

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) of the SEBI Act, 1992, and Sections 19(1), 19(2) and 19(G) of the Depositories Act, 1996, read with Rule 5 of SEBI

(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In Re: SEBI (Depositories and Participants) Regulations, 1996, SEBI (Depositories and Participants) Regulations, 2018, and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003

In respect of SCN:

SCN: SEBI/HO/IVD/ID3/OW/P/2019/32852/1 dated December 09, 2019			
Noticee No.	Name of Noticee	Particulars	PAN
1	Allied Financial Services Pvt. Ltd. (AFSPL)	Depository Participant of NSDL (IN-DP-NSDL-126-2000)	AAACA2020K
2	Mr. Awanish Kumar Mishra	Managing Director of AFSPL	AGOPM7538H
3	Mr. Himanshu Arora	Director of AFSPL	AUXPA3314Q
4	Mr. Jitendra Kumar Tiwari	Director of AFSPL	ALBPT6629A

In the matter of alleged fraudulent transfer of Mutual Fund units from client accounts by AFPSL

BACKGROUND

1. SEBI received the following complaints against Allied Financial Services Pvt. Ltd. (hereinafter referred to as “**Allied/ AFSPL/ Noticee No. 1**”), a Depository Participant of NSDL, alleging fraudulent/ unauthorized transfer of mutual fund units (hereinafter referred to as “**MF Units**”):

- 1.1. Complaint dated February 08, 2019, from Finsec Law Advisor on behalf of clients Dalmia Cement East Limited (hereinafter referred to as “**DCEL**”) and OCL India Limited (hereinafter referred to as “**OCL**”) alleging fraudulent transfer of MF Units worth Rs. 344.07 crores by AFSPL (these complainants are hereinafter collectively referred to as the “**Dalmia Group**”) and
- 1.2. Complaint dated December 31, 2018, January 18 and 21, 2019 from Novjoy Emporium Private Limited (hereinafter referred to as “**NEPL**”) alleging unauthorized transfer of MF Units worth Rs. 21 crores by AFSPL.
2. SEBI conducted an investigation into the matter for the period February 20, 2017, till February 08, 2019 (hereinafter referred to as the “**Investigation period/ IP**”) to determine violations, if any, of provisions of the SEBI Act, 1992 (“**SEBI Act**”), Depositories Act, 1996 (“**DP Act**”), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (“**PFUTP Regulations**”), SEBI (Depositories and Participants) Regulations, 1996 (“**DP Regulations 1996**”), SEBI (Depositories and Participants) Regulations, 2018 (“**DP Regulations 2018**”), SEBI (Stock Brokers) Regulations, 1992 (“**SB Regulations**”) and relevant circulars issued by SEBI. As part of the investigation, SEBI appointed a forensic auditor, Sarath & Associates, CA, to look into the functioning of AFSPL with regard to the alleged fraudulent transfer of securities from accounts of clients.

SHOW CAUSE NOTICE

3. Pursuant to conclusion of the investigation, a Show Cause Notices (SCN) dated December 09, 2019, was issued to AFSPL, Mr. Awanish Kumar Mishra, Mr. Himanshu Arora and Mr. Jitendra Kumar Tiwari (hereinafter collectively referred to as the “**Noticees**”). It has been alleged, inter alia, that:
- 3.1. During the investigation period, there have been fraudulent transfers in the demat accounts of clients, namely, DCEL, OCL and NEPL and MF units have been

transferred from their accounts by using Delivery Instruction Slips (DIS). DCEL, OCL and NEPL have claimed that neither have they signed any DIS nor have they authorized these transfers. NEPL has claimed that it was told by AFSPL that high value securities are moved to Digi Locker automatically by NSDL.

3.2. Economic Offences Wing (EOW), on the basis of a police complaint filed by the Dalmia Group, in its charge sheet filed in the matter, has observed that signature on all the DIS used for transferring MF units from the account of DCEL and OCL were forged. Mr. Subhas Sastri, authorized signatory of NEPL, during his statement on oath submitted that signature on the copy of the DIS used for transferred the MF units from the account of NEPL were not his and have been forged. In view of the same, it is alleged that the MF units from the account of NEPL, transferred during the investigation period, were also transferred by AFSPL using forged DIS.

3.3. These MF units were given by AFSPL to IL&FS Securities Services Ltd. (ISSL), the Clearing Member of AFSPL, as margins/ collateral for getting trading exposure on the exchange. This was done despite there being no clear/ specific instructions from Dalmia Group permitting AFSPL to use the MF units as collateral. On the contrary, there were specific instructions from Dalmia Group instructing AFSPL that securities of DCEL/ OCL were meant only for holding purpose.

3.4. Hence, the conduct of AFSPL in carrying out fraudulent transfers of MF units from the demat account of DCEL, OCL and NEPL by using forged DIS is alleged to be a fraud perpetrated on these entities by AFSPL and by the other Noticees, who were its Directors during the IP. Therefore, it has been alleged that the Noticees have violated Regulations 3(a), 4(1) and 4(2)(p) of the PFUTP Regulations.

4. Further, investigation also revealed certain acts/ omissions of the Noticees, which when seen together cohesively, appeared to have led to perpetration of the above mentioned fraud on DCEL, OCL and NEPL. These allegations, which have led to

violations of the provisions of the DP Regulations 1996, DP Regulations 2018, SB Regulations and relevant SEBI Circulars, are as below:

With respect to demat accounts of DCEL and OCL:

4.1. Two sets of Account Opening Forms (AOFs) for demat accounts of DCEL and OCL were made available during investigation, one received from AFSPL (hereinafter referred to as “Set 1”) and the other received from the Dalmia Group (hereinafter referred to as “Set 2”). It is observed that details, such as, client email ID, address, contact number, etc., in these two AOFs were different. The details entered in the DPM system of NSDL for these accounts were based on Set 1. For e.g., the address of DCEL as per Set 1 is ‘H No. 130, Sector-530, Gautam Budh Nagar, Noida, Uttar Pradesh-201301’, while the same is different as per Set 2. The said address is non-existent as Sector 530 does not exist in Noida and the same was confirmed by Noticee No. 2 during statement recording. Therefore, it is alleged that AFSPL did not carry out proper due diligence at the time of account opening, which is violation of Clause 4 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.

4.2. The fields provided for entering the date of incorporation and date of commencement of business on part I of the KYC application form was pre-printed as DDMMYYYY in Set 2 (given by Dalmia Group), whereas such pre-printed DDMMYYYY was not found on Set 1 (given by AFSPL). However, other than these, the fields provided for entering the dates were pre-printed as DDMMYYYY in both sets. It was also observed that DDMMYYYY was pre-printed in the AOF of other clients of AFSPL. The same shows that there were some anomalies in Set 1 AOF and it is alleged that this AOF appears to be fabricated by AFSPL, which is in violation of Clauses 3, 19 and 22 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.

- 4.3. The authorized signatories have to sign across on the photographs pasted on the KYC documents and also obtain seal of the corporate entity on this page. It is observed that, while the photographs of Mr. Bhabagrahi Pradhan and Mr. Rajesh Ghai, the authorized signatories of OCL, were affixed on the form, there was no signature across the photographs and there was no seal of OCL on the said page. Irrespective of the genuineness of the AOF, the same is not in compliance with the procedure to be followed by a DP while opening a demat account in terms of provisions of SEBI circular CIR/MIRSD/16/2011 dated 22/08/2011, Regulation 29 of the SB Regulations and Clause 4 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.
- 4.4. The Client Master List (CML) for accounts of DCEL and OCL was generated by AFSPL and sent to DCEL and OCL via emails. It is observed that the CMLs have different details vis-à-vis the details in the DPM system with respect to communication address, contact details, email, etc., however, the details in the CML matches with the details in Set 2 (given by Dalmia Group). Hence, it is alleged that the CML of DCEL and OCL, as sent by AFSPL to DCEL and OCL, is false and wrong and could not have been generated from the NSDL system, as the data entered in the NSDL system was different (as per Set 1). Therefore, AFSPL allegedly shared fabricated CMLs with the Dalmia Group and has violated Clauses 3, 16 and 19 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.
- 4.5. For DCEL, AFSPL captured uditagri@gmail.com as the email ID in the DPM system, instead of uditagri01@gmail.com, which was mentioned in the Set 1 AOF. Also, EOW in its charge sheet filed in the matter has observed that signatures on the Set 1 AOF having credentials viz., email address were forged by AFSPL. It is observed that incorrect details were entered by AFSPL in the DPM system of NSDL, which is in violation of Clauses 2(b) and 4 of the Code of Conduct read with Regulation 20 AA of the DP Regulations 1996.
- 4.6. As per the format of holding statement sent by AFSPL to DCEL/ OCL, it has to affix its seal and sign on the holding statement; however, it was observed that there was no such authorization on any of the holding statements, except on the

holding statement as on 30/09/2018, sent by AFSPL to Dalmia Group. It is alleged that the same is in violation of Clause 2(b) of the Code of Conduct read with Regulation 20 AA of the DP Regulations 1996.

