QJA/SS/MRD/MRD-SEC-1/31485/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12A(2) read with Section 23GA and 23H of Securities Contracts (Regulation) Act, 1956 read with Rule 4 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 and Section 15HB of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 - In the matter of inspection of Bombay Stock Exchange Limited PAN -AACCB6672L.

1. Bombay Stock Exchange Limited ('BSE') is a stock exchange recognised and regulated by the Securities and Exchange Board of India ('SEBI') under the Securities Contracts (Regulation) Act, 1956 (SCRA).

2. Pursuant to an inspection of BSE conducted by SEBI for the period February 01, 2021 to September 30, 2022 ('Inspection Period'), SEBI initiated proceedings against BSE under SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') and SEBI Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ('SCRA Adjudication Rules') and monetary penalty under Sections 15G and 15HB of Securities and Exchange Board of India Act, 1992 ('the SEBI Act') and Sections 23GA and 23H of SCRA read with 12A(2) of SCRA and 11B(2) of the SEBI Act.

3. Consequently, a Show Cause Notice (SCN) No. SEBI/HO/MRD/MRD-SEC-1/P/OW/2024/30132/1 dated September 23, 2024 was issued to BSE which is the subject matter of the instant proceedings. In the SCN, the following allegations have been made:

> *"2.1 Before September 13, 2023, system architecture of BSE enabled receipt of unpublished price sensitive information (UPSI) by paid clients and Listing Compliance Monitoring (LCM) before the said information was available to the viewers on BSE website. BSE allowed difference in manner (manual pull vs. push to paid clients) of dissemination of data due to lack of RSS feed post publication of corporate announcement on BSE website.*

2.2 BSE failed to formulate policy with respect to frequent modifiers and failed to initiate disciplinary actions to be taken against such brokers.

2.3 BSE failed to review the 'error account' comprehensively to ensure that the trades flowing in the 'error account' have been liquidated subsequently in the market and not shifted to some other clients.

2.4 BSE allowed client code modifications for trades between two unrelated institutional clients without any due diligence, viz., without verifying genuineness or without penalizing."

4. In view of the above, it has been alleged that, during the inspection period, BSE failed to comply with:-

   (a) Regulation 39(3) of the Securities Contracts (Regulation) (Stock Exchange and Clearing Corporations) Regulations, 2018 ('the SECC Regulations'), SEBI circular no. SEBI/HO/DEPA-III/DEPA-IIISSU/P/CIR/2022/25 dated February 25, 2022 and regulation 3 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('the PIT Regulations') with regard to allegations as stated in 2.1 above;

   (b) SEBI circular CIR/MRD/DP/29/2014 dated October 21, 2014 and SEBI Circular CIR/DNPD/6/2011 dated July 5, 2011 with regard to allegations as stated in 2.2 above,

   (c) BSE circular dated August 26, 2011 and clause 15.3.2.3. of SEBI master circular SEBI/HO/MRD2/MRD2DCAP/P/CIR/2021/0000000591 dated July 5, 2021, with regard to allegations as stated in 2.3 above

   (d) SEBI Circular MRD/DoP/SE/Cir- 35/2004 dated October 26, 2004, and SEBI Circular CIR/DNPD/6/2011 dated July 5, 2011 with regard to allegations as stated in 2.4 above

5. BSE filed its reply to the SCN on February 07, 2025. It also availed opportunity of hearing on February 10, 2025 when Mr. P.N. Modi, Senior Advocate, appeared on behalf of BSE. While reiterating all submissions made by BSE in its written reply, Ld. Senior Advocate presented a written note and based on the same he made his arguments which are dealt with in later part of this order. Subsequently, BSE filed additional written submissions on February 21, 2025. The submissions made by BSE are also dealt in the following relevant paragraphs where each issue is considered to determine whether BSE violated the alleged provisions of regulations/circulars.

6. Ld. Senior Advocate emphasized that the purpose of inspection is remedial and not punitive. Relying upon relevant paragraph of SEBI's Enforcement Manual, Ld. Senior Advocate vehemently argued that as per SEBI's own policy, if at all there is default, no penal actions should be taken for first default and that the alleged defaults, as per the said Enforcement Manual of SEBI, can be remedied by corrective measures through administrative actions. Ld. Senior Advocate vehemently argued that the SCN has been issued based on vague allegations and based on "*possibility*". The SCN cannot be issued on possibility of an event happening and thus, the SCN is bad in law and cannot sustain.

7. Ld. Senior Advocate further argued that Sections 23GA and 23H of SCRA cannot be applied in this case and both the sections cannot operate together. The activities in respect of which the allegations are made in the SCN are not the '*business*' of BSE in this case as section 23GA applies in respect of business in commercial sense of the term and not in regulatory sense. Section 15HB does not apply to the case at all if allegations are for violations under SCRA. The SCN has sought to invoke wrong provisions for invoking penalties under Sections 23GA and 23H of SCRA and also under section 15HB of the SEBI Act for same allegations. Section 23H of SCRA and section 15HB of the SEBI Act both are not applicable and have been wrongly invoked. Further regulation 39(3) of SECC Regulations does not apply to the case of BSE as it has permitted access to all persons and there is no allegation of any bias towards its associates and related entities which is the only obligation under regulation 39(3). The circular dated February 25, 2022 does not apply as BSE has not charged any entity for sharing data within ambit of that circular which is not relevant for the facts of this case.

8. Further, regulation 3 of the PIT Regulations is not applicable to the facts of the case as information available on the website of a stock exchange can never be unpublished price sensitive information ('UPSI'). BSE has not communicated any information so as to attract this regulation and the SCN is vague as to who communicated UPSI, if any. Further, according to him, the present case, assuming without admitting that there were irregularities observed, these were not a continuing violation and did not represent a systemic failure on part of BSE to fulfil its obligation as a stock exchange. It was also argued that no loss was caused to the investors and no gain was made by BSE in relation to the allegations specified in the SCN and such allegations do not have a market-wide impact nor do they affect the integrity of the market. BSE has always been co-operative and provided requisite information sought by SEBI from time to time in a prompt manner. In addition, the alleged violations are merely technical and even are incorrectly alleged. It was claimed that the alleged lapses were

non-repetitive and they were not such as would merit or justify any penalty. He relied upon judgement of Hon'ble Supreme Court in the matter of *Adjudicating Officer, SEBI vs Bhavesh Pabari*, wherein it has been held that the factors laid down in Section 15J of the SEBI Act are illustrative in nature. Additionally, it was informed that corrective steps have already been taken by BSE with respect to all the allegations levied in the SCN.

9. Ld. Senior Advocate also made detailed submissions on merits of allegations based on written reply of BSE and made valiant efforts to emphasise *bona fide* action of BSE and attempted to negate all allegations in the SCN. The arguments and submission are being dealt with while dealing with each of the 4 allegations in later part of this order.

10. I have carefully considered the allegations in the SCN and replies and submissions made by BSE. Before dealing with the issues in this case on merit, I deem it appropriate to deal with the preliminary objections raised by BSE.

Purpose of inspection is remedial and not punitive and first time default does not deserve penal action

11. The first such objection is that SCN emanates from examination/inspection observations *qua* BSE. In this regard BSE has relied on Hon'ble Securities Appellate Tribunal ('SAT') in *UPSE Securities Limited v. SEBI* (Appeal No. 109 of 2011, decision dated July 25, 2011), *Religare Securities Limited v. SEBI* (Appeal no. 23 of 2011, decision dated June 16, 2011), *IDBI Trusteeship Services Limited v. SEBI* (Appeal No. 186 of 2023, decision dated February 22, 2023) and *M/s. DSE Financial Services Ltd. v. SEBI* (Appeal No. 153 of 2012, decision dated September 11, 2012), to contend that the purpose of carrying out inspection is not punitive and not every irregularity or deficiency noticed during the course of inspection calls for initiation of penalty proceedings. In this connection, reliance was placed on the Hon'ble SAT's order in *UPSE Securities Limited v. SEBI (Appeal No. 109 of 2011 decision dated July 25, 2011)* of which the following extract was referred by the Noticee:

> *"5. Before concluding we cannot resist observing that the object of carrying out inspection of the books of accounts and records of any intermediary including a stock exchange or its subsidiaries is to ensure compliance with the provisions of the Act, Rules, Regulations, By-laws and circulars issued from time to time which are meant to regulate the securities market. Every little irregularity / deficiency noticed during the course of the inspection is not culpable and does not call for initiation of penalty proceedings. The purpose of inspection in quite a few cases could*

be better achieved if the inspecting team at the time of the inspection were to advise the erring entity…"

12. However, I note that the Hon'ble SAT in *UPSE Securities Limited* (supra) and *IDBI Trusteeship Services Limited* (supra) went on to observe that for serious lapses, it would always be open to SEBI to take penal action in accordance with law.

13. In the matter of *DSE Financial Services* (supra), the Order of SEBI was set aside because the violations were found to be technical in nature.

14. BSE has relied upon following extract of the order of the Hon'ble SAT in the matter of *Religare Securities Limited* (supra)

"5. It must be remembered that the purpose of carrying out inspection is not punitive and the object is to make the intermediary comply with the procedural requirements in regard to the maintenance of records. We also cannot lose sight of the fact that every discrepancy/irregularity found during the course of inspection is not culpable and the object of the inspection could well be achieved by pointing out the irregularities/deficiencies to the intermediary at the time of inspection and making it compliant."

I note that in *Religare Securities Limited*, the Hon'ble SAT further held that: "*This will, of course, depend on the nature of the irregularity noticed and we hasten to add a caveat that it is not being suggested that if any serious lapse is found during the course of the inspection, the Board should not proceed against the delinquent."*

15. In view of the above observations of the Hon'ble SAT, I note that it is not sacrosanct and binding that the inspection observation must always result in pointing out deficiencies only. If the default is serious, it is always open to SEBI to proceed to initiate quasi-judicial action. I, therefore, find that the SCN issued to BSE cannot be held to be bad in law merely because the allegations arise from an inspection/examination.

16. In addition, BSE has also referred to SEBI's internal policies, *viz*., Enforcement Manual of SEBI and has referred to the following extract of the said Enforcement Manual: -

"Minor violations by intermediaries observed during inspection may predominantly be dealt with by administrative actions as per the general guidelines in Para 2.1.1. If violations are continued or repeated even after administrative actions, adjudication proceedings may be considered."

