

WTM/SKM/EFD1-DRAIII/ 16 /2019-20

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

**CORAM: S. K. MOHANTY, WHOLE TIME MEMBER**

**ORDER**

**Under the provisions of Section 12A of the Securities Contracts (Regulation) Act, 1956 read with Sections 11 (1), 11(2)(a), 11(2)(j), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.**

**In the matter of Dark Fibre/ Leased Line connectivity allowed to certain Stock Brokers by NSE.**

**In respect of:**

<b>Noticee No.</b>	<b>NAMES OF THE NOTICEES</b>	<b>PAN</b>
1.	<b>National Stock Exchange Ltd. (NSE)</b>	AAACN1797L
2.	<b>Mr. Umesh Jain, CTO, NSE</b>	AANPJ7802N
3.	<b>Ms. Chitra Ramakrishna, MD and CEO of NSE</b>	ABVPR7353M
4.	<b>Mr. Subramanian Anand, Group Operating Officer (GOO) &amp; Advisor to MD of NSE</b>	AARPA8290K
5.	<b>Mr. Ravi Varanasi, Head of Business Development Function</b>	AACPV0930C
6.	<b>Mr. Nagendra Kumar SRVS (NSE–Head of Membership Department)</b>	AACPN7675E
7.	<b>Mr. Deviprasad Singh (Head of Colo Support - NSE)</b>	AAZPS9535R
8.	<b>Way2Wealth Brokers Private Ltd.</b>	AAACW3290M

9.	<b>Mr. M R Shashibhushan, CEO of W2W</b>	ABDPB4470B
10.	<b>Mr. C K Nithyanand, Director of W2W</b>	ACRPK3346C
11.	<b>Mr. B G Srinath, Director of W2W</b>	ABKPS0941B
12.	<b>GKN Securities</b>	AAHFG6629C
13.	<b>Ms. Sonali Gupta, Partner of GKN Securities</b>	AAEPC1340F
14.	<b>Mr. Om Prakash Gupta, Partner of GKN Securities</b>	AAHPG3048B
15.	<b>Mr. Rahul Gupta, Partner of GKN Securities</b>	AAHPG6987B
16.	<b>Sampark Infotainment Private Limited (Sampark)</b>	AAMCS0946C
17.	<b>Mr. Prashanth D'souza, CEO of Sampark</b>	AHUPD1548H

### **Background**

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received complaints from a whistle-blower dated January 08, 2015 and August 10, 2015 alleging various irregularities in respect of Co-location (hereinafter referred to as "**Colo**") facility provided by National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**"). Accordingly, a Cross Functional Team (**CFT**) of SEBI officials was constituted to undertake a preliminary fact finding of the various irregularities alleged in these complaints.
2. Subsequently, another complaint dated October 03, 2015 was received which alleged *inter alia* that Way2Wealth Brokers Private Limited (hereinafter referred to as "**W2W**") was permitted to avail of Point to Point (hereinafter referred to as "**P2P**") dark fiber connectivity from Sampark Infotainment Private Limited (hereinafter referred to as "**Sampark**"), a non-empanelled service provider and the P2P connectivity provided by Sampark conferred a latency advantage to W2W which resulted in substantial increase in its turnover during the period April-August, 2015.

3. Based upon the preliminary findings of CFT and the subsequent complaint dated October 03, 2015 received by SEBI and on the basis of recommendation of the Technical Advisory Committee of SEBI (hereinafter referred to as “**TAC**”), an ‘Expert Committee’ was constituted for further examination of the allegations made in the complaints. The Expert Committee submitted its report to SEBI on March 02, 2016. TAC accepted the report of the Expert Committee and recommended seeking reply of NSE on the findings of the Expert Committee.
4. The findings of the Expert Committee along with reply of NSE dated June 29, 2016 were placed before the TAC in the meeting held on August 11, 2016. Further views/ recommendations of the TAC were communicated to NSE vide letter dated September 09, 2016, wherein the following instructions, *inter alia*, were given to the Board of Directors of NSE:
  - a) *NSE’s Board shall immediately 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.*
  - b) *NSE’s Board shall complete the said investigation and submit a comprehensive report to SEBI within a period of three months from the date of the letter.*
5. The Board of NSE appointed Deloitte Touche Tohmatsu India LLP (hereinafter referred to as “**Deloitte**”) to conduct the forensic investigation into the allegations stated in the aforesaid complaints. The report of Deloitte was submitted to SEBI by NSE on December 23, 2016.

### **Investigation by SEBI**

6. In the aforesaid backdrop, a detailed investigation was undertaken to find out the possible violation of provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”), Securities Contracts

(Regulation) Act, 1956 (hereinafter referred to as “**SCR Act, 1956**”) 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, 2012**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations, 2003**”) and SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Broker Regulation**”) pertaining to dark fiber connectivity provided by Sampark in connivance / collusion of NSE's employees (past and current) with stock brokers and role of stock brokers alleged to have been benefited from the aforesaid preferential access to the exchange's Colo facility by way of P2P connectivity taken from an un-authorized service provider.

7. Investigation conducted by SEBI revealed various irregularities and accordingly, Show Cause Notices (hereinafter referred to as “**SCNs**”) dated July 03, 2018 were issued to 17 Noticees including NSE and its 6 employees, W2W and its CEO/ directors, GKN Securities (herein after referred to as “**GKN**”) and its partners and Sampark and its CEO.
8. Briefly stated, the facts of the instant case that are germane to the allegations made in the SCNs served on various Noticees, revolve around the P2P connectivity installed by two brokers of NSE, viz: W2W and GKN between the Colo facility of NSE and the Colo center at BSE during the month of April-May 2015 by engaging an unauthorized service provider i.e. Sampark, in violation of NSE's own circular in which, NSE had authorized four specific Telecom Service Providers (hereinafter referred to as “**TSP**”) from whom its brokers had been availing P2P connectivity from the year 2009 onwards. Sampark allegedly laid dark fiber connectivity for these brokers with the promise of more bandwidth and lower latency for their data transmission and continued the service even after it was found that Sampark did not possess the necessary license from the Department of Telecommunications (hereinafter referred to as “**DoT**”) to provide the required P2P connectivity to the brokers of NSE. The SCNs broadly cover the following points/issues:

- a) Non-transparent mode of communication by NSE to the stock brokers about authorization of TSPs whose services can be availed by the stock brokers for establishing P2P connectivity,
- b) Permitting a unauthorised service provider (Sampark) which did not possess the requisite DoT certificate to access its Colo facility to install its network equipments in the Colo racks of specific brokers in violation of NSE's own circular,
- c) Preferential treatment granted to certain stock brokers by NSE in accessing its Colo facility to install P2P connectivity while refusing the request of some others,
- d) Allowing Installation of Multiplexer (hereinafter referred to as “**MUX**”) by Sampark in the NSE Meet My Room (hereinafter referred to as “**MMR**”) in the Colo facility without verification of its licenses,
- e) Unfair latency advantage conferred on W2W and GKN through the unauthorised P2P connectivity provided by Sampark,
- f) Continuation of Sampark connectivity by W2W and GKN even after discovery of lack of proper license with Sampark,
- g) Site inspection of Brokers' offices at BSE Office Building conducted for some other brokers, viz: Millennium, GRD and SMC etc. for considering their P2P connectivity requests but waived off for W2W and GKN,
- h) Arrangements between Sampark and Reliance Communications Ltd (hereinafter referred to as “**Reliance**”) were facilitated by NSE to regularize the irregular Sampark connectivity.

### **Terms used**

- 9. At the outset, I would like to familiarize myself with the meanings and implications of certain terms and phrases that will be frequently used while discussing various issues in this order. These terms and their meanings as I

understand from the Investigation report and the submissions made before me are as under:

Term/Phrase	Meaning
<p><b>Co-Location Facility</b></p>	<p>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 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. 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</p>

	<p>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 (IP-I) registration can provide assets such as Dark Fibres, etc. 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 on mutually agreed terms and conditions</p>
<b>MUX</b>	<p>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/</p>

	<p>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.</p>
<b>MMR</b>	<p>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.</p>
<b>Colo Rack</b>	<p>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.</p>
<b>Cross Connect</b>	<p>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.</p>
<b>Edge Router</b>	<p>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.</p>

**Consideration of Issues**

10. Before I proceed in the matter, for the convenience of understanding, I would like to list out the allegations made in the SCNs against each of the Noticees based on the findings in the investigation conducted by SEBI and the specific violations of the relevant provisions of SCR Act, 1956, SEBI Act, 1992 and provisions of different regulations, circulars, code of conduct, policy or guidelines issued there-under etc., as presented below :

Entity name	Nature of allegations/findings in brief	Violations observed
<p><b>National Stock Exchange of India Limited (NSE)</b> <b>(Noticee No.1 )</b></p>	<p>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.</p> <p>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.</p>	<ol style="list-style-type: none"> <li>1. Clause 4(i) of SEBI Circular no. CIR/MRD/DP/09/2012 dated March 30, 2012.</li> <li>2. Non implementation of recommendation made by the Secondary Market Advisory Committee (hereinafter referred to as "SMAC") in its meeting dated November 11, 2011 which was communicated to NSE by SEBI vide email dated November 28, 2011.</li> <li>3. Regulation 41 (2) of SECC Regulations, 2012.</li> </ol>

Entity name	Nature of allegations/findings in brief	Violations observed
		4. Clause 3 of the SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015.
<b>NSE</b>	<p>Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</p> <p>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.</p> <p>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.</p>	<p>1. Regulation 41 (2) of SECC Regulations, 2012.</p> <p>2. Clause 3 of the SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015.</p> <p>3. Non-implementation of recommendation made by SMAC in its meeting dated November 11, 2011, as communicated to NSE by SEBI vide email dated November 28, 2011.</p>
<b>NSE</b>	Millennium was unable to avail P2P connectivity of Sampark by installing MUX directly in its rack while other stock	Regulation 41 (2) of SECC Regulations, 2012 and clause 3 of

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>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.</p>	<p>SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015.</p>
<p><b>NSE</b></p>	<p>Preferential treatment of stock brokers by:</p> <ul style="list-style-type: none"> <li>a) NSE facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers</li> <li>b) Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.</li> <li>c) Conducting site inspection of offices of Millennium, GRD &amp; SMC for connectivity while not following the same procedure for W2W and GKN.</li> <li>d) Granting permission to Sampark to place MUX in NSE MMR without verification of license</li> <li>e) Granting permission to W2W and GKN to avail connectivity of Sampark without verifying license of Sampark.</li> </ul>	<ol style="list-style-type: none"> <li>1. Regulation 3(d) and 4(1) of PFUTP Regulations, 2003 read with section 12A(c) of SEBI Act, 1992.</li> <li>2. Regulation 41 (2) of SECC Regulations, 2012.</li> <li>3. Clause 3 of the SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015.</li> <li>4. Non-implementation of recommendation made by SMAC in its meeting dated November 11, 2011, as communicated to NSE by SEBI vide email dated November 28, 2011.</li> </ol>

Entity name	Nature of allegations/findings in brief	Violations observed
<b>NSE</b>	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.	Regulation 41 (2) of SECC Regulations, 2012.  Clause 3 of the SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015.
<b>NSE</b>	Contributory negligence on the part of NSE that facilitated W2W and Sampark establishing connectivity to provide unfair latency advantage to W2W.	Regulation 41 (2) of SECC Regulations, 2012 and clause 3 of SEBI Circular no. CIR/MRD/DP/07/2015 dated May 13, 2015.
<b>Umesh Jain, CTO, NSE (Noticee No.2)</b>	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.	Part B of Schedule II of SECC Regulations, 2012 and read with Regulation 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.  Regulation 3(d) & 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.

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	As supervisor of Colo Support (supervisor of Deviprasad), it was his duty to incorporate checks and balances so that, incidents like cabling to Sampark's MUX through W2W rack are detected early. He failed to establish such procedures to prevent such lapses.	
<b>Umesh Jain</b>	Permission granted to Sampark to place infrastructure in NSE MMR, without verifying the license of Sampark.	Part B of Schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.
<b>Chitra Ramakrishna, MD and CEO of NSE (Noticee No.3)</b>	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.	Part A & B of Schedule II of SECC Regulations, 2012 and read with Regulation 26(1) and 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.
<b>Chitra Ramakrishna</b>	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	Part A & B of Schedule II of SECC Regulations, 2012 read with Regulation 26(1) and 26(2) of SECC Regulations, 2012 and

Entity name	Nature of allegations/findings in brief	Violations observed
	same namely, Sampark.	SEBI Master Circular dated December 31, 2010.
<b>Chitra Ramakrishna</b>	<p>Preferential treatment of stock brokers by:</p> <p>a) NSE facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers.</p> <p>b) Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.</p> <p>c) Conducting site inspection of offices of Millennium, GRD &amp; SMC for connectivity while not following the same procedure was for W2W and GKN.</p>	<p>Regulation 3(d) and 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992; and</p> <p>Part A &amp; B of Schedule II of SECC Regulations, 2012 read with Regulation 26(1) and 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>
<b>Chitra Ramakrishna</b>	<p>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.</p>	<p>Part A &amp; B of Schedule II of SECC Regulations, 2012 read with Regulation 26(1) and 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>
<b>Chitra Ramakrishna</b>	<p>Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on</p>	<p>Part A &amp; B of Schedule II of SECC Regulations, 2012 read with</p>

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>website hosting.</p> <p>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.</p> <p>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.</p>	<p>Regulation 26(1) and 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>
<p><b>Subramanian Anand, Group Operating Officer (GOO) &amp; Advisor to MD (Noticee No.4)</b></p>	<p>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, due to lack of duct space, Sampark was asked by NSE to install the MUX in NSE MMR.</p>	<p>Part B of Schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>

Entity name	Nature of allegations/findings in brief	Violations observed
<b>Subramanian Anand</b>	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.	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.
<b>Subramanian Anand</b>	<p>Preferential treatment of stock brokers by:</p> <p>a) NSE facilitating laying of cable for W2W (by Sampark) so as to provide latency advantage to W2W over other stock brokers</p> <p>b) Allowing W2W and GKN to continue to avail Sampark connectivity even after finding out that Sampark did not have requisite license.</p> <p>c) Conducting site inspection of offices of Millennium, GRD &amp; SMC for connectivity while not following the same procedure for W2W and GKN.</p>	<p>Regulation 3(d) and 4(1) of PFUTP Regulations, 2003 read with section 12A(c) of SEBI Act, 1992; and</p> <p>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.</p>
<b>Subramanian Anand</b>	<p>Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</p> <p>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</p>	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.

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>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.</p> <p>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.</p>	
<p><b>Subramanian Anand</b></p>	<p>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.</p>	<p>Part B of Schedule II of SECC Regulations, 2012 read with Regulation 26(1) and 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>
<p><b>Ravi Varanasi</b> <b>Head of business development function</b> <b>{supervisor of Nagendra}</b></p>	<p>Non transparent mode of communication to stock brokers- An existing circular of NSE was modified by way of a change on website hosting.</p> <p>W2W and GKN were allowed to establish P2P connectivity through Sampark while many stock brokers (e.g. Mansukh</p>	<p>Part B of Schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated</p>

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<b>(Noticee No.5)</b>	<p>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.</p> <p>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.</p>	December 31, 2010.
<b>Ravi Varanasi</b>	<p>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.</p> <p>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.</p>	<p>Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p> <p>Part B of Schedule II of SECC Regulations, 2012 read with Regulation 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>
<b>Ravi Varanasi</b>	Millennium was unable to avail P2P connectivity of Sampark by installing MUX	Part B of Schedule II of SECC Regulations,

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>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.</p>	<p>2012 read with Regulation 26(2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</p>
<p><b>Nagendra Kumar SRVS.</b> <b>NSE – Head of Membership Department</b> <b>(Noticee No.6)</b></p>	<p>No site visit of offices of 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.</p> <p>Granted permission to W2W and GKN to avail connectivity of Sampark without verifying license of Sampark</p> <p>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.</p>	<p>Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>
<p><b>Deviprasad Singh</b> <b>Head of Colo support- NSE</b> <b>(Noticee No.7)</b></p>	<p>Permission granted to Sampark to place infrastructure in NSE MMR, without verifying the license of Sampark.</p> <p>Granted permission to W2W and GKN to avail connectivity of Sampark without verifying license of Sampark</p>	<p>Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>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.</p> <p>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.</p> <p>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</p>	
<p><b>W2W</b> <b>(Noticee No. 8)</b></p>	<p>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</p>	<p>Clauses A(1), A (2), A (3) and A (5) of Code of Conduct specified in Schedule II read with Regulation 9 of SEBI</p>

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>connectivity. The above conduct of NSE &amp; W2W points towards collusion between W2W and NSE to provide benefit to W2W.</p> <p>W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.</p> <p>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.</p>	<p>(Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "Stock Broker Regulations") Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>
<p><b>MR Shashibhusan, CEO of W2W (Noticee No.9)</b></p>	<p>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.</p> <p>W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the</p>	<p>Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>requisite license.</p> <p>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.</p>	
<p><b>CK Nithyanand, Director of W2W (Noticee No.10)</b></p>	<p>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.</p> <p>W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.</p> <p>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.</p>	<p>Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>
<p><b>B G Srinath, Director of W2W (Noticee No.11)</b></p>	<p>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</p>	<p>Regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>

Entity name	Nature of allegations/findings in brief	Violations observed
	<p>W2W and NSE to provide benefit to W2W.</p> <p>W2W continued to avail the services of Sampark till September 9, 2015, in spite of knowing that Sampark did not have the requisite license.</p> <p>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.</p>	
<p><b>GKN (Noticee no.12)</b></p>	<p>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.</p> <p>GKN continued to avail the services of Sampark till September 10, 2015, in spite of knowing that Sampark did not have the requisite license.</p>	<p>Violation of Clauses A(1), A(2), A(3) and A(5) of the Code of conduct specified under Regulation 9 of the Stock Broker Regulations.</p> <p>Violation of regulation 3(d) and 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>
<p><b>Sonali Gupta, Partner of GKN (Noticee No. 13)</b></p>	<p>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</p>	<p>Violation of regulation 3(d) &amp; 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.</p>

Entity name	Nature of allegations/findings in brief	Violations observed
	and GKN points towards collusion between GKN and NSE to provide benefit to GKN.	
<b>Om Prakash Gupta, Partner of GKN</b> <b>(Noticee No. 14)</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. The above conduct of NSE and GKN points towards collusion between GKN and NSE to provide benefit to GKN.	Violation of regulation 3(d) & 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.
<b>Rahul Gupta Partner of GKN</b> <b>(Noticee No. 15)</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. The above conduct of NSE and GKN points towards collusion between GKN and NSE to provide benefit to GKN.	Violation of regulation 3(d) & 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.
<b>Sampark</b> <b>(Noticee No. 16)</b>	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.	Regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read with Section 12A(c) of SEBI Act, 1992.
<b>Prashanth D'souza</b>	Sampark acted in collusion with W2W and NSE to lay the cabling in such a way that W2W had lower latency compared to other	Regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read

Entity name	Nature of allegations/findings in brief	Violations observed
(Noticee No. 17)	stock brokers connected to the Sampark MUX placed in NSE MMR.	with Section 12A(c) of SEBI Act, 1992.

11. A close scrutiny of the violations that have been alleged against different Noticees highlighted in the above table shows that the Noticees are primarily alleged to have violated certain directives/instructions contained in the SECC Regulations, 2012, circulars, code of conduct and recommendation made by SMAC in its meeting etc. in a fraudulent manner for which they have been charged with violation of provisions of Section 12 A(c) of the SEBI Act, 1992 read with provisions of regulation 3(d) and 4 (1) of PFUTP Regulations, 2003. Additionally, the two brokers, i.e. W2W and GKN have been alleged to have violated the provisions of code of conduct specified under the Stock Broker Regulations. It is therefore necessary to first understand the core subject matter of those provisions of SECC Regulations, 2012 and circulars etc. which have allegedly been violated by the Noticees before taking any view about violation of PFUTP Regulations, 2003. The gist of these regulations/circulars, etc. are presented below :

<p><b>Clause 4(i) of SEBI Circular No. CIR/MRD/DP/09/2012 dated March 30, 2012</b></p>	<p><b>Guidelines to the stock exchanges and the stock brokers</b></p> <p>4. Stock exchanges shall ensure the following while permitting algorithmic trading:</p> <p>(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</p>
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	trading.
<p><b>Non implementation of the recommendations made by SMAC in its meeting dated November 11, 2011 as communicated to NSE vide email dated November 28, 2011.</b></p>	<p>SMAC acknowledged that denial of service may be a cause for concern which is further compounded with the availability of Colo services offered by exchanges. It was suggested that <b>fairness and equal opportunity for all should be the premise going forward.</b></p> <p><b>Fair process to avail Colo services across all brokers</b></p>
<p><b>Regulation 41 (2) of SECC Regulations, 2012.</b></p>	<p><b><u>Equal, fair and transparent access.</u></b></p> <p>41(2). The recognised clearing corporation and recognised stock exchange shall ensure <b>equal, unrestricted, transparent and fair access to all persons without any bias towards its associates and related entities</b></p>
<p><b>Clause 3 of the SEBI Circular No. CIR/MRD/DP/07/2015 dated May 13, 2015.</b></p>	<p><b>In order to ensure fair and equitable access to the Colo facility, stock exchanges shall:</b></p> <p>3.1. provide Colo / proximity hosting in <b>a fair, transparent and equitable manner.</b></p> <p>3.2. ensure that all participants who avail Colo / proximity hosting facility <b>have fair and equal access to facilities and data feeds provided by the stock exchange.</b></p> <p>3.3. ensure that all stock brokers and data vendors using Colo / proximity hosting <b>experience similar latency with respect to exchange provided infrastructure.</b></p> <p>3.4. <b>ensure that the size of the Colo / proximity hosting space is sufficient</b> to accommodate all the stock brokers and</p>

	<p>data vendors who are desirous of availing the facility.</p> <p>3.5. provide the flexibility to avail rack space in the Colo / proximity hosting so as to meet the needs of all stock brokers desirous of availing such facility.</p>
<p><b>Regulation 26(1) and 26 (2) of SECC Regulations, 2012 and SEBI Master Circular dated December 31, 2010.</b></p>	<p><b>Regulation 26(1) &amp; 26(2) of SECC Regulations, 2012: Code of Conduct for directors and key management personnel.</b></p> <p>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.</p> <p>(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.</p>

**(Emphasis has been made on some parts in bold letters)**

12. One prominently discernible feature observed in the SECC Regulations, 2012, recommendations made in SMAC Meeting, circulars issued by SEBI etc. referred to above is that they do not talk per se, about technology or employment of technology or P2P connectivity at Colo facilities of Stock Exchanges but only emphasize on the fact that the Stock Exchanges should have adequate arrangements and procedures in place to achieve consistent response time and to ensure that the size of the Colo /proximity hosting space is sufficient to provide equal, unrestricted, transparent and fair access to all the brokers and all the participants without any bias or favour. I find the regulatory concern about providing equal, transparent and fair access to all the brokers has been emphasized time and again by SEBI either through the SECC Regulations, 2012 or circulars and even from the forum of SMAC to remind the Stock Exchanges that fair and equitable treatment should be the sine qua non governing all their policies with respect to deployment of technological

facilities, be it within the Colo or outside the Colo facilities that are offered to brokers and market participants. Therefore, in the present case, I think all the facts and circumstances need to be acid tested in terms of the above said regulatory principle to find out, to what extent NSE has been compliant with this regulatory norm while dealing with brokers in the matter of allowing them access into their Colo facilities, before taking a final view on the allegations made in the SCN.

13. **Evidence:** A comprehensive reading of the SCNs reveal that the allegations have been built upon the basis of a wide ranging factual details with reference to a large number of documentary supports. These documentary supports relate to various events that took place between March-April, 2015 and September, 2015 with respect to installation of P2P connectivity by Sampark at NSE's Colo facility on behalf of W2W & GKN. These supporting documents which have been used as evidences in the SCN predominantly comprise email correspondences exchanged between employees of W2W, Sampark, GKN and NSE officials and also internal emails exchanged by officials of W2W. These emails are contemporaneous in nature and have been primarily exchanged/addressed by the officials of NSE and W2W in due course of their transactions with each other and with Sampark. The SCNs also rely upon various statements recorded mainly of different officials of NSE, officials of W2W and Sampark before the investigating authorities of SEBI. I note that some of the emails and statements referred to in the SCNs have significant implications in terms of their evidentiary value relating to the allegations made in the SCN.

14. Since, the email correspondences of different dates are integral part of the entire factual narratives of the case, at this point, I consider it appropriate to highlight hereunder, the important chronological events that led to installation of dark fibers by Sampark to provide P2P connectivity to W2W & GKN and also the events post establishment of P2P connectivity that bear significance to the allegations made in the SCNs. (**emphasis has been supplied to certain dates and events in bold letters**)

<p>March 26, 2015</p>	<p>Ms. Rima Srivastava of <b>W2W</b> writes to Mr. Nagendra of NSE that they are in the process of taking a new P2P link from Sampark between their rack at NSE Colo to W2W office in PJ. Towers, BSE Building and they will be terminating their fiber on a dedicated MUX placed in their rack.</p> <p>End point addresses were as follows:</p> <p>'A' End: NSE COLO Data Center. Rack No 18, National Stock Exchange India Limited, Bandra - Kurla Complex, Bandra (East) Mumbai - 400 051</p> <p>'B' End: Way2wealth Brokers Pvt. Ltd. Office No 213, 2nd Floor, PJ Towers, Dalal Street Mumbai - 400001</p>
<p><b>April 01, 2015</b></p>	<p>W2W asks for work permit from NSE for Sampark to do a “fibre path survey” to bring fibre into NSE premises upto their Rack in NSE Colo and for termination of the fiber on a dedicated MUX placed in their rack.</p> <p><b>NSE grants work permit in this regard.</b></p>
<p>April 16, 2015</p>	<p>Rahul Gupta of <b>GKN</b> mails to Mr. Nagendra and Mr. Avadhut of NSE for Sampark connection from BSE Edge router to their rack in NSE Colo.</p>
<p>April 21, 2015</p>	<p>Mr. Nagendra from NSE writes an email to W2W mentioning that the link should be terminated directly to W2W rack.</p>
<p><b>April 22, 2015</b></p>	<p><b>Mr. Nagendra writes to Rahul Gupta of GKN stating that he may proceed</b> subject to giving undertaking.</p> <p>GKN on the same day submits an undertaking to NSE wherein the following were <i>inter alia</i> mentioned:</p> <p>“Sampark have been engaged by M/s. GKN Securities for lying a dedicated managed connectivity line which will be installed in GKN rack from National Stock Exchange of India Ltd. on behalf of M/s. GKN Securities.</p>

	<p>Connectivity will be between :-</p> <p>END A: GKN Securities, Rack No C7, B Wing, NSE Colo Data Centre, BKC Mumbai.</p> <p>END B: GKN Securities, Off NO 101, PJ Tower, Dalal Street, Mumbai – 400001”</p>
<b>May 07, 2015</b>	GKN Link (NSE Colo to GKN office PJ Tower) becomes active.
<b>May 28, 2015</b>	W2W line gets activated by Sampark.
June 23, 2015	<b>Millennium applies to NSE</b> for Sampark’s P2P connectivity between NSE Colo and their office in BSE
24 June, 2015	Ms. Prachee Shinde from NSE asks Millennium to provide Undertaking, network diagram and leave license agreement, electricity bill and maintenance bill, for their B end address.
24 June, 2015	Mr. K K Daga of Millennium provides the network diagram and undertaking with Sampark name on the same date.
<b>June 25, 2015</b>	Sampark/Tekzi officials (including Prashanth Dsouza) meet NSE officials, Mr. Nagendra and Mr. Deviprasad Singh. During the said meeting, <b>discussions were around installations of Sampark’s MUX</b> (from where connectivity is redistributed to stock brokers) in NSE MMR were held.
July 06, 2015	Millennium issues a Purchase Order to Sampark for 1 (One) 1gb Managed Network Service between NSE Colo Data Centre and its office at PJ Tower BSE.