- 4.7. At the request of Dalmia Group, on 08/10/2018, AFSPL provided the Dalmia Group with a holding statement, printed on the letter head of NSDL, and purportedly stamped and signed by NSDL. NSDL has submitted that the rubber stamp and the signature on the said statement were not of NSDL. Therefore, it is observed that the said statement was allegedly forged and was not provided by NSDL and/ or its officials. It appears that AFSPL shared a fabricated holding statement with the Dalmia Group, which is allegedly in violation of Clauses 2(c) and 3 of the Code of Conduct read with Regulation 36 of the DP Regulations 2018.
- 4.8. MF Units held by DCEL and OCL were regularly debited and credited from and to their account during FY 2017-18. It was observed that AFSPL had ensured that the securities were transferred back to DCEL and OCL demat accounts as and when positions close and further ensured that these units reflect in the accounts of DCEL and OCL as on March 31, 2018, i.e., on financial year closing day. The Dalmia Group, vide email dated November 08, 2018 (in reply to an email received from AFSPL regarding status of collateral of MF Units of DCEL and OCL), informed AFSPL that the units in their account were not be used as collateral. In reply to which, AFSPL responded that their holding is intact and to read the word collateral as holding. It is observed that although there was clear instruction to AFSPL from Dalmia Group to not to use their MF Units as collateral, the said MF units were debited from the account of DCEL and OCL and were being used as collateral by AFSPL for receiving exposure from ISSL. Further, as per the Consolidated Account Statement (CAS) provided by NSDL on November 09, 2018, DCEL and OCL were not holding any securities in their demat account with AFSPL. Therefore, the email sent by AFSPL indicated that it has misguided its clients with respect to their holdings in the demat accounts with manipulative intent, which is allegedly in violation of Clauses 2(b) and 3 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.

4.9. Dalmia Group claimed that they have not signed any DIS for transfer of MF units and also did not receive the DIS booklets from AFSPL. Further, on examination of the documentary evidences, explanations and records provided by AFSPL, Dalmia Group and NSDL, it was observed that the transactions carried out by AFSPL were unauthorized. No documentation was provided by AFSPL, which were in nature of instructions received by AFSPL from Dalmia Group, to carry out the said transactions. It was observed that these MF units were being used as collateral for taking exposure from ISSL. Further, some affiliate entities of Dalmia Group had trading accounts with AFSPL and payments were also made by AFSPL to these affiliate entities. However, AFSPL could not provide documentary evidence to show that the MF Units of DCEL and OCL were being used as collateral for taking exposure from ISSL for supporting the trading activities of Dalmia affiliated entities. In fact, Dalmia Group, vide email dated November 08, 2018, had given specific instructions to AFSPL that their MF Units were not to be collateralized for any purpose; however, MF Units were being used as collateral by AFSPL for taking exposure from ISSL. DIS number 152721, which consisted of incorrect ISIN no., has been used in executing transfer of MF Units from the account of OCL by AFSPL. It is observed that EOW, in its charge sheet filed in the matter, has observed that signature on all the DIS used for transferring MF Units from the account of DCEL and OCL were forged. Hence, it is alleged that AFSPL has violated Clauses 1, 2(b), 3, 4 and 22 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.

4.10. AFSPL had sent an email to Dalmia Group in October 2018 that they will not be able to maintain their demat accounts and will transfer the MF Units to their other demat accounts. However, the same was not done despite Dalmia Group providing AFSPL with details of their other demat account. Hence, it is alleged that AFSPL has violated Clauses 2(b), 2(c), 2(d) and 5 of the Code of Conduct read with Regulation 36 of the DP Regulations 2018.

4.11. On the change request form dated October 04, 2018, signed by Mr. Bijay Agarwal, the email ID for the account of OCL was mentioned as aggrawal.bijay@dalmiabharat.com, with a spelling mistake, and the same was

captured in the DPM system of AFSPL. However, Mr. Bijay Agrawal is not an authorized signatory for the account of OCL. Irrespective of the question of the genuineness of the said document, the same indicated fraudulent intent of AFSPL as email ID was changed by them in the DPM system based on the purported request by a person who was not the authorized signatory of OCL as per the resolution of the company. AFSPL had captured agarwal.bijay@dalmiabharat.com as the email ID and “9999329975” as mobile number in the DPM system on October 4, 2018, for the demat account of DCEL. However, AFSPL could not provide any change request in support of the same and it is alleged that changes were made by AFSPL without any authorization. It is alleged that AFSPL violated Clauses 2(b), 3, 16 and 22 of the Code of Conduct read with Regulation 36 of the DP Regulations 2018.

- 4.12. AFSPL could not provide acknowledgment receipt for the first DIS booklet, with series number 151661-680, purportedly issued to DCEL on February 21, 2017. On the acknowledgment of third DIS booklet, with series number 154481 to 154500, purportedly issued by AFSPL to OCL on July 09, 2018, the DIS series was mentioned wrongly. It is alleged that AFSPL violated Clause 2(b) of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.

With respect to demat account of NEPL:

- 4.13. DIS booklet with series number 148211 to 148220 was issued to NEPL by AFSPL at the time of account opening and the same was never used by NEPL. Further, DIS booklet with series number 148241 to 148250 was used to transfer MF Units from the NEPL account and AFSPL could not produce the request and acknowledgement receipt for the issuance of this DIS booklet. NEPL has claimed that they never applied/ requested to AFSPL to issue a new DIS booklet. Further, DIS booklet (148211 to 148220) was not entered into the DPM system at the time of account opening and it was done after the MF units had already been transferred using DIS booklet (148241 to 148250). Despite the first DIS booklet being completely unused, the second DIS booklet was entered in

the DPM system and used even before the first DIS booklet was entered in the system by AFSPL. Also, there was delay by AFSPL in updating the first DIS booklet issued to NEPL in the NSDL system and AFSPL has violated Para 6 of SEBI circular CIR/MRD/DP/01/2014 dated January 07, 2014. It is alleged that AFSPL violated Clause 2(b) of the Code of Conduct read with Regulation 36 of the DP Regulations 2018.

4.14. AFSPL vide email dated 05/12/2018 forwarded account statement of NEPL to the email ID of the consultant of NEPL instead of forwarding it to the registered email ID of NEPL. In the said email, MF Units of NEPL were being shown as held in the account of Mutual Fund Digi Locker (MFDL) (client ID: 10063773). However, as per the NSDL system, the said demat account was actually held in the name of Mr. Pankaj Garg and Mr. Jitendra Malhotra, who are partners of MFDL and employees of AFSPL, and not in the name of MFDL. The same is as per the guidelines for account opening for a partnership firm. Since, the statement forwarded by AFSPL showed the units to be held by MFDL instead of Mr. Pankaj Garg and Mr. Jitendra Malhotra, it is observed that a fabricated statement was forwarded by AFSPL to NEPL. Also the said email was forwarded to an email ID which was not registered for that account. It is alleged that AFSPL violated Clauses 2(b), 3, 9 and 22 of the Code of Conduct read with Regulation 36 of the DP Regulations 2018.

4.15. MF units were transferred from the account of NEPL by AFSPL. Economic Offences Wing (EOW), in its charge sheet filed in the matter, has observed that signature on the DIS used for transferring MF Units from the account of DCEL and OCL were forged. Mr. Subhas Sastri, authorized signatory of NEPL, during his statement on oath submitted that signature on the copy of the DIS used for transferring the MF Units from the account of NEPL were not his and have been forged. Mr. Sastri also submitted that the rubber stamp used on the said DIS was not of NEPL. In view of the same, it is likely that signatures on the DIS used for transferring MF units from the account of NEPL were also forged by AFSPL. In view of the same, AFSPL has violated Clauses 1, 2(b), 3, 4 and 22 of the Code of Conduct read with Regulation 20AA of the DP Regulations 1996.

5. Apart from the above, investigation also revealed other facts constituting various other violations, which are as below:

5.1. AFSPL failed to provide DIS issue register for verification during the investigation along with other information sought from AFSPL, which included email backup, details of second DIS issued to NEPL, etc. Thereby, AFSPL failed to comply with the direction given to it vide SEBI letter dated June 10, 2019. This is in violation of Regulations 86(1) read with 86(3) and Clauses 10, 13 and 17 of the Code of Conduct read with Regulation 36 of the DP Regulations 2018.

5.2. AFSPL did not have any compliance officer, which is mandated as per DP Regulations and no such information/ records were submitted by AFSPL in respect of the same during the course of investigation. This is in violation of Regulation 81(1) of the DP Regulations 2018.