The Para 2.1.1. states the following-

"2.1.1. As a matter of policy, the violations that can be remedied by corrective measures or first time violations (other than the cases where there is no ill-gotten gain or fraudulent and unfair trade practice affecting the market integrity or causing widespread losses to investors or money mobilisation by unregistered Collective Investment Scheme (CIS) or Deemed Public Issues (DPI) entities), administrative actions (soft actions) such as issuing administrative warning letters, deficiency/caution letters, advice letters and expedited settlement proceedings (as a newly proposed administrative action) for late filings, delayed compliance, etc. in accordance with the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014."

17. I note that more often than not it is being relied upon by Noticees in quasi-judicial proceedings[1] although they are for internal and administrative use of SEBI officers. Be that as it may, in order to deal with contentions of BSE in this regard, I note that the aforesaid clause 2.1.1 of Enforcement Manual of SEBI is an internal document for guidance of officers of SEBI in their day to day functioning while deciding to initiate actions but does not compel the competent authority to always ignore lapses even if they occur for the first time. Further, reference to first time defaults to be dealt under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 as mentioned in para 2.1.1 of the Enforcement Manual is at the choice of the Noticees and SEBI does not take initiative to propose settlement under the said Settlement Regulations. I, therefore, am not inclined to accept the contention in this regard.

SCN is based on "possibility" and cannot sustain.

18. It has been contended by BSE that the SCN cannot be issued based on possibility and hence the allegation that is based on mere possibility cannot sustain. In this regard, I note that the word "*possibility*" has occurred twice and only in para 12 of the SCN. In the said para 12, it has been stated that by putting load balancer, there was *possibility* that the investors are connected to BSE website

[1] *See SEBI order number QJA/GR/MRD/MRD-SEC-3/31213/2024-2025 dated February 25, 2025*

through any of the data bases, viz., Database 2 ('DB2'), Database 2A ('DB2A') and Database 2B ('DB2B'). Therefore, the time stamp of data published on website from DB2 database may not be the time of data availability to the investors. While LCM received data immediately on creation of News Id from DB2, paid clients received data directly from DB2A or DB2B. Therefore, due to system architecture, there was *'possibility'* that information due to enablement in BSE system, the data was received by LCM and paid subscribers prior to receipt by general investors.

19. I note that this para attempts to summarise only the background of first allegation and does not make allegations. Further, the narration in para 12 of the SCN has to be read and understood in the context of what has been stated in previous paragraph and succeeding paragraphs of the SCN to describe complete facts and circumstances of the case. When seen in the context of entire gamut of facts as described in the SCN, it is noted that the allegation of violation of regulations and circulars in this regard are not based on possibility. The first allegation is summarised in para 14 of the SCN and the said para makes clear allegation with regard to first charge. In fact, the word "*possibility*" used twice in the SCN indicates that the system of BSE was faulty and posed risk of information asymmetry created due to receipt of price sensitive information by LCM and paid subscribers before the same was disclosed to public including other investors. I note that BSE misconceived the purport of the word "*possibility*" used in para 12 based on the contention that the SCN cannot be issued on *possibility of an event happening.* I note that in this case, allegation is not based on hypothetical assessment but based on clear observations based on instances of impugned information dissemination as mentioned in para 11 of the SCN and on allegations as summarised in para 14 of the SCN.

Sections 23GA and 23H of SCRA are not applicable in the present facts and circumstances

20. The SCN contemplates imposition of penalty under Section 23GA and 23H read with Section 12A(2) of SCRA and Section 15G and Section 15HB read with Section 11B(2) of the SEBI Act. The charging sections 23GA and 23H of SCRA provide as follows:

*"**Penalty for failure to conduct business in accordance with rules, etc.***

23GA Where a stock exchange or a clearing corporation fails to conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India

and the directions issued by it under this Act, the stock exchange or the clearing corporations, as the case may be, shall be liable to penalty which shall not be less than five crore rupees but which may extend to twenty-five crore rupees or three times the amount of gains made out of such failure, whichever is higher."

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

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

21. Relying on the Order of Hon'ble Supreme Court in the matter of *R. Kalyani v. Janak C. Mehta & Ors. [2009 1 SCC 516]*, it has contended that penal statute must receive strict construction and that there is no allegation that BSE failed to "*conduct its business with its members or any issuer or its agent or any person associated with the securities markets in accordance with the rules or regulations made by the Securities and Exchange Board of India and the directions issued by it under this Act*" or to any alleged failure to comply with the "*Act, the rules or articles or bye-laws or the regulations of the recognized stock exchange or directions issued by SEBI*." Further, BSE has contended that the requirement of disseminating the corporate announcement uploaded by listed company on the website of the stock exchange arises pursuant to the requirement prescribed by SEBI more specifically, under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR Regulations').Therefore, as required by the LODR Regulations, BSE has merely enabled listed companies to directly upload their corporate announcements onto the BSE website so as to ensure that the public at large can have equal, unrestricted, transparent and fair access to such corporate announcements. However, the same cannot be considered as the '*business*' of the Stock Exchange within the meaning of Section 23GA of the SCRA and as defined by Black's Law Dictionary, i.e., '*business*' is "*a commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain*".

22. In this regard, it is pertinent to note that the opening words of the said sections 23GA say that - "*Where a stock exchange or a clearing corporation <u>fails to conduct its business</u> with its members or any issuer or its agent <u>or any person associated with the securities markets</u> in accordance with the*

rules or regulations made by the Securities and Exchange Board of India and the directions issued by it…" The question that becomes germane for determination is whether the activity of enabling listed companies to directly upload their corporate announcements to the BSE website so as to ensure that the public at large can have equal, unrestricted, transparent and fair access to such corporate announcements is a "*business*" of BSE. It is noted that the primary function of a stock exchange is provided in section 2(1)(j) of the SCRA and, that is, - ***assisting, regulating or controlling the business of buying, selling or dealing in securities***. The SCRA also authorises a stock exchange to make bye laws for several matters for this purpose, as listed in section 9, including for listing of securities. The stock exchange can also lay down listing conditions by way of listing agreement (section 21) and delist the securities (section 21). The argument of BSE indicates that the statutory functions provided in SCRA and those delegated to a stock exchange by SEBI by way of LODR Regulations or circulars are not within the scope of its '*business'*. The word "*business*" has not been defined in the SCRA or Regulations made thereunder. In my view, the word "*business*" used in section 2(1)(j) has different connotations than this word as used in section 23GA. The stock exchanges, presently, do engage in commercial and profit oriented ventures. Briefly stated, the role and function of stock exchanges in modern times are twofold; *viz*.,

(a) Stock Exchanges serve the economy and the public by bringing together those who demand capital (corporations) and those who supply capital (investors). Investors can reduce risk by spreading their investments. They are also acting as information distributors. This function has a considerable economic value in providing free and fair information about companies listed on them and also for financial services such as market reports and analysis of stocks. Stock exchanges are also the first level regulators of the market that they organize. This ranges from compliance and surveillance to enforcement. The brokers who trade on the market are subject to rules of the stock exchanges. Stock exchanges also monitor compliance by participants with the regulatory regime including that directed by SEBI. Stock exchanges perform an important role to ensure fair trading and accurate price discovery both of which are critical in creating investor confidence. Stock exchanges set standards of corporate governance through their listing norms/conditions. In present times, the Stock exchanges, as institutional mechanisms, have an important role to play in ensuring the stability of the financial and economic system.

(b) And importantly, while fulfilling these functions, stock exchanges also carry on business enterprises. As business enterprises (though the business of running a stock exchange may not

necessarily be commercial), the performance of the stock exchange has a bearing on its competitive position in relation to its own competitors and dealing with its constituents.

23. Be that as it may, as the stock exchanges, presently, do engage in commercial and profit oriented ventures also, these areas will certainly fall within the scope of their "*business'* under said section 23GA. However, in the facts and circumstances of this case, the impugned activity of BSE certainly falls within the category of regulatory function within scope of section 2(1)(j). I am also of the view that Section 23H is a residuary provision in a sense that it is attracted where contravention of any rules, regulations, direction etc., is not covered for penalty in any of the listed charging sections of the SCRA. Thus, when any provision of SCRA, rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by SEBI do not fall in specific sections such as section 23GA, section 23H can be invoked. But both sections can never be invoked for the same violation simultaneously.

No penalty can be imposed invoking wrong provisions

24. Relying on an order of SEBI's adjudicating officer in the matter of *IFGL Refractories Limited v. SEBI (Appeal No. 1044 of 2022 decision dated January 06, 2023),* BSE has contended that penalty cannot be imposed under a wrong provision. Further, relying on the Order of Hon'ble Supreme Court in the matter of *Tolaram Relumal v. State of Bombay [(1954) 1 SCC 961]* and *Tuck v. Priester,* BSE has contended that if two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. I note that it is settled position of law that the penalty provisions should be strictly interpreted, penalty cannot be imposed under a wrong provision, penalty cannot be imposed based on vague allegations, and ambiguous probabilities and mitigating factors should be taken while adjudicating the quantum of penalty.

25. In this case, section 15HB of the SEBI Act, provides, as residue provision, penalty for a failure of compliance of the SEBI Act, rules and regulation made thereunder for which no separate penalty has been provided. In fact, the SECC Regulations have been made under SCRA read with SEBI Act. But, if at all the activities of a stock exchange are specifically governed pursuant to provisions of section 23GA of the SCRA, a fanciful approach to invoke section 23H of SCRA and section 15HB also for same violation is not appropriate. Similarly, if the case is not covered in specific provisions

of section 23GA of the SCRA and section 15G of the SEBI Act, then the available recourse is to section 23H of the SCRA or section 15HB of the SEBI Act. Here again, it must be kept in mind that since both these sections, i.e., section 23H of the SCRA or section 15HB of the SEBI Act are *pari materia* and overlapping in scope with regard to non-compliance of any direction of SEBI, it is not appropriate to invoke both sections for imposing penalty twice for same non-compliance. In this case, it is noted that the basis for charging BSE under all the above sections is identical. Further, violation of regulation 3 of the PIT Regulations is also charged for the same act for which section 23GA of SCRA has been invoked. A contravention may fall under both sections, i.e., section 23GA and section 15G if regulation 39(3) of SECC Regulations is contravened and the contravention also amounts to communication of any UPSI in contravention of regulation 3 of the PIT Regulations. Further, if any circular issued under SEBI Act for which no specific penalty is provided, is violated, the provisions of section 15HB would apply with regard to such violation and not section 23H of the SCRA. I proceed accordingly.