July 07, 2015	<b>Ms. Rima of W2W writes an email to Mr. Shashibhushan of W2W stating that they are not in compliance with the B end address provided to NSE and they have a direct connectivity to BSE Colo asking Shashibhushan to take action in this regard.</b>
July 08 2015	<b>Mr. Shashibhushan of W2W replies to Ms. Rima of W2W stating that action is important and they should complete the cable loop from their office to Netmagic MMR and from MMR to their rack at BSE Colo.</b>
	Ms. Rima of W2W writes to Mr. Shashibhushan and Mr. Mohit of W2W stating that 2 cables are intended to be laid and the second cable is disallowed by Mr. Madan of Netmagic due to policy issues, however, Mr. Madan will discuss internally and revert on the same.
July 09, 2015	Mr. Mohit of W2W replies to Ms. Rima of W2W stating that they should speak to Mr. Vishnu or Mr. Vivek Garg at BSE and get Mr. Madan convinced. <b>He also mentions that Mr. Shashibhushan of W2W has suggested to put table, chairs, few desktops and the link should be terminated to make the office look functional. He also asked if the Reliance link can be terminated on the switch.</b>
	Ms. Rima of W2W writes to Mr. Shailesh and Mr. Netaji of Sampark that they have laid cable from their office to Netmagic MMR and they need Sampark equipment details.
July 10, 2015	Millennium receives email from NSE Colo support giving work permit for pilot testing.
<b>July 10, 2015</b>	Mr. Avadhut Gharat informs Millennium that Sampark MUX is not yet installed in Colo and <b>Sampark is not their authorized vendor for P2P link.</b>
July 15, 2015	Millennium requests for permission of work permit from July 17- July 19,

	2015.
July 15, 2015	Mr. Kaushal of NSE replies to Millennium mentioning that the work permit will be ready.
July 16, 2015	Emails were exchanged between James D'Souza/Prashanth Dsouza, Netaji Patil of Sampark and Mr. Avadhut of NSE w.r.t. the work permit for fiber cable laying work.
July 17, 2015	Mr. Avadhut of NSE writes to James D'Souza of Sampark to make sure the fibre will get terminated into respective Sampark racks into each phases and every MUX should be independent of the other phases MUX.  <b>Work permit issued to Sampark.</b>  <b>MUX installed by Sampark in NSE MMRs.</b>
July 17, 2015	<b>Sampark informs Millennium over phone that NSE is not allowing them to work</b>
July 20, 2015	James Dsouza of Sampark sends an email to Mr. Deviprasad Singh, Mr. Nagendra and Mr. Avadhut of NSE <i>inter alia</i> informing that they have successfully terminated their optical fiber cable at all 3 Racks along with MUX and Fibre Switches. <b>All three MUXs have independent fibre inputs.</b> He requests to change the names on the racks as "Tekzi India" since they do Enterprise business on Tekzi India Brand.
July 21, 2015	James D'Souza informs Mr. Deviprasad Singh, Mr. Nagendra and Mr. Avadhut through email that W2W is shifted on Saturday and GKN will be shifted once they get the confirmation regarding the new set up. Mr. James D'Souza informs that they have received orders from GRD and Millennium and if NSE approves they can start their services also together as it's only one hour work to connect new customers.  Mr. Nagendra advises James D'Souza through email that the said stock

	brokers should approach their teams and standard procedure will be followed for each of the cases.
July 22, 2015	<b>Millennium sends a request for Work Permit to NSE but no formal response received on the same.</b>
July 22, 2015	<b>Mr. K K Daga</b> of Millennium receives a WhatsApp message from Nagendra stating that <b>Sampark has some regulatory issues</b> and that Reliance has started doing their work for other stock brokers.
July 22, 2015	Mr. Deviprasad Singh of NSE in his email to James D'Souza requests for DoT licenses of Sampark to provide the said service.
July 27, 2015	Ms. James D'Souza of Sampark in his email to Deviprasad Singh and Nagendra of NSE, forwards soft copy of the licenses stating that with these 2 licenses they can co-locale at any Data center. He also sought appointment of both the NSE officials for discussion in detail.
July 28, 2015	<p>James D Souza of Sampark in his email to Deviprasad Singh, Nagendra and Avadhut of NSE mentions that the licenses will authorize them to Colo in Data Centers and provide infrastructure. He further mentioned that since the billings will happen between Sampark and Customers, NSE or any other Data Center provider will have no role in billing of their vendors. <b>He also stated that as per industry practice they provide managed services to end customers and dark fibre and infrastructure to Telecom players and for this reason they were insisting on installing their MUX since providing dark fibre to end customers is not allowed.</b></p> <p>Mr. James D Souza also mentioned that they will provide NSE an undertaking saying Sampark is responsible for the services and NSE will not be responsible for any legal and financial implications or dispute in future.</p> <p>Mr. Nagendra Kumar responded to him stating he is not convinced by</p>

	<p>justifications of Sampark. He further mentioned that due to Sampark, there are many IP1 service providers chasing NSEs for putting their fibers. Thus, Sampark was identified as an unauthorized service provider by NSE as it did not have NLD/ILD license.</p>
July 29, 2015	<p>Mr. K K Daga of Millennium receives a WhatsApp message from Mr. Nagendra of NSE advising to go with any other vendor and not to get carried away with Sampark.</p>
July 30, 2015	<p>Ms. K K Daga of Millennium sends a WhatsApp message to Mr. Nagendra of NSE stating that some stock brokers are still working on the low latency circuit and <b>Millennium is losing lots of business</b>. He requested Mr. Nagendra to find out some solution to this issue immediately.</p>
July 30, 2015	<p>In reply to the above WhatsApp message, Mr. Nagendra sends a WhatsApp message to Mr. K K Daga of Millennium stating that all are at par now.</p>
July 30, 2015	<p>In reply to the above WhatsApp message, Mr. K K Daga of Millennium sends a WhatsApp message to Nagendra asking <b>whether at par means no other member is on Sampark circuit as on date</b>. Millennium did not get any reply to this message.</p>
August 01, 2015	<p>PO raised by Millennium on Reliance mentioning link needs to be provisioned by "Sampark Estate Pvt Ltd" in the terms and conditions.</p>
August 03, 2015	<p>Mr. K K Daga of Millennium writes an email to Mr. Nagendra and Ms. Prachee of NSE stating that Reliance is their telecom vendor for the P2P connectivity between NSE-BSE.</p>
August 12, 2015	<p>Mr. Nagendra writes to Mr. Mohit of W2W to <b>change their fibre vendor from Sampark to reliance</b>. The email was copied to Mr, Ravi Varanasi</p>

	of NSE.
August 12, 2015	Mr. K K Daga of <b>Millennium complains to Mr. Prashant Dsouza for delay in cabling work</b> to be conducted for his rack but did not receive any response from Reliance and Sampark.
August 13, 2015	<p>Mr. Jayant Bhusare of Sampark in his email to Reliance mentions the following :</p> <p>"Based on your <b>meeting with Prashant</b>; Pls find here with final conclusion on the said connectivity.</p> <ol style="list-style-type: none"> <li>1. Sampark will provide single core to respective customer at NSE and BSE (PJ tower) building.</li> <li>2. <b>Since this is linear dark fiber connectivity</b> neither Sampark nor RCOM will monitor the link.</li> <li>3. For any downtime: customer has to raise fault ticket with rcom and back to back Rcom has to raise ticket with Sampark then only we will send our engineer for restoration.</li> <li>4. Since it is latency critical circuit RCOM will delivered this through Sampark to directly on customer 10 Gig switch.</li> <li>5. This solution is already agreed and accepted by customer and Harish Sir.</li> <li>6. SLA with escalation matrix already shared with Harish Sir and accepted. (again Attached)</li> <li>7. Mr. Tiwari (Legal team) point &amp; accepted: We are declaring FMS (fiber Management system) which is installed at both location are belongs to RCOM. <b>Same we will providing on our letter head which will be comply the specification as per the infrastructure provider (IP1) and TCL shall supervise entire project pertaining to</b></li> </ol>

	<b>deployment of high b/w links".</b>
August 15, 2015	Mr. K K Daga of Millennium writes an email to Mr. Ravi Varanasi of NSE with the subject "My grievance" highlighting the abnormal delay by NSE for the P2P connectivity and referring about the meeting with Mr. Nagendra at Kolkata and also about WhatsApp messages exchanged between him and Nagendra of NSE.
August 18, 2018	<p>Mr. Nagendra writes to Mr. Mohit of W2W to confirm if they have shifted their line from Sampark.</p> <p>Mr. Mohit of W2W writes to Mr. Netaji of Sampark that they need to move the contract of the line between NSE Colo - BSE building office to Reliance asap. It was also informed that if they don't do it immediately; NSE might be forced to shut this line. He requested to get the commercial proposal from Reliance and co-ordinate the move of this line to Reliance by end of next week."</p> <p>W2W issues Letter dated August 18 2015 to Sampark on "Termination of Managed network services.</p>
August 19, 2015	<p>Reliance informs NSE that Sampark's has handed over its infrastructure to Reliance and the leased line services through the said infrastructure of Sampark would be provided by Reliance from August 21, 2015.</p> <p>Reliance sends commercial proposal to W2W.</p>
August 19, 2015	Mr. K K Daga of Millennium sends a work permit to NSE for fibre cabling and installation from Sampark MUX to their rack by Reliance.
August 19, 2015	Ms. Nagendra replies to K K Daga of Millennium asking for a <b>revised work permit</b> as they do not recognize Sampark MUX.
August 19, 2015	Millennium re-applies to NSE for work permit to which NSE advises to wait for Reliance and Sampark to confirm that the MUX belongs to

	Reliance.
August 21, 2015	GKN raises a purchase order dated August 21, 2015 on Reliance for P2P connectivity between NSE and PJ Towers (BSE).
September 05, 2015	Reliance emails W2W mentioning that the circuit was tested and delivered, and provides the circuit details and escalation matrix.
September 05, 2015	Line goes live for Millennium
September 07, 2015	W2W confirms acceptance of the circuit to Reliance. Reliance formally starts P2P connectivity for W2W.
September 10, 2015	Reliance connectivity for GKN commenced

15. I find that after the issue of SCNs, as requested by the Noticees, opportunity of inspection of documents were provided to them and copies of the relevant documents as desired by them were also furnished to them. Opportunity of personal hearing was granted to the Noticees on February 11, 2019, February 25, 2019 and on March 05, 2019. Noticees and their Authorized Representatives made their submissions and presented their case before me. All the Noticees were heard. The following table indicates the dates on which replies/ written submissions have been received from the Noticees:

Noticee No.	Name of the Noticee	Date of reply to the SCN	Date of written submissions after hearing
1.	National Stock Exchange Ltd. (NSE)	February 25, 2015	March 20, 2019

2.	Mr. Umesh Jain, CTO, NSE	February 04, 2019	March 19, 2019
3.	Ms. Chitra Ramakrishna, MD and CEO of NSE	February 23, 2019	Undated (received on March 26, 2019)
4.	Mr. Subramanian Anand, Group Operating Officer (GOO) & Advisor to MD of NSE	February 03, 2019	No written submissions filed
5.	Mr. Ravi Varanasi Head of business development function	March 01, 2019	March 15, 2019
6.	Mr. Nagendra Kumar SRVS (NSE – Head of Membership Department)	March 01, 2019	March 18, 2019
7.	Mr. Deviprasad Singh (Head of Colo support - NSE)	February 29, 2019 (wrongly mentioned)	March 18, 2019
8.	Way2Wealth Brokers Private Limited	February 01, 2019	March 19, 2019
9.	Mr. M R Shashibhushan, CEO of W2W	February 04, 2019	March 19, 2019
10.	Mr. C K Nithyanand, Director of W2W	February 01, 2019	No written submissions filed
11.	Mr. B G Srinath, Director of W2W	February 01, 2019	No written submissions filed
12.	GKN Securities	No reply	March 20, 2019

13.	Ms. Sonali Gupta, Partner of GKN Securities	No reply	April 05, 2019
14.	Mr. Om Prakash Gupta, Partner of GKN Securities	No reply	April 05, 2019
15.	Mr. Rahul Gupta, Partner of GKN Securities	No reply	April 05, 2019
16.	Sampark Infotainment Private Limited	No reply	April 04, 2019
17.	Mr. Prashanth D'souza, CEO of Sampark	No reply	April 04, 2019

16. Thus, all the Noticees were personally heard and after that Noticees were further granted adequate time to file written submissions, if they wished to. I have read and considered the written replies and submissions filed by the Noticees and have also heard their arguments during their personal appearances on the above mentioned dates. I find some of the Noticees have raised certain preliminary observations on technical and legal grounds against the SCNs and the conduct of the instant proceedings which, I think should be dealt with at this stage, before I proceed to discuss their submissions on merit with respect to various allegations made in the SCN.

a) **SCN of 2017 and SCN of 2018**: During their personal hearing before me, the Noticees pointed out that SEBI had earlier issued a SCN dated May 22, 2017 (hereinafter referred to as "**SCN of 2017**") to them before conducting investigation in the matter and after completion of investigation, SEBI has again issued the present notice dated July 3, 2018. The Noticees have pointed out that some of the allegations with respect to P2P connectivity made in the instant Notice against them also formed part of Section H of SCN of 2017 and hence, contended that the SCN of 2017 so as far as it relates to the allegations pertaining to P2P connectivity against the Noticees

should be treated as subsumed in the present proceedings based on SCN of 2018. I also find that some of the Noticees have separately responded to the allegations made in the SCN of 2017 in their written submissions filed before me without prejudice to their aforesaid contention. I note that the present proceedings before me have been initiated pursuant to the issue of SCN dated July 3, 2018 and the SCN of 2017 is not pending before me for consideration. However, as has been pointed out by the Noticees, I concur with their contention that the allegations pertaining to P2P connectivity qua the Noticees in the present SCN include all the allegations pertaining to P2P connectivity earlier raised in Section H of 2017 SCN. Therefore, this order will cover the allegations pertaining to P2P connectivity which were made in the SCN of 2017 qua the Noticees.

- b) **No Specific Measures Contemplated In The SCN**: An objection raised by NSE and some other Noticees is that the SCN of SEBI is silent on the specific measures that are contemplated against the Noticees. In this case the SCN has called upon the Noticee No.1(NSE) to show cause as to why 'suitable directions' should not be issue against them under section 11(1), 11(2)(a), 11(2)(j), 11(4) and 11B of SEBI Act, 1992 read with Section 12A of SCR Act, 1956 and Regulation 41 of SECC Regulations, 2012. Similarly, other Noticees have also been called upon to show cause as to why 'suitable directions' should not be issued against them under specific provisions of Section 11 and 11B of SEBI Act, 1992 and Section 12A of SCR Act, 1956 as specifically stated against the respective Noticees at para-63 of the SCN. According to the Noticees, the principles of natural justice demand that SEBI should have stated the specific measures that are contemplated against the Noticees so that the Noticees are in a position to present their case on the suitability of the directions/measures proposed. The Noticees have relied upon the order of the Supreme Court in the case of **Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors. (2014) 9 SCC 105**. On the basis of the said decision, it is argued that in the absence of specific directions proposed to be taken against the Noticees, proceedings are liable to be quashed.

The decisions of Hon'ble Supreme Court in the above mentioned case is perused and the same is found to be factually distinguishable from the present case. In Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which results into depriving the contractor from entering into any public contracts, thus violating the fundamental rights of such person. Further, in Gorkha Security case, the contractor was blacklisted for breaching the terms of the contract, whereas the present SCN has been issued for violations of statutory provisions. Also, in Gorkha Security case, blacklisting was imposed by way of penalty whereas the instant proceedings propose to issue directions, if found necessary, which are preventive and remedial in nature. Further, in Gorkha Security Case, blacklisting of the contractor was provided for in the contract as a penalty to be imposed in case of breach of terms of contract, whereas in the present matter provisions of law under which directions are contemplated to be issued, confer discretion to SEBI to take such measure as it thinks fit in the interest of investors and securities market. In my view, the reliance upon the judgment of Hon'ble Supreme Court in the case of Gorkha Security referred to above by the Noticees is misplaced on facts and is unwarranted. What the Noticees are suggesting through their objection in effect is that the competent authority should decide the case and specify his proposed actions at SCN stage itself without examining the case on the basis of the explanations that the Noticees may want to offer.

The measures prescribed in sub-section (2) of section 11 read with 11(4) and 11B of SEBI Act, 1992 are merely illustrative that may be taken by the Board in furtherance of its duties to attain the object of the statute, without affecting the generality of provisions of sub-section (1). The Board has such powers and is duty bound to take measures in any manner as it may deem fit to prohibit, unearth and deal with fraudulent and manipulative acts in securities markets to protect the interests of investors.

Moving on to the instant case, the SCNs issued to the Noticees have spelt out the provisions under which the desired preventive/remedial measures would be issued. The SCNs also clearly indicates the specific nature of

violations that have been alleged against the respective Noticees in terms of different regulations, circulars, code of conduct etc. which, if found to be breached, require issuance of possible directions under specific provisions as indicated in the SCNs. It is therefore incumbent on the part of the Noticees to explain their position with support of relevant evidence in response to various allegations made against them in the SCNs. Only after examining and considering the explanation offered by the Noticees to the allegations leveled under the SCNs, it would be imperative for the competent authority to determine as to if and what direction is required to be issued against the Noticees, depending on the extent of the gravity of violation committed by the Noticee. It is to be noted here that the provision of Section 11 and 11 B vest in the quasi-judicial authority a wide plenary power to issue wide ranging directions as it may deem fit, in the interest of securities market which cannot be predicted before-hand without considering the explanations of the Noticees. Therefore, it is not correct to contend that the SCNs should specify the exact nature of direction that may be issued to the Noticees without taking into the consideration the explanation and evidence that may be produced by the Noticees to prove their innocence. Under the circumstances the objection raised by the Noticees on the issue highlighted above are not tenable under law and hence, rejected.

- c) **Remedial Measures Already Taken Render SCN Infructuous**: In another preliminary objection, NSE has stated that it has already taken various measures, both on its own and pursuant to instructions issued by SEBI, which include measures to enhance its systems, processes, finessing its policies, implementing checks and balances, increasing the scope of the functions of its independent systems auditor, conducting system audit, etc. SEBI has not proposed any additional measure(s) that need to be implemented by the Noticee. The directions that can be issued by SEBI under the SCNs are executive in nature and are to be issued only to prevent an act or a detrimental act from occurring. Section 12A of the SCR Act, 1956 read with Sections 11(1), 11(2)(a), 11(2)(j) and 11 B of the SEBI Act, 1992 do not enable SEBI to impose penalties for violation of provisions of the SEBI Act, 1992 or the Regulations framed thereunder. The SEBI Act, 1992 confers

on SEBI only an executive power under Section 11B read with Section 11, to prevent an immediate adverse situation from arising or spreading. It is well settled law that the powers under Sections 11 and 11B cannot be used by SEBI to adjudicate matters or impose penalties. Therefore, there is no need for any further directions to be issued by SEBI.

It is further contended that more than four years after the alleged events as set out in the SCNs have occurred, and that too after actions that would potentially be the remedial actions that may be directed, have already been taken by it. Hence, it is not prudent for SEBI to exercise its executive powers under Section 12A of the SCR Act, 1956 read with Sections 11(1), 11(2)(a), 11(2)(j) and 11B of the SEBI Act, 1992 and Regulation 49 of the SECC Regulations, 2012 as nothing left to be remedied in the matter.

I have considered the above objections taken by the NSE. The aforesaid contention of the Noticee proceeds on the premise that no further remedial action is warranted in the present case and the present proceedings will only result into penal direction. Whether any remedial action is warranted in the present case or not is to be adjudged on the examination of whole conspectus of facts of the case. The fact that NSE has taken certain measures either on its own motion or under instruction from SEBI does not vitiate the pursuance of present proceedings.

- d) **Inspection and Cross -Examination**: Another objection raised by some of the Noticees is that they were not permitted to take inspection of all the documents including the documents pertaining to other Noticees, statement recorded from all the persons and have instead been granted inspection of limited documents relating to the issues raised in the SCNs. A few Noticees have also pointed out that they have not been given opportunities for cross examination of certain experts whose reports have been relied upon by SEBI. In this regard, I find that the objections raised by the Noticees are general in nature. From the records, I can observe that all the Noticees have been granted inspection of all the documents, records, investigation reports which have been relied upon in the SCNs issued to them and which are relevant to the issues raised in SCNs pertaining to them. The materials relevant to their

case and relied upon by the SCNs have been allowed to the Noticees for inspection as evident from the records. Therefore, the claim of the Noticees regarding deficiency in inspection granted is untenable. Similarly, with respect to cross examination, I find that none of the Noticees has put forth any specific reason for cross examining the experts nor has any Noticee furnished any reason as to how his/its 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. None of the Noticees has stated in his/her/its submission that it has not been able to explain a specific issue or allegation made against him/it because of non availability of cross examination of any particular expert whose report has been relied upon by SEBI or only after cross-examination of a specific person he/she/it can submit explanation to a specific allegation. Under the circumstances, such a general grievance of Noticees of not getting opportunity for cross examination is without any merit and cannot be entertained.

e) **Dealing in Securities:** It is noted that some of the Noticees have taken a plea that they cannot be charged with violation of PFUTP Regulations, 2003 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, 2003 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.*

The scope of aforesaid definition came for consideration of the Hon'ble Supreme Court in **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.....”*

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 (**DMA**) or Smart Order Routing (**SOR**). 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.

- f) **Persons Associated With Securities Market:** In this context, it is further noted that some of the Noticees such as Sampark and its Director have taken a plea that the direction contemplated in the present SCN cannot be issued to them as they are not “person associated with securities market” as they are not in any way connected to the securities market. In this connection, it would be appropriate to refer to 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, 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*

*aid to be persons associated with the securities market within the meaning of the provisions of the said Act.....”*

Applying the same analogy and logic as adopted in the aforesaid judgment to the facts of the present case, it can be stated that the Noticees (i.e. Sampark and its Director) in this case are 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, DMS or SOR while dealing in the securities market. Thus any such service provided by them definitely have an impact on the securities market. Accordingly, these Noticees can safely be termed as person associated with securities market rendering them liable for issue of any directions under the SEBI Act, 1992 and SCR Act, 1956 if found guilty under these laws.

g) **Vicarious Liability**: Some of the individual Noticees including the Noticee no.3 and Noticee no.9 have raised a plea, 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 that case, the Hon'ble Court was confronted with the question whether doctrine of *alter ego* can be applied to hold directors liable for criminal prosecution for the acts of the company. 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. 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. The reliance placed by the Noticees is misplaced on facts & in law as the instant proceedings are not criminal.

17. After considering the above mentioned preliminary objections raised by NSE and some other Noticees, which are not acceptable for want of merit, I am now moving on to consider the submissions made by each of the Noticees in response to the SCN in the following paragraphs.

**National Stock Exchange (Noticee No.1)**

**18. Allegation-1- Non-Transparent Mode of Communication to Stock Brokers**

The background facts and the context in which the above stated allegation has been made in the SCN are narrated as follows:

18.1 NSE issued **Circular No. 693 dated August 31, 2009**, *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.*”

18.2 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.

18.3 NSE, in **October 2013** made modification (hereinafter referred to as 2013 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.*”

18.4 The above modification was communicated to the stock brokers by posting the same on NSE website.

18.5 The above amendment made in 2013 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.

18.6 The SCNs alleges that (i) NSE did not follow uniform practice for bringing change in its Circular dated August 31, 2009, (ii) no reference was made to the Circular being amended, (iii) the Circular was amended through website publication, (iv) no formal communication was made by Noticee no. 1 to the market at large regarding the changes being made in the circular through website publication. In view of the above, it is alleged in the SCNs that NSE failed to communicate with its members in an unambiguous, transparent and consistent manner and thereby failed to provide an equal, transparent and fair access to all the stock brokers.

18.7 The aforesaid amendment/changes were made only through website publication even without referring to the Circular amended and also the same was not duly communicated to all concerned persons thus rendering the many stock brokers unaware of the amendments/changes made in the Circular dated August 31, 2009. Evidently most of the brokers of NSE were not aware about the amendment made to the 2009 circular by way of websites announcement made by the Noticee.

18.8 It is noted that Ms. Rima Srivastava, CTO of W2W (which had taken P2P connection through Sampark) in her statement dated July 4, 2017 admitted that it was an oversight to have applied through Sampark when the list of telecom service provider were clearly mentioned in the NSE Circular dated August 31, 2009 and the same was permitted by NSE as well. It is also noted that even the **Colo Support team of NSE were also not aware about the changes** made in the NSE Circular dated August 31, 2009. The said changes made in NSE Circular dated August 31, 2009 was not communicated to Colo Support team also which is first point of contact for stock brokers and the same was admitted by Mr. Nagendra (Head of Membership Department - NSE) in his statement dated March 1, 2018. Therefore, it was alleged that NSE has indulged in a non transparent mode of communication on an important issue which should have been communicated through a proper regulatory Circular as was done consistently in the past.

19. **Submissions by Noticee**

NSE has submitted the following explanations in response to the above allegation:

19.1 Changes made to existing Circulars which are regulatory in nature are communicated through another Circular. The amending circular would refer to the Circular being amended;

19.2 Where the amendments proposed are in relation to non-regulatory processes, procedures, facilities, functionalities, commercials etc., the changes are communicated by making changes to the Noticee's website;

19.3 The 2013 modification was a non-regulatory amendment. It enabled stock brokers to engage service providers of their choice for availing P2P connectivity. Since, it was an operational and a procedural matter, no Circular was issued;

19.4 NSE posted the 2013 modification on its website, which has also been confirmed by E&Y;

19.5 SEBI issued a circular dated May 13, 2015 with the subject "Colo/proximity hosting facility offered by stock exchanges", wherein in Paragraph 3.8, SEBI, *inter alia*, directed exchanges to *"make available on their websites description of the Colo/ 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"*;

19.6 The Noticee's actions taken several years prior to the SEBI's Circular May 13, 2015 were therefore, consistent with a mode of communication that SEBI endorsed much later. Therefore, the allegation of non-transparent communication of the 2013 Modification, merely because it was not issued by way of a Circular, is untenable;

19.7 There was no need for reference to 2009 NSE circular for the 2013 modification. The changes were self-explanatory;

19.8 The mere fact that a few stock brokers and certain officials of the Noticee no. 1 were unaware of the 2013 modification, is not an evidence of lack of transparent communication by the Noticee;

19.9 The 2013 modification was not made available selectively to certain stock brokers. The Noticee made the 2013 modification, amendment publicly available and hence provided equal, transparent and fair access to stock brokers. Therefore, the allegation that the Noticee no. 1 failed to provide equal, fair, transparent access is incorrect.

## 20. **Consideration and Observations**

20.1 NSE has claimed that it has transparently communicated the changes made in 2013 by posting the amendment on its website. However, as mentioned above, the 2013 modification did not provide any reference to the earlier requirement mentioned in its Circular dated August 31, 2009. In the absence of cross-reference to the provision of 2009 Circular of NSE, in effect there were in existence, two 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, which are bound to create ambiguity in the minds of brokers interested in availing of such connection. Moreover, in the past NSE had amended its August 2009 Circular twice, viz: on March 4, 2010 and April 21, 2011 by issuing amended circulars in which the original circular of 2009 was always referred to. Therefore, there was no reason as to why NSE chose to disseminate its amended stand on empanelled service providers only through a website publication without any reference to the prior circular (and not through a Circular) which went unnoticed by the stock brokers and even by their own internal Colo support team.