5.3. In December 2018, NSDL had issued a letter imposing penalty on AFSPL for non-compliance pertaining to inspection conducted by NSDL as per the uniform penalty structure. However, AFSPL failed to inform the same to SEBI as required by the DP Regulations. This is in violation of Clause 14 of the Code of Conduct of the DP Regulations 2018.

6. In view of the above allegations, Noticee Nos 1 to 4 were called upon to show cause as to why appropriate directions:

6.1. Under Sections 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992, and Section 19(1) of the Depositories Act, 1996, including return of MF Units to the respective clients which were fraudulently transferred from the accounts of DCEL, OCL and NEPL, should not be issued against them for the alleged violations of the aforementioned provisions of SEBI Act, Depositories Act, PFUTP Regulations, DP Regulations, SEBI (Stock Brokers) Regulations, 1992, and SEBI Circulars.

6.2. For imposing penalty under Sections 11B(2) and 11(4A) read with Sections 15HA and 15HB of the SEBI Act and Sections 19(2) and 19G of the Depositories

Act, should not be issued against them for the alleged violations of the aforementioned provisions of SEBI Act, Depositories Act, PFUTP Regulations, DP Regulations, SEBI (Stock Brokers) Regulations, 1992, and SEBI Circulars.

REPLY, WRITTEN SUBMISSION AND ADDITIONAL SUBMISSION:

7. I note the following details regarding the delivery of the SCN on the Noticees:

Noticee	Date of delivery of SCN	Mode of delivery	Date of Reply to SCN, if any
AFSPL	December 09, 2019	Email and letter	01/01/2020
Mr. Awanish Kumar Mishra	March 21, 2020	Letter (Noticee was in judicial custody and SCN was delivered to him in jail)	No reply received in individual capacity
Mr. Himanshu Arora	December 09, 2019	Email and letter	28/12/2019
Mr. Jitendra Tiwari	As per material available on record, the SCN has been delivered to the Noticee by post.		No reply received

8. In the interests of natural justice, opportunity of personal hearing was granted to the Noticees, initially on May 20, 2020, which was adjourned, due to administrative exigencies to June 25, 2020, and October 29, 2020, respectively. Hearing with respect to Noticee No. 3 took place on October 29, 2020.

9. Noticee Nos. 1 and 2 sought extension on grounds of medical exigency of Noticee No. 2 and November 17, 2020, was scheduled as the date of hearing. Subsequently, Noticee No. 2 sought an extension on grounds of his counsel being quarantined due to Covid-19 and a hearing date of November 26, 2020, was granted, which was adjourned due to administrative exigencies to January 05, 2021. Accordingly, Noticee Nos. 1 and 2 appeared for the personal hearing on January 05, 2021, and made their submissions.

10. As per available records, Noticee No. 4 i.e., Mr. Jitendra Kumar Tiwari, has neither replied to the SCN nor has he appeared for personal hearing.

11. Additional submissions have been received from the Noticees, the details of which are as under:

Noticee	Date of additional submissions
Noticee Nos. 1 and 2	Letter dated 05/10/2020 and email dated 20/01/2021
Noticee No. 3	Email dated 16/11/2020
Noticee No. 4	No submission

12. **Noticee Nos. 1 and 2:** The Noticees have made their submissions vide letters dated January 01, 2020, October 05, 2020, and email dated January 20, 2021. As regards the submissions on the allegations made in the SCN, they have denied all the allegations, observations and violations mentioned in the SCN. These are considered in the issues for consideration.

13. The Noticees have also alleged that employees and/ or office bearers of the Dalmia Group were fully aware of and had authorized the transfer of MF units from accounts of DCEL and OCL, which were actually given as loan to AFSPL to be used as collateral for margin trading to generate income in the accounts of their related entities. Various documents, emails, WhatsApp chats, etc., have been submitted in support of these allegations. Submissions in this regard are given below:

13.1. Mr. Puneet Dalmia, MD of Dalmia Cement (Bharat) Ltd. (hereinafter referred to as DCBL) met Noticee No. 2 somewhere in middle of 2016 and discussed a proposal regarding trading in derivative segment of NSE. He explained the concept of advance income wherein he wanted to utilize the dead assets/ promoter shares of Dalmia Group companies as collateral to get a high margin in order to do trading in derivatives market. He proposed that AFSPL would sell

long dated option contracts, collect the premium, take the premium as advance income and transfer the same to promoter related companies of Dalmia Group.

- 13.2. Several phone calls have been exchanged between Mr. Puneet Dalmia, relatives of Mr. Dalmia and Mr. Bijay Agrawal, GM (Finance) and Treasury Head of Dalmia Bharat, with Noticee No. 2 regarding opening of accounts of Dalmia Group companies with AFSPL.
- 13.3. On November 22, 2016, Mr. Agrawal sent email to Noticee No. 2 asking for documents to open account of Dalmia Group promoter companies. He was informed that AFSPL was a very small broker and had network issues to handle such big accounts. On January 2, 2017, employee of Dalmia group sent another email asking for more information on account opening. Noticee has attached these emails.
- 13.4. Mr. Puneet Dalmia opened accounts of a companies, namely, Shri Vallabh Orthopedic Instruments Pvt. Ltd. (VOIP) and Cointribe Technologies Pvt. Ltd., on December 21, 2016, and December 28, 2016, respectively. Mr. Dalmia had 50% share capital in Cointribe. Thereafter, nine accounts of entities related to Dalmia group were opened in next 5 months. The objective was that upon instructions of Mr. Dalmia, dead assets/ promoter shares of OCL, would be transferred to demat account of VOIP so that a big margin could be created in order to trade in derivatives and the income generated would be deposited in the account of Cointribe. This was planned such that the returns/ income received in the aforesaid transactions would neither show up in the balance sheet of OCL nor come to the notice of RoC, SEBI and NSE. These demat accounts were opened with AFSPL even when these entities had demat and trading account with other intermediaries.
- 13.5. Shares of OCL worth Rs. 92-100 crores were transferred to the demat account of VOIP on December 30 and 31, 2016. The authorized signatories of OCL were the same who got the shares transferred from another DP of Dalmia Group, namely J M Financial Services Ltd. into the account of AFSPL, without any complaint of forgery of signatures. Noticee has attached CML and demat statement of VOIP.

- 13.6. These shares were offered as collateral to Axis Securities Ltd., the then clearing member of AFSPL, who refused to provide margin due to liquidity constraints. This was communicated to Mr. Agrawal and Mr. Jayesh Doshi through emails, which have been attached. Subsequently, the account of VOIP was closed and securities were repatriated back to OCL. The DIS to transfer these shares back was also signed by the same authorized signatories of OCL who signed DIS to transfer MF units to associate entities of AFSPL. Such transfer of large quantities of shares of OCL and subsequent repatriation in the short span of time clearly shows the intention of Mr. Dalmia to clandestinely transfer promoter shares into a third company have demat account with AFSPL and then use them for his proposal to generate income. Noticee has attached email dated January 24, 2017, exchanged with employees of Money Mishra Financial Services (promoter of AFSPL) and DCBL regarding use of shares of OCL as collateral for margin trading.
- 13.7. Mr. Dalmia then suggested use of MF units of Dalmia Group companies as collateral and suggested the name of ISSL as a clearing member. It was inquired with ISSL if they would accept MF units as collateral to give margin for derivatives trading and ISSL agreed to the same.
- 13.8. Mr. Bijay Agrawal, GM (Finance) and Head of Treasury, Dalmia Group, vide two emails shared list of schemes and requested AFSPL to check whether these units were eligible under NSE list for use as collateral. Affirmative reply was sent by AFSPL. Noticee has attached these emails.
- 13.9. As the MF units were in physical form, Mr. Puneet Dalmia got permission from the Board of Directors of DCBL and OCL for holding the MF investments upto Rs. 350 crores in demat form. Father-in-law of Mr. Dalmia, Mr. Vinod Poddar, was instrumental in getting the MF units of Dalmia Group dematerialized through the RTA of Dalmia Group. This shows that the Board of aforesaid companies were aware of the dematerialization of MF investments of Dalmia Group and their use as collateral.
- 13.10. Demat accounts of DCEL and OCL were opened and as Mr. Dalmia did not want to give MF units directly to clearing member as collateral as it would

appear in the balance sheet of these companies, he did not open their trading accounts. Noticee has attached an email from employee of Dalmia Group asking for income certificate.