26. Coming to the merits of the case, the question that now comes for determination is whether BSE violated SEBI regulations/circulars during the inspection period as alleged in the SCN and, if yes, whether such violations deserve penalty. On careful reading of the SCN, it is noted that although the SCN makes 4 charges separately, it lists them in mainly following two heads so as to understand the allegations in perspective in which they are attempted in the SCN:

(a) Dissemination of corporate information (corporate announcement data of listed companies) to LCM team and paid clients; and

(b) Lapses in process and monitoring mechanism regarding client code modifications.

The second head is then broadly dealt under three aspects, i.e.,

(i) Frequent client code modifications

(ii) Review of error accounts of brokers; and

(iii) Institutional –intuitional client code modifications

While the above two heads are independent, the three aspects of the second head are interlinked and intertwined. I proceed to deal with them accordingly.

Dissemination of corporate information (corporate announcement data of listed companies) to LCM team and paid clients

27. In this context, the charge is that BSE has violated the provisions of Regulation 39(3) of the SECC Regulations, SEBI circular dated February 25, 2022 and also the provisions of regulation 3 of the PIT Regulations. Regulation 39(3) of the SECC Regulations provides as follows:

SECC Regulations

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

28. It is noted that the above regulation 39(3), as it is worded, applies with regard to '*access'* to every system/platform/service provided by the stock exchange without any limitation. Thus, it also applies with regard to equal, unrestricted, transparent and fair access to information/data with regard to corporate announcements of listed companies to all persons. Thus, if a stock exchange fails to ensure the equal, unrestricted, transparent and fair access to information/data with regard to corporate announcements of listed companies to all persons, the matter would fall within the ambit of regulation 39(3) of the SECC Regulations and in turn section 23H of the SCRA will be attracted.

29. SEBI circular SEBI/HO/DEPA-III/DEPA-III_SSU/P/CIR/2022/25 dated February 25, 2022 has been issued under section 11(1) of the SEBI Act. Thus, section 15HB can be invoked for non-compliance, if any, of this circular. It is noted that the said circular provides that:- "*As far as the data provided by various data sources in Indian securities markets pursuant to regulatory mandates for reporting and disclosure in public domain are concerned, such data should be made available to users, 'free of charge' both for 'viewing' the data as also for download in the format as specified by regulatory mandate for reporting, as well as their usage for the value addition purposes*." In my view the obligation under this circular is to make the data available to users, '*free of charge'*. In the facts and circumstances of this case, the charge with regard to the violation of said circular is not made out. Firstly, because there is no allegation with regard to charging the costs on information/data access although the allegation is with regard to receipt of corporate announcements by paid subscribers also. And, secondly, this circular applies with regard to viewing and obtaining data published by exchanges for research, analysis, etc., purposes.

30. On the same basis that due to system architecture, there was *'possibility'* that data was received earlier by LCM and paid subscribers, the SCN makes additional allegations of violation of regulation 3 of the PIT Regulations. In para 28 of the SCN, it is attempted to allege violation of all sub-regulations of regulation 3 of the PIT Regulations which are listed in para 28 of the SCN and reproduced as under:

"RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS:

Communication or procurement of unpublished price sensitive information.

3.(1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

(2A) The board of directors of a listed company shall make a policy for determination of "legitimate purposes" as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8.

Explanation –For the purpose of illustration, the term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors,

insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

(2B) Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

(3) Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would: –

(i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information] is in the best interests of the company;

NOTE: It is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

(ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.

NOTE: It is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations when authorised by the board of directors if sharing of such information is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished

price sensitive information well before the proposed transaction to rule out any information asymmetry in the market.

(4) For purposes of sub-regulation (3), the board of directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

(5)The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

(6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings."

31. Apparently, the prohibitions under Regulation 3 of the PIT Regulations have different facets. In fact, the SCN has referred to all the prohibitions (para 28) of regulation 3 without being specific as to violation of one or more of the many prohibitions contained in sub-regulations (1) and (2) of regulation 3 and obligations intended as preventive measures in sub–regulations 3(2A), 3(2B), 3(4), 3(5) and 3(6) and if the case falls under exceptions provided in sub regulation 3(3). It is established position of law that SCN must be specific to the charge and should not be ambiguous. The allegation of contravention of regulation 3 of the PIT Regulations does not sustain on this count alone.

32. If one were to infer that the allegation would fall within prohibition of communication of UPSI under regulation 3(1), then it would be prudent to examine the contention that the information related to corporate announcements of listed entities available with BSE is not UPSI. In this connection, I note that regulation 2(n) of the PIT Regulations defines UPSI to include *any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities*. In my view, if not all, certainly many of the unpublished corporate announcements of listed company, on being published, are likely to materially affect the price of securities of the company. Accordingly, I am of the view that information related to such corporate announcements of listed entities available with stock exchanges is UPSI, till it is published by the stock exchanges. In this case, the SCN is again vague as there is no mention at all as to which of the many corporate announcements and that of which company were shared before publication, as alleged, contained UPSI.

33. Regulation 3(1) of the PIT Regulations, prohibits an '*insider'* from communicating, providing, or allowing access to any UPSI, relating to a company or securities to '*any person'* including except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. In terms of regulation 2(1)(g) of the PIT Regulations, the term "*insider*" includes any person who is in possession of or having access to UPSI. In literal sense, not only BSE but the company which shares its corporate announcement to BSE for public dissemination and employees of the company and also of BSE who handle such corporate announcements before public disclosure on its website would be deemed to be '*insiders'*. With the same logic any authority or regulator and their employees who receive UPSI from filings of companies would be insiders and when they communicate UPSI while exchanging correspondences would attract the prohibition under regulation 3(1).

34. When it comes to prohibition under regulation 3(1), it is noteworthy that the said regulation creates an exception with regard to communication or access to UPSI '*in furtherance of legitimate purposes, performance of duties or discharge of legal obligations'.* The phrase "*in furtherance of legitimate purposes, performance of duties, or discharge of legal obligations"* is an exception to the prohibition under regulation 3(1) and it seems to allow the sharing of UPSI when it is necessary for specific legitimate reasons, rather than for personal gain. The expression '*in furtherance of legitimate*

purposes, performance of duties or discharge of legal obligations' has neither been defined nor explained in the PIT Regulations. In 2017, SEBI interpreted the same in an informal guidance provided to *Kirloskar Chillers Private Limited (KCPL)* that there exists an assumption that the actions of entities entrusted with ensuring adherence to PIT Regulations, should be to ensure compliance with the regulatory framework and not for an *"ulterior motive*". Regulation 3(3) further carves out exception to the prohibition under regulation 3(1) and 3(2).

35. The PIT Regulations, thus, are not intended as an all-purpose ban on information dissemination. Further, as per the 'Notes' appended to said regulation 3(1), the provision is intended to cast an obligation on all '*insiders'* who are essentially persons in possession of UPSI to handle such information with care and to deal with the information with them when transacting their business strictly on a *'need-to-know'* basis. It is also intended to lead to organisations developing practices based on '*need-to-know'* principles for treatment of information in their possession. If the communication of UPSI is *in furtherance of legitimate purposes, performance of duties or discharge of legal obligations'* and share on '*need to know'* basis, the prohibition in regulation 3(1) is not attracted. Further, in an institutional set up, if the UPSI is received in the organisation in one department for a legitimate purpose or for *performance of duties or discharge of legal obligations* of processing in compliance of LODR Regulations or circulars of SEBI or bye laws of BSE, it cannot be said that the entire organisation is communicating the UPSI to its department or to any person outside the organisation. When seen within spirit of prohibitions under regulation 3 and 4 of the PIT Regulations, it is clear that in case of non-individual insiders, the communication must flow from an individual. The SCN is silent as to who in BSE communicated the UPSI and to whom. In fact, the SCN is not definite about communication itself and also there is not even a whisper in it that the UPSI was communicated by any specific person in BSE. BSE being a listed company and also receiving UPSI in regulatory and fiduciary capacities must have taken preventive measures mandated in regulation 8 and 9 of PIT Regulations as to lay down code of fair disclosures, code of conduct and policy for safe handling of UPSI for legitimate purposes, etc. However, the SCN has not gone into these aspects at all before levelling serious charge of communication of UPSI on BSE. Thus, the SCN is incomplete, vague and unsustainable on this count also. It is pertinent to note that

when allegations are made in such a manner as in this case, the following observations of Hon'ble SAT becomes pertinent to note[2] :-

".. , we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. ***SEBI is the watchdog and not a bulldog****. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the … instead of mechanically imposing a penalty. Other factors should be considered including those stated in Section 23J of the Act which apparently was not considered."*

[emphasis added]

36. There is no definite charge of communication by an individual to another in this case. It is settled position that the charge of communication of UPSI under regulation 3(1) of the PIT Regulations, whether leading to insider trading or not, is a serious charge.

37. The communication must be established based on higher degree of probability based on direct or circumstantial evidence supported by foundational facts. In this case, the allegation is merely on the basis of probablilising or endeavouring and there is no foundational fact suggesting communication of UPSI by BSE as an institution. I note that Hon'ble SAT in its order dated November 19, 2009, in the matter of *Dilip S. Pendse v. SEBI,* Appeal No. 80 of 2009 observed as follows:

"13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability."

[2] *Piramal Enterprises Vs SEBI -http://sat.gov.in/english/pdf/E2019_JO2016466.PDF*

38. In view of the above, I find that the charge of violation of regulation 3 of PIT Regulations is not made out in this case.

39. I now proceed to examine the replies of BSE in light of the above analysis. In this case it has been observed during inspection that as per the process flow of BSE disseminating corporate announcements, listed companies file corporate announcements through Corporate Announcement Filing System (CAFS)/listing centre which is received in Database 1 ('DB1') of BSE. Thereafter, the data received in ('DB1') is pushed to another database, viz., Database 2 ('DB2'), which creates News ID for the announcement. After creation of News ID, data is replicated from Database 2 ('DB2') on to two separate databases, i.e., Database 2A ('DB2A') and Database 2B ('DB2B'). The data is also sent from DB2 to LCM simultaneously. Leased line and web services are used for continuous data feed products. Both push and pull form of data dissemination is available for leased line paid clients. Leased line database pulls the data from DB2B and multi-casts to internal systems and disseminates to paid client over TCP/IP. In web services, data is available in pull form only and paid clients connect to DB2B via Application Programming Interface ('API') for accessing the data. Investors/users access the BSE website and based on the load, the load balancer gives access to website through any of the three databases, viz., DB2, DB2A and DB2B.