20.2 I find that NSE has erroneously referred to Circular dated May 13, 2015 by SEBI to defend its action of amending its Circular through websites communication. I find that the aforementioned Circular of SEBI does not endorse the *modus operandi* of amending an existing provision of a circular by way of an amendment posted on the website, without any cross reference to

the Circular which was being amended, as adopted by the NSE. On the contrary, the SEBI Circular mandates stock exchanges to provide Colo / proximity hosting in a fair, transparent and equitable manner. 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.

20.3 The allegation that the amendment to a provision relating an important facet of Colo facility was not clearly communicated in a transparent manner is also evident from the fact that most of its stock brokers were not aware of the said amendment. This is clearly demonstrated by the statement dated July 04, 2017 of Ms. Rima Srivastava (CTO of W2W), wherein it was accepted that it was an oversight of the part of W2W to have applied for P2P connectivity through Sampark, as Sampark was not part of the list of TSP mentioned in the NSE circular dated August 31, 2009.

20.4 Similarly, Mr. Rahul Gupta, partner of GKN, has also stated in his statement dated June 21, 2017, that at the time of taking connectivity from Sampark in 2015, he was not aware whether any more vendors have been allowed by NSE to provide connectivity between member's rack to their offices.

20.5 From the statement dated March 1, 2018 of Mr. Deviprasad Singh (Head of Colo support, NSE), email dated July 10, 2015 of Mr. Avadhut Gharat (Project Manager, IT NSE) and email dated July 30, 2015 of Mr. Rajesh Karia (Assistant Manager, Business Development, NSE), it is evident that NSE employees were not aware about the changes in the NSE Circular dated August 31, 2009. It is therefore appalling that neither the staff members of the Noticee's Colo team who were supposed to administer the implementation of the provisions of the said modified communication and nor the stock brokers for whom the communication was intended, were aware of the 2013 Modifications.

20.6 Circulars issued by stock exchanges are binding on the stock brokers of a stock exchange. Stock exchanges, being the first level regulators, are required to communicate to its stock brokers any changes made to a Circular

in an unambiguous, transparent and consistent manner. The casual manner in which an amendment to the provision of a Circular was communicated to the stock brokers by the Noticee, conspicuously, did not adhere to the aforesaid principles. Moreover, the actions and communications of a frontline regulator like NSE, so far as they call for necessary compliance by the registered intermediaries are regulatory in nature and the exchange cannot compartmentalize some of its as 'regulatory' some other as 'operational' on its own volition, just to suit its needs.

20.7 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.

#### **21. Allegation 2: Preferential Treatment of Stock Brokers by NSE**

21.1 The SCNs alleges that the Noticee no. 1, while granting permission to its brokers for the purpose of establishing P2P connectivity from its Colo facility, has adopted a discriminatory approach towards the brokers. It is alleged that NSE has treated W2W and GKN on a preferential and priority basis while granting them permission to establish P2P connectivity while similar requests from certain other brokers were not treated favorably.

21.2 W2W, vide an email dated April 06, 2015, submitted an application to NSE for a P2P connectivity through Sampark connectivity through a MUX to be placed in their rack at NSE Colo facility which was permitted by NSE on April 21, 2015. Similarly, GKN also requested for Sampark connectivity through a MUX in its rack in the Colo facility which was permitted by NSE on April 22, 2015. The MUX was installed directly in the racks of GKN and W2W at NSE Colo facility from which Sampark connectivity was provided to these two stock brokers. At the time of permitting Sampark to lay its dark fibre in Colo facility of NSE, neither NSE nor the stock brokers, i.e. W2W and GKN had checked the license of Sampark to find out if Sampark was, at all, eligible to provide such services.

21.3 It is noted that Sampark had IP-1 (Infrastructure Provide Category -I) license which enabled it to provide infrastructure to Internet Service Providers (hereinafter referred as “**ISPs**”) and telecom service providers. This license was obtained on September 17, 2014. As per DoT norms, specified for the IP-1 license, the scope of IP-1 license holder is limited to establishing and maintaining a dark fibre, right of way, duct space and tower for the purpose of lease / rent / sale basis only to the licensed telecom service provider and Sampark was not eligible to extend these services directly to end customers i.e. stock brokers.

21.4 In this respect, it is noted that Mr. Prashant D’souza and Mr. Jayant (CEO and Employee of Sampark, respectively), in their statements dated March 26, 2018 have admitted that Sampark had IP-1 license under which billing to end customers was not allowed and that they were not in compliance with DoT guidelines for providing the services to W2W and GKN. W2W availed the services of Sampark during the period May 28, 2015 to September 09, 2015 and GKN availed the services of Sampark from May 07, 2015 to September 10, 2015.

21.5 However, contrary to the above action, NSE denied permission to other stock brokers to avail the services of Sampark for P2P connectivity as may be observed from the following examples:

- a) Mansukh Securities and Finance Limited (a member of NSE) (hereinafter referred to as “**Mansukh**”) had also applied for Sampark connectivity between NSE and BSE on June 22, 2015 which was not permitted by NSE on the plea that Sampark was not an authorized vendor.
- b) Millennium Stock Broking Pvt. Ltd., another member of NSE, (hereinafter referred to as “**Millennium**”) on June 23, 2015, applied to NSE to avail the services of Sampark, by installing MUX in its rack at NSE, for P2P connectivity between NSE and BSE (similar to W2W and GKN). It is noted that due to lack of duct space, Sampark was advised by NSE to install the MUX in NSE MMR and subsequently the request of Millennium was denied

by NSE giving reason that Sampark did not have the license to place a MUX in MMR of NSE.

21.6 Further, Shaastra Securities Private Limited (hereinafter referred as “**Shaastra**”), another member of NSE, on July 20, 2015, introduced Microscan Computers Private Limited (hereinafter referred to as “**Microscan**”) as its vendor for providing connectivity to NSE Colo and requested for its empanelment with NSE. However, Mr. Deviprasad Singh (Head of Colo support - NSE), vide email dated July 23, 2015, *inter alia*, stated that there was no reason to change existing service providers and subsequently, on July 29, 2015, rejected the request for empanelment of Microscan citing no feasibility to lay extra cables in NSE ducts and also for the fact that Microscan lacked requisite DoT licenses.

21.7 In view of the above stated refusals to some Brokers' request to avail P2P connectivity through Sampark or other service provider, it is alleged in the SCN that NSE failed in ensuring equal and fair access to all its stock brokers and gave preferential treatment to Sampark and the two brokers i.e. W2W and GKN.

## 22. Submissions of NSE

NSE has made the following submissions in response to the above allegations:

22.1 As noted in the 2009 NSE Circular, Colo 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.

22.2 No trading member has a right to insist that Colo services including P2P connectivity are provided by a service provider of his choice and NSE would necessarily have the discretion to determine whether such a request is reasonable and practical. NSE'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.

22.3 The P2P connectivity availed by W2W and GKN from Sampark, terminated directly in their respective racks in NSE Colo, which are part of the trading member's infrastructure and not within the purview of NSE, as they are not exchange provided infrastructure.

22.4 When Millennium and Mansukh applied for P2P connectivity from Sampark in their own racks, NSE found that there was no duct space to run separate cables for each member. Instead of outrightly denying P2P connectivity to Millennium and Mansukh, NSE explored permitting Sampark to deploy an MUX in the MMR so that it could provide services to multiple stock brokers through a single cable. This was ultimately not possible due to deficiencies in Sampark's license.

22.5 Millennium and Mansukh, subsequently, availed connectivity from Reliance on August 22, 2015 and October 9, 2015 respectively. Hence, it is not the case these stock brokers were denied the P2P connectivity per-se.

22.6 In accordance with NSE's policy at the relevant time, whenever a request for installation of infrastructure in NSE's MMR was received from a service provider, NSE, 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. 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.

22.7 That SEBI has not issued any directive that service providers, providing infrastructure support services, are ought to be licensed.

22.8 NSE took a voluntary initiative to ensure that the entities rendering services are regulated by the relevant sectoral regulator.

22.9 In cases of both W2W and GKN, as they had requested for connections from Sampark terminating at MUX's located in their own racks, NSE followed a uniform approach and did not verify the license of Sampark, as the lines were for the sole use of the respective stock brokers, and did not relate to exchange infrastructure.

- 22.10 In order to accommodate pending requests for P2P connectivity from Sampark, NSE had explored permitting Sampark to deploy an MUX in the MMR. Sampark commenced installing the MUX in the Noticee's MMR between July 17, 2015 and July 19, 2015.
- 22.11 Sampark began transitioning its existing clients to the common MUX installed in the MMR. W2W therefore was provided connectivity through the MUX installed in the MMR on July 18, 2015.
- 22.12 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 customers and it could provide infrastructure support services only to other telecom service providers.
- 22.13 No member other than W2W was connected to Sampark's MUX installed in the Noticee's MMR.
- 22.14 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 NSE and this cannot amount to either unfair or discriminatory treatment.
- 22.15 On the one hand, the 2018 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.
- 22.16 When NSE discovered Sampark did not have the requisite licenses, it made a bona-fide choice not to disconnect services:
- 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 fiber and qualified to lay fiber 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.

### **23. Consideration and Observations**

23.1 The explanations of NSE are considered but found to be devoid of merit. At the outset, I find that no documentary evidence produced before me to suggest that NSE had any documented policy as far as verification of eligibility of prospective service providers is concerned. So it would be erroneous on their part to claim that they had a stated policy to verify the license and eligibility of the service provider only when the service provider would seek approval to install its infrastructure in the MMR of Noticee.

23.2 On the one hand NSE is claiming 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, while at the same time asserting that NSE would have the discretion to determine whether someone's request for P2P connectivity is reasonable. It is fact on record that from the inception of its Colo facility, NSE has issued its

Circular dated August 31, 2009, which prescribed various terms and conditions for compliance by the brokers whoever desired to have connectivity to the NSE Colo. The Circular also provided a proforma application form for the brokers to fill in necessary particulars while applying for access to Colo facility. The said circular also allowed the stock brokers to avail lease line connectivity from the amongst the four empanelled telecom service providers.

23.3 It is also seen that NSE has prescribed Colo guidelines to guide the desirous stock brokers for compliance with various requisitions for the purpose of availing Colo facility. Therefore, it will be erroneous to say that NSE had a system of segregated policy with respect to its Colo facility, by which it had granted full freedom to the stock brokers in choosing the service providers and establishing connectivity to the exchange Colo system so far as the connectivity terminated at the broker's racks and it was only when the service provider wanted to install its infrastructure (MUX) in the MMR of Colo facility that NSE had a policy of checking the eligibility and other factors with respect to the service provider. Therefore, I find that rather than addressing the issue of preferential treatment given to some stock brokers, NSE has made contradictory submissions. If NSE really did not have any say 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 becomes also pertinent to note that the other two stock brokers of NSE 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- 23, 2015, however, the facility to W2W and GKN were continued and Sampark was allowed to continue to provide services to W2W and GKN.

23.4 I note that Noticee no. 1 has relied upon certain judgments contending that its obligation is to treat all persons in an equitable manner and not to treat

unequals as equals and that the word 'equitable' implies 'fairness', and not 'equal'. According to Noticee no. 1, the principle of equality cannot be adopted to apply mathematical equality. I do not defer with the above contentions of the Noticee no. 1, however, given the facts and evidences available in record, NSE has to justify how the differential treatment rendered to some of its brokers in the matter of P2P connectivity, as pointed out in the SCN, confirm to the above judicial principle laid down in the judgments referred to and relied upon by it.

23.5 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.

23.6 NSE has not explained as to why stock brokers had to take NOC from it before engaging a service provider for installing connectivity directly to their Colo racks, if it was their policy not to interfere in the matter of stock broker's trading infrastructure. 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 datacenter would be available only with prior permission from NSE.

23.7 From the chronological events narrated at para 14 **Error! Reference source not found.** above and further highlighted at para 21.2 and 21.5 of this order, it is also noted 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 them since June 23, 2015 and was not being considered on some ground or other. 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 stock broker 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.

23.8 Thus, the above sequence of facts suggest 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.

23.9 It is not being advocated here that Noticee no. 1 should have allowed an unauthorized service provider to provide connectivity to any stock broker at all but having already entertained Sampark to provide connectivity to two (2) specific brokers and continuing them to avail the services of Sampark even after Sampark was found to be lacking the requisite license, it was certainly

unfair on the part of NSE to deny the same connection to Millennium and also to Mansukh more so when Millennium has complained that it was losing business because of other brokers who were enjoying low latency due to Sampark connectivity.

23.10 Noticee no. 1 has 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. By implication NSE seeks to express that it was their own Circular voluntarily issued and the violation of it should not call for any regulatory action. I find that this is an erroneous assumption on the part of Noticee no. 1. Noticee no. 1 is a stock exchange which has been given recognition by SEBI perform the statutory functions of a stock exchange, i.e. to assist, regulate or control the business of buying, selling or dealing in securities market. It is a frontline regulator and all its bye laws, rules and circulars have the effect and enforceability of that of a regulator. Therefore, it is not open to Noticee no. 1 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 securities market cannot be run on the whims and fancies of a frontline regulator who has been conferred with the statutory responsibility to control and regulate the market. In case the August 31, 2009 Circular of Noticee no. 1 was issued in the interest of securities market, so was to ensure that only the licensed service providers can provide connectivity to the Colo facility, it is the regulatory duty of Noticee no. 1 to safeguard the instructions and not allow any broker to violate the same. Moreover, when there is a specific sectoral law mandating certain things, I find there is no need for SEBI to issue any directive in this regard.

23.11 The Noticee no. 1 has pointed out that although BSE had refused to empanel Sampark, W2W and GKN managed to take Sampark connectivity into the MMR of BSE Colo centre managed by Netmagic and yet no action was taken against BSE except for issuing administrative warning. Hence, the action proposed against the Noticee 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 the Noticee (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 centre as a matter of their own regulatory reasons, BSE did not have any such policy. As discussed above, 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 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 Noticee'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.

23.12 The Noticee no. 1 contends that the SCN is self-contradictory. According to it, 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 Noticee has refused to permit Mansukh and Millennium to avail service from Sampark. In my view, the SCN is not self-contradictory and by pointing out the discriminatory approach exhibited by Noticee by favoring two stock brokers and disfavoring others, the SCN only emphasizes on the fact that the Noticee 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.

23.13 Keeping in view the foregoing discussions and observations, I am of the view that NSE has adopted a preferential treatment while granting permission for P2P connectivity from its Colo facility to its brokers during the relevant period of time.

**24. Allegation 3: Installation of MUX in MMR of NSE without verification of licenses**

24.1 As noted above, W2W and GKN were permitted to install MUX directly in their rack at Noticee no. 1 from which Sampark connectivity was provided to these two stock brokers whereas same facilities were denied to other stock brokers. Further, permission was given to W2W and GKN by Noticee no. 1 without verifying the eligibility of the license of Sampark, for providing the said services.

24.2 It is seen that after permitting Sampark to provide P2P connectivity W2W and GKN, in which Sampark terminated the connectivity directly in the Colo racks of the two Brokers, Mr. Nagendra (Head of Membership Department - NSE) and Mr. Deviprasad Singh (Head of Colo support - NSE) had a meeting with Sampark employees on June 25, 2015 after which Sampark was allowed to lay fibre and install MUX in NSE Colo MMR during the period July 17, 2015 to July 19, 2015. In the email dated July 20, 2015 sent by Mr. Prashanth D'souza (CEO of Sampark) to Noticee no. 1 (Mr. Deviprasad Singh, Avadhut and Mr. Nagendra Kumar), he mentioned "*We, Sampark group of companies would like to thank you for giving us an opportunity to work with NSE as your connectivity partner. We have successfully terminated our OFC at all 3 racks along with MUX and Fibre Switches. All three MUXs have independent fibre inputs.*" Mr. Prashanth D'souza (CEO of Sampark), vide email dated July 21, 2015 wrote to Mr. Nagendra Kumar (Head of Membership Department - NSE) stating "*W2W was shifted on MUX on Saturday (i.e. July 18, 2015)*".

24.3 It is noted from the email dated July 22, 2015 forwarded by Mr. Deviprasad Singh (Head of Colo support - NSE) to Mr. Prashanth D'souza (CEO of Sampark) that after installation of MUX, NSE requested Sampark for requisite licenses for providing P2P connectivity which were shared by Sampark through email dated July 27, 2015.

24.4 Mr. Deviprasad Singh (Head of Colo support - NSE) in his statement dated March 01, 2018, further stated that "*Sampark has represented NSE*

during its meeting dated 25th June 2015 that they had all the required licenses provided by DoT. Also, in subsequent follow ups on con calls on 10th July 2015, Sampark represented that they have licenses and would submit the same in due course. Sampark was allowed to install their infrastructure and subsequently email was sent to Sampark on 22nd July 2015 seeking his license.” It is noted from the statements of Mr. Nagendra Kumar (Head of Membership Department - NSE) dated June 29, 2017 and Mr. Deviprasad Singh (Head of Colo support - NSE) dated July 14, 2017 that Noticee no. 1 had a practice of not verifying the license of a service provider in case the connection is to the rack of a stock broker.

24.5 Mr. Deviprasad Singh (Head of Colo support - NSE) has further stated in his statement dated March 01, 2018 that *“When a service provider applies to put his infrastructure in NSE Meet Me Room. The role performed by my team is to check the feasibility in terms of power, space and duct availability. Post feasibility, the DoT are validated. It is also possible that during Project Phase the service provider is allowed to install its infrastructure and parallelly licenses are validated. For Colo purpose service providers leased line licenses issued by DoT was required and verified. This procedure was practiced during the period 2010 to 2016 and formalized in 2017.”*

24.6 Mr. Nagendra Kumar (Head of Membership Department - NSE) in his statement dated March 1, 2018, regarding his role in Sampark installing MUX in MMR of NSE, stated that *“I was part of the discussions that NSE Colo team had with Sampark on 25th June and 10th July. In both the instances, I had set the calendar entry. The discussions were technical in nature and was on Sampark wanting to become a service provider. I was facilitating the discussion and had no other role beyond this.....I came to know Sampark licenses were pending for submission only on 22nd July, 2015 post Millennium’s escalation on NSE Colo not processing their work permit.”*

24.7 From the aforesaid depositions and exchange of emails, it is evident that Noticee no. 1 did not conduct any due diligence and did not verify the ISP license of Sampark, from the very beginning in April, 2015 when permission to W2W & GKN was granted, till July 17, 2015 when the MUX of Sampark was

being installed at MMR of NSE Colo. It is also clear that W2W and GKN, who were the first to apply for P2P connectivity to NSE Colo through Sampark, did not verify the license and eligibility of Sampark before seeking its services. It is, therefore, alleged that Noticee no. 1 failed to carry out the necessary due diligence and allowed an ineligible entity to install MUX in its MMR which is detrimental to the interest of securities market. It is also alleged that W2W and GKN have also failed to exercise due diligence and care in checking the eligibility of Sampark for providing these services.

**25. Submissions of NSE**

In its submissions, NSE has submitted the following with regard to this allegation:

25.1 In order to obviate the need for service providers to lay new cables for each stock broker, the Noticee permitted telecom service providers to deploy the MUX as part of the infrastructure in the Noticee's Meet Me Room ("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 stock brokers, without multiple cables having to be laid to connect to the outside world..

25.2 The Noticee's actions in dealing with requests for P2P connectivity were bona-fide, fair and reasonable.

25.3 The Noticee's policy of distinguishing between service providers providing: (a) P2P connectivity that terminates in the stock broker's rack and (b) P2P connectivity to multiple stock brokers by hosting a common infrastructure (MUX) in the Noticee's MMR, was therefore, fair, reasonable and logical.

25.4 In the cases of both W2W and GKN, as the stock brokers had requested for connections from Sampark terminating at MUX's located in their own racks, the Noticee followed a uniform approach and did not verify the license of Sampark (as the lines were for the sole use of the respective stock brokers, and did not relate to exchange infrastructure).

**26. Consideration and Observations**

26.1 The explanations offered by Noticee no. 1 do not give any rationale or justification for ignoring the crucial aspect with regard to granting permission to brokers availing P2P connectivity directly from their rack in NSE Colo. There is no doubt that Noticee no. 1 did not take care to verify the eligibility of Sampark when W2W and GKN introduced Sampark to Noticee no. 1 for the purpose of providing P2P connectivity from their Colo racks. It was well known to everyone that Sampark was not one of those 4 authorised Telecom Service Providers mentioned in the August 2009 circular of NSE. Being a new player in the industry offering dark fiber connectivity to the end customer for establishing P2P connectivity, it was the primary duty of Noticee no. 1 to raise the first question to Sampark with regard to their ISP license before permitting them access to their Colo facility. However, for the reasons best known to Noticee no. 1 no questions was asked, no effort to verify their ISP license was made and no inquiry with regard to their antecedent was even made when on June 25, 2015, NSE officials met Sampark in a meeting and gave it in-principle permission to install its MUX in the NSE MMR.

26.2 Noticee no. 1, as per its own policy, was supposed to check the license of Sampark before allowing it to install MUX in its MMR. However, from the emails stated earlier, it is observed that Noticee no. 1 allowed Sampark to install MUX in its MMR during the period July 17, 2015 to July 19, 2015. Subsequently, Noticee no. 1 sought license of Sampark on July 22, 2015 for verification. Sampark shared its license on July 27, 2015 with Noticee no. 1. On July 28, 2015, Noticee no. 1 finally realized that Sampark did not have requisite license applicable for a TSP to carry out the activities related to P2P connectivity. Based on the above, it is observed that Noticee no. 1 failed to carry out necessary due diligence and allowed an ineligible entity to install MUX in its MMR in violation of its own policies. From the submissions made by Noticee no. 1, it is also observed that subsequent to the above, Noticee no. 1 allowed W2W to connect through the MUX installed by Sampark in the MMR of Noticee no. 1. Therefore, Noticee no. 1 not only allowed an ineligible service

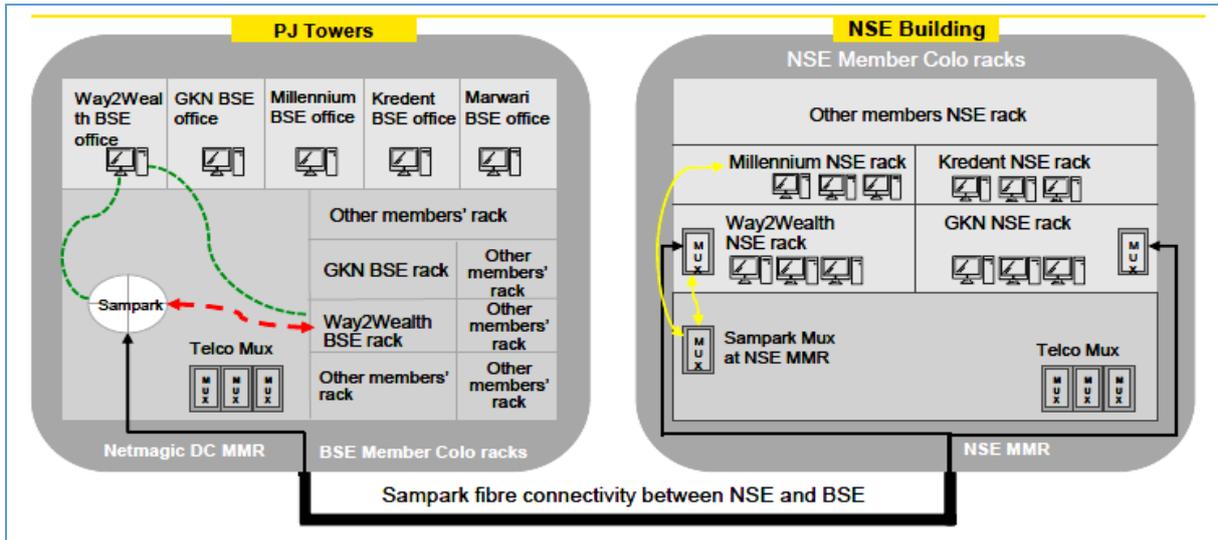
provider to install MUX in its MMR, but also allowed a stock broker to connect through such MUX.

26.3 Such inaction on the part of Noticee no. 1 as well as on the part of W2W and GKN to ignore their most primary duty not only speaks of gross negligence but also demonstrates mala fide intention to defraud the policy about engagement of empanelled vendors which Noticee no. 1 itself had set out in its own circular.

#### **27. Allegation 4: Latency Advantage to W2W**

27.1 It is observed that W2W, while applying to Noticee no. 1, 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 in Noticee no. 1 to its office at 213, PJ tower, BSE Building. This is because Noticee no. 1, 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 Noticee no. 1'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.

27.2 Further, it was observed during investigation that when Sampark had installed its MUX at MMR of NSE, 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 (in particular NSE's end) illustrate the connectivity:



27.3 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 MMR of NSE. It is, therefore, alleged that Noticee no. 1 failed in conducting due diligence and providing level playing field to all its stock brokers. The same is evident from the statement of NSE staff (Mr. Deviprasad Singh, Mr. Avadhut Gharat and Mr. Nilesh) dated March 26, 2018 wherein they admitted that they were not aware about such connectivity.

27.4 It is further noted from the email of Mr. Sudipta (Manager IT, Alphagrep, subsidiary of W2W) dated April 01, 2016 addressed to Mr. Mohit Mutreja (Director, AlphaGrep) and Mr. Prashant Mittal (Director, AlphaGrep) with copy to 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....”***

27.5 Further, Sudipta (Manager IT, Alphagrep, subsidiary of W2W) vide an email dated May 09, 2018, *inter alia*, has stated that W2W had no

knowledge/details about the path of the fibre/circuit within the Noticee no. 1's premises before it enters their rack and that any details and decision regarding the path of the fiber inside Noticee no. 1's premises but outside their rack was out of their purview and control.

27.6 It is alleged 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 Noticee no. 1 had issued the work permit through Sampark and the cabling was done through MMR of NSE and therefore, NSE failed in its responsibility to monitor the cabling and ensure fair and equitable access to all its stock brokers. Further, Noticee no. 1 also failed to carry out the necessary due diligence, oversight and periodical supervision. It is alleged that such arrangements were made in collusion and connivance between Sampark, NSE and W2W.

27.7 During the course of investigation, it was also noted that BSE had outsourced its Colo operation and maintenance to Netmagic Solutions Private Limited (hereinafter referred to as "Netmagic"). It is noted that, in respect of W2W connectivity, Mr. Madan Kumar Shinde (Netmagic personnel) in his statement dated February 6, 2018, stated that they had found only W2W cross connect to Sampark in the period 2014-2016 and 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.

27.8 In this respect, it is further observed that in the email dated July 7, 2015 from Ms. Rima Srivastava (CTO, W2W) to Mr. Shashibhushan (CEO – W2W) and 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.”*

27.9 In this connection, 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 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 Ms. Rima Srivastav (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”**.

27.10 It was also noted 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 Srivastav (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.”**

27.11 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. Noticee no. 1 also, for reasons known to them, did not conduct site inspection and failed to verify the same.

27.12 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.

27.13 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"*.