- 13.11. In January 2017, Mr. Dalmia told Noticee No. 2 that he wanted more income in the account of Cointribe on immediate basis and transferred Rs. 4 crores to the account and told AFSPL to generate return in derivative market. Noticee has attached financial ledger showing payment of Rs. 4 crores. Subsequently, the Rs. 4 crores was taken back from AFSPL. Despite nil investment with AFSPL, Mr. Dalmia wanted to show income of around Rs. 15 crores in Cointribe in FY 2016-17, to fudge financial parameters of Cointribe, to make it attractive to private equity investors and to sell his stake. Mr. Dalmia then asked AFSPL to use the funds and securities of its retail investors for making payments to Cointribe as gains on income from derivatives and assured that he would make good these diverted funds and liquidated securities. On his assurance, AFSPL diverted cash and liquidated securities either directly into account of Cointribe or by routing through MMFS. Cointribe fraudulently showed an income of Rs. 15 crores in FY 2016-17.
- 13.12. In FY 2017-18, Mr. Dalmia wanted much more managed income in Cointribe, without investing much in Cointribe. He apprised AFSPL that he needed advance earnings in his promoter group companies, especially in Cointribe, which would be offset against use of securities of Dalmia Group. He assured AFSPL that these securities would remain with AFSPL for next 5 years.
- 13.13. Bogus investments were made in AFSPL where funds were first transferred and then subsequently taken back. In order to make good for monies diverted from the retail investor accounts into accounts of Dalmia Group entities, Mr. Dalmia directed AFSPL to use the MF units of Dalmia Group as collateral for margin trading.
- 13.14. Upon instructions of Mr. Dalmia, Mr. Bijay Agrawal provided signed DIS to transfer MF units held by OCL and DCEL into demat accounts of MMFS, MMOPL and Noticee No. 2. This loan of MF units was given for a consideration which varied from 0.2% to 0.6% p.m. of the value of the units, depending on

market sentiment and availability of margin. Noticee has attached emails showing a return matrix on basis of units of DSP Blackrock Banking and PSU Debt fund offered by Dalmia Group. A return calendar was prepared at the instruction of Mr. Dalmia and shared through email, which clearly mentions the use of MF units worth Rs. 100 crores. Noticee has attached an email sent to Mr. Agrawal showing such calculation.

- 13.15. During March 3, 2017, to April 11, 2018, Cointribe received Rs. 53.44 crores from AFSPL as consideration for the MF units which were provided as loan. Mr. Dalmia first transferred money into trading account held with AFSPL and then took the same back after some time and showed it as derivative income in his books. He also fabricated contract notes to show to auditors. AFSPL has provided a WhatsApp conversation between Noticee No. 2 and Mr. Agrawal.
- 13.16. These MF units were shown as loan in the DIS and transferred to the beneficiaries. Noticee has provided its own forensic audit report verifying the signatures of the authorized signatories on the DIS.
- 13.17. Between March 03, 2017, and August 31, 2018, a total amount of Rs. 101.5 crores was transferred to five start-up companies as consideration for the MF units provided.

Name of company	Amount paid
Cointribe	Rs. 69 crores
Glow Homes Technologies	Rs. 1.5 crores
Vinimay Developers Pvt. Ltd.	Rs. 4.9 crores
Antordaya Commercial & Holdings Pvt. Ltd.	Rs. 19.1 crores
Primarc Projects Pvt. Ltd.	Rs. 7 crores
Total	Rs. 101.50 crores

- 13.18. At this relevant time, Boston Consultancy Group was conducting due diligence of Cointribe and Mr. Dalmia was planning to sell 25% stake in it. At direction of Mr. Dalmia to divert retail investors money into account of Cointribe, Noticee No. 2 gave Rs. 53.45 crores directly from AFSPL and Rs. 15.56 crores through MMFS to Cointribe during March 2017-July 2018 period.

- 13.19. AFSPL had entered into member-client agreement with these five companies and hence, derivative income, if any, could only have been received from AFSPL. However, Cointribe has received Rs. 15.56 crores from MMFS and not from AFSPL. This amount was booked as investment with Cointribe in the balance sheet of MMFS. This amount is the advance income received from use of the MF units as collateral. However, Cointribe wrongly showed this income as derivative income to its auditor. Employee of Dalmia Group requested AFSPL to provide a CA certificate to justify this fraudulent income in Cointribe. AFSPL never provided such false income certificate. Dalmia Group demand man-made contract notes to satisfy auditors and justify the bogus and fraudulent income in their balance sheet. Noticee has attached a few emails in this support.
- 13.20. In April 2017, Mr. Dalmia opened a demat cum trading account of Himshikhar Investment Ltd (HIL) with AFSPL and bought shares of Dalmia Bharat worth Rs. 55 crores between April 6-17, 2017, in order to increase the share price of Dalmia Bharat. The value increased by 20% post this purchase. This was done because there was a deal between private equity KKR and Dalmia Group wherein KKR was willing to sell 8.43% equity of Dalmia Bharat. Hence, Mr. Dalmia wanted to increase the price so that it did not fall after KKR exited. Noticee has attached welcome letter for HIL, share purchase mail and sample contract notes.
- 13.21. Mr. Dalmia wanted to use shares of OCL and DBCL as margin but Axis Securities Ltd., refused to provide margin. On August 30, 2017, Dalmia Group offered units of DSP Blackrock Bond Fund for margin but Axis Securities Ltd. did not provide margin as this security was not in the approved list of NSE. This MF is now part of the disputed MF units. Mr. Dalmia then suggested to use ISSL as a clearing member. Noticee has attached emails in this regard.
- 13.22. Mr. Dalmia was happy with ISSL because it did not collect any cash component on liquid MFs, accepted unapproved shares as margin and provided interest on unutilized cash component. Noticee has attached evidence of ISSL

providing interest on unused cash component and acceptance of unapproved securities.

- 13.23. Mr. Dalmia sold his stake in Cointribe and made huge gains. Noticee has attached copy of payments made to Cointribe and its balance sheet. Noticee has submitted that Mr. Jayesh Doshi, CFO, DCBL, is director in OCL and Cointribe. He is authorized signatory in both companies. From OCL he gives MF units as loan and receives income in Cointribe.
- 13.24. As MMFS, MMOPL and Noticee No. 2 had to meet their margin requirements, they gave these MF units as collateral to AFSPL to meet margin requirements, first with Axis Securities and then with ISSL.
- 13.25. This arrangement went on smoothly till September 2018 when merger process of OCL and DCBL started and external auditor insisted on physically verifying the MF units given to promoter entities of AFSPL.
- 13.26. Mr. Dalmia asked AFSPL to return the MF units, which was not possible as the units were given to ISSL as collateral to take positions in options and Mr. Dalmia had pocketed the option premium i.e., the advance income, which had to be paid back before returning the MF units. Also, losses were created in the derivative positions undertaken by AFSPL on the directions of Mr. Dalmia, that were to be recovered from his group companies.
- 13.27. As the pressure increased on Mr. Dalmia, he started creating false record of sending redemption requests every day for the MF units. At directions of Mr. Dalmia, AFSPL sent email dated December 28, 2018, to ISSL with copy to Mr. Agrawal seeking release of MF units. This was done so that Mr. Dalmia could show these emails to his Board and convince them that the MF units were safe. These emails show that Mr. Agrawal was well aware that the MF units were being used as collateral.
- 13.28. NSDL had started sending the CAS for DCEL at the address 12th floor, Hansaliya Building, Barakhamba Road, CP, New Delhi. This fact is also confirmed by the SEBI forensic auditor. SEBI, in its affidavit filed before the Hon'ble Supreme Court, has stated that the MF units were lying with ISSL since June 2018 and that Dalmia Group did not raise any objections. Hence,

Mr. Dalmia was aware that the MF units were not in the demat account of DCEL.

- 13.29. As part of joint efforts of AFSPL and Mr. Dalmia of managing collaterals for replacement of MF units of OCL and DCEL, we had signed a deal with Mr. Rupinder Pal Singh of Coolbrain in October 2018 and expected MF units worth Rs. 400 crores from his clients. Agreement was signed with Mr. Singh to acquire Coolbrain. It was agreed that Coolbrain will facilitate opening of demat account of all its clients and get their MF units dematerialized. More than 20 accounts were opened, including that of NEPL. Dalmia Group was in the loop, Mr. Vinod Poddar, father-in-law of Mr. Dalmia and Mr. Agrawal, were instrumental in getting MF units of clients of Coolbrain dematerialized in order to facilitate replacement of units of Dalmia Group. Noticee has attached emails sent to Mr. Poddar and Mr. Agrawal seeking their help in getting MF units of NEPL dematerialized. These units were then credited into the demat account of NEPL on November 27, 2018, and taken out on the same day to replace units of the Dalmia Group, as per instruction of Dalmia. There was no written agreement with Mr. Singh for use of MF units of their clients as collateral, as the units belonged to the clients. In case of NEPL, we had a verbal talk and then execution of DIS.
- 13.30. As NEPL raised objection to this transfer, on December 04, 2018, Mr. Dalmia offered OCL shares worth Rs. 700 crores to replace the MF units worth Rs. 344 crores. However, since OCL was undergoing merger, the ISIN of its shares was suspended and the shares could not be used as collateral. J M Financial has informed the EOW, Delhi, that it had received such a DIS for transfer of shares of OCL but could not execute the same as the shares were suspended. Noticee has attached copy of DIS for transfer of this OCL shares.
- 13.31. On December 31, 2018, Noticee No. 2 was called to meet Mr. Dalmia and asked to sign a letter confirming that the MF units were present in the accounts of OCL and DCEL. The letter was prepared by Mr. Agrawal and he also had the letterhead of AFSPL/ Noticee No. 2. Under pressure from Mr. Dalmia, Noticee No. 2 gave an undated letter on January 2, 2019, confirming the same.