40. In view of the above process flow, it is alleged that prior to September 13, 2023, system architecture of BSE enabled possibility of receipt of corporate announcements by LCM and the paid subscribers before the said information was available to all viewers on the BSE website. Further, there was a difference in manner (push to paid clients versus manual pull on BSE website) of dissemination of data due to lack of Really Simple Syndication (RSS) feed for dissemination of data on BSE's website. It is also alleged that till the time ordinary investors manually browse announcement/information on each update, there is potential for Algos to read such machine readable corporate announcement/information pushed to paid clients. Additionally, certain anomalies were noticed in time stamp of receipt of data at DB1 and DB2. Also, it has been alleged that there were certain instances wherein data was received by LCM/paid subscribers prior to replication in DB2A and DB2B. The SCN has also described that investors/users access the BSE website and based on the load, the load balancer gives access to website through any of the three databases, i.e., DB2, DB2A and DB2B. This means that the time at which general investors/users of BSE can see

corporate announcements on the website depends on which database (i.e., DB2, DB2A or DB2B) the website has access to as per the load balancing done by load balancer.

41. The Ld. Senior Advocate appearing for BSE valiantly argued that BSE has not deliberately defaulted. Reiterating written reply of BSE, he attempted to show why the conduct of the BSE was *bona fide* as follows:

    a) There is no allegation that anyone can ever know as to which database one is connected through or whether one can ever know whether one is getting information before or after anyone else. Neither BSE nor SEBI have access to information as to the time when any client (paid or otherwise) received any information. BSE's website on an average daily basis experiences approximately 8.95 million page views and 0.26 million users. Therefore, no one can take advantage of the same because of alleged possibility. The load balancer distributes the load between DB2A and DB2B and ensures fairness, transparency and equality in the system.

    b) '*Machine readable*' means that data is searchable by a computer and corporate announcements by listed companies are in a narrative form which requires a person to assess it to frame an opinion regarding the trading call to be made and this cannot be done by an algo. Algo can only be programmed to receive trade/order data and place trade orders on the basis of the trade/order data. Time differentials in dissemination of such corporate announcements by different flows of dissemination process are alleged in fraction of seconds and this differential is irrelevant in the context of a person reading and analysing a corporate announcement.

    c) The time of dissemination of information is totally different from the time of receipt of information by public/investors. The time of receipt depends on the connectivity and speed thereof as well as the location of the recipient. Multiple channels of communications are available to the public/investors to receive corporate announcements and the receipt of the corporate announcement is totally dependent upon the choice exercised by the investor. Hence, exact same time cannot be expected for all modes of connectivity.

    d) Pursuant to observations by SEBI during the inspection, on September 13, 2023, BSE created time gap in the dissemination of the data to the paid subscribers and this was informed to SEBI on September 20, 2023.

e) The allegation that there was a possibility that the LCM could receive the information prior to the clients/general investors who accessed the information on BSE's website is factually incorrect as the corporate announcements of each listed company are immediately made available to the public at large from DB2 from which information is displayed on BSE website's general '*corporate announcements*' page and this page displays all companies' corporate announcements. The paid subscribers are the last in the process flow. Hence, the allegations with respect to push and pull methods of dissemination are irrelevant as BSE's website gets information from DB2.

f) The misunderstanding has arisen from the fact that the load balancer provided information from the other databases (i.e., DB2A and DB2B) for displaying information in a summary form on the front/home page of BSE's website only for the latest 10 corporate announcements and even this has been changed after SEBI's inspection so that the information/corporate announcements for even this summary display on the home page is also taken from DB2 and is displayed on BSE's home page before it is available to the paid subscribers. There is no regulatory requirement to have RSS feed for dissemination of data on BSE website.

g) The fractional time difference between time stamp at the DB2A and DB2B and the database for paid clients is a system/technology matter. Listing Center and BSE website are hosted on windows servers. Windows supports Network Time Protocol (NTP) for time synchronization and NTP is sourcing time from Global Satellites on periodic basis. Downstream servers sync with Active Directory at 15 minutes interval and Active Directory servers sync with NTP servers at 10 minutes interval. Hence, there is a chance of drift between two synchronization cycles which is typically in the range of milliseconds. Hence, the timestamp of corporate announcements looks to be earlier by around 20 milliseconds on BSE India website as compared to Listing Centre for certain days. Therefore, timestamps may vary due to technology, connectivity/network, CPU Processing, etc.

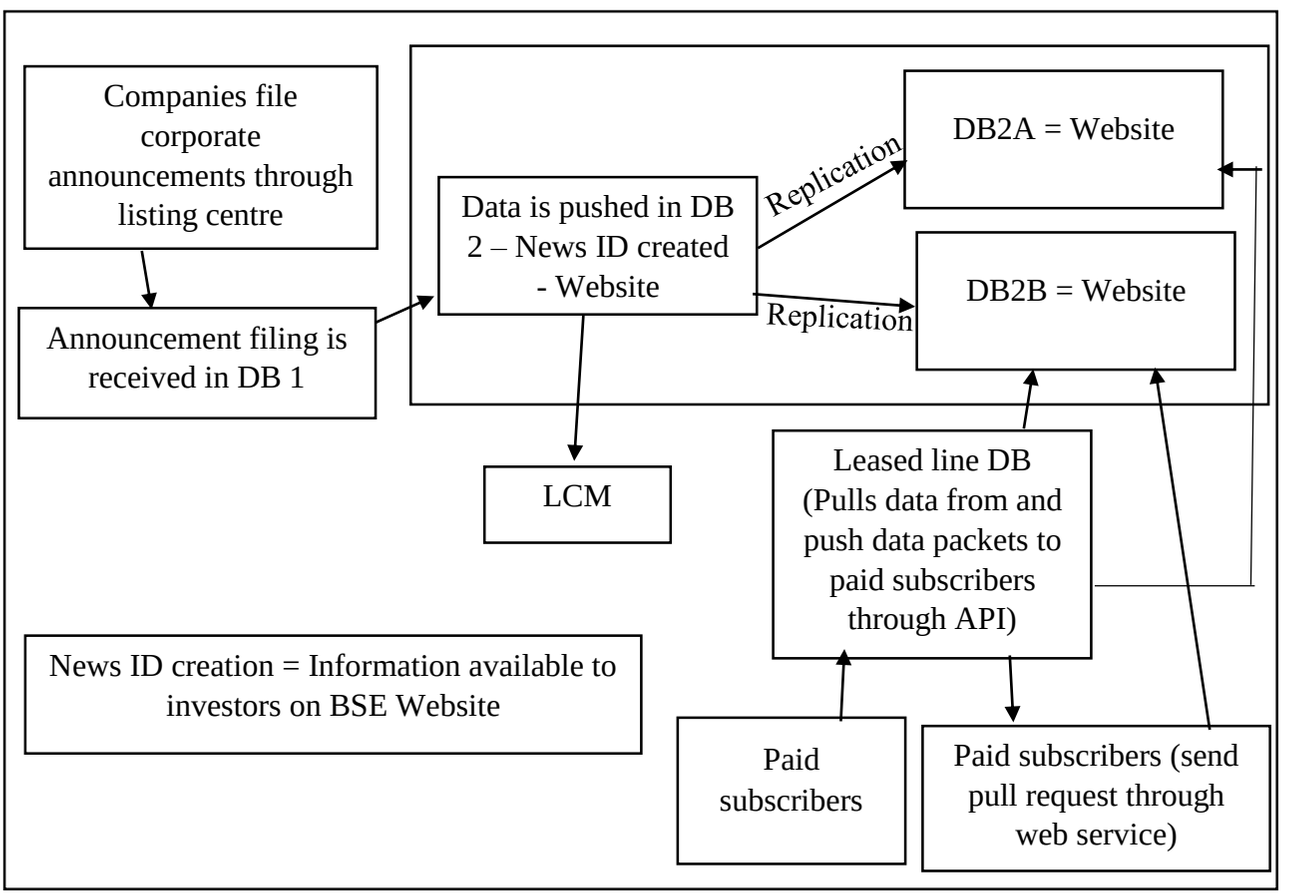
h) Relying upon the process flow chart provided in inspection observations with respect to dissemination of corporate announcements, he submitted that the load balancer provided information from other databases (i.e., DB2A and DB2B) and all the corporate announcements of each listed company were available to the public at large via the general '*corporate announcements*' page on BSE's website as well as each listed company's

'*corporate announcements*' page on BSE's website as the news ID was created as soon as information was received by DB2.

i) Even if there could be any possibility that LCM could receive information prior to general investors, it may be noted that the LCM team of stock exchange verifies the corporate announcements made by a listed company as required under SEBI Regulations. Further, LCM is subject to strict policy with regards to secondary market trading. Yet, after the time gap of fractions of seconds in receipt of information was pointed out to BSE during the inspection, BSE has implemented a time gap in the flow of information to LCM.

j) Pursuant to observations by SEBI during the inspection, on September 13, 2023, BSE created time gap in the dissemination of the data to the paid subscribers and this was informed to SEBI on September 20, 2023 and there is no allegation that anyone can ever know as to which database one is connected through or whether one can ever know whether one is getting information before or after anyone else.

42. I have carefully perused the process flow of information dissemination on BSE as depicted in the following chart:



43. From the said process flow, I observe that after the announcement filing is received in DB1, data is pushed to DB2 and news ID is created (which means that information is available on BSE website). Thereafter, the data in DB2 is replicated in DB2A and DB2B from where the data is pulled by/for paid subscribers through leased line and web services. The data from DB2 is also sent to LCM simultaneously. Leased line DB pulls the data from DB2B and multi-casts to internal systems and disseminates to paid clients over TCP/IP. Whereas in web service, data is available in pull form only and paid clients connect to DB2B via API for accessing the data. However, users access the BSE website and based on the load, the load balancer gives access to website through any of the three databases, viz., DB2, DB2A and DB2B. This means that as per the system architecture/process flow, LCM or paid subscribers could get access to the unpublished corporate announcements of listed companies before they are published on the BSE website whenever the load balancer provided access through DB2A/DB2B. This was even more aggravated by the fact that the link of BSE website was available for a particular company on press of a specific button on pull basis whereas leased line database pulled data and pushed data packets to paid subscribers through API. Further, from the sample inspected by SEBI during the inspection, SEBI observed the following:

    a) On many occasions, time recorded at DB2 is prior to time recorded at DB1.
    b) In 98 out of 100 instances, LCM received data prior to replication in DB2A and DB2B.
    c) In 6 out of 100 instances, paid subscribers received data prior to replication in DB2A and DB2B and hence, paid subscribers would have received data prior to users of BSE website if they had connected through these databases.
    d) In 47 out of 100 instances, paid subscribers received data prior to latest time stamp of databases 2A and 2B. Hence, paid subscribers had access to data prior to investor in case investor has connected to website through other database (i.e., except DB2).