27.14 From a comprehensive reading of the above statements and correspondences, it is alleged that Noticee no. 1 was in collusion with W2W and Sampark and therefore, waived its policy of site inspection and proper due diligence and facilitated W2W and Sampark in establishing connectivity in such a manner which provided unfair latency advantage to W2W and discriminated the other stock brokers. Noticee no. 1, therefore, failed to provide fair, equal and transparent access to all its stock brokers in providing Colo facility. It is also alleged that W2W had deliberately misled Noticee no. 1 that P2P connectivity would be terminating at their office at BSE whereas the same was terminated at their rack at BSE. Thus W2W failed to maintain high standard of fairness and to act with due skill and care and rather it has acted in a fraudulent manner in collusion with Noticee no. 1.

## 28. **Submissions of NSE**

NSE has responded to the aforesaid allegations with the following arguments:

28.1 There are no clear positive exculpatory findings in relation to the main charges in the SCNs, including in relation to allegations of an unfair latency

advantage purportedly conferred on W2W or allegedly increased turnovers of W2W, as a result of availing of Sampark's P2P connectivity

- 28.2 Charge of unfair latency advantage is not supported by any evidence.
- 28.3 W2W and GKN did not receive any advantage as a result of Sampark's P2P connectivity.
- 28.4 A direct connectivity between a stock broker's server at NSE Colo and its server in BSE Colo, does not confer any advantage
- 28.5 In fact, SEBI vide its circular dated December 1, 2016 and the Noticee 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.
- 28.6 Relevant official of the Noticee 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.
- 28.7 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 fiber cable joint through which the fiber optic cable passed before reaching the MUX in the MMR. W2W was given connectivity through the MUX placed in the MMR (as any other stock broker would eventually have been).

## 29. **Consideration and Observations**

- 29.1 I don't find any force in the arguments advanced by NSE in response to the allegations about advantage of latency conferred on W2W. The allegations made above with the support of diagrammatic representation about the P2P connectivity availed by W2W, as made available to SEBI during investigation, 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 fiber. 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 fiber 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 email of Mr. Sudipta Rout cannot be relied upon as a hard 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.

29.2 Similarly, on the other end of P2P connectivity terminating at BSE Colo, it is admitted by Ms. Rima Srivastava (CTO of W2W) in her email dated July 7, 2015, to her CEO, Mr. Shashibhsushan wherein she has stated 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. The aforementioned email of Ms. Rima Srivastava starts with an expression 'as you

are aware' which indicates that all the officials of W2W were already aware that their connectivity directly terminated at their BSE Colo rack instead of terminating at their office which further indicates that such type of laying of cable was part of a pre planned arrangement as no service provider will lay cable in a manner deviating from the policy of the exchange without being in collusion with or without being instructed by the brokers (in this case W2W) or even the exchange who have allowed them to install the connectivity for the added latency advantage for the broker. 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. It is further supported by W2W's own submission dated February 01, 2019 wherein it is admitted:

- a) At para 113 that *"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) At para 125 that *"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"*

29.3 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 directed that *"please ensure that we get the cable loop completed (to our office and from office to Colo)..... We shall convert the space as functional branch. Gentil to post few people to display 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 Noticee no. 1 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.

29.4 In this regard, I noticed from the submissions of W2W dated February 1, 2019, that Sampark had promised them that through their dark fiber 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.

29.5 The Noticee has also taken a view that direct connectivity between a stock broker's server at NSE Colo and its server at BSE Colo does not confer any advantage. If that is the case, then what is the reason for NSE at that relevant point of time to take stand that it will not allow its stock brokers to have direct connectivity with BSE Colo. In fact it is because of SEBI's circular of December 01, 2016 that the exchange had to allow direct connectivity between racks of same stock broker in Colo facilities at NSE and BSE.

29.6 The Noticee has also stated that W2W and Sampark had provided false undertaking to the Noticee with regard to the termination of P2P connectivity and at the same time it also states that nothing on record to positively demonstrate that W2W P2P connectivity indeed terminated at W2W rack in BSE Colo. In my view, the Noticee has to first put a question to itself as to why it did not conduct physical inspection of the office premises and connectivity at the BSE end before holding the stock broker responsible for misleading it.

29.7 In my view, on the face of such incontrovertible evidence as highlighted above, it can be concluded that the P2P connectivity established by Sampark provided preferential latency advantage to W2W at the cost of other stock brokers.

**30. Allegation 5: Continuation of Sampark Connectivity by W2W and GKN**

30.1 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. In this respect, Mr. Deviprasad Singh (Head of Colo support - NSE) in his statement dated March 01, 2018, stated that *"If a service provider installs its infrastructure in its member's rack directly and not in NSE meet me room, then NSE does not enquire into eligibility or the license of the service provider employed by member to service their respective connectivity related requirement. NSE is not privy to such inter se arrangements between service providers and trading members."*

30.2 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 their existing P2P connectivity of Sampark was shifted to Reliance/new connectivity was taken.

30.3 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.

30.4 During the course of investigation, it is observed that even after discovering that Sampark did not have the required licenses, 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.”*

30.5 It was noted from the above email of 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. In this respect, Mr. Deviprasad Singh (Head of Colo support - NSE) in his statement dated March 1, 2018 stated, *“I did inform business team that Sampark was not authorised leased line service provider. **However we did not take any decision to discontinue Sampark services. It would have been inappropriate for exchange to disrupt the services of member without providing them alternative.** Hence NSE business team advised W2W to shift to alternate service provider from Sampark’s infrastructure”*.

30.6 In this respect, Mr. Nagendra Kumar (Head of Membership Department - NSE), in his statement dated March 01, 2018, stated that *“**The decision not to disconnect the existing connection of W2W & GKN were discussed and approved by Mr. Ravi Varanasi.** The idea and intent was not to disturb any of the existing services to the member whereas Ravi Varanasi in his statement dated April 19, 2018 with respect to services being continued for W2W and GKN mentioned that *“General principle is to avoid disruption to members trading activity. I would have advised them accordingly.”**

30.7 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.

30.8 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.

30.9 It is alleged that there appears to be a fraudulent arrangement 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, NSE allowed W2W and GKN to continue with the unauthorized activity of Sampark connectivity.

### 31. **Submissions of NSE**

31.1 In its replies, NSE has advanced the following arguments to support its decisions not to disconnect Sampark connectivity even after discovering that Sampark did not possess the necessary licenses:

- a) The P2P connectivity was part of the broker's infrastructure and was not in violation of the Noticee's policy at that time.
- b) Since Sampark's common infrastructure (MUX) was not being shared by multiple stock brokers, Noticee did not believe that it should disconnect the P2P connectivity since the brokers were availing their services from May 2015.
- c) The violation of Sampark of its license is a matter between Sampark and DoT.
- d) Noticee asked W2W to shift its connectivity to any other authorized service provider as Sampark had misled it on the nature of their licenses. However, Noticee did not ask GKN to shift its P2P connectivity since the same was

directly terminated at GKN's rack at NSE Colo and was not in violation of Noticee's policy.

- e) A quasi regulator such as exchange has to take decision considering its impact on the constituents and to ensure that it does not prejudice any person. In the absence of any evidence of collusion between Sampark, GKN and W2W, the Noticee decided not to disconnect the existing Sampark connectivity, so that W2W and GKN are not inconvenienced.

### **32. Consideration and Observations**

32.1 The main thrust of the arguments and explanation offered by the Noticee is that it did not disconnect the Sampark P2P connectivity for W2W and GKN to avoid any disruption to these stock brokers and a decision to this effect was taken by the Business development team at NSE headed by Mr. Ravi Varanasi, which has been affirmed by Shri Deviprasad Singh (Head of Colo support) and Shri Nagendra Kumar (Head of membership department) in their respective statements recorded during the investigation. The exchange has also taken the plea that as a quasi regulator it had to take decision so that it does not prejudice any person. In my view, the arguments of NSE are fraught with contradictions. On the one hand, NSE rightly assumes the role of a quasi regulator so as to ensure that its action does not prejudice any person but in its action what it has done was to perpetuate the preferential treatment already availed by W2W and GKN and in protecting the vested interests of these 2 stock brokers in availing latency advantage uninterruptedly.

32.2 I note that both W2W and GKN are old customers of NSE's Colo facility and have been accessing the Colo facility since 2010 onwards. Both these stock brokers were well aware of the NSE circular and instructions of 2009 and the fact that they were ignorant regarding the amended instruction of NSE disseminated through website publication in 2013, it is obvious that they had taken the dark fiber services of Sampark circumventing the Colo policy of NSE. As discussed earlier, NSE had refused Shaastra from obtaining the services of Microscan on the ground that they did not possess the DoT license. Similarly, Millennium and Mansukh were denied Sampark connectivity on a

discriminatory basis and were given connectivity only when Sampark sold its infrastructure to Reliance. Thus having taken regulatory decisions in refusing connectivity to other brokers at its own discretion from time to time, it is not understood as to why NSE could not have taken action by not only disconnecting Sampark connectivity but also ought to have taken penal measures against Sampark and the two stock brokers which had apparently misled it to grant permission to them to avail the dark fiber connectivity from Sampark.

32.3 In their submission before me, GKN had claimed that they were 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. In that case it is not understood as to why, after Sampark being discovered as an unauthorized vendor, NSE did not disconnect GKN connectivity and has defended its action under the plea that since GKN connectivity was terminating at their Colo rack, they had a policy not to interfere in it. Similarly, W2W was also availing leased line connectivity from Reliance prior to engaging Sampark. What disruption would it have caused to them had they been asked to return to Reliance connectivity? It is not the case that the trading brokers at NSE were without any alternative service providers.

32.4 The submission made NSE that it would have caused disruption to the stock brokers is inconceivable given the fact that both W2W and GKN had alternative connections. As a quasi regulator, it would have been a natural step for NSE to ask Sampark to immediately disconnect the connectivity provided to W2W and GKN. However, on the contrary NSE allowed the two stock brokers to continue to enjoy the latency advantage provided by Sampark unabatedly while at the same time keeping the request of Millennium pending disregarding their repeated reminders, grievance and disappointment. On the one hand NSE claims that Sampark has misled them and at the same time it rewards Sampark by allowing it to continue providing their services to W2W & GKN till such time they find a solution of their problem in handing their infrastructure over to Reliance, 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.

32.5 It was also observed that it was illegal on the part of Sampark to serve end customer as, it did not have the requisite DoT license. Even after NSE found out about the same, NSE allowed Sampark to continue with such illegal activity. This in my view is not worthy of an entity, which is performing the role of a quasi- regulator. Therefore, I am of the view that NSE ought to have taken immediate regulatory action against Sampark and the stock brokers for misleading it about the bonafide of Sampark, instead of helping them in achieving their goal of preferential enjoyment of latency advantage. Therefore, NSE's action of allowing Sampark connectivity to continue was unjustified and gives an impression that the officials of NSE had favorable disposition towards Sampark, W2W and GKN in contrast to their dealings with other stock brokers.

**33. Allegation 6: Site Inspection Conducted for Millennium, GRD and SMC and not for W2W and GKN**

33.1 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.

33.2 However, it was noted that the same procedure was not followed while permitting the said services for GKN and W2W and no such site inspection was conducted for these two brokers. 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 have stated *“based on their knowledge NSE did not carry out any physical inspection of their office in BSE”*. Further, GKN (Rahul Gupta) in its statement dated March 9, 2018 has stated *“We had taken BSE office in July 2014, that time we had applied TATA point to point connectivity. No one from NSE had physically inspected. We had submitted all documents regarding the connectivity as per NSE norms. There was no physical inspection done by NSE anytime.”*

33.3 It is noted from the statement of Mr. Nagendra Kumar (Head of Membership Department - NSE) dated March 01, 2018 and NSE email dated April 13, 2018 and May 02, 2018 that NSE had no consistent approach in making site visit and for an ulterior reason NSE in collusion with W2W and GKN had not done the site inspection of their offices and further facilitated the service of P2P connectivity by advising them to shift the service subsequently from Sampark to Reliance.

33.4 It was, therefore, alleged that by conducting site inspection for other brokers except GKN and W2W, NSE had adopted discriminatory approach towards stock brokers and provided preferential treatment to selected brokers (GKN and W2W) and thereby NSE failed to provide fair and transparent access to all its stock brokers in equal manner. It is further alleged that NSE was acting in collusion with W2W and GKN under a fraudulent scheme of arrangement for providing undue benefit to selected brokers (W2W and GKN) at the cost of other stock brokers.

#### 34. **Submissions of NSE**

34.1 The SCN alleges that NSE conducted site visits for some stock brokers but not for others.

34.2 NSE'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 stock brokers between NSE Colo and a stock broker'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 stock broker's office at BSE.

34.3 The purpose of the site-visits was to ensure: (i) the stock broker had an actual office space and (ii) the P2P connectivity was not terminating at the stock broker's rack at BSE Colo. However, a site inspection was not done when the stock broker had an existing P2P Connection at the same location, or if the stock broker sought termination at the BSE Edge router.

34.4 It may be noted that in any event, a direct connectivity between a stock broker'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 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.

34.5 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. Post approval of the said connection – it was only belatedly (post approval), by way of an email dated April 22, 2015, GKN intimated the Noticee that it would be terminating the connection in its office within BSE.

34.6 NSE's officials inspected the offices of GRD Securities and SMC Global Securities at BSE as they were availing of P2P connectivity from NSE Colo to their offices at BSE for the first time.

34.7 As regards Millennium, the office address provided by it was identical to the address provided by GRD. This led to doubts about whether two stock brokers who were asking for two separate P2P Connections, had the same office. Consequently, officials of the Noticee decided to undertake a site-inspection. 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."*

34.8 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.

34.9 This policy on site-inspections was consistently followed by the Noticee and there was no preferential treatment. The SCNs do not demonstrate how any norms of fair and equitable access of the stock brokers were adversely affected by site-visits.

34.10 It is incorrect to suggest that the act of undertaking a site inspection by a recognized stock exchange in some cases but not in others, per-se amounts to a violation of a stock brokers' right to fair and transparent access. Such an approach would have larger ramifications on the ability of the Noticee or indeed any stock exchange to regulate the conduct of stock brokers. Indeed, it would have a chilling effect on the monitoring and surveillance functions of an exchange, since the exchange would hesitate to undertake any checks or steps which had not been taken in respect of all other stock brokers' constituents, for fear that the same would be deemed to be discriminatory.

34.11 As any regulator would no doubt be aware of 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.

34.12 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 non-discriminatory access cannot mean that a stock broker can claim immunity from site-visits because a fellow stock broker's office was not the subject of one. Each case would depend on facts.

34.13 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.

34.14 It is unclear as to how undertaking site-visits can be detrimental to stock brokers or amount to granting preferential treatment to those stock brokers whose officers were not subject to site-visits. These allegations lack any foundation, are vague, and therefore have to be dropped.

### 35. **Consideration and Observations**

35.1 NSE, in its own submission has admitted to the fact 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. 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.

35.2 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. From the facts, it is clear that the above policy of site inspection was not followed for W2W and GKN.

35.3 There is no doubt that for a regulator, the degree of scrutiny and checks required may vary from case to case, depending on the specific facts and circumstances. I also agree with the submission of NSE that a regulator should have discretion while performing certain checks. It is, however, incumbent on a regulator to apply the same standards of checks in cases with similar facts and circumstances. Otherwise, a regulator would be accused of bias and unfair and inequitable in its treatment of the trading members.

35.4 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.

35.5 It is clear from the submissions made by NSE that the aforesaid criteria for undertaking site visits was not applied for W2W and GKN. NSE has also not demonstrated any extenuating reasons for not following its own policy of conducting site visits for W2W and GKN.

35.6 Deviation from its own policy to safeguard its own Colo facility on various pretexts as highlighted above does not auger well for a reputed compliant regulator like NSE, nor does it instill confidence or credibility about the way it conducted itself in managing its Colo facility. The explanation of NSE is not at all impressive and its selective waiver of physical inspection in favor of W2W and GKN lacks justification, transparency and principles of equitable treatment of all market intermediaries.

**36. Allegation 7: Arrangements Facilitated by NSE between Sampark and Reliance**

36.1 During the investigation, it is noted that Sampark had subsequently handed over its infrastructure installed in NSE to Reliance which was formally informed by Reliance to NSE vide email dated August 19, 2015 addressed to Mr. Nagendra Kumar (Head of Membership Department - NSE). It is further

alleged that NSE instead of taking action against Sampark and discontinuing the P2P connectivity services, had facilitated the arrangement between Sampark and Reliance in order to regularize an unauthorised activity of Sampark carried out to benefit selected stock brokers.

36.2 In this respect, it is noted that 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”*.

36.3 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 *“Fiber 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 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.”*

36.4 It is also noted that Mr. Nagendra Kumar (Head of Membership Department - NSE) 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*”.

36.5 The above communications made by Mr. Nagendra Kumar (Head of Membership Department - NSE) was also confirmed by Ms. Rima Srivastava (CTO, W2W), Mr. Mohit Mutreja (Director, AlphaGrep) and Mr. Prashant Mittal (Director, AlphaGrep) 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.

36.6 From the above, it is alleged that NSE employees namely Mr. Nagendra Kumar (Head of Membership Department - NSE) (Noticee No. 6 )and Mr. Deviprasad Singh (Head of Colo support - NSE) (Noticee No. 7) 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.

36.7 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.

### **37. Submissions of NSE**

The responses of NSE to the aforementioned allegations are as under:

37.1 NSE did not recommend Reliance to Sampark, or facilitate their relationship. At best, the Noticee gave Sampark a list of possible options that it may consider to ensure that it operated in compliance with law.

37.2 Sampark has collaborated with Reliance in the past as evident from an agreement Sampark had entered with Reliance on July 1, 2014. Further, Sampark's sales representative Netaji was a former employee of Reliance. It is Sampark that volunteered to work with Reliance and since it was an existing vendor of Reliance.

37.3 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. Sampark deployed fibre optic cables whereas other providers deployed copper cables.

37.4 Reliance upgraded its infrastructure to fibre cables between July 17-19, 2015 at NSE's MMR when Sampark was also in the process of installing its MUX in the MMR of NSE. It is in this context Deviprasad Singh has stated in his email dated July 17, 2015 that "*Sampark and Reliance are starting work today*" 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.

37.5 Given that Reliance was the only other service provider using fiber optic cables, it was suggested to some stock brokers which were seeking connections from Sampark that they 'change' their fibre vendor from Sampark to Reliance (even prior to the arrangement between Sampark and Reliance being formalised and communicated).

37.6 The 2018 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.

37.7 Trying to draw a parallel to the transition allowed by NSE to the stock brokers to move from Sampark to Reliance, NSE has cited SEBI order dated

March 22, 2016 in the matter of Sharepro Services (I) Private Limited, wherein SEBI advised companies who were clients of Sharepro to switch their related to a registrar to an issue either in house or to another registrar, after finding that Sharepro was no longer the fit and proper person to render services as a Registrar and Share Transfer Agent.

37.8 NSE was only suggesting alternatives to Sampark who could provide services in place of Sampark and not in collaboration with Sampark.

37.9 Since, Sampark was an IP 1 service provider, it was permitted to establish and maintain assets such as dark fibre and lease them to licensed telecom service providers which they have given to Reliance and there is nothing unusual about Noticee's action.

### 38. **Consideration and Observations**

38.1 From the evidence on record, it is observed that:

- a) Sampark had prior relationship with Reliance and one of its employees had worked with Reliance.
- b) NSE gave a list of telecommunication companies who were giving services in NSE to Sampark.
- c) 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.

38.2 I 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.

38.3 It is observed that NSE has not refuted the contents of the aforesaid email or the statement of employees of W2W. From a perusal of the abovementioned communications, one can genuinely infer that NSE was actively associated in the process of transition from Sampark to Reliance.

38.4 I am of the view that the reference to SEBI order dated March 22, 2016 has been cited out of context. In the said order, SEBI had, *inter alia*, advised all the companies to shift from Sharepro to other Registrar and Transfer Agent. SEBI did not ask Sharepro to somehow make the illegal activity legal. It is also found to be misplaced for the reason that the direction of SEBI in Sharepro was in the interest of the market, whereas the decision of Noticee to allow W2W and GKN to continue to avail the services of Sampark despite having found that they had existing alternative service providers could not be said to be justified in the interest of the market.

38.5 I find that there is no force in the explanations of the Noticee on this point given the fact that Netaji (former employee of Sampark) in his statement recorded on September 6, 2017, has clearly stated that Mr. Deviprasad Singh (NSE) suggested Sampark to approach Reliance to take over the existing infrastructure as Sampark was already a vendor of Reliance. Thus there is a clarity on the point that when NSE was confronted with the absence of requisite licenses with Sampark, instead of discontinuing their service forthwith, the officials of NSE came to their rescue by suggesting Sampark to approach Reliance. By citing the statement of James that Mr. Deviprasad only gave a list of telecommunication service providers, NSE is giving an impression that Sampark was not aware of the authorized service providers to NSE Colo facility. However, Sampark was already an existing service provider to Reliance and the circular dated August 31, 2009 of NSE about Colo facility was well known to it. Therefore, there was hardly any necessity for anyone to give a list of authorized telecommunication companies to Sampark which was itself an IP1 license holder of DoT and was already in the business of providing infrastructure to telecommunication companies like Reliance who were providing lease line P2P connectivity at NSE Colo facility. Therefore, the explanation of NSE that its official merely handed over a list of

telecommunication companies to Sampark is without any substance and lacks credibility.

38.6 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. As already pointed out earlier from the chronology of sequence of events, it was 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 connectivities 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.

38.7 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 message 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.

38.8 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.

### **39. Allegations of regarding Fair and Equitable Access**

39.1 To sum up the observations, in the forgoing sections of the order, NSE is 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 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 co-location though W2W had undertaken to terminate the P2P link at their BSE office.

39.2 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.

39.3 As pointed out in the beginning of this order, 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”*. With respect to the conduct of NSE stated at para- 39.1(a), 39.1(b), 39.1(c), 39.1(e), 39.2(a) and 39.2(b), NSE is found to have failed to implement the above recommendation of SMAC.

#### **40. Allegations of Collusion and fraud under PFUTP Regulation, 2003**

40.1 The SCN has alleged that the Noticee has violated the provisions of Section 12 A (c) of the SEBI Act, 1992 read with Regulation 3 (d) and 4 (1) of PFUTP Regulations, 2003. Opposing to these allegations, the Noticee states that these allegations are not based on any concrete evidence. According to

the Noticee, they have followed due processes and due diligence for providing P2P connectivity to W2W and GKN. This was consistent with their policy of not enquiring into the license of service provider when the connectivity was directly taken to the Colo rack of the trading member. The investigation report acknowledges that W2W has misled the Noticee and has given false declaration and none of the expert's reports namely Deloitte and EY have found any evidence of any collusion. The allegations in the SCN are based on conjecture, surmise and suspicion. Stating that allegation of fraud and failure to exercise due diligence cannot co-exist, the Noticee states that a higher standard of proof for preponderance of probability is necessary to allege fraud or collusion on part of the Noticee.

40.2 Before I deal with the contentions of the Noticee, it would be relevant to visit the definition of "fraud as defined under PFUTP Regulations, 2003" and then advert to the issue as to whether the conduct of Noticee falls within the ambit of fraud. The provisions of Regulation 3 (d) and Regulation 4 (1) are also quoted hereunder after the definition of fraud:

*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;

The provision of Regulation 3 (d) and Regulation 4 (1) of PFUTP Regulations, 2003 are reproduced below:

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

No person shall directly or indirectly—

(a)....

(b).....

(c)....

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

#### 4. Prohibition of manipulative, fraudulent and unfair trade practices

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

40.3 It is observed that the definition of fraud under PFUTP Regulations, 2003 imports a very wide meaning and implication to the term fraud. In the case involving **SEBI & Ors. vs Kanaiyalal Baldevbhai Patel and Ors.**, 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 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 deceive 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.

40.4 With regard to the meaning and legislative intent behind the phrase unfair trade practices, the finding of the Hon'ble Supreme Court of India, in the matter of **SEBI Vs Rakhi Trading Private Ltd 2018, (SCC online Sc 101)** is relevant wherein it was observed 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 mark. 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”.*

40.5 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 the Noticee falls into the definition of fraud in so far it has lead 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.

40.6 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 was 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 conducts of NSE appropriately fall into the inclusive definition of fraud under Regulation 2 (1) (c) of PFUTP Regulations, 2003.

40.7 As a logical corollary to the aforesaid observation, I am of the opinion that NSE has conducted its business in a manner which involved unfair trade practice and also amounted to commission of 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.

40.8 Under the circumstances, in line with the allegations made in the SCN, I hold NSE (Noticee No. 1) 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 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.

**Mr. Umesh Jain (Noticee No.2)**

**41. Submissions of Noticee**

41.1 The Noticee No.2 has made several submissions, the latest being dated March 19, 2019 apart from making his submission during the personal hearing held on February 25, 2019. The Noticee has furnished a detailed chronological sequence of events in support of his submission that he has had no active role to play in the entire transaction and interactions between NSE and the brokers who have established P2P connectivity with Colo facility of NSE with the service of Sampark.

41.2 The Noticee has stated that he had verbally tendered his resignation on April 7, 2015, followed by formal resignation on April 17, 2015. From April 23, 2015 onwards he stopped taking any decision and started handing over his responsibilities as CTO.

41.3 The handing over formalities were completed on May 15, 2015, after which he went on vacation.

41.4 After his return from vacation on May 28, 2015, he had completely disengaged himself from his job and was relieved from his services on June 30, 2015. Thus, the Noticee had stopped taking any critical decision in the intervening period prior to handing over his responsibilities as CTO. Therefore, during the period July 17-19, 2015, the time when Sampark was allowed to install MUX in the Colo facility of NSE, Noticee No.2 had already left NSE.

41.5 The charges mentioned in the SCN are general, vague and unsupported by facts or evidence.

41.6 Functional reporting of the Colo helpdesk was with the business development team and not with the technology team. Mr. Ravi Varanasi was in charge of business development and operational activities relating to Colo request at the relevant time.

41.7 As per the Noticee, during the relevant period of time, Mr. Deviprasad Singh was serving a dual role, viz. as Head-IT-Operations and also as a Supervisor of the managers of the Colo helpdesk. While for matters relating to Colo facility he reported to Mr. Ravi Varanasi (the head of Business Development team), for functions other than Colo facility he reported to the Noticee No. 2.

41.8 The definition of “fraud” under SEBI Regulations deals with dealing in securities or inducing others to deal in securities and not general charges of fraud. There are no charges that the Noticee has dealt in securities or induced anyone to deal in securities. Noticee No. 2 has cited various case laws to support his argument that the charge of fraud against him lacks detailed particulars hence, not maintainable.

41.9 The Noticee No.2 was not in-charge of the Colo facility. The Noticee No. 2 did not participate in any discussions, verbal or written, relating to laying of the dark fibre.

41.10 Since, Noticee No.2 was not classified as a KMP, it is submitted that the code of conduct as specified under Part B of Schedule II of SECC Regulations, 2012 read with Regulations 26(2) of SECC Regulations, 2012 was not applicable to the Noticee No. 2.

## **42. Consideration and Observations**

42.1 The explanations and contentions of Noticee No. 2 are carefully examined with respect to his job profile at NSE during the relevant period of time. I note that the written submissions made by Noticee No.2 especially his claim that the Colo helpdesk was not reporting to him at any point of time during his tenure at NSE and instead Shri Deviprasad Singh, Supervisor of Colo Helpdesk, was directly reporting to the Business Development head, Mr.

Ravi Varanasi. The above submission made by Noticee No.2 has not been disputed by any other Noticees. There is no material evidence observed from the investigation report or the SCN to suggest any direct role played by Noticee No. 2 in the transactions involving establishment of P2P connectivity by Sampark on behalf of W2W and GKN.