- 13.32. On January 02, 2019, a significant portion of the MF units of Dalmia Bharat Group were lying in the demat account of its affiliate company Primarc Projects Pvt. Ltd. Noticee has provided transaction statement.
- 13.33. In January 2019, external auditor S R Batliboi and Co. LLP was appointed for the merger, which asked for independent verification of the MF units of Dalmia Bharat group from AFSPL through an email dated January 24, 2019. They were very particular about the units of DSP Low Duration Fund. AFSPL did not verify the same as the MF units were with ISSL. Mr. Dalmia called Noticee No. 2 at his residence on January 29, 2019, and asked him to write an email confirming the availability of the MF units of Dalmia Bharat group in their respective accounts, despite having received the CAS directly from NSDL. Noticee No. 2 sent an email dated January 31, 2019, confirming the same. Forensic Audit report confirms that Dalmia Group had received the CAS for months of October, November and December 2018 but Mr. Dalmia needed a fabricated statement from AFSPL to keep the fact of diversion of MF units under wrap. Noticee has attached documents in support.
- 13.34. On February 06, 2019, Mr. Dalmia informed Noticee No. 2 that if the MF units were not returned, then he would have no option but to go against AFSPL as a Board meeting of Dalmia Group companies was scheduled on February 07, 2019, to discuss the missing MF units. On same day, Mr. Agrawal, in a WhatsApp chat, mentioned that *he would be helpless beyond this time*.
- 13.35. Hence, Mr. Dalmia and the Dalmia Group of companies were aware of the fact that the MF units of OCL and DCEL were given as loan to AFSPL to be used as collateral for margin trading and to receive advance income in the accounts of the five start-up companies belonging to Mr. Dalmia, who authorized the transfer of MF units by way of DIS signed by authorized signatories. The Central Forensic Science Laboratory has confirmed that the signatures on DIS are neither done by Noticee No. 2 nor by any of its staff member. Therefore, no fraudulent transfer or misuse of MF units ever took place. Mr. Dalmia and the Dalmia Group companies were parties to the overall scheme and were beneficiaries of the same.

- 13.36. Mr. Dalmia cajoled AFSPL to give donation of Rs. 50 lakhs to Serendipity Art Foundation, patronized by Mr. Dalmia and his wife. This amount was diverted from retail investors account.
- 13.37. Report of SEBI forensic auditor has extracts which proves that the movement of MF units and their use as collateral was well known to the Dalmia Group and all actions were taken on the directions of Mr. Dalmia.
- 13.38. MMFS, MMOPL and Noticee No. 2 have received MF units from NEPL through one un-related entity i.e., partnership firm of Mr. Pankaj Garg and Mr. Jitender Malhotra, namely Mutual Fund Digi Locker. AFSPL does not know from where this firm received the said MF units.
- 13.39. NSDL conducted inspection of AFSPL and found no anomaly. In compliance closure letter dated November 9, 2018, NSDL has mentioned that no significant deviation was observed. NSDL did not find any major lapse until Dalmia Group lodged a complaint.
14. Noticee Nos. 1 and 2 have also provided the following circumstantial evidence to justify the submissions mentioned above:
- 14.1. Mr. Bijay Agrawal had shared a document with Noticee No. 2, via WhatsApp, on January 09, 2018, which shows the movement of MF units of Dalmia Group companies in December 2017. AFSPL has submitted that this shows that Mr. Puneet Dalmia was aware of the MF units going to ISSL and other demat accounts as early as January 2018.
- 14.2. On August 30, 2017, Mr. Agrawal was apprised that units of DSP Blackrock Bond Fund could not be used for margin as this security was not in the approved list of NSE. NSE approved list of securities is part of this email.
- 14.3. On August 01, 2018, Kotak Flexi Debt and Growth Fund was removed from the list of approved collaterals by NSE. An email was sent to Mr. Agrawal with copy to other employees of Dalmia Group for replacement of this security. It was made known to them that the aforesaid MF units were being used as collateral and Mr. Agrawal became conscious that two other employees of

Dalmia Group knew about the scheme. After repeated requests of Mr. Agrawal, AFSPL withdrew the email. However, he did not react in this manner when the email regarding DSP Blackrock MF was sent only to him. Further, the units of Kotal MF scheme were replaced with other MF units. on August 02, 2018, Mr. Abhay Singhal, employee of Dalmia Group, sent MF for dematerialization.

- 14.4. Mr. Dalmia was keen to watch trading activities and margin utilization in his promoter group company accounts and for the same, he got an algo trading system installed by AFSPL at three places in his office. Through this system, they were able to watch the real time information of trading activities and margin utilization of their MF units in accounts of Dalmia Group companies and entities of Noticee No. 2. So all key management persons of Dalmia Group were aware of the use/ misuse of MF units lying in the accounts of entities linked with Noticee No. 2. Noticee has attached a few emails in this support.
- 14.5. Dalmia Group had received correct status of holdings as on October 31, 2018, as CAS was sent by NSDL to correct address. This finding is recorded in the SEBI forensic auditor report. However, Mr. Agrawal and Mr. Singhal are claiming that they are not aware of this statement.
- 14.6. Mr. Dalmia offered OCL shares worth Rs. 700 crores to replace the MF units lying as collateral with ISSL.
- 14.7. Email dated December 28, 2018, sent by AFSPL to ISSL with copy to Mr. Agrawal. The email enumerates all the MF holdings of Dalmia Group and says that the holdings are with ISSL. Hence, atleast on December 28, 2018, it was known to Mr. Agrawal that the MF units are pledged with ISSL.
- 14.8. Email dated December 31, 2018, sent by AFSPL to ISSL with copy to Mr. Agrawal. The email mentions that collateral were not available on time and serves termination notice.

15. These submissions of the Noticees regarding the collusion with employees and/ or office bearers of the Dalmia Group are dealt with in the issues for consideration.

16. **Noticee No. 3:** He has submitted that he joined as a Manager in AFSPL and was always paid as a Manager. Noticee No. 2 asked him to be appointed as an Additional Director to comply with requirement of NSE; however, he had no intention to be appointed as Director and his name was never approved in AGM of AFSPL, as required by law. He had sent his resignation letter dated 14/06/2018 and had no authority to approve, sign documents or do any type of transaction on behalf AFSPL. He was unaware of the fraud committed by the Directors of AFSPL. Pursuant to hearing, Noticees confirmed that his reply sent vide letter dated December 28, 2019, is to be considered as the final reply.

17. **Noticee No. 4:** No reply has been received.

ISSUES FOR CONSIDERATION:

18. I have perused the SCNs, replies, written submissions, findings of the forensic auditor and other materials available on record. Before I proceed to determine the issues for consideration, I consider it appropriate to summarize the nature of the fraudulent transfer and fraudulent conduct as alleged in the SCN.