44. I find that the system architecture of BSE did not ensure equal, unrestricted, transparent and fair access to information/data with regard to corporate announcements of listed companies to all persons as required under regulation 39(3) of the SECC Regulations.

45. BSE has also contended that load balancer provided information from the other databases (i.e., DB2A and DB2B) for displaying information in a summary form on the front/home page of BSE's website only for the latest 10 corporate announcements. However, I note that BSE, in its reply dated November 06, 2023 to the inspection observations, had made no reference to such an arrangement and even during the

current proceedings, it has not supplied any evidence in support of this statement. Further, BSE has stated that the difference in time stamp of data at DB1 and DB2 is on account of chance of drift between two synchronization cycles (sync of downstream servers with Active Directory at 15 minutes' interval and Active Directory sync with Network Time Protocol servers at 10 minutes' interval). Also, BSE has stated that the time of dissemination of information is totally different from the time of receipt of information by public/investors and the time of receipt depends on the connectivity and speed thereof as well as the location of the recipient. However, it is established that the dissemination of data through DB2, DB2A and DB2B was being balanced by the load balancer in a way that in many instances, it provided access to paid subscribers and LCM before the general users of BSE website. This raises serious concerns with respect to managing and handling price sensitive information by BSE. The fact that paid subscribers could receive data before the same was published on BSE website further amplifies the unfairness of its system architecture which posed serious risk of dissemination of UPSI available with BSE which was prone to misuse and abuse by receivers of the UPSI.

46. With respect to the receipt of information by LCM before general investors, BSE has contended that even if there was a possibility that LCM could receive information prior to general investors, it may be noted that the LCM team of stock exchange verifies the corporate announcements made by a listed company as required under SEBI Regulations. Further, BSE has stated that LCM is subject to strict policy with regards to secondary market trading. Yet, after the time gap of fractions of seconds in receipt of information was pointed out to BSE during the inspection, BSE has implemented a time gap in the flow of information to LCM.

47. I note that the display of corporate announcements on BSE website is technology driven and not intended as a system design to be verified before publishing on BSE website. Hence, I find that there is no plausible reason that LCM must get the data before general users of BSE website, especially when such information is prone to misuse by anyone who gets this information before general investors.

48. BSE has further submitted that there is no regulatory requirement to have a RSS feed. In my view, absence of any such statutory requirement does not dilute the spirit of obligation under regulation 39(3) of the SECC Regulations. The availability of an RSS feed for dissemination of information on BSE website would have addressed the disparity between pull and push of data between general website users

and paid subscribers. BSE being an MII has higher responsibility to take necessary steps to abide by the said principle and it was incumbent on BSE to ensure that the possibility of receipt of information by LCM or paid clients before its publication on website, even if due to technical reasons, is avoided. Stock exchange, as a first level regulator, has a fiduciary duty to the entire ecosystem and market participants' confidence in the system is based on the presumption that information is disseminated fairly to all. I note that such situation continued for a long time till SEBI pointed out and then BSE took corrective steps (by way of creating time gap in the dissemination of the data to the paid subscribers). Nevertheless, considering the facts and circumstances of the case, I find that the act and omission of BSE as found hereinabove were in violation of regulation 39(3) of the SECC Regulations prior to the inspection and advice of SEBI.

Lapses in process and monitoring mechanism regarding client code modification.

49. The allegation in this regard is that BSE has violated provisions of SEBI circular CIR/DNPD/01/2011dated January 03, 2011, SEBI circular CIR/DNPD/6/2011 dated July 05, 2011, SEBI circular CIR/MRD/DP/29/2014 dated October 21, 2014, clause 15.3.2.3 of SEBI Master circular SEBI/HO/MRD2/MRD2_DCAP/P/CIR/2021/0000000591 dated July 05, 2021, SEBI circular MRD/DoP/SE/Cir-35/2004 dated October 26, 2004 and BSE circular dated August 26, 2011.

50. In order to understand all three limbs of charge in this regard, it is deemed relevant to understand requirements in respect of restrictions along with allowance given for *client code modifications* ('CCMs') and how to deal with occurrences on the part of brokers. For this purpose, it is noted that the first circular as relied upon SCN is the SEBI Circular dated January 03, 2011, which, *inter alia,* states as under:

"Sub: Modifications to client code post trade execution

Stock Exchanges can permit modifications to client code post trade execution only in case of genuine error or wrong data entry made by trading members. This facility has been provided for the smooth functioning of the system and is expected to be used more as an exception rather than routine."

51. It is seen from above that the circular clearly intended for prohibition of CCMs and provided exceptions to the prohibition for smooth functioning of the system and the said allowances were permitted as exception rather than routine. The limited allowance for CCMs post trade execution as given by this circular is only in case of (a) genuine error or (b) wrong data entry made by trading members. Thus,

there is no other situation where such CCMs could be permitted by the stock exchange. Therefore, by the said Circular, SEBI advised Stock Exchanges to:

- *Set objective parameters for identification of client code modifications arising as a result of genuine error or wrong data entry. These objective parameters should be approved by the Governing Board of the Exchange and disclosed to the trading members.*
- *Impose monetary penalty in addition to disciplinary action against members who do not meet the laid down objective parameters.*
- *Include verification of client code modification as a reporting item in internal audit report of the trading members.*

52. By Circular no. CIR/DNPD/6/2011 dated July 5, 2011, SEBI laid down additional norms with regard to modification of client codes of non-institutional trades and provided as under:

"Sub: Modification of Client Codes of Non-institutional Trades Executed on Stock Exchanges (All Segments)

1. In consultation with BSE, MCX-SX, NSE and USE, it has been decided that the Stock Exchanges may allow modifications of client codes of non-institutional trades only to rectify a genuine error in entry of client code at the time of placing / modifying the related order.

2. If a Stock Exchange wishes to allow trading members to modify client codes of non-institutional trades, it shall

a. lay down strict objective criteria, with the approval of its Governing Board, for identification of genuine errors in client codes which may be modified, and disclose the same to market in advance,

b. set up a mechanism to monitor that the trading members modify client codes only as per the strict objective criteria, and

c. ensure that modification of client codes is covered in the internal audit of trading members prescribed by SEBI through its Circular No MRD/DMSCir-29/2008 dated October 21, 2008.

Notwithstanding the above,

A. the Stock Exchanges shall levy a penalty from trading members and credit the same to its Investor Protection Fund as under:

'a' as % of 'b'	*Penalty as % of 'a'*
≤ 5	*1*
> 5	*2*

Where,

a = Value (turnover) of non-institutional trades where client codes have been modified by a trading member in a segment during a month.

b = Value (turnover) of non-institutional trades of the trading member in the segment during the month.

B. The Stock Exchange shall conduct a special inspection of the trading member to ascertain whether the modifications of client codes are being carried on as per the strict objective criteria set by the Stock Exchange, as directed in Para 2 above, if 'a' as % of 'b', as defined above, exceeds 1% during a month and take appropriate disciplinary action, if any deficiency is observed."

53. It is noted that the above circular lays down clear norms without any ambiguity that:

(a) The stock exchange may allow modifications of client codes of trades only to rectify a genuine error in entry of client code at the time of placing / modifying the related order.

(b) And if the stock exchange allows modification of non-institutional trades, it must:

a. lay down strict objective criteria, with the approval of its Governing Board

b. disclose the same to market in advance,

c. set up a mechanism to monitor that the trading members modify client codes only as per the strict objective criteria, and

d. ensure that modification of client codes is covered in the internal audit of trading members.

e. levy a penalty in the manner laid down as above from trading members and credit the same to its Investor Protection Fund

f. conduct a special inspection of the trading member to ascertain whether the modifications of client codes are being carried on as per the strict objective criteria set by the Stock

Exchange, as directed in the circular, if 'a' as % of 'b', as defined above, exceeds 1% during a month and take appropriate disciplinary action, if any deficiency is observed.

54. By circular dated October 26, 2004, SEBI further clarified that *MFs and the FIIs shall henceforth enter the unique client codes pertaining to the parent MF and parent FII at the order entry level and do allocation to the individual schemes of the MFs and sub-accounts of the FIIs in the post-closing session.* Further, the Stock Exchanges were advised - *to put in place a suitable mechanism to enable the MFs and the FIIs to allocate the client codes to the individual schemes of the MFs and sub-accounts of the FIIs in the post-closing session.*

55. By its Circular dated October 21, 2014, SEBI permitted waiver of penalty with regard to CCMs where stock broker was able to produce evidence to the satisfaction of the stock exchange to establish that the modification was on account of a genuine error and such permission was subject to the following norms:

    a. Not more than one such waiver per quarter may be given to a stock broker.
    Explanation: If penalty wavier has been given with regard to a genuine error client code modification from client code AB to client code BA, no more penalty waivers shall be allowed to the stock broker in the quarter for modifications related to client codes AB and BA.
    b. Proprietary trades shall not be allowed to be modified as client trade and *vice versa*.
    c. Stock exchanges shall submit a report to SEBI every quarter regarding all such client code modifications where penalties have been waived.
    d. Stock exchanges shall undertake <u>stringent disciplinary actions</u> against stock brokers who undertake frequent client code modifications.