42.2 The Noticee No. 2 was the CTO of the exchange; however, he has clarified that P2P connectivity and matters related thereto involving any broker in the Colo facility belonged to the domain of the Colo helpdesk which directly reported in these matters to the business development team and not to the CTO. The investigation report also does not contain any document either in the form of email or correspondence from or to the Noticee having implication with the Colo issues pertaining to the P2P connectivity of Sampark. The chronological sequence of events which have been narrated by Noticee No.2 in his submission also point to the fact that the Noticee was in the process of leaving the exchange pursuant to his resignation and he had desisted himself from taking any major assignment during the period under consideration. Since, the Noticee was apparently out of the loop and was not involved in the Sampark P2P connectivity matters, I understand that the allegations made against him in the SCN will not hold good just because he was holding the designation of CTO at the relevant point of time. Under the circumstances, I am of the view that the allegations made against Noticee No. 2 in the SCN are not sustainable.

### **Chitra Ramakrishna (Noticee No.3)**

#### **43. Submissions of Noticee**

43.1 In response to the allegations made against the Noticee in the SCN which has been highlighted at para 10 of this order, the Noticee has made the submissions which are listed in subsequent paragraphs of this order.

43.2 The Noticee No. 3 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. 3 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 No. 3 has explained her case by advancing various arguments and explanations which are summarized as below:

43.3 SCN has sought to make Noticee No.3 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. 3 in any of the matters forming subject matter of the SCN.

43.4 The Noticee No.3 being a MD and CEO was not involved in the day to day operations of the NSE Colo facility.

43.5 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.

43.6 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.3 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.

43.7 The Noticee No. 3 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.

43.8 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. 3.

43.9 Noticee No.3 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.

43.10 None of the functional heads responsible for the issues raised in the SCN had brought to the Noticee No. 3'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. 3.

43.11 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.3, directly, in her capacity as MD & CEO while for other issues other responsible person within NSE had the authority to take the decision.

43.12 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.

43.13 Dealing with the various paragraphs of SCN the Noticee No. 3 has further argued that:

- a) 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.
- b) Regarding non transparent mode of communication, the Noticee No.3 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.3 was involved in the process of issuance of this Circular or that she overlooked any issue in respect of the same.

- c) On the Sampark issue, Noticee No. 3 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.
- d) The SCN fails to identify the specific preventing and curative measures that could have been taken by the Noticee No.3 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.
- e) 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. 3 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.
- f) 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.3 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.

- g) 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.3 under the SEBI Act, 1992 has been raised in the SCN and in the absence of the same, SEBI cannot presume that Noticee No.3 merely as the Managing Director/CEO or Joint Managing Director (JMD) was automatically liable for actions of NSE. In this regard, Noticee No.3 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.
- h) 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. 3. 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.3 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.3 has not traded in the securities and there is no observation to that effect in the show cause notice.
- i) Noticee No.3 has also stated that the paragraphs 198 to 243 of NSE reply along with various case laws referred therein may also be read as forming part of her written submissions.

#### **44. Consideration and Observations**

44.1 The explanations and various arguments made by the Noticee No.3 have been carefully examined. The Noticee has made an attempt to disassociate herself from the matter involving P2P connectivity and other

attendant actions and inactions that have been attributed to NSE in various allegations made in the SCNs. The Noticee No.3 was functioning as the MD and also the CEO of the NSE during the relevant period of time. Thus, she was the de facto executive head in-charge of all the day to day operations of the organization. NSE, apart from being a corporate entity is a recognized stock exchange functioning as a self-regulating organization. Thus, the Noticee No.3 was effectively functioning as the head of a front line regulator in the securities market. The definition of stock exchange under the SCR Act, 1956 embodies the objective of the stock exchange i.e. for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities. Thus, the regulatory role of the NSE is already enshrined in the definition of stock exchange itself. Therefore, the role of the MD & CEO of a front line regulator enjoys an exalted status with enormous responsibility of assisting, regulating or controlling the business of buying, selling or dealing in securities.

44.2 As an MD & CEO, all the departments/Divisions of the exchange were under her supervision and control and all the functional heads were reporting to her. The board of directors of NSE in its meeting dated March 30, 2013 had also delegated an exhaustive list of power to the MD covering various administrative, financial, legal and quasi-judicial powers including all-inclusive powers 'to manage the affair of the company (NSE) and to perform and exercise all the powers, rights and discretion assigned to or vested in her by the Articles of Associations of the company and which may from time to time the assigned or vested in her by the Board.'

44.3 In ***N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152***, while dealing with the case of imposition of monetary penalty on a director for mis-statements in the financial statements of a listed company wherein the defence taken by the director was that he was incharge of the human resources functions of the company, Hon'ble Supreme Court has observed as under:

*"33. 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.”*

44.4 I note that Noticee has placed reliance on ***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 legal position on liability of directors. However, such judgments have only a persuasive value when there is no Indian case law specifically dealing with the facts of the instant case. As pointed out above in the case of ***N. Narayanan Vs. Adjudicating Officer, SEBI (2013) 12 SCC 152***, Hon’ble Supreme Court has specifically dealt with the role of the director in the context of the Indian securities market and have made observations as quoted above. The Noticee has further placed reliance on the judgment of the Hon’ble Supreme Court in ***Chintalapati Srinivasa Raju & Ors. Vs. SEBI (2018) 7 SCC 443*** to contend that the decision in Dovey case (supra) has been followed in the case. In this regard, it is noted that the Hon’ble Supreme Court was examining the liability of a non-executive director of the company while referring to Dovey case. However, in the instant case, the Noticee was not a non-executive director but was the MD and CEO of NSE at the relevant time. Therefore, the judicial decisions relied upon by Noticee in her defence, do not cover the facts on the basis of which the SCN has been issued to her.

44.5 Being MD and CEO of NSE, the Noticee was completely in command and control of the exchange during the relevant period of time. Since, responsibility is always coterminous with power, the MD & CEO at all points of time has to be responsible for all the decisions and acts of omissions and commissions by the exchange or any of its employees. The MD & CEO of the

company is a key managerial person 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. As can be noticed from the annual report of the NSE for the relevant Financial year, commensurate with the humongous operational responsibility entrusted to the MD & CEO of the exchange by the board of the exchange, she was remunerated more than double the remuneration of the next senior most employee of the exchange viz Group President and the functional heads of the exchange were remunerated less than one-third of the remuneration received by the MD & CEO of the exchange. Therefore, it will be unfair on the part of MD & CEO to evade her responsibility towards the irregularities and the fraudulent acts allegedly committed by her subordinates in the matter of allowing P2P connectivity in the Colo facility of the exchange.

44.6 Incidentally, I find that Mr. Ravi Narain former MD & CEO of NSE in his statement dated April 13, 2018 recorded before the Investigating Officer of SEBI, has stated that *"Chitra Ramakrishna served a Joint MD from 2003 and almost all operations and technology reported through her. In 2009 she was promoted by the Board as JMD at which point everyone in the exchange reported through her."* Thus, it is observed that even long before the Noticee assumed the responsibility of MD & CEO, she was looking after the technology matters of the exchange. Hence, claiming ignorance of the happenings in Colo facility of NSE is under the plea that Colo facility was managed by functional heads and she is not aware of the Sampark connectivity issues, is not substantiated.

44.7 It is also recognized under the corporate law that the liability of the Managing Director, when compared with the other directors is comparatively high. While a particular director could be proceeded against or not is a matter of evidence, the presumption as to the culpability of the Managing Director is much stronger and almost conclusive in nature. ***In S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla and Ors. (2005) 8 SCC 89*** Hon'ble Supreme Court held that the Managing Director or Joint Managing Director would be admittedly incharge 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. It may be noted here that the said judgment is regarding the liability for prosecution of the MD/JMD of a company under the Negotiable Instruments Act, 1881 which requires much higher degree of proof than the present proceedings which are only of civil in nature. Thus, the liability and accountability of a MD who also happens to be CEO of a company are onerous in nature and it is not open to the MD and CEO of a company to escape from his/her responsibility and accountability that has been entrusted upon him/her in view of the immense power that is vested in him/her under the law.

44.8 Keeping in view the aforesaid legal position with respect to the duties and responsibilities of a MD & CEO of a company, more so, when the company is a stock exchange discharging the role of the front line regulator of securities market, the MD & CEO cannot escape from owning up 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 Noticee 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. are evasive and are rejected.

44.9 It is a settled principle of law that a director is bound by the maxim *delegatus non-protest delegare* meaning thereby, no delegated power can be further delegated. The same thing is also applicable to a MD who is also a whole time director on the Board and as the MD & CEO she was exercising all the powers and functions as delegated to her by the Board of Directors. The Board of Directors appointed her because of their faith in her skill, competence and integrity and they may not have the same faith in another person. The views held by the Supreme Court in the case of **J.K Industries Limited v. Chief Inspector of Factories (1996) 6 SCC 665** emphasize on the point 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.

44.10 Based on the aforesaid views held by the Hon'ble Supreme Court, it can be said that the MD, on the pretext of having appointed competent people to manage various department who have been delegated various jobs to perform in the domains of their specializations, cannot evade her responsibilities to each and every of such department that comprise the operational framework of the exchange of which she is the operational head. As a MD & CEO of a public market infrastructure institution which is a corporate body as well as a first level regulator, the MD ought to have ensured a strict vigil mechanism in the exchange so that the market users are not prejudicially affected on account of any acts of omission or fraudulent transactions or negligence on the part of any of the employees working in any functional division of exchange. The Noticee has not explained as to what kind of vigil mechanism or periodic reviews of the functioning of various departments was being carried out by her on a day to day basis, so as to objectively satisfy herself of the functioning of the respective departments and to assure herself that each department is dealing with the market participants in a fair and equitable manner. All the arguments advanced by the Noticee No.3 in her defense stating that she was not aware of any wrong doings, neither was she apprised by any of the functional heads of any irregularity in the matter of providing connectivity to the Colo facility or that she had limited knowledge in technology and never dealt with giving permissions to Colo facility, etc. indicate she was not proactive to ensure that the Colo facility of the exchange is available to the market participants in fair and equitable manner.

Therefore, such arguments advanced by the Noticee as highlighted above, will not hold ground to support her stand in the matter.

44.11 I find that while the Noticee No.3 has on the one hand pleaded her innocence and lack of knowledge of any untoward transactions or events associated with Colo facility of NSE, at the same time she has argued in defense of the officials of NSE and also their actions stating that whatever has been done and said by them are as per the policy of the exchange hence, there cannot be any allegation of any wrong doing on the issue of Colo facility. On various other issues pertaining to the actions of Business Development Team and Colo Support Team, the Noticee No.3 has toed the line of arguments and explanations as have been put forth by NSE in its written submission. Under the circumstances, I cannot persuade myself to accept the arguments advanced by the Noticee No.3 in a manner to keep herself at a safe distance from the alleged wrong doings of the NSE. The liability of the MD & CEO as far as the maintainability of the allegations in the SCNs are concerned has to be on equal footing and on par with the liability of the exchange of which she was the operating head during the relevant period. Being the executive head of the Exchange, her culpability is inextricably linked with the culpability of the NSE and if NSE is held liable in terms of provisions of SEBI Act, 1992, PFUTP Regulations, 2003, SECC Regulations, 2012 or any other regulatory provisions, the MD & CEO shall also be equally held accountable under those provisions.

44.12 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. On account of this, the Noticee No. 3 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. 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 to mode of communication regarding the amendment of 2009 Circular of NSE, allowing brokers to avail P2P connectivity from an unauthorized

service provider in an unfair manner, to the detriment and deprivation of other stock brokers etc.

44.13 I have already held that NSE is liable in terms of the aforesaid provisions on the basis of various allegations made against it in the SCN. In view of my observations in the foregoing paragraphs, being the MD and CEO, the Noticee No. 3 was responsible for the affairs of NSE at the relevant point of time. Under the circumstances, in line with the allegations made in the SCNs, I hold Chitra Ramakrishna (Noticee No. 3) 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 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.

44.14 In view of the foregoing discussions, I further hold Chitra Ramakrishna (Noticee No. 3) 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 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 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 .

**Mr. Subramaniam Anand (Noticee No.4)**

**45. Submissions of Noticee**

The Noticee No.4 did not seek personal hearing in the matter. The Noticee No.4 made the following submissions in his written response dated February 3, 2019 to the SCN:

45.1 He joined NSE on April 1, 2013 as a consultant and demitted office on October 21, 2016. Noticee No.4 never played a part in the Colo activities of NSE either directly or indirectly at any point of time during his tenure at NSE.

45.2 He joined NSE as a Chief Strategic Officer (hereinafter referred to as "CSO") in April, 2013. His areas of operation were strategy, people management, administration, premises, business excellence, group company portfolios and NSE IT. The regular operations and regulatory matters of the exchange were not part of his portfolio.

45.3 Subsequently, in April, 2016 he was entrusted with the task of administrative coordination with NSE Tech and their Chief Technical Officer (hereinafter referred to as "CTO") to assist the MD and CEO with huge burden on her shoulders. However, he never attended any NSE Tech activity or technical discussions as the same was being performed by the respective CTOs.

45.4 The Noticee No.4 has seldom visited the Colo facility in NSE and was merely doing coordination job from MD's office.

45.5 The Noticee No.4 has no technical knowledge and was not a KMP and was a part-time consultant. He was recipient of various mails addressed to MD &CEO on behalf of her for coordination purposes and the matters related to Colo facility was never part of his portfolio while he was serving in the exchange. Therefore, Noticee No.4 has requested for being discharged from any further proceedings in the matter.

**46. Consideration and Observations**

46.1 I have gone through the submissions of the Noticee. It is a fact that the Noticee joined NSE as a consultant on April 1, 2013. However, I find from the records that Shri Anand Subramaniam was re-designated as 'Group Operating Officer and Advisor to MD' w.e.f. April 1, 2015 by, then MD & CEO, Ms. Chitra Ramakrishna, 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, Noticee has been indicated as part of the 'Management Team' in the capacity of a Group Operating Officer. The Noticee was practically enjoying the post of a key managerial person (that of a KMP) is indicated in a report of the Nomination and Remuneration Committee (NRC) of NSE, dated November 22, 2017 submitted to SEBI, in which it has been observed by the NRC that the re-designation of Anand Subramaniam 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 to the Noticee substantial power of management akin to the power granted to MD and CEO, in order to smoothen the day-to-day conduct of business operations of the exchange.

46.2 As pointed out above, the Noticee became Group Operating Officer & Advisor to MD since April 1, 2015 and was delegated with powers concurrent and co-terminus with the powers & functions of the MD & CEO of NSE in the aforementioned Board meeting. The organization structure of NSE displays that 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. Under the circumstances, I do not find any merit in the submissions of the Noticee that he was merely a consultant and had no role to play regarding issues involving establishment of P2P connectivity by Sampark on behalf of W2W and GKN.

46.3 While dealing with the submissions made by Noticee No.3 (Ms. Chitra Ramakrishna), I have held that the liability of the MD & CEO as far as the

maintainability of the allegations in the SCN are concerned has to be on equal footing and at par with the liability of the exchange of which she was the operating head during the relevant period. Her culpability is inextricably linked with the culpability of the NSE and if NSE is held liable in terms of provisions of SEBI Act, 1992, PFUTP Regulations, 2003, SECC Regulations, 2012 or any other regulatory provisions, the MD & CEO shall also be equally held accountable under those provisions.

46.4 Taking into account the fact the Noticee No. 4 was 'Group Operating Officer and Advisor to MD', a large number of Departments/Divisions including the business head, CTO-Operations were reporting to the Noticee and taking into account the report of the NRC of NSE referred to above, I am of the view that the Noticee is equally liable for the actions and inactions on the part of NSE and the MD & CEO of NSE with respect to P2P connectivity. The Noticee was consciously assigned with all the powers and responsibility by the MD & CEO so was to assist her in her day-to-day functioning as the MD & CEO of the exchange. Noticee therefore cannot escape from the fact that he was involved in day-to-day operations concurrently with the MD & CEO in a manner to assist and support her and therefore cannot take the plea of "working as a consultant" when he was practically functioning as the Group Operating Officer. Under the circumstances, it is not open to the Noticee to disassociate himself and avoid the responsibility that he was discharging as a Group Operating Officer of the exchange.

46.5 I find that Noticee No. 4 has neither disputed to the fact that he was a KMP nor to the applicability of Regulation 26(2) of SECC Regulations, 2012. 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, the Noticee No. 4 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, Noticee No.4 did not adhere to the code of ethics as specified under Part-B of Schedule II of SECC Regulations, 2012.

46.6 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 it in the SCN. For the same reasons that I have recorded while dealing with their submissions, I hold that the Noticee No.4 is liable and accountable in terms of provisions of the above Act and Regulations and is liable for directions under Section 11(1), 11(2)(a),11(2)(j),11(4) and 11 B of SEBI Act, 1992 and section 12A of the SCR Act, 1956 and other Regulations/Circulars as stated in the SCNs.

46.7 In view of my observations in the foregoing paragraphs about the role and responsibility of the Noticee, under the circumstances, in line with the allegations made in the SCN, I hold Subramanian Anand (Noticee No. 4) 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.

46.8 In view of the foregoing discussions, I further hold Subramanian Anand (Noticee No. 4) 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 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 W2W and GKN while the procedure of conducting inspection was followed for Millennium, GRD and SMC office for such connectivity.

#### **Mr. Ravi Varanasi (Noticee No.5)**

#### **Submissions of Noticee**

##### **47. Preliminary Submissions of Noticee**

47.1 The SCN of 2017 has been issued prematurely and even prior to the completion of the investigation into the captioned proceedings. He had submitted an application seeking to settle the allegations made under the SCN of 2017, the same was returned on the ground that *“investigation is pending apparently for the same cause of action”*

47.2 If the proceedings are allowed to continue under both the SCNs, then he would be subjected to regulatory actions under two separate proceedings qua the same cause of action, issues and allegations, which is contrary to the fundamental principle that no person can be tried twice for the same offence/ wrong doing.

47.3 The SCNs are silent on the action proposed to be taken. Since Sections 11 and 11B of the SEBI Act, 1992 empower SEBI to pass a wide array and variety of orders as SEBI deems fit, the principles of natural justice make it necessary for SEBI to state the specific action that are contemplated

against him, so that he is able to defend himself and present his case on the suitability of the action proposed.

**48. Other Submissions of Noticee**

48.1 Noticee No. 5 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.

48.2 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.

48.3 There was no preferential treatment granted to any trading member in any manner whatsoever, as alleged or otherwise.

48.4 He was the head of the department and hence trivial issues were never escalated to him at any point in time.

48.5 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.

48.6 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.

48.7 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

48.8 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.

- 48.9 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.
- 48.10 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.
- 48.11 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.
- 48.12 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.
- 48.13 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.
- 48.14 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.

48.15 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.

#### 49. **Consideration and Observations**

49.1 The preliminary objections raised by the Noticee No. 5 have already been dealt with by me in the beginning of this order at para 16 above. The submission of the Noticee that he has not been afforded a fair and reasonable opportunity of inspecting and then reviewing documents that constitute the entire record necessary for determining or responding to the SCNs is also not justified. I see from the record that all the Noticees have been provided with detailed inspections and copies of the documents referred to and relied upon in the SCN including the entire investigation report. During the course of hearing, the Noticee has not made any submission advancing the prejudice caused to him for want of inspection of any specific documents. Thus, the submission of the Noticee is without any merit. As regards the other explanation and submissions made by the Noticee No. 5, I find that some of his explanations, especially on the issues of amended circular of October 2013, non-interference in P2P connectivity directly terminating at Colo racks of trading members and the issue of non-disruption of Sampark connectivity even after discovering lack of license on their part, etc, are on the similar lines as have been offered as explanation by NSE in their written submission. I have already discussed the stand of NSE on these issues on merit and recorded my views on these points while discussing the explanations of NSE in the earlier paragraphs wherein, I have held that the explanations of NSE are not acceptable. I hold the same view on the explanation of the Noticee No. 5 on above issues as well.

49.2 During the relevant period of time, the Noticee No. 5 was functioning as the head of Business Development at NSE to whom the Colo support team was directly reporting. 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. Under the circumstances the Noticee's contention that verification of license of W2W was outside his scope of role and responsibility is not tenable. Similarly as the head of Business Development, Noticee had admittedly decided not to disconnect W2W and GKN on the ground that it would cause operational and control disruption which would have resulted in grave monetary losses. Hence a prudent commercial decision was taken not to disconnect them. The explanation of Noticee is not supported by any tangible material to suggest what kind of operational and control disruptions could have been caused by disconnecting the Sampark connectivity and what was the monetary loss that would have occurred to W2W and GKN because of such disconnection. The explanation is found to be ambiguous and general without specifying the exact nature of disruption and loss that was anticipated by him at that time. As discussed earlier, the W2W was already having its existing connectivity from Reliance and GKN has claimed that it was already being served by TATA and it had engaged Sampark connectivity only on a trial basis. Therefore, had he taken a regulatory decision to disconnect Sampark P2P connection of W2W and GKN, it would not have caused any disruption as these trading members had alternate connections. However, as the head of Business development, it appears the Noticee did not think of such alternatives and was convinced for no explicable reason, that disconnecting Sampark would cause control disruption and monetary loss. Further, Noticee has not submitted any documents or correspondence with W2W or GKN to suggest that he had to take the decision against discontinuation of Sampark connectivity in response to any specific request made by these 2 stock brokers citing any disadvantage or monetary loss that may be caused to them if the Noticee had taken any decision to discontinue their Sampark connectivity. In the absence of any corroborative evidence, the ground of non disruption taken by the Noticee can be called only a speculative claim without any basis.

49.3 The Noticee's conduct also does not appear to be equitable vis-a-vis other trading members when it comes to dealing with them especially Millennium which despite complaining to the Noticee that they are incurring trading losses because of other trading members operating on low latency,

was kept waiting while W2W and GKN continued to enjoy the Sampark connectivity. The Noticee's contention that site visit of trading member offices started in May, 2015 only (and not in April 2015 when W2W and GKN got their approvals), is also not supported by any evidence hence cannot be relied upon. Similarly, the contention that NSE did not have any policy to check the eligibility of service provider when the P2P connectivity was directly terminating at the rack of trading member remains unverifiable as it is not supported by any evidence.

49.4 The Noticee claims 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. He also states that his Colo team was only passing on the connectivity request to the concerned department. I find these claims to be bald denials without any factual basis and is an attempt to evade his responsibility as the head of Business Development by passing on the responsibility to "concerned department" without naming as to which department was responsible for verifying the eligibility of service vendors and for granting NOC for P2P connectivity. If the contentions of the Noticee have to be believed then it is incumbent of the Noticee to explain us to why he took a decision for not disconnecting Sampark connectivity when he claims that P2P connectivity did not come under his purview. Keeping the above observations in view, I am not able to persuade myself that the Noticee has not played any active role in the entire matter pertaining to P2P connectivity by Sampark and instead I am of the firm view that the Noticee had played a major role in permitting and continuing Sampark connectivity inside NSE Colo facility thereby prejudicing the interest of other trading members who could not avail such connectivity and serving the interest of only W2W and GKN who took Sampark connectivity surreptitiously in an irregular manner with the active support and assistance of Business Development team of NSE. Under the circumstances, I uphold the allegations made in the SCN against the Noticee No.5.

49.5 As stated above, Noticee No.5 was in charge of Business Development and operational activities relating to Colo requests at the relevant time. The Noticee was also considered as KMP in terms of regulation 2(i) of SECC Regulations, 2012 by virtue of the position the Noticee held at the exchange during the relevant period of time, which has not been disputed by the Noticee. 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, 2012 read with SEBI Master Circular dated December 31, 2010.

49.6 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, the Noticee No. 5 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 an unauthorised 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 to do 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 in connection with the above matters, as a KMP, Noticee No.5 did not adhere to the code of ethics as specified under Part-B of Schedule II of SECC Regulations, 2012. In view of the above, I find Noticee No.5 has violated Part B of schedule II of SECC Regulations, 2012 and thereby violated regulation 26(2) of SECC Regulations, 2012 read with SEBI Master circular dated December 31, 2010.

49.7 Keeping in view my observations on the role played by the Noticee in the matter of P2P connectivity, I find that the allegations made in the SCN against the Noticee stand vindicated on the basis of substantial supporting facts and evidence, hence the Noticee is liable for being issued directions as per the SCN.

49.8 In view of my observations in the foregoing paragraphs about the role and responsibility of the Noticee, under the circumstances, in line with the allegations made in the SCN, I hold Ravi Varanasi (Noticee No. 5) 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) 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.*

49.9 In view of the foregoing discussions, I further hold Ravi Varanasi (Noticee No. 5) 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 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.*

**Mr. Nagendra Kumar (Noticee No.6)**

**Submissions of Noticee**

**50. Preliminary Submissions of Noticee**

50.1 The 2017 SCN has been issued prematurely and even prior to the completion of the investigation into the captioned proceedings. The allegations made in the SCN 2017 with respect to P2P connectivity are based on incorrect facts and such incorrectness has been confirmed by subsequent investigation

50.2 If the proceedings are allowed to continue under both the SCNs, then the Noticee No.6 would be subjected to regulatory actions under two separate proceedings qua the same cause of action, issues and allegations, which is contrary to the fundamental principle that no person can be tried twice for the same offence/ wrong doing.

50.3 The SCNs are silent on the action proposed to be taken. Since Sections 11 and 11B of the SEBI Act, 1992 empower SEBI to pass a wide array and variety of orders as SEBI deems fit, the principles of natural justice make it necessary for SEBI to state the specific action that are contemplated against him, so that he is able to defend himself and present his case on the suitability of the action proposed

**51. Other Submissions of Noticee**

51.1 He was not incharge 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 Colo facility to the offices of the trading members.

- 51.2 The SCNs do not quantify any gain made or loss suffered by any party as a result of the baseless allegations made against him.
- 51.3 The Noticee No.6 was not concerned either with the setting up of the Colo facility of the NSEIL or the day-to-day management thereof.
- 51.4 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.
- 51.5 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.
- 51.6 The changes to NSEIL's website was not at all strategic in nature and was in the normal discharge of his duties.
- 51.7 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.
- 51.8 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.
- 51.9 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.

- 51.10 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.
- 51.11 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.
- 51.12 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.
- 51.13 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.
- 51.14 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.
- 51.15 Based on the confirmation email received from the Colo support team that Sampark was ready for 'a fibre hand off', he sent a WhatsApp message to Millennium, informing Millennium of the same.
- 51.16 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.
- 51.17 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”*.

51.18 Millennium was advised to apply through Reliance vide WhatsApp messages on July 22, 2015 and on July 29, 2015.

51.19 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.

51.20 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.

51.21 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.

51.22 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.

51.23 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.

51.24 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.

51.25 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..

51.26 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.

51.27 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.

51.28 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.

51.29 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.

51.30 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.

## **52. Consideration and Observations**

52.1 The Noticee has raised some preliminary objections with respect to SCN of 2017 and no specific directions proposed in the SCNs, which I have already discussed and dealt with in the beginning of this order. As regards, the other submissions and explanations offered by the Noticee, I find that the Noticee wants to emphasize on the points that P2P connectivity was being handled only by the Colo support team and the membership department which was being headed by him had no role to play in this matter.

52.2 Similarly, the installation of MUX in the Colo racks of W2W and GKN and installation of Sampark MUX in NSE MMR were directly handled by the Colo support team. It is his contention that the instructions and the approval to the trading members (W2W and GKN) were issued by him after receiving a go ahead from the Colo support team. Thus the Noticee primarily seeks to explain that permission to W2W and GKN through Sampark for establishing P2P connectivity was communicated by him only after receiving clearance from the Colo support team which was reporting to the Business Development department headed by Shri Ravi Varanasi, Noticee no. 5.

