you are reporting. I think some more Sir we could not appreciate your selective disclosure to a particular analyst or over brokerage house because I think stock fell 16% and 17% and now you are doing the call rather than doing the call first before telling the analysts in general?

Reply of Mr. Unnikrishnan: Yes I take your point. I mean that is a valid lesson and in fact you know my intention was to sensitize the market so I had certain discussions in order to communicate this I thought I should ask somebody that is what has happened. So it was done with the good intention.”

25. From the above reply of Mr. Unnikrishnan, I note that Mr. Unnikrishnan has admittedly communicated the UPSI before making it public. As noted earlier, MFL in its minutes of the Board meeting held on March 13, 2013, recorded at point no. 8 that-

" there was a probability that the company may have to report negative profit for the quarter ended 31st March 2013 contrary to the expectations of stakeholders. Management said that it would seek professional advice as to what needs to be done in this regard towards making appropriate disclosures to all the stake holders."

26. Further, the corporate announcement made on March 20, 2013 at 15:36 hrs, MFL had stated that -

"... we have met M/s Ambit Capital analyst wing seeking some guidance on a professional basis on guiding the market about the 4th quarter results and future outlook. Our representative has met them at their office on Monday, the March 18, 2013 at about 4:00 p.m...."

27. I note from the above that the purpose of the meeting between MFL representatives and analysts of Ambit, including the Noticee, on March 18, 2013 was to seek professional advice, which is on all probabilities on guiding the market about the quarterly results. The same is evident from the reply of Ambit wherein on March 19, 2013 at 10.00 hrs, when they offered help to MFL in organizing call with the market participants. Further, it has been admitted by MFL in the above corporate announcement. Mr. Unnikrishnan also admitted during conference call with market participants and also stated that it was done with good intention. From the above, I am of the view that Mr. Unnikrishnan communicated the UPSI of recoveries which likely to report loss of Rs. 50 cr. during 4th quarter of FY2012-13 with Ambit analysts, including the Noticee.

28. In view of the foregoing, I conclude that the Noticee in the meeting dated March 18, 2013 with Mr. I. Unnikrishnan and Mr. Sachin Agrawal of MFL procured unpublished price sensitive information and communicated UPSI through research report in violation of Sec. 12A(d) and 12A(e) of SEBI Act read with Regulation 3(ii) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015. Therefore, I find that the Noticee has not maintained the

confidentiality of the price sensitive information and has violated Regulation 12(1)(e) of the PIT Regulations, 1992 read with clause 2.1 and 2.2-1 of the Code of Conduct for Prevention of Insider Trading for Other Entities as specified in Part B of Schedule I of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

29. With respect to the allegation that the act of commission of releasing research report prior to making the information public resulted in fraud on innocent investors, who are not privy to price sensitive information and dealt in the scrip of MFL during 19th and 20th of March 2013, I am of the view that as soon as the research report was distributed to 2194 email addresses on March 19, 2013, the information ceased to be unpublished. As noted earlier, Bloomberg portal flashed the Research Report before market hours at 8:48 a.m on March 19, 2013 and CNBC TV 18 was covering the news of MFL since morning 9: 22 a.m. on that day indicating that there were some concerns about the income reversal issue in the third quarter and MFL is under pressure. In view of the above, I conclude that the allegation of violation of Section 12A(c) of SEBI Act read with Regulation 3(d) of PFUTP Regulations by the Noticee is not established.

30. Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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..."*.

31. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Sections 15G(ii) and (iii) and 15HB of the SEBI Act, as existing at the relevant time, which read as under:

Penalty for insider trading.

15G. If any insider who, —

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

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 may extend to one crore rupees.

32. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

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 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.

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.

33. I note that on the basis of data available on record, it is difficult, in cases of such nature, to quantify exactly the disproportionate gain or unfair advantage enjoyed by the Noticee and the consequent losses suffered by the investors. Further the amount of loss to an investor or group of investors also cannot be quantified on the basis of available facts and data.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticee:

Name of the Noticee	Penalty
Pankaj Agarwal	Rs. 10,00,000 (Rupees Ten Lakh Only) under Sections 15G(ii) and (iii) of SEBI Act
	Rs. 5,00,000 (Rupees Five Lakh Only) under Section 15HB of SEBI Act
	Total – Rs. 15,00,000 (Rupees Fifteen Lakh only)

35. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

36. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-I, SEBI, SEBI Bhavan 2, Plot No. C -7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051". The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

37. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

38. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: February 28, 2022

Place: Mumbai

VIJAYANT KUMAR VERMA

ADJUDICATING OFFICER