56. The basis of the first aspect of the charge in the SCN are that:

    a) BSE has failed to formulate policy with respect to defining brokers as frequent modifiers in terms of number of modifications done by a broker and no disciplinary action is triggered on any such broker.

b) BSE conducts limited purpose inspection of brokers based on objective criteria set by it exceeding 1% of the value of trades executed during a month and disciplinary action is initiated if any deficiency is observed.

c) Inspection of brokers by BSE is carried out periodically and for most brokers, it is once in 3 years and therefore, all the brokers are not covered under such inspections in a year. It is further stated that as broker inspections are carried out once in three years with generally an inspection period of 1 year, even for those brokers for whom error account review has been carried out, it would only be for a period of 1 year (and once in three years). Therefore, the brokers are un-reviewed for remaining 2 years.

d) During inspection, BSE is merely taking confirmation from brokers with respect to trades transferred to error account being subsequently liquidated. Hence, inspection of all brokers for error account review is not being done every year and even when it is done, BSE is relying on confirmations provided by brokers themselves.

e) BSE has failed to review the error account comprehensively to ensure that the trades flowing in the error account have been liquidated subsequently in the market and not shifted to some other clients.

f) There were instances wherein INSTITUTIONAL to INSTITUTIONAL (INSTI -INSTI) CCM modifications between two unrelated entities have been done but not penalized by BSE.

57. In its defence, BSE has stated the following:

a) SEBI's master circular dated July 05, 2021 requires exchanges to periodically review the trades flowing to the error accounts of brokers but the master circular does not define the periodicity of such review.

b) SEBI's circular dated June 30, 2017, which sets out the policy for annual inspection does not provide that the brokers having an error account should be inspected annually or at any particular intervals to ascertain whether the trades are liquidated in the market. The circular stipulates that apart from the brokers who fall in identified categories, some may be randomly selected for an annual inspection and all the other brokers should be inspected once in 3 years.

c) Error accounts are assigned their own separate Unique Client Code and BSE is able to track daily whether the trades in the error account are being liquidated in the market.

d) BSE has issued circulars regarding CCMs from time to time in line with the SEBI directions and SEBI was kept informed about the implementation of certain SEBI circulars by BSE.

SEBI circulars did not require BSE to have a policy regarding CCMs in terms of number of modifications.

e) The review of error accounts of brokers was in line with SEBI circulars and that special inspection reports do not contain enough details to indicate that due verification of statements made by brokers during inspection is done by BSE.

f) There is no allegation of any incident of any non-institutional trade in the error account not being liquidated in the market and being transferred to another client code. Additionally, SEBI circulars do not restrict CCMs between two different and separate institutions.

g) BSE has provided copy of its Notices dated October 12, 2001, March 29, 2003, April 09, 2003, October 15, 2004, February 21, 2006, April 05, 2006, April 19, 2011, July 06, 2011, July 29, 2011, August 26, 2011, June 25, 2014, October 21, 2014 to contend that BSE has policy defining frequent modifiers and that action has been taken against erring brokers in line with SEBI circulars issued from time to time. Further, BSE has stated that after the inspection, corrective action has been taken by BSE.

58. I have perused the abovementioned BSE Notices and SEBI circulars issued in the matter. A summary of the communication to brokers by BSE through these Notices and circulars issued by SEBI is provided in the following table:

Date	**Particulars**
October 12, 2001	Facility for modifying client codes is provided to brokers with the direction to avail the said facility to the minimum extent possible.
March 29, 2003	It was informed that BSE will monitor the utilisation of CCMs facility and would implement a monetary penalty structure that would escalate with the number of incidence of CCMs.
April 09, 2003	Penalty structure for misutilisation of the facility for rectifying the client codes informed to BSE members. The penalty was based on number of instances of CCMs per thousand trades on a daily basis.
October 15, 2004	Revised penalty structure for modification of client codes informed to brokers. The revised structure, *inter alia*, stated that if segment-wise percentage of client codes modified to total orders (less institutional

Date	**Particulars**
	orders) on a daily basis after deducting a maximum of 5 non-institutional modifications is less than or equal to 1%, the fine will be Nil.
February 21, 2006,	Revised penalty structure for modification of client codes informed to brokers. The revised structure also stated that the fine will be 'nil' if segment-wise percentage of client codes modified to total orders (less institutional orders) on a daily basis after deducting a maximum of 5 non-institutional modifications is less than or equal to 1%. Further, it provided escalating penalty for habitual offenders.
April 05, 2006	Revised penalty structure for modification of client codes informed to brokers. The revised structure retained the clause that the fine will be 'nil' if segment-wise value of trades with CCMs to value of total trades (less institutional orders) on a daily basis after deducting a maximum of 5 non-institutional modifications is less than 1% and the clause of escalating penalty for habitual offenders.
January 03, 2011 (SEBI circular)	Circular required exchanges to set objective parameters for identification of client code modifications and impose monetary penalties in addition to disciplinary action against members who do not meet the laid down objective parameters. It also required verification of CCMs in internal audit of brokers.
April 19, 2011	BSE's notice specified format of internal audit report regarding CCMs by brokers.
July 05, 2011 (SEBI circular)	SEBI prescribed penalty structure for excessive modifications of client codes on non-institutional traders and directed stock exchanges to undertake inspection of brokers whose segment-wise value of non-institutional trades with CCMs as a percentage of value of total non-institutional trade was more than 1% in a month.
July 06, 2011 and July 29, 2011	Dissemination of SEBI circular dated July 05, 2011 regarding "*Modification of Client Codes of Non-Institutional Trades Executed on*

Date	Particulars
	Stock Exchanges (All Segments)" along with other details regarding the circular's implementation.
August 26, 2011	Clarifications provided when brokers are permitted to change client codes, *inter alia*, stating that members had to inform BSE on a daily End of Day basis regarding the reason for CCMs.
June 25, 2014	The requirement to upload reasons for CCMs on EOD basis extended to next trading day 12 noon.
October 21, 2014 (SEBI circular)	The circular allowed stock exchanges to waive penalty for CCMs and provided other modalities in this regard. Further, the circular stated that stock exchanges shall undertake stringent disciplinary actions against stock brokers who undertake frequent CCMs.
October 21, 2014	Dissemination of SEBI circular dated October 21, 2014 regarding when penalty can be waived.

(Note:- BSE Notices dated October 15, 2004, February 21, 2006 and April 05, 2006 were not provided to SEBI during inspection or while submitting reply to the inspection observations. This laxity on the part of BSE in dealing with SEBI inspections must be avoided in future).

59. From the above table, it is seen that vide Notice dated April 09, 2003, BSE informed regarding its policy to impose penalty based on number of instances of CCMs per 1,000 trades on a daily basis. Subsequently, vide Notice dated October 15, 2004, February 21, 2006 and April 05, 2006, the penalty structure was revised to impose penalty based on percentage of CCMs to total orders on a daily basis after deducting a maximum of 5 non-institutional modifications and providing separate penalty for habitual offenders. Subsequently, as discussed above, SEBI circulars dated January 03, 2011 and July 05, 2011 directed stock exchanges, *inter alia*, to set objective parameters for identification of CCMs for genuine errors with approval of its governing board, set up a mechanism to monitor that the trading members modify client codes only as per the strict objective criteria, impose monetary penalty and take stringent action against brokers who do not meet the laid down objective parameters. Further, the circulars mandated that stock exchanges shall levy penalty on trading members based on value of non-institutional trades with CCMs as a percentage of value of non-institutional trades of the trading member in the segment during a month. Accordingly, it was obligatory on the part of

BSE to lay down objective criteria for dealing with cases of frequent CCMs and take stringent disciplinary actions against the stock brokers who undertake frequent CCMs. Thus, these are two distinct requirements prescribed in SEBI circulars. Further, BSE was required to impose '*monetary penalty in addition to disciplinary action'* against members who do not meet the laid down objective parameters. In addition, BSE should conduct a special inspection of the trading member to ascertain whether the modifications of client codes are being carried out as per the strict objective criteria set by it and CCMs exceeds 1% during a month and take appropriate disciplinary action, if any deficiency is observed.

60. BSE has submitted that it had laid policy based on SEBI circulars. I note that the Notice dated July 29, 2011 relied upon by BSE reads as follows:

"2. As per the direction of SEBI in the said circular, BSE has prescribed the following strict objective criteria for identification of genuine errors in entry of client codes of non-institutional trades for all segments. Members are permitted to change client codes of non-institutional clients only for the following criteria

(a) Punching error / typing error of client codes

(b) Trade entered for wrong client due to communication error

(c) Modification within family members

(d) Institutional trades modified to broker error account

3. Further, the members are required to inform the Exchange (through BEFS), on a daily basis by end of day, the reasons for modification of client codes of non-institutional trades based on the aforesaid objective criteria. For this purpose, members will be downloaded data after 6.30 p.m. every day in the BEFS system, containing details of non-institutional trades modified by them during the day. The member has to select any one of the above mentioned four objective criteria for each of the modified trade, details of which is given in the BEFS system and submit the completed file to the Exchange by end of day. ...

4. In case the member fails to give reason (by selecting one out of the aforesaid objective criteria) for modification of any of the non-institutional trades on the day of trade itself, the same will be considered as modification for purposes other than genuine error. In all such cases, member shall become liable for penalty/action, which shall be informed to the members shortly. This

penalty/action shall be in addition to the penalty which would be levied on the member, as per the aforesaid SEBI circular, for modification of client codes of all the non-institutional trades."

61. The above Notice shows that a policy as specified by SEBI did exist in BSE. The policy allowed brokers to change client codes only for 4 specified reasons and end of day reporting of reasons for CCMs for non-institutional trades. Further, failure to provide reason for CCM is considered as non-genuine modification and liable for penalty/action which shall be in addition to penalty levied on member as per SEBI circular dated July 05, 2011. Further, the said Notice of BSE provides for the penalty in addition to the penalty which shall be levied on the member, as per the aforesaid SEBI circular, for modification of client codes of all the non-institutional trades and that such penalty shall be *informed shortly*.

62. Further, BSE Notice dated August 26, 2011 states as follows:

"Please refer to Exchange Notice no. 20110706-1 dated July 06, 2011 and no. 20110729-24 dated July 29, 2011 prescribing guidelines on the captioned subject applicable for all the segments w.e.f. August 01, 2011.

Further to this, SEBI in consultation with other exchanges to bring consistency in the process of client code modification across the market, has decided to issue the following clarification:

(1) Members are permitted to change client codes of non-institutional clients only for the following objective criteria:

a) Error due to communication and/or punching or typing such that the original client code/name and the modified client code/name are similar to each other.

b) Modification within relatives (Relative for this purpose would mean 'Relative' as defined under sec. 6 the Companies Act, 1956).