52.3 It has already been seen that Noticee no. 5 (Shri Ravi Varanasi) who was head of Business Development has denied any responsibility with respect to granting permission for P2P connectivity and has shifted the responsibility to the "Concerned Department" to whom the request for P2P connectivity was passed on by his Colo support team without naming the said 'concerned department. Now, although the Noticee no. 6 (Shri Nagendra Kumar) has admitted that he has conveyed the approval to W2W and GKN, yet he has done so only after receiving the clearance from the Colo support team. As per the records, vide email dated April 6, 2015, Ms. Rima Srivastava (CTO- W2W) requested the Noticee (Shri Nagendra Kumar) *"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 Noticee no.7 (Shri Deviprasad Singh, Head Colo support Team, NSE) with the remark *"please confirm?"* to which Noticee no. 7 responded stating *"can be permitted"*. Therefore, it now appears that the Colo support team was referred to as the "concerned department" by Noticee no. 5 (Mr. Ravi Varanasi) in the matter of giving approval to Sampark connectivity, as it was Shri Deviprasad Singh of Colo support team who gave clearance to the Noticee to confirm W2W about their proposed connectivity.

52.4 As per the reporting structure that was prevalent at NSE during the relevant of 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 nor can the Head of Membership Department 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), the Noticee (as Head of Membership team) and Shri Ravi Varanasi (as Head of Business Development to whom the former two Noticees 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.

52.5 Therefore, for all the acts of omission and commission which have led to granting permission to Sampark and allowing it to continue to provide services uninterruptedly to the two specific trading members in a discriminatory manner thereby causing prejudice to the interest of other trading members in gross violation of the policy and circulars of NSE, the Noticee No. 6 (Mr. Nagendra Kumar) is equally accountable and liable for violations as alleged in the SCN served upon him.

52.6 The submission made by Noticee No. 6 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. The contention of the Noticee is also corroborated by the written submissions of NSE with respect to site visit in which no averment has been made with respect to visit to premises of Shaastra on a sample basis. Therefore, the Noticee'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 Noticee'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.

52.7 With regard to GKN, it has been submitted by Noticee No. 6 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 dated February 25, 2019 made by NSE that initially NSE had been informed that the connection would terminate at the BSE Edge router. Post approval of the said connection, it was intimated by GKN that it would be terminating the connection in its office within BSE. In my considered opinion, in line with the then existing policy of NSE, when GKN intimated NSE that its P2P connectivity would be terminating in its office instead of BSE Edge router, site visit should have been conducted by NSE.

52.8 Further, the Noticee's claim that site visit was waived in respect of W2W since, it had already an existing connection from Reliance from its office at BSE building, suffers from inconsistencies insofar as the Noticee's approach towards Millennium, in whose case site visit was carried out, despite the fact that Millennium was also having similar existing connection through Reliance. 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 was not in line with the existing policy of NSE at the relevant point of time.

52.9 At the end of the aforesaid discussion, I find that the Noticee 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, in not pursuing the site visit policy, on a selective basis in the case of the above two trading members and also has been actively associated with the business development team at various stages of dealing with Sampark including allowing Sampark to install its MUX at NSE-MMR without verifying its eligibility. Under the circumstances, the Noticee 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 survive provider. Therefore, I uphold all the allegations made against the Noticee in the SCN.

52.10 In view of the foregoing discussions, in line with the allegations made in the SCN, I hold Nagendra Kumar SRVS. (Noticee No. 6) 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 :

- 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

### **Deviprasad Singh (Noticee No.7)**

#### **53. Submissions of Noticee**

53.1 The Noticee has filed a written submissions 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.

53.2 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 members 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:

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

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) NSE does not enquire into the eligibility or the license of the telecom service provider employed by trading member for their P2P connectivity
- (vi) 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.

(vii) 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.

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

(i) In June 2015, Sampark approached NSE to host their infrastructure at NSE Colo facility to provide connectivity to multiple trading members, from that infrastructure.

(ii) 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.

(iii) 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.

(iv) The violation of DoT license by Sampark is a matter between the DoT and Sampark.

(v) 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.

(vi) 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.

c) On the allegation of latency advantage:

- (i) 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.
- (ii) 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.
- (iii) 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.
- (iv) 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.

#### **54. Consideration and Observations**

54.1 In his submission, the Noticee has made certain legal and technical objections with respect to inspection, cross examination and the SCN being vague as not stating the specific charges and the specific measures that SEBI is contemplating against him. These legal and technical issues have already

been dealt with in the beginning of this order in which the Noticee's objections are also covered and they have not been accepted for want of merit.

54.2 The Noticee has relied upon a number of case laws to emphasize that the allegation of fraud against him must be supported by sufficient evidence. I can observe that the allegations made against the Noticee and other officials of NSE are adequately backed by email correspondences and statements recorded on oath and various other documents which are verifiable evidence. Therefore, the claim of the Noticee that the SCN lacks evidence is not borne out of facts.

54.3 The Noticee was in-charge of the NSE Colo team and in that capacity 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 that in the Colo facility of NSE. The Noticee is trying to make a distinction between members' infrastructure and NSE Colo infrastructure to suggest that NSE did not have any say on the matters pertaining to members' infrastructure and the equipment placed in their racks. The Noticee further claims that P2P links are not within the purview of NSE and the same are procured and maintained by member itself. Further, it is claimed that NSE does not enquire into the license of telecom service provider employed by the trading member. At the same time, the Noticee states 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. Thus the Noticee gives contradictory explanation about the procedure and practice of NSE with respect to P2P connectivity. On one hand, he claims that P2P connectivity was part of members' infrastructure and there is no need for giving any approval while at the same time he states that Sampark was allowed to establish P2P connectivity on behalf of W2W and GKN after being authorized by NSE business team and after he took undertaking from them. Further, Noticee's claim that he had given a clearance to Sampark only for path survey (and not for laying fibre connectivity) is an unsubstantiated claim and on the contrary, it is the Noticee who, on reference received from Shri. Nagendra Kumar, 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. The active involvement of the Noticee in the matter of allowing Sampark is well supported by the record and facts of the case.

54.4 I find that Shaastra, another member of NSE, on July 20, 2015, introduced Microscan Computers Private Limited (hereinafter referred to as "Microscan") as its vendor for providing connectivity to NSE Colo and requested for its authorization by NSE. The Noticee, vide email dated July 23, 2015, stated that there was no reason to change existing service providers. Subsequently, on July 29, 2015, he rejected the request for authorisation of Microscan citing no feasibility to lay extra cables in NSE ducts and also for the fact that Microscan lacked requisite DoT licenses. This email is in contrary to the submissions of the Noticee 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. 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, he permitted the same without seeking any license or raising any objection regarding eligibility of Sampark. However, while dealing with Shaastra, the approach adopted by the Noticee was entirely the opposite and the Noticee proactively interfered with their P2P connectivity proposal. Therefore, the explanation of Noticee on the issue of permission to Sampark is found to be inconsistent and not acceptable.

54.5 On the point regarding Sampark being permitted to place its MUX in MMR without verifying its license, I find the responses of Noticee are equally evasive and incoherent. The Noticee states that merely allowing Sampark to shift its MUX from W2W rack to NSE's MMR cannot be called an act detrimental to securities market and that violation of DoT license by Sampark is a matter between the DoT and Sampark. If that is the stand he wants to take then there is no need for him to explain at the same time by stating that as soon as he learnt about the lack of license, Sampark was instructed not to

provide connectivity through its MUX in NSE MMR. It may be noted that by the time the Noticee and his colleagues discovered that Sampark did not have the requisite license, Sampark already had installed its MUX in NSE MMR with a link to W2W rack. There is also no credible response from the Noticee with respect to the rejection of request made by Millennium around the same time when Sampark was installing its MUX in the NSE MMR. Thus, the reply of Noticee on this point also suffers from infirmities and is not tenable.

54.6 On the allegation of latency advantage obtained by W2W and GKN, the Noticee comes with an explanation stating that the connectivity provided by Sampark was not a dark fibre, since the same was attached to Ethernet Hand-off on both sides of the connectivity. However, 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. Therefore, while on one hand the Noticee is claiming that NSE did not have any say on the matters pertaining to members' infrastructure and the equipment placed in their racks, on the other hand is certifying that the connectivity was not a dark fibre.

54.7 The Noticee disputes the diagrammatic presentation of the P2P connectivity depicted in the SCN and instead presents another diagrammatic presentation in his submissions to prove his point that after installation of Sampark MUX in NSE MMR, there was no equipment in the Colo rack of W2W. What remained there was a mere passive junction box containing some fibre cable joints. This contention is also flawed and not worthy of reliance, since, it is not supported by any reliable piece of evidence. The diagram depicted in the SCN was based upon the contents of an e-mail dated April 01, 2016 addressed by the employee (Mr. Sudipta Kumar Rout) of W2W (the beneficiary of P2P connectivity) addressed to Mr. Mohit Mutreja of Alpha Grep (a subsidiary of W2W). Since, the diagram represents an evidence of email exchanged in ordinary course of business without any external provocation, the credibility of evidence cannot be questioned. The Noticee is trying to recreate a diagrammatic presentation based on his memory after more than three years of the occurrence of the events, which does not have any evidentiary value. Therefore, the claim that there was no MUX equipment in

the Colo rack of W2W after Sampark installed in MUX in NSE MMR is not acceptable.

54.8 The Noticee has 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 in fact used for transferring market data from NSE and BSE Colo, which was used for algo trading. The Noticee is unnecessarily trying to present partial information to mislead the fact that the said P2P connectivity was ultimately used for algo trading by the trading members/stock brokers.

54.9 The Noticee has raised certain legal and technical objections including his request for cross examination which have already been dealt with separately along with similar objections raised by some other Noticees. As regards, the Noticee's contentions against the allegations made in the SCNs under section 12A(c) read with various provisions of PFUTP Regulations, 2003, I note that the Noticee has played a pivotal role in facilitating laying of dark fibre by Sampark in the Colo facilities of NSE . From the nature of evasive, inconsistent and contradictory responses that the Noticee has made in his reply shows that the Noticee has acted in an arbitrary and irregular manner in discharge of his duties only to help and facilitate the W2W and GKN to establish P2P connectivity with the support of Sampark, an unauthorized service provider, in clear defiance of all the regulatory norms and guidelines issued by NSE. The actions of the Noticee gives rise to a bonafide suspicion on his intentions while he dealt with the P2P connectivity matters of the aforesaid two Brokers. Therefore, I uphold all the allegations made against the Noticee in the SCNs.

54.10 In view of the foregoing discussions, in line with the allegations made in the SCN, I hold Deviprasad Singh (Noticee No. 7) 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:

- 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.
- 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.

### **Way2Wealth Brokers Private Limited (Noticee No.8)**

#### **55. Submissions of Noticee**

55.1 In their reply dated February 1, 2019, the Noticee has stated that it is a SEBI registered stock broker, portfolio manager, depository participant and also a research analyst. The Noticee serves over 40,000 retail clients for securities trading activities and also provides depository services to more than 62,000 clients apart from distributing mutual funds schemes to more than 2 lakhs folios. The Noticee is one of the earliest brokers of NSE to have availed the Colo facility of the exchange since the year 2010. Responding to various allegations levelled against it in the SCN, the Noticee has advanced various arguments and explanations which are briefly summarized below:-

55.2 There was no policy of NSE documenting the process to be followed and requisite credentials for an entity providing P2P connectivity. As a result

the brokers had to rely on the advice/directions of the stock exchange to establish connectivity with the Colo facility of the exchange.

55.3 The Noticee has always treated NSE as the frontline regulator and all its actions for availing Colo facility of NSE were undertaken under instructions and approval from the Exchange. It has always acted in good faith while dealing with NSE and has always believed that NSE is empowered to take disciplinary or other regulatory actions against it.

55.4 Between the year 2010 and 2015 it has availed services of a number of service providers such as Reliance and Tata Communication Ltd (hereinafter referred to as TCL) for which it has always taken NOC from NSE.

55.5 At the time when it availed the services of Sampark, the Noticee had the existing leased line connection from Reliance which was providing a bandwidth of 45 Mbps and from TCL which was providing a bandwidth of 100 Mbps. The Noticee was pursuing with the existing service providers to provide lower latency and at this juncture, Sampark approached them with an offer that they can provide 1 gig bandwidth for the added leased line connected to the Colo facility of NSE. They also presented them with the lower latency that they have achieved between certain locations than the latency currently being enjoyed by the Noticee.

55.6 The Noticee thereafter hired Sampark for one year for Rs. 19 lakhs as payment towards its services subject to Sampark providing a latency of less than 1 millisecond.

55.7 On March 26, 2015 the Noticee sought permission from NSE to use the services of Sampark for laying the necessary infrastructure for installing the P2P connectivity. NSE granted permission on April 6, 2015 which was again reconfirmed by NSE on April 21, 2015. The work in relation to the network line was carried out only after permission was received from NSE.

55.8 The Noticee always treated NSE as a regulator and itself as a regulated entity and accordingly had taken due prior permission before it

allowed Sampark to provide them with P2P connectivity from the Colo facility of NSE which went live on May 28, 2015.

55.9 The Noticee was directed by NSE to move the circuit from Sampark to Reliance on August 12, 2015 and as per the directions of NSE, the line from Sampark was terminated on September 9, 2015.

55.10 At no point of time Noticee was made aware either by NSE or by Sampark that they did not possess the requisite regulatory licenses for providing the services. They merely went by the NOC granted by NSE while availing connectivity. They have used the services of Sampark under the impression that it had the requisite license. Moreover, since Mr. Netaji Patil who represented Sampark was earlier employed with Reliance with whom they had dealt with in connection with their existing P2P connectivity provided by Reliance, there was no ground for suspecting the bona fides of Sampark with regard to their license.

55.11 Noticee availed the services of Sampark without the knowledge that Sampark did not have the requisite license or otherwise ineligible to provide leased line connectivity at the NSE Colo.

55.12 It is submitted by the Noticee that it was an oversight to have missed out the requirements mentioned in the NSE circular dated August 31, 2009 in terms of which, it was supposed to avail the services from one of the four authorised service provider which included Reliance from which they were already taking service. However, their oversight cannot be concluded to mean that they had availed the services from Sampark deliberately knowing about their deficiency in holding an appropriate license.

55.13 As evident from the SCN it was only in the month of July, 2015 that NSE came to know about the absence of proper license with Sampark, which was also not shared by NSE with the Noticee. The Noticee was only informed that there seems to be some issues with Reliance and Sampark for which it was being asked on August 18, 2015 to change the service provider from Sampark to Reliance. Accordingly, the lines were disconnected from Sampark on September 9, 2015.

55.14 It is the contention of the Noticee that NSE did not discontinue the services of Sampark after becoming aware of its licensing irregularities and unilaterally permitted Sampark to provide its services without any discussion or a communication with the Noticee. At all times the Noticee was not aware of the communications between NSE officials and Sampark in relation to their eligibility and licensing requirements. Thus the Noticee did not have any prior knowledge of the fact that Sampark did not have the requisite license to provide its services at the Colo centre of NSE.

55.15 Relying up on the statement given by Mr. Devi Prasad Singh to SEBI on March 1, 2018, the Noticee has stated that NSE was responsible for conducting the validation of the licenses of the service providers and it is only after receiving permission from NSE that the Noticee believed that Sampark was an approved vendor under 2009 Circular of NSE for providing the connectivity to the Colo centre of NSE.

55.16 The Noticee has argued that it cannot be reasonably expected of a trading member to inspect the license of a leased line provider to ascertain its eligibility, in the absence of any clear policy of the exchange with respect to eligibility condition of ISP especially when the leased line provider represents that it possesses the necessary license required to provide a particular service. There was no guidance or regulations framed by the stock exchange specifying the necessary DoT license which an empanelled service provider should possess.

55.17 Several other trading members including Millennium, Marwadi, GDR securities, Shaastra, Kredent, etc. had also approached Sampark for P2P connectivity and under the same impression that it had the requisite license to provide leased line services.

55.18 The Noticee was not aware of the changes made in the 2009 Circular of NSE and it availed its services under the bonafide belief that Sampark possessed the necessary license.

55.19 The Noticee did not receive any latency advantages over other trading members while availing Colo facilities for its high frequency trading (HFT). Its

turnover as a percentage of BSE's total turnover during the time when Sampark provided P2P connectivity did not increase and hence, did not reflect any latency advantage.

55.20 The investigation report of SEBI also does not demonstrate any unfair latency advantages to the Noticee in terms of its total turnover and algo turnover during the relevant period.

55.21 On the allegation that the Noticee had the advantages of one less hop/switch with respect to its P2P connectivity between BSE Colo centre and NSE Colo centre it is argued that the same is not backed by any factual analysis, hence lacks merit. According to the Noticee, the allegation which is based on the email dated May 28, 2015 from Mr. Sudipta Kumar to Mr. Mohit Mutreja, one less hop/switch would result in maximum latency advantage of 0.35 micro seconds which is miniscule and would not have any real impact on the performance on the leased line connectivity.

55.22 The conclusion drawn about the latency advantage is based on email conversations between officials of Noticee No.8, Sampark and NSE and not on the basis of physical evidence to suggest that Notice no 8 received any advantage.

55.23 The allegation with respect to irregularities in wiring connections are technical in nature and even if found to be true, were mere technical irregularities due to bonafide mistakes made unintentionally.

55.24 The Noticee No.8 had no knowledge about the path of the circuit within the NSE data center before it entered Noticee No. 8 rack at the Colo facility of NSE. Further, the Noticee has disputed the authenticity of the diagram referred in the SCN based on Mr. Sudipta Kumar's email dated April 01, 2016.

55.25 The investigation report itself states that it was the responsibility of NSE to monitor the cabling and ensure fair and equitable access to all the trading members.

55.26 The Noticee contends that there is no concrete proof to substantiate the arrangement as depicted in the diagram.

55.27 The SCNs alleges that by arranging the cabling in Colo rack in such a manner that the Noticee No.8 was at advantage in comparison to other trading members connected to Sampark MUX placed in the NSE MMR and the email of Mr. Sudipta Kumar indicate that the connectivity provided by Sampark to Noticee No. 8 and Notice No.12 was different and disadvantageous to other brokers. The Noticee has refuted this allegation stating that the said email merely states that the source cable was passing through Noticee No.8's rack and there is no evidence to suggest that the cable terminated at Noticee No.8's rack before getting connected to Sampark MUX at NSE MMR.

55.28 The Noticee was not aware of the cable path and hence it had stated in its email of Mr. Mohit Mutreja that, 'the cost incurred in changing the cable path should be incurred by Sampark'. Further, Shri Nilesh Thote (NSE Employee) has denied communicating with Sudipta around March-April 2016 regarding the above issue.

55.29 On the allegation that the other end of P2P connectivity was terminated directly in the rack of Noticee in the Colo facility of BSE instead of its office in PJ Tower between May 15, 2015-July 9, 2015, it is submitted that the cable from NSE Colo facility first passed through Noticee No. 8's office at BSE Building before directly connecting to the Sampark MUX at Net magic MMR at BSE. According to the Noticee, during the above period, it had availed a cross-connect from its rack to the Sampark MUX in Netmagic MMR. Thus, there was always a hop/switch at BSE since the Noticee availed a cross-connect to join their rack to Net magic MMR where the Sampark MUX located. Therefore, the Noticee did not have direct P2P connectivity between BSE Colo center and NSE Colo facility as has been alleged.

55.30 Since the physical circuit that came from NSE Colo passed through its office in BSE Building before going to BSE's Colo center it was Noticee's understanding that its office can be considered as the terminating point for compliance with NSE's requirement.

55.31 On the email of Ms. Rima Srivastav in which she has expressed concern about the direct P2P connection it is explained that Ms. Srivastav came to the conclusion that NSE might not consider Noticee No. 8's office as the terminating end of circuit as there was no switch in the office. Therefore, she brought it to the attention of senior officers of Noticee No. 8.

55.32 W2W installed a switch in their office in BSE building only on July 09, 2015. It is submitted that the same was a mere technical irregularity for a temporary period with no intention to gain any unfair advantage.

55.33 Noticee has also made an argument stating that it was rather in a disadvantaged position compared to other brokers because of the location of its office on the second floor of BSE tower whereas the other brokers were located on the first floor of the building, as a result of which it had an additional distance of 100 meter to reach the Colo center thereby having latency disadvantage of 0.66 microseconds as compare to the latency enjoyed by other brokers. Therefore, the advantage of 0.35 microseconds latency which was allegedly being enjoyed by it because of having one less hop/switch at the BSE end of circuit was neutralized by the facts of its distant location from the Colo center in BSE.

55.34 The Noticee argues that there was no law, regulation, Circular or policy of NSE which prohibited any direct P2P connectivity between NSE Colo and BSE Colo.

55.35 At the worst it can be alleged that the wiring connection of the Noticee was inconsistent with the circuit diagram provided by Noticee to NSE, for a short period which was rectified as soon as it became aware of it and it does not constitute any violation of any rules or regulations framed by SEBI or NSE.

55.36 SEBI has not produced any photographs or other documentary proof to substantiate the allegations that W2W availed direct P2P connectivity in absence of any switch or cross connect.

55.37 On the allegation of NSE consciously ignoring its own policy to do physical inspection of the Noticee's office at BSE tower before granting NOC

for P2P connectivity, it is contended that NSE had started this policy of physical inspection of Stock Broker's office from May, 2015 whereas Noticee obtained NOC from NSE for its P2P connectivity in April, 2015. The Noticee has drawn its support from an email dated April 13, 2018 addressed by the Chief Regulatory Officer (CRO), Ms. Priya Subbaraman.

55.38 Denying any collusion by the Noticee with NSE or its officials as alleged in the SCN, the Noticee argues that there is no evidence of collusion either in the report of E&Y or anywhere else and SEBI must bring out higher degree of proof to substantiate its allegation of collusion.

55.39 On the allegations that Noticee has violated the provisions of Section 12A(c) of the SEBI Act, 1992 read with Regulation 3(d) and 4(1) of PFUTP Regulations, 2003, the Noticee has cited an array of case laws and has contended that SEBI has to prove the charges of fraud against the Noticee based on the test of preponderance of probability on the basis of admitted and proven set of facts and whether a reasonable or prudent person would view these 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 allegations of fraud and fraudulent practice. It is claimed that neither the E&Y report nor the investigation report has found evidence in support of charges of fraud and collusion involving the Noticee.

55.40 According to the Noticee for proving charge of fraud, the action or omission of the Noticee should have the effect of inducing another person to deal in securities and the SCNs do not make any case against Noticee for fraudulently inducing another person to deal in securities. Further, the Noticee has not committed any manipulative transaction and there is no evidence to prove that it had any intention to enter into any collusion or fraudulent scheme devised between the Noticee, Sampark and NSE.

55.41 The Noticee has been charged with both fraud and violation of code of conduct as specified in Schedule II of Regulation 9 of the Stock Broker Regulations for the same set of facts and no difference has been made as to which particular action of the Noticee tend to fraud and violation of the code of

conduct. Citing the Supreme Court decision in the case of SEBI vs. Kishore R. Ajmera, the Noticee states that fraud and violation of code of conduct should be distinguished based on the volume/scale of irregular transactions and the length of period during which irregularities took place. In their case the period of alleged irregularity was a short period of more than three months; hence no fraudulent motive should be attributed.

55.42 On the issue of violation of code of conduct under the Stock Broker Regulations, the Noticee argues that it has followed due diligences standard of a reasonable person and has taken permission from NSE before allowing Sampark to execute its P2P Connectivity in the Colo facility of NSE.

#### 56. **Consideration and Observations**

56.1 After a patient reading of all the averments and assertions made by the Noticee in its submissions, I find that there are certain admitted positions and facts that need to be first identified. According to me, the following facts and observations are undisputed:

- a) Sampark was certainly not a DoT licensed ISP Vendor to be dealt with by any of the registered Brokers of NSE. Even if the amended circular of NSE allowed the stock brokers to engage any service provider in addition to the four ISP vendors named earlier in its August 2009 Circular, a stock broker needed to and Noticee no. 1 is required to permit only a DoT licensed ISP and not an IP-1 licensed Vendor to provide P2P connectivity. The Noticee has been dutifully availing P2P services from only authorised vendors since the year 2010 and admittedly at the time of engaging the services of Sampark it was not knowing that NSE has liberalized the vendor policy in 2013. So there was no question of it deviating from the August 2009 circular, unless there was any other extraneous reason motivating it to do so.
- b) Sampark in its presentation to the Noticee offered to provide higher speed and lower latency and higher bandwidth which was not being offered by any of the four authorised ISP Vendors through their existing connections. As claimed by the Noticee, Sampark shared ping shots of latency (proof of

their capacity to provided lower latency) that Sampark had achieved to provide in certain locations and also proposed to provide 1 giga byte of bandwidth for the leased line as compared to 45 mbps being provided by Reliance leased line.

- c) The Noticee's existing service provider 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,
- d) The Noticee was admittedly well conversant with Netaji Patil, a former employee of Reliance with whom the Noticee was very familiar, who represented Sampark to deal with the Noticee.
- e) The Noticee is aware of NSE Circular of August, 2009 and yet it chose not to ask Sampark about whether they have obtained necessary ISP license to be able to provide P2P access to NSE Colo facilities or Sampark is one of the authorized vendor of NSE.
- f) Admittedly, it is the lure of more data speed and more bandwidth and may be at a reasonable cost that motivated the Noticee to accept the offer of Sampark to establish a new P2P connectivity.
- g) The Noticee hired Sampark for P2P connectivity and paid them Rs 19 Lakh subject to Sampark providing a latency of less than one millisecond.
- h) True to their offer, a print out of the ping test (latency test) report communicated by Mr. Sudipta Kumar Rout of W2W on May 28,2015 to Mohit Mutreja of Alpha-grep (subsidiary arm of W2W) suggests that they have achieved a latency in the range of 365 to 367 micro seconds which was much less than one millisecond.
- i) The Noticee has explained at Para 75 of its submission that Sampark was hired after detailed deliberations, evaluation conducted by the technology department and business team and based on representation of Sampark.

It has been explained that Sampark provided a pilot testing to demonstrate that it can deliver a latency below 1 millisecond.

- j) The P2P connectivity established by Sampark without having a DoT license remained live for the Noticee during the period between May 28, 2015 to September 9, 2015.

56.2 Apart from the above stated admitted position as far as dealing between Noticee and Sampark is concerned, the allegation that the Noticee had installed its P2P connectivity in such a manner that it got further advantage in terms of benefit of latency is also found to be adequately substantiated in the SCNs. When Sampark had installed its MUX at MMR of NSE and connected the Noticee 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. This is supported by the evidence observed from the by the email dated April 1, 2016 addressed by Mr. Sudipta (Manager IT, Alphagrep, subsidiary of W2W) to Mr. Mohit Mutreja (Director, AlphaGrep) and Mr. Prashant Mittal (Director, Alpha Grep) with copy to 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...."*

56.3 Based on the above email of Mr. Sudipta, E&Y in their report have also stated that *"it appears that Sampark's P2P connectivity to other stock brokers may have been provided through W2W's MUX places in there rack."*

56.4 The other end (B end) of the P2P connectivity was required to terminate at the office of the Noticee in BSE tower as per the prevalent policy of NSE. From there, the connectivity could have gone to the Colo facility of BSE being offered by third party vendor, viz: Net Magic. However the connectivity did not terminate at Noticee's office at BSE tower and instead the

fibre cable only passed through the office of Noticee 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.

56.5 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.”* The direct connectivity established by the Noticee to their rack in BSE Colo is further supported by the statement dated February 6, 2018 of Mr. Madan Kumar Shinde (Netmagic personnel) in which he has stated that they had found only W2W cross connect to Sampark in the period 2014-2016 and that when a connectivity comes from member’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.