19. The allegation against Noticees is that there was a scheme of fraudulent conduct involving transfer of the impugned MF units from the demat accounts of DCEL and OCL through forged DIS and their use as collateral by AFSPL for transactions of entities other than DCEL, OCL and other Dalmia affiliated entities. It is also alleged that DCEL and OCL, as legal entities, were made to believe that the impugned MF units in demat form were intact and that these units have not been used as collateral. In order to perpetuate this and to shield the same from the legal entities of DCEL and OCL, the Noticees have been alleged to have entered incorrect details in the Depository Participant Module (DPM) system of NSDL of the accounts in respect of the contact details of DCEL and OCL, so that when transfers of MF units happens from the demat accounts of DCEL and OCL, then they will not receive alerts of such transfers. Further, it is alleged that the Noticees made DCEL and OCL, as legal

entities, believe that the units were intact in the demat account by sending allegedly false holding statements, making false representations and sharing a false NSDL signed and stamped holding statement. The Noticees are alleged to have perpetuated the scheme of fraud by fraudulently transferring the MF units back to the demat accounts of DCEL and OCL at regular intervals, especially on December 2017 quarter end and March 2018 financial year end, so as to make DCEL and OCL believe that the impugned MF units are intact in their respective demat accounts

20. The chronology of material events is extracted below:

Date	Event
February 20, 2017	Account of DCEL opened
February 20, 2017	CML of DCEL sent by AFSPL to DCEL
February 21, 2017	DIS issued to DCEL (151661-680)
May 10, 2017	Account of OCL opened
May 10, 2017	CML of OCL sent by AFSPL to OCL
May 16, 2017	DIS issued to OCL (144391-400)
July 22, 2017	DIS issued to DCEL (152701-720)
July 24, 2017	DIS issued to OCL (152721-740)
November 14, 2017	TM-CM agreement signed between AFSPL and ISSL
July 09, 2018	DIS issued to OCL (154481-500)
May 2017-August 2018	Debit/ credit of MF units from the demat account of DCEL and OCL
August 31, 2018	Last debit/ credit transaction in DCEL demat account. Nil balance in account thereafter.
October 04, 2018	Changes made to the details of DCEL and OCL in the DPM System by AFSPL
October 08, 2018	Non-genuine holding statement, purportedly signed and stamped by NSDL, given to DCEL and OCL by AFSPL
October 09, 2018	Email from AFSPL regarding termination of contract with Dalmia Group and transfer of MF holdings
November 07, 2018	Email from AFSPL mentioning release of collateral i.e., the MF units
November 08, 2018	Email from Dalmia Group mentioning that MF units should not be collateralized
November 09, 2018	Email from AFSPL stating that the word collateral should be read as holding and that the holdings of the Dalmia Group are intact with AFSPL

Date	Event
November 27, 2018	Units belonging to NEPL transferred out of NEPL account and then transferred to ISSL as collateral
November 28, 2018	88,991 units of L&T MF scheme credited into OCL demat account and redeemed. Last debit/ credit transaction in OCL account.
December 04, 2018	Dalmia offered OCL shares worth 700 crores as replacement. DIS provided by Dalmia for transfer.
December 27, 2018	Redemption request submitted by Dalmia Group
December 28, 2018	Email from AFSPL to ISSL for release of MF units
December 31, 2018	Notice of termination sent by AFSPL to ISSL
October-November 2018	CAS for DCEL was received at office address of Dalmia
January 17, 2019	Written request sent to NSDL by Dalmia Group seeking reasons for non-redemption
January 25, 2019	NSDL provided transaction and holding statements for Dalmia Group, which showed Nil holdings

21. In the context of the above mentioned allegations, the following issues arise for consideration in order to examine whether the alleged violations of the PFUTP Regulations are maintainable. They are as follows:

21.1. Issue No. 1: Whether communication details captured in the DPM system of NSDL were such that DCEL and OCL would never receive CAS and transactions alerts from the Depository and whether DCEL and OCL, as legal entities, were made to believe that CAS and transactions/ SMS alerts would be sent to the communication details mentioned in the CML?

21.2. Issue No. 2: Whether MF units from the accounts of DCEL and OCL were transferred to AFSPL for use as collateral?

21.3. Issue No. 3: Whether there was a misrepresentation regarding the status of the holdings of MF units in the accounts of DCEL and OCL by (a) sending false holding statements to DCEL and OCL and (b) giving holding statement falsely claimed to be signed and stamped by NSDL?

- 21.4. **Issue No. 4: Whether there was a fraudulent transfer of MF units to the demat accounts of DCEL and OCL during December 2017 quarter end and March 2018 financial year end?**
- 21.5. **Issue No. 5: Whether MF units from the demat account of NEPL were fraudulently transferred and given as collateral to ISSL, and status of MF units was fraudulently misrepresented to NEPL?**
- 21.6. **Issue No. 6: If any or more than one or all of the issues in Issue Nos. 1-5 are determined in the affirmative, whether Noticees have committed fraud/ unfair trade practice and/ or fraudulent transfer of MF units as alleged in the SCN?**
- 21.7. **Issue No. 7: Whether the above acts of the Noticees were at the behest and in the knowledge of employees and/ or office bearers of the Dalmia Group?**
- 21.8. **Issue No. 8: Whether violations of the respective clauses of the provisions of the DP Regulations 1996, DP Regulations 2018 and relevant SEBI Circulars as alleged in the SCN stands established?**
- 21.9. **Issue No. 9: If Issue No. 6 or 8 or both are answered in affirmative, then whether Noticees are responsible for these violations?**
- 21.10. **Issue No. 10: If answer to Issue No. 8 above is affirmative, then whether any directions are required to be issued against the Noticees?**

Issue No. 1: Whether communication details captured in the DPM system of NSDL were such that DCEL and OCL would never receive CAS and transactions alerts from the Depository and whether DCEL and OCL, as legal entities, were made to

believe that CAS and transactions/ SMS alerts would be sent to the communication details mentioned in the CML?

22. As per NSDL guidelines, a DP is required to enter client details, as mentioned in the KYC and Account Opening Forms (AOF), in the DPM system of NSDL, after verifying the same with the originals. Crucial information of the client that is captured in the DPM system is the name, PAN, bank details, local/ correspondence address, email ID and the mobile number. The SMS flag in the DPM system is to be enabled after DP captures the mobile number of the client.

23. As per SEBI circular on Consolidated Account Statement (CAS) dated November 12, 2014, a single CAS shall be sent to clients who hold MF units and securities in demat form with the Depositories. While CAS can be sent through email, where an investor does not wish to receive CAS through email, option shall be given to the investor to receive the CAS in physical form at the address registered in the DPM system. Therefore, as the CML is a copy of the data captured in the DPM system by the DP, it provides the client with information such as where the CAS will be sent and on which mobile number the SMS alerts shall be sent by the Depository.

24. NSDL provides SMS Alert facility for demat account holders whereby they can receive SMS alerts directly from NSDL for all debit transfers, including debit of MF units, change in mobile number/ address, etc. This facility is available to investors provided they have given their mobile numbers to their DPs and the DPs have captured the numbers in the DPM system and have also enabled (ticked) the SMS flag in the DPM system.

25. I note that two AOFs have been sent by DCEL and OCL to AFSPL vide emails dated February 13, 2017, and May 03, 2017, respectively.

26. The AOFs contain the following communication details:

Particulars	As per AOF of DCEL given by Dalmia Group (Set 2)	As per AOF of OCL given by Dalmia Group (Set 2)
Address	No Correspondence Address (Registered address of Tiruchirapali mentioned)	11 th Floor Narain Manzil 23 Barakhamba Road, New Delhi-110001
Mobile No.	9999329795	9999329795
Email ID	agrawal.bijay@dalmiabharat.com	agrawal.bijay@dalmiabharat.com

27. Therefore, the details in the DPM system should reflect the details as given in the above table. However, incorrect details have been captured in the DPM system by the Noticee. The incorrect details entered in the DPM system vis-a-vis the communication details mentioned in the AOF sent by Dalmia group through email are mentioned below.

Particulars	As per AOF of DCEL given by Dalmia Group (Set 2)	As per data entered in DPM system by AFSPL
Address	No Correspondence Address (Registered address of Tiruchirapali mentioned)	H.No. 130, Sector 530, Gautam Budh Nagar, Noida-201301
Mobile No.	9999329795	7530920535
Email ID	agrawal.bijay@dalmiabharat.com	uditagri@gmail.com

Particulars	As per AOF of OCL given by Dalmia Group (Set 2)	As per data entered in DPM system by AFSPL
Address	11 th Floor Narain Manzil 23 Barakhamba Road, New Delhi-110001	E 205 Mayur Vihar Ext., New Delhi-110091
Mobile No.	9999329795	7530920535
Email ID	agrawal.bijay@dalmiabharat.com	uditagri@gmail.com

28. In order to explain the discrepancy in the DPM details and AOFs given by Dalmia Group, AFSPL submitted a copy of the AOFs which are in physical form. The Noticee claims that these physical AOFs are the one which were submitted by DCEL and OCL.

29. On perusal of the said physical AOFs, I find that the details mentioned in the DPM and the communication details mentioned in the physical AOFs are same. The details are as follows:

Particulars	As per AOF of DCEL given by AFSPL (Set 1)	As per data entered in DPM system by AFSPL
Address	130, Sector 530, Gautam Budh Nagar, Noida-201301 (non-existent)	H.No. 130, Sector 530, Gautam Budh Nagar, Noida-201301
Mobile No.	7530920535	7530920535
Email ID	uditagri01@gmail.com	uditagri@gmail.com

Particulars	As per AOF of OCL given by AFSPL (Set 1)	As per data entered in DPM system by AFSPL
Address	E 205 Mayur Vihar Ext., New Delhi-110091	E 205 Mayur Vihar Ext., New Delhi-110091
Mobile No.	7530920535	7530920535
Email ID	uditagri@gmail.com	uditagri@gmail.com

30. In this regard AFSPL has submitted the following:

- 30.1. It received only Set 1 AOFs and the same was relied upon, while Dalmia Group has not furnished any evidence to show that Set 2 AOFs were submitted to AFSPL.
- 30.2. As per procedure to open account, KYC documents are required to be submitted physically at the office of the DP and not electronically or otherwise.
- 30.3. The details entered in the DPM system were on the basis of the physical form sent by OCL and DCEL. AOFs sent by emails dated February 14, 2017 (for DCEL) and May 3, 2017 (for OCL) were different from the physical AOFs and the same could not have been accepted, as it was not signed/ stamped by authorized personnel of Dalmia Group.