(2) Any transfer of trade (institutional or non-institutional) to error account of the broker would not be treated as modification of client code and would not attract any amount of penalty, provided the trades in error account are subsequently liquidated in the market and not shifted to some other client code.

(3) For easy identification of error account, members are required to register a fresh client code as "ERROR" in the UCC database of the Exchange for the account which is classified by them as error account.

(4) Members are required to have a well-documented error policy approved by their Board/Management.

(5) Members are required to inform the Exchange (through BEFS), on a daily basis by end of day, the reasons for modification of client codes of non-institutional trades based on the aforesaid objective criteria, which shall be taken into consideration at the time of inspection.

(6) All cases of modification of client codes of non-institutional trades executed on the Exchange and not transferred to broker error account, shall be liable for a penalty of 1% of value of non-institutional trades modified if value of non-institutional trades modified as a percentage of total value of non-institutional trades executed is less than or equal to 5% and penalty of 2% if modification exceeds 5%, in a segment during a month. Members are once again strictly advised to modify client codes of trades only to rectify genuine error in entry of client code at the time of placing /modifying the related order."

63. Thus, this BSE Notice specifies the penalty that shall be levied on brokers undertaking frequent CCMs as a percentage of value of non-institutional trades with complete disregard to the absolute number of CCMs undertaken by a broker. It is clear from a reading of SEBI circulars dated January 03, 2011 and July 05, 2011 that inspection and imposition of penalty on brokers where segment-wise value of orders with CCMs as a percentage to value of total orders on a daily basis is more than 1% is mandated by SEBI. The SCN does not specify any particulars to show any lack of monitoring or negligence in imposing monetary penalty and take disciplinary action on any erring broker except for a statement that instances of actionable modifications are high. BSE has denied this statement. BSE has submitted that its policy provides for focused monitoring of instances of CCMs by way of daily reporting and it carries out inspection of the brokers pursuant to breaching 1% limit for CCM. Further, the BSE Notices dated October 15, 2004, February 21, 2006 and April 05, 2006, provide for penalty based on percentage of CCMs to total orders on a daily basis after deducting a maximum of 5 non-institutional modifications and providing separate penalty for habitual offenders.

64. The policy laid down in SEBI circulars is silent about objective criteria based on absolute number of instances and rather states special inspection and monitoring based on percentage only. The penal provisions can not be invoked based on assumptions. The regulatory prudence from SEBI and BSE both demands that the objective criteria could have identifiers in terms of number of modifications done by a broker also but in absence of any legal obligation cast on stock exchanges, the penal action

in this respect would not be possible as it would be based on assumption and expectation rather than based on breach of a positive and specific requirements.

65. In this connection , it is also pertinent to note that when the similar allegation was levelled against MCX and MCXCCL that they failed to implement the Outsourcing Circular from 2018 until February 2023 , SEBI speaking through an order dated May 26, 2025[3] passed by its Whole Time Member held that the allegation did not sustain for the reasons of ambiguity in the circular, absence of clear directive and remedial steps taken by MCX and MCXCCL later but prior to issuance of SCN as a good governance measure. The instant allegation against BSE is on the same lines and deserves same treatment as in the other case.

66. The other aspect of the charge in the SCN is that the BSE has failed to review the trades flowing into the error accounts of all brokers periodically so as to ensure that the trades flowing in the error account are liquidated subsequently in the market and not shifted to some other clients and has, thus, violated Clause 15.3.2.3 of the SEBI Master Circular dated July 05, 2021 and BSE circular dated August 26, 2021. It is noted that by its Master Circular dated July 5, 2021, SEBI clarified that shifting *of trades to the error account of broker would not be treated as modification of client code, provided the trades in the error account are subsequently liquidated in the market and not shifted to some other code.* BSE vide its Circular dated August 26, 2011 prescribed that the following would constitute *genuine errors* with regard to CCMs:

    i. *Error due to communication and/or punching or typing such that the original client code/name and the modified client code/name are similar to each other.*
    ii. *Modification within relatives ('Relative' for this purpose would mean "Relative" as defined under the Companies Act, 1956).*

67. Further, for easy identification of error account, members must, *inter alia* –

    (a) register a fresh client code as "ERROR" in the UCC database of the BSE for the account which is classified by them as error account.

[3] *WTM/AB/MRD- SEC-1/31435/2025-26*

(b) inform BSE on a daily basis by end of day, the reasons for modification of client codes of non-institutional trades based on the aforesaid objective criteria, which shall be taken into consideration at the time of inspection.

68. It is noted that above Clause 15.3.2.3 of the SEBI Master Circular dated July 05, 2021 waived restriction on CCM in case of trades to the error account of broker subject to two conditions i.e. (a) the trades in error account are subsequently liquidated in the market and (b) they are not shifted to some other client code. The BSE Circular dated August 26, 2011 treated aforesaid two situations where CCMs would be considered "*genuine errors".* Further, for easy identification of error account, brokers are required to register a fresh client code as "ERROR" in the UCC database of BSE for the account which is classified by them as error account.

69. It is pertinent to mention that all the requirements specified in different circulars of SEBI have to be seen holistically. SEBI Circular no. CIR/DNPD/6/2011 dated July 5, 2011clearly mandated the stock exchanges to *set up a mechanism to monitor that the trading members modify client codes only as per the strict objective criteria*. Accordingly, BSE was required to monitor/review the trades in error account of brokers with respect to whether these trades have been liquidated and not shifted to other clients within the ambit of the said Master Circular dated July 05, 2021. While I note that the SEBI Master Circular dated July 05, 2021 does not specifically provide for the periodicity with which brokers must be inspected to review the compliance with error account specifications, the monitoring mechanism of BSE is expected to be focused and objective to permit *client code* modification by broker *only as per the strict objective criteria.* However, BSE does not have any set monitoring mechanism to ensure strict compliance as stipulated in the SEBI circulars. Instead, it had been undertaking inspections once in 3 years. It has been alleged that BSE had been relying only on confirmations provided by brokers themselves when reviewing the trades flowing to the error account during inspection. BSE has contended that it takes confirmation from brokers and its inspection team takes confirmation with respect to liquidation of securities in error account only by sale in market and then the same is also verified with the records of the broker during inspection.

70. I note that BSE circular dated August 26, 2011 requires daily monitoring but states that information received by BSE from brokers on daily basis shall be taken into consideration at the time of inspection. But since the SEBI circular does not specify the periodicity, BSE monitored error account

activity once in 3 years (based on SEBI circulars that specify inspection policy). It is pertinent to note that the said BSE circular does not mandate inspection once in 3 years as per prevailing policy. But, SEBI circulars mandated monitoring of broker engaged in CCMs with set objective criteria. Millions of trades are executed on BSE every day and several SEBI circulars provide for regular monitoring of frequent and non-genuine CCMs (of which trades flowing in error accounts are only a sub-set) along with penalty and stringent action against brokers indulging in them. Hence, the possibility of trades flowing in error accounts is a daily possibility. Considering this factor, by no stretch of imagination can this activity be considered to be monitored once in 3 years.

71. The concerns which circulars seek to address, as is visible from terms and tenor of the said circulars, such as *"frequent modification"; "strict objective criteria"* and *'stringent disciplinary actions'*, clearly show requirement for focused and daily monitoring to deal with deviation and consequent disciplinary action and penalties on erring brokers. The condition that *trades in the error account are subsequently liquidated in the market and not shifted to some other code* imposed by SEBI Master Circular dated July 5, 2021, entail daily monitoring of such shifting of trades to error account and their liquidation. In fact, BSE Circular dated August 26, 2011 also states such daily monitoring. However, it states that information received by BSE from brokers on daily basis shall be taken into consideration at the time of inspection.

72. This shows weak supervision and monitoring by BSE when seen in the context of requirements of daily monitoring of shifting of trades to error account and its liquidation as per SEBI circular dated July 05,2011. This also shows laxity of BSE towards its supervisory functions. The very fact that BSE promptly put in place a system where it can track, on a daily basis, whether trades flowing in error accounts are being liquidated within 3 working days after the said inspection observation shows laxity and lethargic indifference and negligence for years and Clause 15.3.2.3 of the SEBI Master Circular dated July 05, 2021 has been clearly violated by BSE.

73. The last aspect of the charge in this regard is that there were instances wherein INSTITUTIONAL to INSTITUTIONAL (INSTI -INSTI) CCMs between two unrelated entities have been done and not penalized by BSE. To understand the context of the SEBI circular dated October 26, 2004, it is important to draw reference to SEBI circular dated March 31, 2003, which inter alia, states that

"... the exchanges would generate a unique code for Mutual Funds and each scheme of a Mutual Fund, Foreign Institutional Investors (FIIs) and their sub-accounts." There is no allegation that BSE did not generate unique code as stipulated in circular dated March 31, 2003. Further, by circular dated October 26, 2004, SEBI clarified that Mutual Funds ('MFs') and Foreign Institutional Investors ('FIIs') shall '*henceforth'* enter the unique client codes pertaining to the parent MF and parent FII at the order entry level and do allocation to the individual schemes of the MFs and sub-accounts of the FIIs in the post-closing session. By the said Circular, SEBI directed the Stock Exchanges to enable the MFs and the FIIs to allocate the client codes to the individual schemes of the MFs and sub-accounts of the FIIs in the post-closing session.

74. A combined reading of the above circulars dated March 31, 2003 and October 26, 2004 implies that stock exchanges, which were earlier required to have UCC for each MF scheme and FII sub-account, were directed to put in place systems that enabled MFs and FIIs to allocate the client codes of MFs/FIIs to the individual schemes of the respective MFs and sub-accounts of the respective FIIs in the post-closing session. Hence, I find that the circular dated October 26, 2004 only clarifies that in the post-closing session, client code of MF/FII can be modified with code of respective MF scheme/FII sub-account. Hence, any CCM which does not fall under this category must be considered suspicious if not non-genuine CCM altogether. Therefore, I find that BSE's contention that there was/is no prohibition on modification of UCC from one institution to an unrelated institution is misplaced. CCMs are allowed to rectify genuine errors made during order entry and such instances wherein INSTITUTIONAL to INSTITUTIONAL (INSTI -INSTI) CCMs between two unrelated entities have been done should have been noticed by BSE of its own accord without the requirement of SEBI to point it out during inspection.