56.6 It is further supported by W2W’s own submission dated February 01, 2019 wherein it is admitted

- a) At para 113 that *“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) At para 125 that *“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”*

56.7 Thus the above arrangement not only helped the Noticee to enjoy better advantage vis-a-vis other trading member at the end of NSE Colo but also enabled it to reduce one switch/hop at the end of BSE Colo by taking the cable directly to its Colo rack in BSE. 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.

56.8 The aforesaid act of the Noticee with the assistance of Sampark is found to be deliberate act. This is explicitly implied when one goes through the email of 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”.*

56.9 The Noticee disputes the contents of both the emails cited above. On the email of Sudipta Kumar, the Noticee states that it merely refer to an arrangement and does not provide any evidence that the cable terminated at Noticee’s rack before being terminated to Sampark MUX at NSE MMR. Further, Noticee claims that there is no direct evidence, no photograph or any concrete proof to suggest that the connectivity of Sampark terminated directly at its Colo rack before being connected to other brokers and it was not aware of about the path of the cable or control over the path of the cable within the premises of NSE, except for within its own rack of Colo facility. It may be observed here that the entire episode of unauthorized connectivity by Sampark happened between April and September 2015. The entire arrangement must have undergone several changes after controversy erupted pursuant to examinations of complaints by SEBI and after a gap of almost three years the

Noticee in its explanation is trying to dismiss and refute the contents of an email which was written by a person closely involved in the P2P connectivity work along with Sampark. 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 the Noticee after a gap of 3 years. Similarly, the email of Ms. Rima Srivastava expressing her concern about the direct connection made by Noticee with their Colo rack in BSE in violation of NSE's P2P connectivity policy clearly portrays that the Noticee 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. Thus it brings to a conclusion that the Noticee 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.

56.10 Moving onto the other arguments and explanations offered by the Noticee, I have the following observation on the different issues. On exercising due diligence, certainly I can find that the Noticee has exercised due diligence and care as far as assessing the technological capability of Sampark to provide the promised bandwidth and latency. However, for reasons best known to them the Noticee did not ask the first question that it needed to ask before dealing with a new vendor, i.e. whether the vendor possessed the necessary government license to provide such services as per their representation before them. The Noticee states 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 connection on August 12, 2015. Further, Noticee states that NSE never informed them about the fact that Sampark did not have proper license of an ISP. But the first question that comes back to bother me is that why the Noticee, knowing well that there are only four service providers authorized by NSE in their Circular of 2009, in which the name of Sampark does not appear, did not ask the basic question to

Sampark about their ISP license the moment it approached them with an offer for providing P2P connectivity

56.11 The Noticee states that the August 2009 circular of NSE was vague and there was no guidance to trading members with respect to verifying eligibility of service providers at the Colo center of NSE. It is further explained that it cannot be reasonably expected that a trading member should inspect a license of a leased line provider to ascertain its eligibility. I find this explanation rather vague. The circular of NSE might not have prescribed in detail the methodology to be adopted to assess the eligibility of a service provider primarily because it had already suggested four authorized service providers for the stock brokers to choose from. That does not however, entitle the Noticee to say that the Noticee should not check the license of a vendor even after knowing that it is not one of those four vendors authorized by NSE. Therefore, the explanations of 'ignorance' or 'acting in good faith' or 'missed to check by oversight' do not lend much credence to support the cause of Noticee because what the Noticee calls oversight, on the face of it does not appear to be so, hence, is untenable. Moreover, the Noticee's reliance on the argument that there were several other trading members who approached NSE for taking Sampark connectivity without checking its license is untenable, as W2W was the very first broker to apply for P2P connectivity through Sampark

56.12 On the issue of latency advantage, the Noticee has submitted that one less switch/hop would result in a maximum latency reduction of 0.35 microseconds which would not have any impact on the performance of the leased line connectivity. However, it may be noted that this 0.35 microseconds represents an additional gain of latency because of reduction in one switch/hop at BSE end over and above the latency reduction it was supposed to gain from Sampark connectivity.

56.13 On the issue of NSE not conducting site visit, I have already dealt with the matter earlier in this order. It is observed that NSE has been conducting site visits atleast from 2014 onwards and yet, it did not conduct site visit of W2W, and therefore the contention of W2W with respect to site visit is devoid of merits.

56.14 The Noticee states that the P2P connectivity from Sampark did not have any positive impact on its business turn over or trading volume and neither the E&Y report nor the investigation report of SEBI demonstrate any unfair latency advantage to the Noticee. The conclusion drawn about latency advantage in the SCN is based on the email conversations between officials of Noticee and Sampark and NSE without support of any physical evidence about latency advantage. I find the explanation of the Noticee is misplaced on facts and not quite relevant to the core issue. The objective of having a P2P connectivity with maximum bandwidth and lowest latency is to transmit large quantity of data at a faster speed which enabled the Noticee to gain faster access to the market data feed than other brokers. Such an advantage of first view of market data enables the high frequency trading strategy to execute its trading algorithm much faster and more beneficially. Trading volume and turnover is not necessarily dependent upon the speed of data transmission, rather it is dependent on several other factors such as the resources available, price view and trading strategy of the broker on the particular trading day. However, the ability itself to access the market data faster than others would always provide the first mover advantage to the trader which the trader may or may not utilize depending upon his trading policy, strategy and resource capability for the purpose. Therefore, the explanation that the P2P connectivity did not necessarily lead to increase in the trading volume or profitability of the Noticee, would not be relevant as far as the engagement of Sampark as a P2P connectivity provider is concerned. Similarly the explanation furnished by W2W regarding arrangement of its connectivity and cable path-way at NSE Colo & BSE Colo would also not be relevant. If the arguments of the Noticee are to be believed it has to answer as to why it took the connectivity from Sampark, if the connectivity was not going to give it any latency advantage. Therefore, the explanation that there was only some technical/minor irregularities at NSE & BSE and that the Noticee did not get any latency advantage is found to be devoid of merit.

56.15 The Noticee's contention is that its office in BSE tower was located on the second floor thereby suffering from a disadvantage of additional distance of 100 meter as compare to other brokers who were located on the first floor of

BSE tower and therefore enjoy a higher latency advantage of 0.66 microseconds compared to the Noticee. This statement itself explains why the Noticee wanted one switch/hop less than others since it was giving additional latency of 0.35 microseconds. The contentions about these extra latency gain or loss are not borne out of any physical evidence but indicates that the purpose of engaging Sampark was to neutralize the latency it was losing on account of being located on the second floor of the building, by directly joining the BSE end of its connectivity to its rack in the BSE Colo facility. Thus the intention of the Noticee becomes explicit in its engagement with Sampark.

56.16 In this regard, I find that the Noticee has made various incoherent arguments at different places of its written submission. At one point it accepts the fact that the cable pathway of its P2P connectivity was inconsistent for a short period with the circuit diagram provided by Noticee to NSE and such a minor aberration with respect to terminating points of the cable should not be construed as a planned attempt to gain any latency advantage or fraudulent conduct. At the same time it states that SEBI has misinterpreted the internal emails of the official of Noticee No.8 to understand that its P2P connectivity was not done as per the representations made to NSE. Further, Noticee also argues that there was no law, regulations, circular or policy of NSE which prohibited any direct P2P connectivity between NSE Colo and BSE Colo centers. At the same time it acknowledges that NSE had a policy of not allowing any direct P2P connectivity to its members. If the Noticee was so sure about the validity of its connectivity, then the question arises as to why did its official Ms. Rima Srivastava raised concern in her email to her superiors about the violation committed by the Noticee in its connectivity to BSE Colo center. Therefore, on this front also Noticee has not been convincing in explaining its conduct of surreptitiously establishing direct P2P connectivity between NSE Colo & BSE Colo thereby breaching the policy of the NSE.

56.17 On the one hand, the Noticee has emphasized on the fact that NSE is the front line regulator and the Noticee has taken all its actions in availing Colo facility under necessary approval and guidance of NSE while on the other hand by establishing a direct P2P connectivity with the support of an unauthorized

service provider clearly puts a question mark on its conduct as a registered intermediary of NSE. Such a question about the conduct of the Noticee and also the conduct of NSE gets further accentuated by the fact that NSE, deviating from its practice of inspecting office premises of brokers which are located in the BSE tower prior to approving the request for P2P connectivity, waived its policy and practice in favor of Noticee and did not conduct any site inspection of the cable path way of the connectivity that the Noticee was proposing to lay down between NSE Colo & BSE Colo centers.

56.18 The Noticee 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 the Noticee 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 Noticee is 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.

56.19 One of the Supreme Court decisions relied upon by the Noticee 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.

56.20 In this case the direct P2P connectivity that the Noticee 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 the Noticee and the clients of Noticee to deal in security with an expectation of better result and profitability. One has to ask, what is the ultimate objective of Noticee to obtain leased line connectivity from an unauthorized service vendor when the Noticee was already being provided with P2P connectivity by another authorized vendor. The answer lies in the fact that the Noticee 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 the Noticee than trading faster with better and more execution.

56.21 As regards the Noticee's contention that the Noticee can be implicated with a charge of fraud under PFUTP Regulations, 2003 on the basis of preponderance of probabilities based on set of admitted facts, I have already outlined a set of admitted facts at para 56 and 56.6 of this order in which I have set out the facts and the admitted position which the Noticee itself has brought to the fore in its written submission. Therefore the allegations of violation of PFUTP Regulations, 2003 cannot be said to be without any factual foundation. The sequence of events, the manner in which the Noticee entertained an unauthorized service provider to avail P2P connectivity, the covert manner in which the Noticee 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 Noticee's action of continuing with Sampark even after it was found to be lacking the requisite license, go on to suggest that the Noticee had arranged the entire P2P connectivity in a pre-meditated 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 the Noticee that its actions do not attract invocation of provisions of PFUTP Regulations, 2003 against it. Similarly, the Noticee 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. The Noticee 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.

56.22 To sum up the above, in line with the allegations made in the SCN, I hold W2W (Noticee No. 8) 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 Clause A(1), A(2), A(3) and A(5) of Code of Conduct stipulated under regulation 9 of the SEBI (Stock Brokers and Sub- Brokers) Regulations, 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. 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.

**Mr. Shashibhushan (Noticee No.9)**

**57. Submissions of Noticee**

57.1 In his written submission dated February 4, 2018, Noticee No.9 has stated that he has been working as the CEO of Noticee No.8 since November 1, 2007. He is based out of Bengaluru head office of the Noticee No.8 and visits Mumbai 2-3 times a month for important matters. His primary role was to manage and grow the retail investment advisory business and in this connection 14 different business and non-business heads reported to him. Up to November, 2014 the relevant team dealing in Colo connectivity was reporting to a dedicated Chief Operating Officer (COO). After COO vacated his position the reporting line was moved to Noticee No.9. Being a non-technology person, the Noticee No.9 was not involved in the task pertaining to vendor management, hiring technology etc., and only exceptional matter was being escalated to him. In the matter of engaging Sampark for their P2P connectivity the Noticee states that since they had normal practice and standards in place, he did not interfere with the same. It was only when he received an email from the concerned official about the P2P connectivity not terminating at their office in BSE, he intervened to resolve the issue quickly. Therefore, the Noticee has exercised due skill, care and diligence in conducting the business of Noticee No.8.

57.2 The Noticee contends that the concept of vicarious liability would not apply to him since there is no specific act attributable to him on which such a liability can be fastened. Similarly, in the absence of any specific wrong doing by the Noticee to which any intention can be assigned no charge of fraud or fraudulent practice can be made against him. The Noticee has also argued that he has not derived any profit or any advantage from the alleged contraventions by Noticee No.8. Hence the allegation made in the SCN against him are not sustainable.

**58. Consideration and Observations**

58.1 The contentions of the Noticee are carefully considered, however they are not found to be acceptable under law and the facts of the case. The

Noticee was the Chief Executive Officer(CEO) of Noticee No.8 and 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 (Key Managerial Personnel) 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 discharge as per law. As per his own submission the Noticee was in charge of 10 business and 4 non-business divisions which included operations of HO and RO back office and both business head and technology head were reporting to him. Thus, the Noticee was in complete command and control of the company's operations. The contention of the Noticee 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.

58.2 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 Noticee no.3 at para 44.1 to 44.12 of this order, 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 Noticee no.3, however I hold that those observations are equally applicable to the case of Noticee no.9 as well .

58.3 In the instant case, the CEO (Noticee no.9) 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 (Noticee No.8) as have been pointed out earlier in the discussion pertaining to Noticee No.8. Therefore, all the allegations that have been leveled against Noticee No.8 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.

58.4 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.

58.5 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 belie the innocence and ignorance being displayed by the Noticee in his contentions and instead shows that the Noticee 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) reproduced at para 56.5 of this order, starts with an expression 'as you are aware' which indicates that the Noticee No.9 was already aware that W2W's connectivity directly terminated at their BSE Colo rack instead of terminating at their office. Therefore, I am convinced that the Noticee No.9 was fully aware of the acts committed by W2W in the matter of establishing Sampark connectivity

58.6 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 the Noticee to be the reasons for holding him not responsible for the alleged activities of his company. The Noticee 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 the Noticee liable for all the actions of and all the allegations made in the SCNs against the company (Noticee No.8) of which he was the CEO during the relevant period of time.

58.7 In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold Shashibhushan (Noticee No. 9) 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.

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 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.

**Mr. C.K. Nithyanand (Noticee No.10) & Mr. B.G.Srinath (Noticee No.11)**

**59. Submissions of Noticee**

59.1 The aforesaid two Noticees have made a common reply on February 1, 2019. Both of them were appointed as non-executive, non-whole time director on the board of W2W (Noticee No.8) during the relevant period of time. After a perusal of their written submission, the points that the two Noticees want to make in their defense against the SCNs served on them are as follows:

- a) The SCN is vague and does not allege any specific wrong doing by the Noticees.
- b) The principle of vicarious liability has been incorrectly applied to the Noticees.
- c) The Noticees are non-executive, non whole time directors of Noticee No.8 and were not involved in the day to day affairs of the business of Noticee No.8.

- d) The alleged defaults of Noticee No.8 raised out of transactions undertaken in the ordinary course of its business and Noticee No.8 had adequate internal systems in place to ensure compliance with all applicable laws.
- e) The Noticees have not made any financial or commercial gains and the charged provisions of section 12 A(c) of SEBI Act, 1992 & PFUTP Regulations, 2003 have been incorrectly applied against the Noticees.

#### **60. Consideration and Observations**

60.1 After considering the explanation and arguments of the above mentioned two Noticees, I find that both of them were acting as non executive and non whole-time directors on the board of the company during the relevant period of time. Therefore, I can appreciate the fact that since the company had a full time CEO to manage the day to day operations of the company, it can hardly be said that the non executive directors would be either aware of or having any role to play in the day-to-day decision making or operational activities of the company. There is nothing on record to suggest that these two Noticees were in any manner involved with the company's actions and decision with respect to engaging Sampark for P2P connectivity. Therefore, I am of the view that the allegations made against them in the SCN are not sustainable.

#### **GKN SECURITIES (Noticee No.12)**

##### **61. Allegations**

61.1 The allegations made against GKN in the SCN are primarily borne out of the fact that GKN was a direct beneficiary of preferential treatment by NSE, since NSE allowed GKN to continue to use the Sampark connectivity even after knowing that Sampark did not have the requisite licenses to provide such connectivity. GKN continued to avail the services of Sampark till September 10, 2015, in spite of knowing that Sampark did not have the requisite license. The above conduct of NSE & GKN points towards collusion between GKN and NSE for benefit to GKN.

61.2 NSE in collusion with GKN had not done the site inspection of their offices and, further, not only facilitated the service of P2P connectivity but also advised to shift the service subsequently from Sampark to Reliance.

## 62. Submissions of Noticee

During their personal hearing and in the written submissions dated 28 March, 2019, the Noticee has explained the case with an array of arguments which are summarized as below:

62.1 The Noticee availed the connectivity of Sampark as an additional connection (in addition to the existing connection taken from TATA). This connection was not a substitution of TATA connection and was taken on the trial basis based on the representation made to them by Sampark and as approved by NSE. Sampark represented that W2W had already taken their services with permission of NSE.

62.2 Therefore, based on such representation by Sampark they applied to NSE and after completion of due formalities such as submission of root path for laying the cables and necessary undertaking, work permit was issued by NSE for their P2P connectivity.

62.3 In July 2015, NSE directed Noticee to shift its leased line connectivity from Sampark to other ISP. The Noticee followed the instruction and it did not lose out on anything since it already had data connection for its P2P connectivity.

62.4 On August 19, 2015 Sampark informed the Noticee that all their infrastructure was transferred to Reliance and the service will be provided henceforth by Reliance. Accordingly, Noticee switched over the Reliance for its P2P connectivity which was activated on September 10, 2015.

62.5 Noticee believed that switching over to Reliance from Sampark was only a technical name change as there was no change in leased line/wire/fiber or in any system infrastructure, hence the same connectivity was retained.

62.6 To justify its action of hiring Sampark for the P2P connectivity the Noticee has argued that Sampark was a renowned service provider well known in the community of stock brokers, in BSE. Sampark had necessary infrastructure expertise to lay down high speed leased connections. The Noticee understood that Sampark had state of the art features to offer leased line P2P connectivity. Sampark made a presentation to the Noticee about its capability to provide speed and also represented that it had the necessary regulatory and legal approval to provide the connectivity. Therefore, Noticee decided to avail the services of Sampark on a trial basis.

62.7 Defending its action further, the Noticee has stated that the only disability of Sampark was that being a IP-1 license holder it could not provide direct service to the trading member but could route its infrastructure through a TSP. The Noticee was not aware of the same. Moreover, Sampark was already servicing various stock brokers at BSE hence there was no reason for checking the veracity of the representation made by Sampark.

62.8 The Noticee has availed the leased line service from Sampark in due course of its business and there is no evidence that it has derived any latency or trading advantage due to Sampark connectivity. Relying on the E&Y report, the Noticee has stated that there was no increase in its trading turnover during the period from May 7, 2015, to September 10, 2015 when Sampark connectivity was live.

62.9 On the allegation of non-disconnection of Sampark connectivity as soon as it was made aware that Sampark did not have the requisite license, the Noticee has explained that in a fast moving stock market any operational change in the infrastructure of a stock broker takes some days so that existing clients are not inconvenienced. Drawing support from the statement of NSE employees which shows that the business development head of NSE took a deliberate stand to continue the Sampark connectivity so as to avoid disruption to trading members including the Noticee, the Noticee made a transition of their contractual terms from Sampark to Reliance immediately after direction from NSE.

- 62.10 The Noticee has stated that it has conducted necessary due diligence and at best the Sampark connectivity can be termed as a technical human oversight but not violation of any rules, regulation, or commission of any fraudulent act. GKN relied on the judgment and integrity of NSE to conduct the due diligence of all the service providers that use the exchange services.
- 62.11 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.
- 62.12 GKN has not bought, sold or otherwise dealt in the securities market in a fraudulent manner. The case deals with alleged preferential access to GKN in respect of leased line connectivity and there is no case of manipulation of any kind of security in the SCN. The Noticee has contended that it has committed no fraud, no inducement to deal in securities nor any fraudulent practice within the meaning of the relevant provisions of SEBI Act, 1992 or PFUTP Regulations, 2003.
- 62.13 It is submitted that the two allegations, viz. violation of code of conduct and violation of provision of PFUTP Regulations, 2003 cannot co-exist as they operate in different scenarios and while the former deals with negligence the latter deal with active violation of law.

### **63. Consideration and Observations**

- 63.1 The Noticee 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 the Noticee, 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 which the Noticee is supposed to answer and the table given in para 10 above clearly brings out the specific allegation made against the each Noticee.

63.2 After a careful perusal of the explanation and arguments advanced by the Noticee, I find that its contentions are somewhat similar to the explanations offered by Noticee No.8. It is an admitted fact that the Noticee also accepted the offer of Sampark on the ground that its proposed connectivity offered more speed and efficiency in terms of latency. The Noticee 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.

63.3 The contentions of the Noticee suffers from certain grave inconsistencies. 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 client. The explanation does not justify the reason provided by the Noticee for not disconnecting Sampark line even after being told by NSE to shift from Sampark to other ISP. In fact the Noticee 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. Even though GKN, as per its own admission had been instructed by NSE to disconnect Sampark line in July, 2015, 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 Noticee's contention that it had taken Sampark connectivity as an additional connection on a trial basis.

63.4 The Noticee 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 Noticee to take direct P2P connectivity services from them without checking with them about their license status. The Noticee 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.

63.5 In fact, the record shows that Sampark activated its connectivity for the Noticee on May 7, 2015 prior to activating the P2P connectivity for Noticee No.8 (W2W) on May 28, 2015. Moreover, even after the Noticee No.8 shifted its MUX from its rack in the NSE Colo to the Sampark MUX in the NSE Colo MMR in July, 2015, the Noticee 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 the Noticee reveals a clear cut stand of the Noticee 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 Noticee'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

Noticee was knowing about this disability 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, the Noticee 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, unlike many other stock brokers, GKN was not subject to site inspection by NSE. This favorable treatment by NSE reflects the collusive nexus between NSE and GKN in the matter of P2P connectivity to the detriment of several other rule abiding stock brokers.

63.6 The Noticee'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 the Noticee and deprivation of the other stock brokers regardless of whether or not it leads to actual increase in turnover or profit.

63.7 The Noticee 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, 2003. According to the Noticee, it is not the case of SEBI that the trade executed by the Noticee where deceptive in nature or had any impact on the investment decision of investors. Undoubtedly, the Noticee 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 the Noticee 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 the Noticee 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 the Noticee certainly lead 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 HFT brokers. Therefore, it would be wrong on the part of the Noticee 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 the Noticee 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, 1992 and other provisions of PFUTP Regulations, 2003 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 the Noticee in view of the misconduct, lack of due diligence and lack of integrity displayed by the Noticee in the transactions and its actions and inactions vis-a-vis its dealing with Sampark as well as NSE.

63.8 In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold GKN (Noticee No. 12) 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 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.

**Noticee No. 13, 14 and 15 (Sonali Gupta, Om Prakash Gupta and Rahul Gupta)**

**64. Submissions of Noticee**

The above mentioned three Noticees have made the following submissions:

- 64.1 They are adopting the submissions filed by GKN.
- 64.2 GKN in its reply has dealt with the allegations and disproved the fact that there was any collusion with NSE in the dark fibre episode.
- 64.3 Even if SEBI finds GKN guilty, there is no reason to implicate them being partners of GKN.
- 64.4 There are no specific allegations in the entire investigation report.
- 64.5 They are erroneously roped in the captioned matter for the alleged acts of GKN. It is unfair and arbitrary to mechanically rope the partners of GKN without any evidence against them.
- 64.6 The office bearers like partners cannot per-se be made responsible for every proposed action against the firm.
- 64.7 The SCNs does not indicate that the partners were aware that Sampark did not have requisite licenses to act as a service provider and they had any collusion with NSE.

**65. Consideration and Observations**

- 65.1 The Noticees 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. 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 the is 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.

65.2 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 fiber. 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, 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, 2003 as per the SCNs served upon them. In this regard, I also find that the decisions referred to by the Noticees 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.

65.3 In view of the foregoing discussions, in line with the allegations made in the SCNs, I hold Sonali Gupta (Noticee No. 13), Om Prakash Gupta (Noticee No. 14) and Rahul Gupta (Noticee No. 15) 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.

#### **Noticee No. 16 and 17 (Sampark and Prashant D'Souza)**

##### **66. Allegations**

66.1 The main allegation in the SCNs against Sampark is that it acted in collusion with W2W and NSE to lay the cabling of dark fiber connectivity in such a way that W2W had lower latency compared to other stock brokers connected to the Sampark MUX placed in NSE MMR thereby facilitating W2W to execute its algo trading in securities with higher bandwidth and lower latency as compared to other stock brokers.

##### **67. Submissions of Noticee**

Sampark and Prashant D'Souza, vide letter dated April 03, 2019, have filed written submissions. The submissions made by Sampark are as follows:

67.1 Sampark is an internet service provider (ISP) and has no role with respect to services allowed by NSE or services availed or trading carried out by trading members.

- 67.2 They have no relationship with other Noticees except as a service provider to W2W and GKN.
- 67.3 They have no knowledge about the intention and the purpose of the usage of their infrastructure by their clients.
- 67.4 GKN and W2W disconnected their services and switched over to other service provider i.e. Reliance.
- 67.5 They provided services to stock brokers after obtaining permission from NSE and NSE granted NOC.
- 67.6 Dark fibre is not some sinister piece of technology which allows backdoor access to the vault and it is just unused fiber over capacity.
- 67.7 Before a fibre is used, equipment needs to be installed to control the transmission of waves and fibre that is available without such equipment is dark fibre. World over optical fibers both dark and lit are leased by trading firms.
- 67.8 They did not have any mala fide intention and ulterior motive behind providing services to specific trading members. Cabling inside the premises is completely as per customer and building owner decision.
- 67.9 There was no collusion between NSE, W2W, GKN and Sampark.
- 67.10 As an infrastructure provider, their responsibility is to lay cable as per customer and owner of the premises.
- 67.11 If they had given anything better to W2W, W2W would have continued with them and not shifted to other service provider.
- 67.12 The entire allegation is untenable in view of the fact that they come under the jurisdiction of TRAI and not within the jurisdiction of SEBI.
- 67.13 If SEBI renders a finding in the case, it would amount to clearly trespassing into jurisdiction vested solely with the DoT, even though the same is intentionally and expressly excluded from the jurisdiction of SEBI.

67.14 If DoT passes an order holding them not in violation of their norms and SEBI holds to the contrary, Sampark would suffer penal consequences at the hands of SEBI despite being exonerated by DoT.

**68. Consideration and Observations**

68.1 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.

68.2 The SCNs alleges 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, 2003. Therefore, the issue before me is whether Sampark is in violation of the said regulations and not on the issue of its License.

68.3 I find that the Noticee 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. Earlier in this order at para no 27.2 & 27.3, I have 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 fiber 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.

68.4 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, Prashant D'Souza (Noticee No. 17) is equally culpable and liable for the actions and fraudulent conduct on the part of Sampark. Under the circumstances, in line with the allegations made in the SCN, I hold Sampark (Noticee No. 16) and Prashant D'Souza (Noticee No. 17) in violation of regulation 3(d) read with 4(1) of PFUTP Regulations, 2003 read with section 12 (A) (c) of SEBI Act, 1992.

#### **69. Concluding Observations and Directions**

69.1 I have carefully considered all the allegations made in the SCNs and the factual evidence and supporting documents in the form of emails and statements and circulars, etc, that have been referred to in the SCNs. The oral and written submissions made by the Noticees, the explanations offered and arguments advanced by them have been closely examined. At the end of this exercise, in my view, there are certain undisputable facts emerging out of the entire matter that need to be delineated before making any conclusive observations on the Noticees. They are as follows:

- a) NSE had issued a Circular August 31, 2009 with respect to its Colo facility in which NSE, *inter alia*, prescribed four authorized telecom service providers viz. MTNL, TATA, Bharati and Reliance and the Stock Brokers were required to take one or more leased line connectivity to the NSE Colo facility by availing services of any of these four service providers.
- b) The communication of October, 2013 made through a website publication allowing trading members to select any other telecom service providers was not in the knowledge of either Sampark or W2W or GKN or even the Colo support team of NSE.
- c) W2W and GKN have been accessing the Colo facility of NSE since 2010 and had already availed of leased line services from one of the four authorized service providers at different points of time.