31. I note here that AFSPL has not denied the receipt of AOFs by email. It has only contended that these cannot be relied upon as they were not signed/ stamped by authorized personnel of Dalmia Group. However, I note that there is no evidence produced by AFSPL that it sought a physical version of the AOF. AFSPL has not submitted any evidence to show that it attempted to reconcile the two different communications from the client with differences in critical fields. Even more so considering that this was not a small retail client but two large corporate clients.

Therefore, there arises a question on the genuineness of the physical AOF produced by AFSPL.

32. On the question of genuineness of physical AOF, due to the allegation of non-existent address, absence of pre-printed date format and non-availability of signature of the authorized signatory across the photograph, AFSPL made the following contentions:

32.1. In defense of the non-existent address in Set 1 AOF for DCEL, AFSPL has submitted that there is no requirement to physically verify the address submitted at the time of account opening and that the address is to be confirmed only on the basis of the documents submitted.

32.2. In defense to allegation that certain fields in Set 1 AOF did not have the pre-print of DDMMYYYY, while all fields in Set 2 AOF had such a pre-print, AFSPL has submitted it cannot be said that the AOF has been forged merely because DDMMYYYY is not pre-printed in some fields. I note here that investigation revealed that DDMMYYYY was found to be pre-printed on AOFs of other clients as well.

32.3. In defense to the allegation that AOF of OCL has no signature of the authorized signatories across their photographs as well as no company seal on Set 1 AOF, AFSPL has submitted that the same appears to be an oversight on part of the concerned employee of AFSPL when the forms were submitted

33. These deficiencies noted above cannot be brushed aside as mere technical errors, especially in view of the larger allegation of fraud and the circumstance of non-availability of any evidence to show that AFSPL attempted to reconcile conflicting AOFs. This, coupled with other circumstances such as the non-existent address in physical AOF for DCEL, the absence of the pre-print of DDMMYYYY, while all the physical AOFs of AFSPL, including the one sent through email, had the pre-print of DDMMYYYY, and absence of signature of the authorized signatories across their

photographs, lead to the preponderance of probability that the physical AOF claimed to have been received by *AFSPL from Dalmia group is not genuine*.

34. This finding is further reinforced by a comparison of the first two pages of Annexure K of the different AOFs on record, which leads to the following observations:

34.1. **For OCL:** Page 10 of the two AOFs appear to be identical. The same can be seen on the basis of the placement of the signatures of the authorized signatories. However, page 9 of the two AOFs are completely different. It can be seen that in the AOF sent by the Dalmia Group, the status of OCL is ticked as "Public Ltd. Co.", while in the physical AOF, the status is ticked as "Body Corporate". Hence, it appears that page 9 of the physical AOF, which contains communication details of OCL, is not genuine.

34.2. **For DCEL:** Similar distinction can be made for the two AOFs of DCEL. While page 10 appears to be identical, page 9 of the physical AOF, which contains communication details of DCEL, does not appear to be genuine.

35. Even though AFSPL should not have acted upon the AOF sent through email, instead of seeking the submission of physical documents for proper KYC requirements, it entered the wrong communication details and KYC details. Preponderance of probability based on these and surrounding circumstances, points to the likelihood that this was done so that DCEL and OCL would never receive CAS and SMS alerts from the Depository.

36. Therefore, I find that AFSPL captured wrong and unverified communications details for DCEL and OCL in the DPM system of NSDL on the basis of non-genuine physical AOFs, knowing very well that NSDL will send the CAS and SMS alerts to the email ID/ physical address and mobile number entered in the DPM system.

37. In the above context, the further question that arises for consideration is whether CML details provided to DCEL and OCL reflected the communication details provided by DCEL and OCL.

38. What needs to be determined under this question is what are the details mentioned in the CML and whether such details were same as the ones given by the Dalmia Group in the AOF sent by email and whether the said CML was sent to DCEL and OCL:

38.1. The Client Master List or the CML (also referred to as the Client Master Report) is a document which contains a snapshot of important client details viz., the address, bank details, email ID, contact details, mobile number, PAN of client, whether SMS Facility available or not, etc. The DP is required to send a print of the CML to the client after the account has been opened. NSDL guidelines stipulate that the CML may be provided to the client at the email ID recorded in the DPM system. While the DP can provide the CML to the client either from the DPM system or from its back office or from any other mode, which the DP may deem fit, the data in the CML must be same as the data entered in the DPM system.

38.2. I note that as per CML sent by AFSPL through email, the following communication details are mentioned therein.

Particulars	As per CML sent by AFSPL through email for DCEL	As per AOF of DCEL given by Dalmia Group (Set 2)
Address	12 th Floor, Hansaliya Building, Barakhamba Road, Connaught Place, New Delhi-110001	No Correspondence Address (Registered address of Tiruchirapali mentioned)
Mobile No.	9999329795	9999329795
Email ID	agrawal.bijay@dalmiabharat.com	agrawal.bijay@dalmiabharat.com

Particulars	As per CML sent by AFSPL through email for OCL	As per AOF of OCL given by Dalmia Group (Set 2)
Address	11 th Floor Narain Manzil 23 Barakhamba Road, New Delhi-110001	11 th Floor Narain Manzil 23 Barakhamba Road, New Delhi-110001
Mobile No.	9999329795	9999329795
Email ID	agrawal.bijay@dalmiabharat.com	agrawal.bijay@dalmiabharat.com

38.3. The above tables show that the details in the CMLs were the same as the ones mentioned in the AOFs sent through email by the Dalmia Group. I note that there are two emails dated February 20, 2017, and May 10, 2017, vide which AFSPL allegedly sent CMLs to DCEL and OCL, respectively.

38.4. It was contended that the alleged emails by which CMLs were sent by AFSPL do not belong to AFSPL and have not been sent by AFSPL, therefore, data in the CMLs cannot be attributed to be forged/ changed by AFSPL.

38.5. I note that the CMLs were sent to the Dalmia Group by email through email ID allied.fspl@gmail.com. I note here that investigation has confirmed that, as per discussions and analysis of records, the email ID allied.fspl@gmail.com belongs to AFSPL. I also note that the Noticees, as part of their submissions made in reply to this SCN, have themselves submitted email conversations with Dalmia Group employees, which have originated from this email ID. Hence, I note that AFSPL has been using the email ID allied.fspl@gmail.com for its official communications with the Dalmia Group. Therefore, the submission of AFSPL that it has not sent the email and that the data in the email cannot be attributed to be forged/ changed by it, is not acceptable. Therefore, I conclude that the two emails dated February 20, 2017, and May 10, 2017, were the emails vide which CMLs were sent to DCEL and OCL, respectively, were sent by AFSPL.

38.6. I further conclude that CML details provided to DCEL and OCL reflected the communication details provided by DCEL and OCL, vide email and NOT as per the physical AOFs claimed to be genuine by AFSPL. A comparison of the details

mentioned in the CML and DPM system and AOF send through E-mail are given below:

Particulars	As per AOF of OCL given through email	Details in the DPM system	Details in the CML
Address	11 th Floor Narain Manzil 23 Barakhamba Road, New Delhi-110001	E 205 Mayur Vihar Ext., New Delhi-110091	11 th Floor Narain Manzil 23 Barakhamba Road, New Delhi-110001
Mobile No.	9999329795	7530920535	9999329795
Email ID	agrawal.bijay@dalmiabharat.com	uditagri@gmail.com	agrawal.bijay@dalmiabharat.com
SMS Alert facility	Yes	All SMS sent to 7530920535*	Available
Mode of receipt of Holding Statements	Electronic at agrawal.bijay@dalmiabharat.com	CAS sent to uditagri@gmail.com*	-

* As informed by NSDL during forensic audit

Particulars	As per AOF of DCEL given through email	Details in the DPM system	Details in the CML
Address	No Correspondence Address (Registered address of Tiruchirapali mentioned)	H.No. 130, Sector 530, Gautam Budh Nagar, Noida-201301	12 th Floor, Hansaliya Building, Barakhamba Road, Connaught Place, New Delhi-110001
Mobile No.	9999329795	7530920535	9999329795
Email ID	agrawal.bijay@dalmiabharat.com	uditagri@gmail.com	agrawal.bijay@dalmiabharat.com
SMS Alert facility	Yes	All SMS sent to 7530920535**	Available
Mode of receipt of Holding Statements	Physical also ticked Mandate also given for receipt at agrawal.bijay@dalmiabharat.com	CAS sent physically to H.No. 130, Sector 530, Gautam Budh Nagar, Noida-201301**	-

** As informed by NSDL during forensic audit

39. In view of the conclusions reached above, I note that AFSPL captured the details in the DPM system of NSDL on the basis of the physical AOFs, knowing very well that NSDL will send the CAS and SMS alerts to the email ID/ physical address and mobile number entered in the DPM system, while the CMLs sent to the Dalmia Group reflected the details mentioned in the electronically sent AOFs so that DCEL and OCL would believe that they would get CAS and transaction alerts in the communication

details mentioned in the CML. Thus the CML sent to the clients were non-genuine since they did not reflect the details in the DPM system.