75. Further, SEBI circulars dated January 03, 2011 read with July 05, 2011 directed stock exchanges to set objective parameters for identification of CCMs for genuine reasons and imposition of monetary penalty and disciplinary action against members who do not meet the laid down objective parameters. This leaves no doubt that modification of UCC for non-genuine reasons includes modification of UCC from one institution to an unrelated institution and calls for imposition of monetary penalty. Further, I note that in all institutional trades (i.e., 3,579 trades) where there were CCMs, for all but one institutional trade, no penalty has been levied by BSE. The SCN brings out clearly that in all these transactions, entries for a particular bank, Insurance Company, Mutual Fund,

FPI, or FII, etc. have been modified to completely different unrelated entities and this cannot be termed as allocation to individual schemes of MFs and sub accounts of FII. I find that such lack of due diligence on the part of BSE towards CCMs, which can be used with the *mala fide* purpose by brokers. Hence, in my view, BSE has violated provisions of SEBI circular dated October 26, 2004, January 03, 2011 and July 05, 2011 by not penalizing brokers.

76. All the above SEBI circulars which have been found to have been violated/deviated by BSE have been issued under section 11(1) of the SEBI Act. Hence, these failures would be covered within the ambit of section 15HB of the SEBI Act.

77. Coming to the issue whether BSE should be penalised by imposing a minimum prescribed penalty, Section 15I(2) of the Adjudication Rules and Section 23I(2) of SCRA gives discretion based on facts and circumstances of the case and application of the principles of reasonability and proportionality. The current proceedings do not entail restorative justice practice as victim restitution. Proportionality demands that a penalty should be proportionate with the mischief it seeks to address and penalties cannot be disproportionate to the magnitude of default. In fact, Section 15J of the SEBI Act, Section 23J of SCRA and Regulation 49 of SECC Regulations cast duties to consider several other factors. Sections 23J of the SCRA are *pari materia* Sections 15J of the SEBI Act. To avoid repetition, I reproduce provisions of Section 15J of the SCRA as following:

"Factors to be taken into account while adjudging quantum of penalty.
15J. While adjudging quantum of penalty under section 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.
Explanation. — For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15AA to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

78. While dealing with scope of such discretion under section 15I (2) of the SEBI Act with expression "*may impose such penalty as he thinks fit*" mentioned therein and applicability of inclusive factors

in 15J in such situation, Hon'ble Supreme Court in *SEBI v. Bhavesh Pabari (Civil Appeal No.11311 of 2013)* decided on February 28, 2019[4] held that the charging sections must have to be read along with Section 15J in a manner to avoid any inconsistency or repugnancy. Conflict and head-on-clash in different provisions between the one which gives discretion and the other which prescribes penalty must be avoided and both the provisions must be construed harmoniously. Provision of one section cannot be used to nullify and obtrude another unless it is impossible to reconcile the two provisions. The Explanation to Section 15J of the SEBI Act has clarified and vested in the Adjudicating Officer a discretion under Section 15J on the quantum of penalty to be imposed while adjudicating defaults under. This clarification through the medium of enacting the Explanation to Section 15J, also states that the Adjudicating Officer shall always have deemed to have exercised and applied the provision. It was held that the provisions of Section 15J were never eclipsed and had continued to apply in terms thereof to the defaults. Same principles do apply with regard to applying the provisions of section 23I(2) and section 23J of the SCRA.

79. Regulation 49 of the SECC Regulations lays down guidelines as to when to issue direction and levy penalty. The guiding principles for invoking monetary penalty is provided in proviso to regulation 49(2)(b) as under: -
    (i) a *mala fide* intent; or
    (ii) an act of commission or an act of omission; or
    (iii) negligence, or
    (iv) repeated instances of genuine decision making that went wrong.

80. I have noted the facts and circumstances in which the violations were committed by BSE. The SCN does not allege any *mala fide* on the part of BSE yet it attempts to show lack of legitimately expected regulatory approach by acts of commission and omission and negligence on the part of BSE. Hence, the contention of BSE that Section 49 of the SECC Regulations is not applicable in the present case cannot be accepted.

81. BSE is an integral part of the securities market and the statutory framework which SEBI regulates in relation to the securities market. The relationship between a stock exchange and SEBI is one based

[4] *Coram:- [Ranjan Gogoi, CJI, Deepak Gupta and Sanjiv Khanna, JJ.]Authored by SANJIV KHANNA, J.*

on trust and utmost good faith. Stock Exchanges play a vital and important role in the economy and are an instrument of regulation. Recognition under Section 4 of the SCRA is granted to them in the interest of trade and public interest. SEBI has to be, thus, always be satisfied of the effect of regulations by stock exchanges with higher degree of ethics particularly while handling price sensitive information. As observed by Hon'ble Bombay High Court in *MCX Stock Exchange Limited Vs. Securities and Exchange Board of India & Ors.*[5]*:*

> *"51. Stock exchanges provide what is described as "the first layer of oversight". In many areas, stock exchanges are self-regulators. As self-regulatory organizations, stock exchanges have a front-line responsibility for regulation of their markets and for controlling compliance by members of rules to which they are subject. They ensure, in that capacity, compliance of the requirements established by the statutory regulator. Apart from the regulation of members, market surveillance carried on by stock exchanges in certain jurisdictions regulates issuers. They do so by ensuring that the stocks of issuers are reliably traded and that issuers meet standards of corporate governance. In exercising these powers, stock exchanges may face issues involving a conflict of interest. Such conflicts of interest have to be handled and addressed effectively within the regulatory framework."*

82. It is also pertinent to note that the words *equal, unrestricted, transparent and fair* access to all *persons without any bias towards its associates and related entities* are of much significance. The first principles of the obligation under regulation 39(3) of the SECC Regulations is that *all persons* should have *unrestricted, transparent and fair* access to information intended for public access. Equal and unrestricted access demands availability of same information at same time to all without exception or exclusion. The elements of transparency and fairness cast additional duty on the stock exchange to ensure such access to *all persons* without any element of bias, negligence, disparity and partiality. The requirements are compulsive and not facultative, in that the transparent and fair access to information is the core of the information disclosure to general investors in the securities market. Thus, there is no room for any negligence, bias, disparity and partiality towards any person.The additional phrase '*without any bias towards its associates and related entities'* have been used in the said regulation 39(3) to explain avoidance of conflict of interest with associated or related entities in giving access to systems/services /platforms, etc., and accessibilities of other data/information.

5 Decided on 14 March, 2012

83. Being the first level regulator in the stock market and having been bestowed with primary duties as discussed herein above, the role of stock exchanges as *"the first layer of oversight"* is of much significance while handling material price sensitive information about listed companies and their securities. Therefore, as a premier recognized stock exchange, BSE must have internal controls on how to manage and handle such corporate announcements so as to ensure compliance with its obligations. The availability of information about listed companies with employees of LCM of BSE and its paid subscribers before it is available to general investors through its website of BSE has clearly impaired the concept of impartiality, transparency and fairness of information dissemination from the first level regulator BSE. Further, BSE has also displayed laxity and negligence with respect to not supervising norms with regard to client code modifications as found hereinabove.

84. This case involves multiple acts of omissions, laxity and negligence with a certain amount of lethargic approach which cannot be allowed to be exonerated if the first level regulator having paramount duties of regulation and oversight shows such approach of lax regulation leaving visible scope for misuse of its systems. At stake in the present case was the sanctity of exclusive regulatory duty of BSE. Such duty, if allowed to be violated with impunity, will be a serious setback to the image and the prestige of the BSE and SEBI both. It is for this reason that SEBI has not invoked other drastic actions such as order under section 11 or direction under section 12A of the SCRA but has initiated action under penalty provisions even after corrective steps have been taken as regulatory mandate. I humbly submit that I take this case with that direction, mandate and approach and consider this case for imposition of monetary penalty under section 23H of the SCRA and section15HB of the SEBI Act accordingly.

85. While adjudicating the penalty, I have taken into consideration the common and overlapping factors under section 23J of the SCRA and section 15J of the SEBI Act. I note that the SCN does not bring out any details about magnitude, impact or misuse of early access of any corporate announcement of any listed company by its LCM and paid subscribers. There is no allegation or material to show any disproportionate gain or unfair advantage by BSE or loss to investors on account of its failures as found in this case. However, the failures have continued until corrective steps were taken after the above violations were pointed out by SEBI.

86. I also note that in MCX and MCXCCL case (*supra*) wherein allegations of violations of SECC Regulations, LODR Regulations including with regard to non-disclosure of material information was upheld, a penalty of Rs. 25 lac was imposed by SEBI on MCX vide order dated May 26, 2025. In para 89 of the said order factors under section 15J were considered as *"While imposing the monetary penalty, I have considered the factors, as mentioned under Section 15J of the SEBI Act, 1992."*

87. Considering the facts and circumstances of this case and above mitigating factors, I, in exercise of the powers conferred upon me under Section 12A (2) of the SCRA and 11B (2) read with Section 19 of the SEBI Act and Rule 5 of the SEBI Adjudication Rules and SCRA Adjudication Rules hereby impose the following monetary penalty on BSE:

Violation	**Under**	**Penalty (in Rs.)**
Regulation 39(3) of the SECC Regulations	Section 23H of the SCRA	15 lakh
SEBI circulars dated July 05, 2011, Master circular dated July 05, 2021 and circular dated October 26, 2004	Section 15HB of the SEBI Act	10 lakh

88. BSE shall remit/pay the said amount of penalty, within a period of forty-five (45) days from the date of receipt of this order, through online payment facility available on the website of SEBI, i.e.www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of EDs/CGMs -> PAY NOW. In case of any difficulty in online payment of penalty, BSE may contact the support at portalhelp@sebi.gov.in.

89. BSE shall forward details of the online payment made in compliance with the directions contained in this Order to the Division Chief, MRD, SEBI, SEBI Bhavan, Plot no. C-4A, G Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400051 and also to e-mail id: tad@sebi.gov.in in the format as given in table:

Case Name	
Name of Payee	

Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/disgorgement/recovery/settlement amount/legal charges along with order details)	

90. This Order shall come into force with immediate effect.

91. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of BSE.

92. In terms of Rule 6 of the Adjudication Rules, copy of this Order is sent to BSE and also to SEBI.

SANTOSHKUMAR SHUKLA
Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2025.06.25 12:28:56 +05'30'

Date: June 25, 2025
Place: Mumbai

Santosh Shukla
Quasi Judicial Authority
Securities and Exchange Board of India