- d) Sampark was neither an authorized service provider nor had provided direct leased line services to any stock brokers of NSE before April, 2015.
- e) Sampark did not possess the requisite license from DoT to provide telecom service directly to end customers. It was a holder of IP 1 license which enabled it to establish and maintain assets such as dark fibre, right of way, duct space, and tower, etc for the purpose of giving on lease / rent / sell, etc to other licensed telecom service providers. Thus, Sampark was not entitled to deal directly with end customers or to raise invoice on end customers.
- f) In conformity with its license status Sampark was already in the business of leasing out its infrastructure to other telecom service providers including Reliance. W2W was at the relevant point of time before engaging Sampark, had taken leased line connectivity from Reliance.
- g) Sampark approached W2W and GKN with a promise of providing dark fibre connectivity which would assure them of higher bandwidth and lower latency in their connectivity with the Colo facility of NSE and BSE. Sampark demonstrated to W2W that it would provide latency in less than 1 millisecond and the bandwidth of 1 gigabyte.
- h) Sampark wanted to conduct its business as an independent service providers even though it did not have the requisite licenses.
- i) Sampark was well known to W2W and GKN as an infrastructure provider to Reliance and not as a direct service provider to end customer. Despite this, neither of them enquired about the eligibility of Sampark as a service provider when Sampark approached them.
- j) The P2P connectivity provided by Sampark remained live for W2W from May 28, 2015 to September 9, 2015 and for GKN, it remained live for May 7, 2015 to September 10, 2015. The P2P connectivity provided by Sampark was dark fibre cable connectivity which is evident from the records.

- k) The officials of NSE dealing with Colo support and membership Departments never checked or verified the eligibility of Sampark at the time of granting NOC to W2W and GKN for establishing P2P connectivity with their respective racks at NSE Colo.
- l) NSE officials also permitted Sampark to install its MUX in NSE MMR between June 17-20, 2015, without verifying the license or eligibility of Sampark.
- m) NSE officials waived their policy of physical inspection of the office of the trading members at BSE prior to granting permission for P2P connectivity to W2W.
- n) NSE officials allowed W2W and GKN to continue to avail the services of Sampark even after discovering that Sampark did not have the requisite license.
- o) NSE did not allow other stock brokers to avail connectivity from Sampark till Reliance took over the infrastructure of Sampark.
- p) NSE officials did not permit Shaastra to take P2P connectivity from Microscan (an unauthorized service provider similar to Sampark) during the time when Sampark was already allowed to establish P2P connectivity at its Colo.
- q) W2W, taking advantage of non physical inspection by NSE took the leased line connectivity from NSE Colo directly to their rack in BSE Colo without routing it through their office in BSE premises.
- r) The engagement of Sampark violated the circular of NSE with respect to authorized Telecom service providers.
- s) The action of W2W in taking direct connectivity to BSE Colo and the inaction on the part of NSE, by not making on-site inspection at the end of office of W2W in BSE premises, violated the stated policy of NSE, thereby putting the interest of other trading members whose P2P connectivity was in conformity with NSE Colo policy, at disadvantage.

- t) Admittedly it is the strong lure of faster data speed and more bandwidth at a reasonable cost through a dark fibre cable pathway that motivated W2W and GKN to engage Sampark to establish a new P2P connectivity with the help of Sampark and NSE officials to the detriment of interest of other trading members.

69.2 In my view, the aforementioned facts which emerged from the entire narrative of the events involving engagement of Sampark as a P2P connectivity service provider are undeniable and unassailable. These are the core facts which impinged upon the sum and substance of the actions, omissions, expressions and concealment of facts which have been alleged against different Noticees in the SCNs. Similarly, the evidentiary value of the different emails exchanged between officials of W2W, Sampark and NSE on a contemporaneous basis and also the inter se email exchanges amongst the officials of W2W cannot be questioned. The statements recorded from various persons including the Noticees have strengthened the factual evidence that have been collected during the course of investigation. Thus, the evidences gathered during investigation and referred to in the SCNs and the allegations made on the basis of such factual evidences are found to be corroborating each other.

69.3 The factual observations that have been listed out above, support the allegations made against different Noticees with respect to the role played by them in their dealings with each other. At the core of these facts, I can observe that there is a scramble for more speed and less latency by the trading members. In their exuberance and greed to achieve the lowest possible latency in the Colo connectivity, the Noticee No. 8 and 12 have overlooked the basic eligibility of a service provider and engaged Sampark to provide connectivity through their dark fibre cables. Apart from that, I find that Noticee No.8, i.e. W2W has left no stone unturned to acquire latency as low as possible by avoiding switches / hops, by shortening distances of the cable paths or by positioning the cable path in such a manner that it always remains ahead of the other trading members in terms of accessing the market data feeds through its connectivity at NSE Colo and BSE Colo. At the end of the

discussions, I am left with the impression that the Colo facility at NSE during the relevant period was symbolized by maladministration and misgovernance. From the way the Noticees, especially NSE, its officials, W2W, its officials and GKN have conducted themselves with respect to the Colo connectivity, it appears that there was an implicit collusion amongst the Noticees to protect the interest of W2W and GKN and also that of Sampark at the cost of interest of other stock brokers, thereby indulging in a fraudulent and unfair trade practice.

69.4 NSE has displayed glaring inconsistencies in its colo management especially with respect to P2P connectivity. It has switched from a transparent to a non transparent way of disseminating important instructions. It has proclaimed an unsubstantiated dual policy supposed to be prevalent during the relevant period with respect to verification of eligibility of lease line service providers by stating that, it verified the eligibility of service providers only when the connectivity was established to its Colo MMR and not when it terminated at the Colo rack of the trading member. There is a glaring inconsistency when it comes to on-site inspection of the office of the trading member while processing applications for Colo connectivity. The trading members got a discriminatory deal from NSE officials in the matter of taking connectivity from the same service provider. The unauthorized service provider is first allowed to get access to their Colo space to install infrastructure in the trading member's rack and then is allowed to continue with the services under the plea of avoiding disruption and monetary loss to two of its stock brokers. Thus, NSE has been taking inconsistent positions and its conduct has been violative of its own regulatory norms and policies right from the time when the Sampark was granted permission in April, 2015 till Sampark handed over its assets to Reliance to regularize its connectivity already provided to W2W and GKN. Therefore, NSE, its MD & CEO and the officials of its Business Development and Membership Department and Colo Support Team (who are Noticees in the instant proceedings) are collectively and individually liable for violation of various provisions of SEBI Act, 1992, SECC Regulations, 2012, Circular and other directives of SEBI including the PFUTP Regulations, 2003 as have been stated in the SCNs.

69.5 Similarly, as observed earlier while discussing the submissions of W2W, the conduct of W2W and its CEO has been replete with deliberate misleading representations, circumvention of regulatory norms and policies of NSE and manipulation of the network pathways at Colo facilities of NSE and BSE in a manner to achieve, at any cost, its goal of lower latency and fastest access to market data feeds as compared to the other stock brokers. As regards GKN and its partners, they are also equally culpable in engaging Sampark deliberately ignoring the fact that it had no legal ability to provide P2P connectivity. Contrary to their specious claim that they had engaged Sampark only on a trial basis, the fact of the matter is that they remained actively connected to the connectivity provided by Sampark from May 7, 2015 to September 10, 2015, and utilized the connectivity for their data feed and transmission even after that period. GKN also fraudulently stuck to Sampark connectivity even after it was asked to move to another service provider. Therefore, for the reasons recorded by me on the basis of my observations about their respective roles in the matter of allowing Sampark to establish P2P connectivity for them, I hold W2W and its CEO and GKN and its partners liable for violation of various provisions of code of conduct specified in Schedule II of Regulation 9 of stock brokers Regulation, 1992 read with Section 12 A (c) of SEBI Act, 1992 and relevant provisions of PFUTP Regulations, 2003 as have been cited in the SCNs.

69.6 As pointed out earlier, NSE is a Market Infrastructure Institution (hereinafter referred to as “**MII**”) providing a market platform for the public to participate in the trading of securities and to avail other related services from the exchange. Being a MII, the stock exchange discharges very sensitive role in the public interest and millions of people trade on the platform of the exchange in good faith and under the implicit assurance and guarantee that the trade in securities taking place on the exchange's platform is being conducted with utmost transparency, fairness and by way of equitable treatment to all the market participants irrespective of their status and resources. Under SCR Act, 1956, Stock exchange implies a body corporate incorporated for assisting, regulating and controlling the business of buying, selling or dealing in securities. Under SCR Act, 1956, a recognized stock

exchange is empowered to frame its bye laws and business rules and it enjoys a number of delegated powers to act as a frontline regulator for the purpose of discharging its duties of regulating and controlling the trading in securities. Therefore, apart from complying with the rules, regulations and regulatory instructions of SEBI issued from time to time, NSE as a frontline regulator is vested with substantial powers to frame its rules and bye laws and its own regulatory norms to control and regulate the trading of securities on its platform. Over the years, NSE has become one of the top ranking securities exchange in the world in terms of deployment of technology as well as trading volume which calls for impeccable regulatory ability of NSE as a stock exchange to conduct its own governance in a manner that it can discharge its fiduciary duties towards the market participants without a blemish.

69.7 With the advent of technology, the trading platform of a recognized stock exchange has been witnessing tremendous change with innovative technological applications being introduced in a dynamic manner for increasing speed and enhancing efficiency and for establishing ease of doing business for the millions of participants. As a regulator, SEBI has not been prescriptive about regulating any technology per se, but as pointed out in the beginning of this order, the only thing which has been emphasized by SEBI, through its regulations, circulars and guidelines is that the exchanges should display in all their actions, absolute transparency, equity and fairness while dealing with and dispensing technology for the purpose of trading in securities on its platform. Subject to the compliance with the above, like any other MII, NSE has its freedom to utilize the latest technology for upgrading its trading, clearing and settlement functions as well as for enhancing the trading experience for the market participants.

69.8 The technology surrounding Colo facility, P2P connectivity and dissemination of market data feeds is one area where NSE has been freely deploying technology and setting its own regulatory norms for observance and compliance by its own intermediaries. The only cardinal principle that they ought to respect is that no market participant is discriminated against and no market participant is allowed to take undue advantage of its Colo facility and

the integrity and sanctity of its facility is ensured at all points of time. As a Self Regulatory Organization (SRO), NSE issued its own circular and guidelines for accessing into its Colo facility by the trading members and therefore, it was its onerous duty to maintain the sanctity of its own regulatory norms without fail. However, the way Colo facility has been mis-managed and manipulated by certain trading members with the active connivance of an unauthorized service provider and the officials of NSE, as evident from the discussions and observations made by me in the earlier paragraphs of this order, shows NSE's apathy towards the principle of transparency, fairness and equity mandated by SEBI on them. Under the circumstances, the irregular acts, absence of due diligence, misrepresentation and false statements that have come to notice in this entire narrative of P2P connectivity involving Sampark have put a question mark on the corporate ethos and credibility of the exchange trading system. Such collusive irregularities cannot be allowed to be passed off as mere technical irregularities as has been postulated by NSE, W2W, GKN and other individual Noticees in their submissions. The roles played by all the Noticees as highlighted above have cumulatively resulted into not only a fraud on the trading platform of a recognised leading stock exchange but also have upset the very foundation of a securities market institution that is built upon faith and confidence of the investing public at large.

69.9 With respect to the Noticees' objection to the invocation of provisions of PFUTP Regulations, 2003 against them on the ground that, "dealing in securities" is *sine qua non* to prove fraud under the PFUTP Regulations, 2003, I have already observed in the beginning of this order that 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 (**DMA**) or Smart Order Routing (**SOR**). 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. Similarly, I have already discussed and held in the

beginning of this order that Sampark and its Director (Noticee no. 16 and 17) are persons associated with securities market for the acts committed by them in connection with providing P2P connectivity to some stock brokers at NSE Colo facility to enable them to have lower latency in the matter of their trading in securities.

69.10 It may be noted that the provisions of section 12A(c) of the SEBI Act, 1992 and regulation 3(d) of the PFUTP Regulations, 2003 prohibit engagement in any act, practice or course of business, in connection with issue or dealing in securities, in contravention of law. Similarly, Regulation 4(1) of the PFUTP Regulations, 2003 provides that no person shall indulge in a fraudulent or unfair trade practices in securities.

69.11 In the instant case, I find that the acts, omissions and conduct of all the Noticees, as alleged in the SCNs, except for the acts of Noticee no.2, Noticee no.10 and Noticee no.11, are covered in the prohibitions prescribed under section 12A(c) of the SEBI Act, 1992 and regulation 3(d) and 4(1) of the PFUTP Regulations, 2003. In view of the aforesaid observations, I find no flaw with the allegations of violations of provisions of Section 12A (c) of SEBI Act 1992 read with relevant regulations of PFUTP Regulations, 2003 against the above stated Noticees.

69.12 In addition to the violations as mentioned in para 69.11,

(i) Noticee no. 1, by committing the aforesaid acts, has failed to ensure equal, unrestricted, transparent and fair access to all stock brokers and has thus violated regulation 41 of the SECC Regulations, 2012.

(ii) Noticee no. 3, 4 5, by committing aforesaid acts, being key management personnel of a recognised stock exchange, have failed to abide by the Code of Ethics specified under Part– B of Schedule– II of SECC Regulations, 2012.

(iii) Noticee no. 3, by committing aforesaid acts, has also failed to abide by Code of Conduct specified under Part– A of Schedule– II of SECC Regulations, 2012.

(iv) Noticee no. 8 and 12, by indulging in the acts as narrated above, have violated the Code of Conduct for Stock Brokers, as provided under Schedule II of Stock Broker Regulations.

69.13 I note that SECC Regulations, 2012 has been repealed by Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2018 (hereinafter referred to as "**SECC Regulations, 2018**"). In terms of regulation 52(2) of SECC Regulations, 2018, notwithstanding such repeal, anything done or any action taken or purported to have been taken or contemplated under the repealed regulations and circulars before the commencement of these regulations shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of SECC Regulations, 2018. Therefore, present proceedings in so far as violations of SECC Regulations, 2012 are concerned may be continued unaffected by such repeal.

69.14 In the conclusion, I hold that Noticee No. 1, Noticee No. 3, Noticee No. 4, Noticee No. 5, Noticee No. 6, Noticee No. 7, Noticee No. 8, Noticee No. 9, Noticee No. 12, Noticee No. 13, Noticee No. 14, Noticee No. 15, Noticee No. 16 and Noticee No. 17 have violated the provisions of SEBI Act, 1992 and the provisions of other regulations including relevant provisions of PFUTP Regulations, 2003 as specifically mentioned in the SCN qua each of the aforementioned Noticees and also in my concluding paragraphs while dealing with submissions of each Noticee in this order. Keeping in view the nature of serious violations committed by these Noticees, it is necessary that effective remedial measures are taken, by issuing appropriate directions to them. However, in the case of Noticee no. 2, 10 and 11, whom I don't hold liable for the reasons recorded in respect of them while discussing their respective submissions, no directions is required to be issued.

## 70. **Directions**

70.1 Based on the findings established against NSE (Noticee no. 1), the next important issue which requires consideration, pertains to the direction which could be appropriate to be issued to the Noticee no.1 in the facts and

circumstances of the matter. As emphasised by me in the foregoing discussions, NSE being a recognised stock exchange and being the leading MII of the country, occupies a pivotal role as a front line regulator in the functioning of the securities market. Therefore, apart from issuing directions that are required to be issued to the Noticee no. 1 for taking various remedial and reformatory steps under section 11, 11(4) and 11B of the SEBI Act, 1992 and Section 12A of the SCR Act, 1956, in my view, considering the gravity of the allegations that have been established against the Noticee, additional exemplary directives need to be issued to the Noticee which could pose an effective deterrence and dis-incentive to the Noticee to perpetrate such kind of violations in future so far as administration and governance of its Colo facility is concerned. In this regard, to meet the ends of justice and in the fitness of things, I deem it proper to direct NSE to deposit a reasonable portion of revenue earned by the Noticee through its Colo facility during the period from May 08, 2015 to September 10, 2015 (i.e. the period during which Sampark was permitted to provide P2P connectivity to Noticee no. 8 and Noticee no. 12) to the Investor Protection and Education Fund (hereinafter referred to “IPEF”) of SEBI which would be utilised for the objectives of the IPEF. Based on the information obtained from Noticee no. 1, the revenue generated by it from its Colo facility during the relevant Financial year (2015-16) is tabulated below:

<b>Revenue from co-location facility* ( In Rupees)</b>					
<b>Financial Year</b>	<b>Transaction Charges from Co-location Facility</b>	<b>Rack Charges</b>	<b>Connectivity Charges</b>	<b>Total of (A+B+C)**</b>	<b>Total of (A+C)**</b>
	<b>(A)</b>	<b>(B)</b>	<b>(C)</b>	<b>(D)</b>	<b>(E)</b>
<b>2015-16</b>	<b>483,11,861,71.02</b>	<b>20,97,27,868.82</b>	<b>49,16,28,005.26</b>	<b>553,25,42,045.10</b>	<b>5532,28,14,176.28</b>
*Figures provided by NSE					
**Rack charges excluded from computation					

70.2 On the basis of the information about the revenue from Colo facility earned by Noticee no. 1, the reasonable portion that is proposed to be deposited in IPEF of SEBI is determined as below:

- a) As may be observed from the above, the Noticee recovers three type of charges from the stock brokers for extending Colo facility to them, viz: transaction charges, rack charges and connectivity charges. Out of these, transaction charges and connectivity charges are linked to the trading turnover of the stock brokers, hence I propose to consider the revenue of Noticee from these two type of charges for determining the subject amount. During the entire year of FY. 2015-16, Noticee's revenue from Colo facility for the aforesaid two types of charges aggregate to Rs.532.28 Crores. Accordingly, revenue for the period from May 08, 2015 to September 10, 2015, i.e. approx. four months comes to Rs.177.43 Crore. As established in this order, Noticee no.1 has allowed Sampark to provide P2P connectivity without having proper licence, to a few stock brokers in a preferential manner while denying the same service to other stock brokers and the said illegitimate service continued for a period of four months. Therefore, it would be appropriate to consider the revenue generated by Noticee during the above stated period of four months as the first basis for determining the amount to be directed to be deposited in the Investor Protection and Education Fund (hereinafter referred to "IPEF") of SEBI.
- b) In this regard, I further find it relevant to take note of the Net Profit Margin [i.e. Profit after Tax over Revenue from Operations] of Noticee for the relevant period and consider the same as the second basis for determining the subject amount. During the relevant financial year, the net profit margin of Noticee was as shown below:

<b>NSE's Net Profit Margin :</b>			
<b>Year</b>	<b>Revenue from Operations (In Rs. Cr.)</b>	<b>Profit after Tax (In Rs. Cr.)</b>	<b>(PAT/Revenue from Operations)*100</b>
2015-16	1854.50	654.14	35.27%
Source: NSE Annual Reports for the relevant period			

70.3 I note that that the net profit margin of the Noticee for the relevant year i.e. FY. 2015-16 was 35.27%. Applying the said net profit on Noticee's revenues from Colo facility of Rs.177.43 Crores earned during the relevant period of four months as determined above, I find that the net profit from Colo operation for the said period of four months comes to Rs.62.58 Crores. This is the amount which is determined for the purpose of directing the Noticee to deposit into the IPEF of SEBI for the reasons recorded above.

70.4 With respect to Noticee no. 8 (W2W) and Noticee no. 12 (GKN), for the reasons recorded in this order while discussing the submissions made by these two Noticees, it is established that these two Noticees have fraudulently availed of P2P connectivity with the help of an unauthorized Telecom Service Provider (Sampark) at the Colo facility of Noticee no. 1, in a manner to gain undue advantage in terms of low latency and high bandwidth in data transmission as compared to other stock brokers in securities market. I therefore deem it proper to direct Noticee no. 8 and 12, to deposit an amount equivalent to income from trading in securities earned by the aforesaid respective Noticees from their proprietary trading accounts during the period from May 28, 2015 to September 09, 2015 and May 07, 2015 to September 10, 2015, respectively, (i.e. the period during which Sampark was permitted to provide P2P connectivity to Noticee no. 8 and Noticee no. 12), to the IPEF of SEBI.

70.5 I note that the income from trading in securities of Noticee no. 8 and Noticee no. 12, in their respective proprietary accounts during the financial year 2015-16, are as under:

<b>Year</b>	<b>W2W (In Rs. Cr.)</b>	<b>GKN (In Rs. Cr.)</b>
2015-16	54.37	14.31

70.6 It is observed from the above that Noticee no. 8 got the Sampark connectivity from May 28, 2015 to September 09, 2015 while Noticee no. 12 availed their services for the period from May 07, 2015 to September 10, 2015 .Therefore, based on the period they have availed the services from

Sampark, I find it appropriate that a proportionate amount from their respective income earned from trading in securities for the financial year 2015-16, should be deposited by the respective Noticees to the IPEF of SEBI. Accordingly, the proportionate amount of income earned from trading in securities by Noticee no. 8 and Noticee no. 12 during their respective periods of Sampark Connectivity, comes to Rs.15.34 Crores and Rs 4.9 Crores respectively.

70.7 Keeping the foregoing discussions and findings, I, in exercise of the powers conferred section 11, 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and Section 12A of the SCR Act, 1956 read with Section 11(2)(j) and Section 19 of the SEBI Act, 1992, hereby issue the following directions:

**NSE (Noticee No.1)**

- a) Noticee no. 1 is directed to deposit a sum of Rs. 62.58 Crores as determined at para 70.3 above along with interest calculated at the rate of 12% p.a. from September 11, 2015 till the actual date of payment, to IPEF of SEBI within 45 days from the date of this order.
- b) The Noticee no.1, on completion of every six months (by June 30th and December 31st ) for the next three years, shall get its network architecture and infrastructure in its Colo facility and its linkages to the trading infrastructure audited by an independent CISA/CISM qualified and CERT-IN empanelled auditor. The deficiencies/shortcomings observed therein and the corrective steps taken thereon, with the comments of the MD and CEO of the Noticee No.1 shall be submitted to SEBI after obtaining approval of its Governing Board within 60 days from June 30th and December 31st of the year starting from June 30, 2019.
- c) Noticee No.1 is directed to prepare a comprehensive documented policy which shall, inter alia, include Guidelines, Standard Operating Procedures and Protocols with respect to its Colo facility *including the* eligibility criteria for Telecom Service Providers, the norms to be observed by the Stock Brokers and other registered intermediaries. The said documented policy is directed to be issued to the market intermediaries under intimation to SEBI, within three months from the date of this order.

- d) Noticee No.1, is directed to submit to SEBI, a report duly certified by its MD and CEO and with the comments of its Governing Board certifying that the network architecture and connectivity at its Colo facility and its linkages to the trading infrastructure are in conformity with SEBI's regulatory norms to provide fair, equitable, transparent and non-discriminatory treatment to all the market intermediaries registered with the Noticee No. 1. Such report shall be submitted within 30 days after every six months (ending on June 30th and December 31st ) for the next three years. First such report shall be filed for the six months ending on June 30, 2019, by July 31, 2019 based on the existing system and practices, pending compliances to directions issued at b) and c) above.
- e) The Noticee no. 1 is directed not to introduce any new derivative product for next six months from the date of this order.

**Chitra Ramakrishna (Noticee No.3)**

- f) Noticee No. 3 is directed that she shall not hold any position either directly or indirectly in the management and/or the Board of or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or any intermediary registered with SEBI or any of their related entities, for a period of 3 years. Further, Noticee No. 3 shall also not hold any position either directly or indirectly in or be associated, directly or indirectly, with a company listed in any of the stock exchanges recognized by SEBI for a period of 3 years.

**Subramanian Anand (Noticee No.4)**

- g) Noticee No. 4 is directed that she shall not hold any position either directly or indirectly in the management and/or the Board of or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or any intermediary registered with SEBI or any of their related entities, for a period of 3 years. Further, Noticee No. 4 shall also not hold any position either directly or indirectly in or be

associated, directly or indirectly, with a company listed in any of the stock exchanges recognized by SEBI for a period of 3 years.

**Ravi Varanasi (Noticee No.5)**

- h) Noticee No. 5 shall not hold any position, either directly or indirectly in or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or in any intermediary registered with SEBI or any of their related entities, for a period of 2 years. Further, Noticee No. 5 shall also not hold any position either directly or indirectly in or be associated, directly or indirectly, with a company listed in any of the stock exchanges recognized by SEBI for a period of 3 years.

**Nagendra Kumar SRVS (Noticee No.6)**

- i) Noticee No. 6 shall not hold any position, either directly or indirectly in or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or in any intermediary registered with SEBI or any of their related entities, for a period of 2 years.

**Deviprasad Singh (Noticee No.7)**

- j) Noticee No. 7 shall not hold any position, either directly or indirectly in or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or in any intermediary registered with SEBI or any of their related entities, for a period of 2 years.

**Way2Wealth Brokers Private Limited (Noticee No.8)**

- k) Noticee no. 8 is directed to deposit a sum of Rs. 15.34 Crores along with interest calculated at the rate of 12% p.a. from September 10, 2015 till the

actual date of payment, to IPEF of SEBI within 45 days from the date of this order.

- l) Notice No. 8 is hereby directed not to accept / induct / enroll any new client for a period of 1 year from the date of this order. Further, Noticee No.8 shall not undertake any trades on any stock exchange recognized by SEBI on proprietary account for a period of 2 years.

**Shashibhusan, CEO of Way2Weath (Noticee No.9)**

- m) Noticee No. 9 shall not hold any position, either directly or indirectly, in or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or in any intermediary registered with SEBI or any of their related entities, for a period of 2 years.

**GKN Securities, (Noticee No.12)**

- n) Noticee no. 12 is directed to deposit a sum of Rs 4.9 Crores along with interest calculated at the rate of 12% p.a. from September 11, 2015 till the actual date of payment, to IPEF of SEBI within 45 days from the date of this order.
- o) Notice No. 12 is hereby directed not to accept / induct / enroll any new client for a period of 1 year from the date of this order. Further, Noticee No.12 shall not undertake any trades on any stock exchange recognized by SEBI on proprietary account for a period of 2 year.

**Sonali Gupta, Om Prakash Gupta and Rahul Gupta (Noticee No.13, Noticee No.14 and Noticee No. 15)**

- p) Noticee No. 13, Noticee No. 14 and Noticee No. 15 shall not hold any position, either directly or indirectly, in or be associated, directly or indirectly, with any Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or in any intermediary registered with SEBI for a period of 2 years.

**Sampark Infotainment Private Limited (Noticee No.16) and Prashant D'Souza (Noticee No.17)**

- q) Notice No. 16 and Noticee No. 17 are hereby directed not to offer, directly or indirectly, any new telecom services in any manner to any of the Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or any intermediary registered with SEBI or their related entities, for a period of 2 years.
- r) Noticee No. 17 is hereby directed not to be associated with any telecom service provider, in any manner, providing services to any of the Stock Exchange, Clearing Corporation, Depository recognized or registered by SEBI and/or any intermediary registered with SEBI, or their related entities, for a period of 2 years.
- s) Amounts directed to be deposited as mentioned at para no. a), k) & n) above, shall be deposited either by way of demand draft drawn in favour of "Securities and Exchange Board of India", payable at Mumbai or by e-payment to SEBI account as detailed below:

<b>Name of the Bank</b>	<b>Branch Name</b>	<b>RTGS Code</b>	<b>Beneficiary Name</b>	<b>Beneficiary Account No.</b>
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

*\*Noticees who are making e-payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:*

1. Case Name:	
2. Name of the 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:	

-Sd/-

**S.K. MOHANTY**

**WHOLE TIME MEMBER**

**DATE: April 30, 2019**

**PLACE: MUMBAI**

**SECURITIES AND EXCHANGE BOARD OF INDIA**