40. This also reinforces the finding that the physical AOFs were non-genuine.

41. The above conduct of AFSPL also shows that from the start of the account opening, AFSPL has misled DCEL and OCL, as these clients would be under the reasonable impression that the CAS and SMS alerts pertaining to their accounts would be received at the email ID/ physical address and mobile number mentioned in the CMLs that were sent to them. The forensic auditor has noted that the email ID uditagri@gmail.com does not belong to the Dalmia Group, while for the number 7530920535, Airtel has submitted that the number is not active and no details are available. EOW has also noted that this mobile number is not registered as per reply of service providers. Hence, the CAS and transaction alerts have actually been sent to email ID/ physical address and mobile number that do not belong to DCEL and OCL.

Issue No. 2: Whether MF units from the accounts of DCEL and OCL were transferred to AFSPL for use as collateral?

42. Investigation observed that MF units were regularly debited from and credited to the accounts of DCEL and OCL but AFSPL ensured that the securities reflected in the accounts as on March 31, 2018, i.e., financial year end closing. The MF units were being used as collateral by AFSPL for receiving exposure from ISSL.

43. In this context, the email conversation alleged to have taken place between AFSPL and Dalmia Group on 07/11/2018, 08/11/2018 and 09/11/2018, regarding status of MF units in demat accounts of DCEL and OCL requires consideration, as they make reference to using the MF units as collaterals.

44. The main allegation is that the email dated 08/11/2018, referred above, sent by Mr. Bijay Agrawal constitutes a clear instruction from the Dalmia Group that their MF units were not to be used as collateral and despite this instruction, the said MF units were being debited and credited from their accounts and being used as collateral, while denying the same to the Dalmia Group.
45. With regard to the email conversation that took place between AFSPL and Dalmia Group on 07/11/2018, 08/11/2018 and 09/11/2018, regarding status of MF units in demat accounts of DCEL and OCL and usage as collaterals, AFSPL has submitted that email dated 09/11/2018 has been sent from an email ID which is not the official email ID of AFSPL and cannot be attributed to Noticee No. 2. Further, AFSPL has submitted that no such email of 07/11/2018 was received from DCEL.
46. In this context I note that the email communication has taken place between email ID dpatmoneymishra@gmail.com and official email ID of Mr. Bijay Agrawal, agrawal.bijay@dalmiabharat.com.
47. I note from available records that the first email dated 07/11/2018 sent from dpatmoneymishra@gmail.com does not have any details of the person who has sent it. The email itself refers to an earlier email on release of collateral and goes on to state that the process will start from 09/11/2018 and L&T MF units will be released on Friday itself and thereafter, collaterals will be released on regular basis.

*"On Wed, 7 Nov 2018, 23:16 DP Mishra, dpatmoneymishra@gmail.com wrote:
Dear sir,*

Greetings!

Pl refer to our mail on release of collateral. We will start the process on Friday, 9th November 2018, even before schedule. L&T MF units will be released on Friday itself.

Thereafter, collaterals will be released on regular basis.

We were to shift collaterals on Monday, 12th November, 2018. But the National Stock Exchange has fixed sign off date for trade done on Muhurat Day at 15th November. The circular is attached herewith.

Therefore collaterals will be transferred on sign off date+2 basis.

Hope, you would bear with us.

Thanks and regards,

48. Mr. Bijay Agrawal, employee of the Dalmia Group, vide email dated 08/11/2018 has responded that the MF units of the Dalmia Group, which are in demat, are not to be collateralized for any purpose and that they should be able to redeem the same, as and when needed.

“On Thu, Nov 8, 2018 at 11:03 PM Bijay Agrawal agrawal.bijay@dalmiabharat.com wrote:

Dear Allied team,

Our mf units in demat are not collateralised for any purpose and should not be collateralised at all. I guess there is some confusion at your end.

We should be able to redeem the same, as and when we need.

Request you to please check and confirm.

*Regards
Bijay”*

49. There is a reply vide email dated 09/11/2018 from dpatmoneymishra@gmail.com to Mr. Bijay Agrawal, with copy to Mr. Abhay Singhal, an employee of Dalmia Group, and Mr. Awanish Kumar Mishra. The email states that the holdings of the Dalmia Group are intact, are not being held as collateral, have not been collateralized and the word collateral should be read as holding.

“From: DP Mishra dpatmoneymishra@gmail.com

Sent: Friday, November 9, 2018 11:18 AM

To: Bijay Agrawal

Cc: abhaysinghal@outlook.com; Awanish Kumar Mishra

Subject: Allied Financial Services

Dear sir,

Your holding with us is intact. It is not being held as collateral. It has not been collateralized. Use of word Collateral in the previous mail is deeply regretted. It should be read as Holding.

Thanks and regards,”

50. I note that the forensic auditor has confirmed that, as per discussions and analysis of records, the email ID dpatmoneymishra@gmail.com belongs to AFSPL. I also note that Noticee Nos. 1 and 2, as part of their defense to this SCN, have submitted email conversations with Dalmia Group employees, which have originated from this email ID. Hence, I note that while this email ID may not be the official email ID of AFSPL, I find that this email ID has been used for official communications with the Dalmia Group and therefore, AFSPL cannot deny the contents of any emails that are sent from this email ID, especially when the contents of the email denote the official nature of communication. Further, a copy of the email dated 09/11/2018 is also marked to Mr. Awanish Kumar Mishra. If indeed this email had nothing to do with AFSPL and Mr. Awanish Kumar Mishra, he had the opportunity to deny or clarify its contents. However, I note that there is no such material on record. With respect to submission that no email of 07/11/2018 was received by AFSPL from DCEL, it is not clear which email AFSPL is referring to. The email received from the Dalmia Group is dated 08/11/2018 and AFSPL cannot deny its receipt as, from available record, it can be seen that it has replied to this email on 09/11/2018.

51. Hence, I find that the emails dated 07/11/2018 and 09/11/2018 have been sent from an email ID which is being used by Noticee No. 1 in communicating with their clients and these emails can be attributed to Noticee No. 2 as well as he is the MD of AFSPL. The contents of the communication make reference of using the MF units as collateral, though email dated 09/11/2018 quickly changes the position. This changed position is in fact, factually incorrect since by its own admission, and as per records available, the MF units were in fact given as collateral to ISSL. Thus, the email of 09/11/2018 is a false representation to the clients, designed to fraudulently convey to them that their holdings are intact in their accounts.

52. Therefore, I hold that the content of the communication by AFSPL clearly indicate that the MF units referred to there, have been used as collateral by its own admission. Further, AFSPL has not been able to provide any documentary evidence to show that the MF units transferred from the demat accounts of DCEL and OCL were used as collateral for the transactions of DCEL, OCL or any other Dalmia affiliated entities. There is no material on record, either in the form of an agreement between DCEL and OCL and AFSPL or in the form of written instructions from DCEL and OCL, which permitted AFSPL to utilize the MF units from the demat accounts of DCEL and OCL as collateral for the transactions of DCEL, OCL or any other Dalmia affiliated entities. In fact, I take note here of the submission of the Noticees that the MF units from the demat accounts of DCEL and OCL were used as collateral for trading in the accounts of Noticee No. 2 and his associate entities viz., Money Mishra Financial Services and Money Mishra Overseas Pvt. Ltd., as the case of the Noticee is that they were used as collaterals with the collusion of employees/directors of the Dalmia Group.

53. Thus I find that the MF units from the demat accounts of DCEL and OCL were transferred to AFSPL for being using as collateral for the transactions of DCEL, OCL or any other Dalmia affiliated entities.

Issue No. 3: Whether there was a misrepresentation regarding the status of the holdings of MF units in the accounts of DCEL and OCL by (a) sending false holding statements to DCEL and OCL and (b) giving holding statement falsely claimed to be signed and stamped by NSDL?

54. Investigation has revealed that holding statements, as on dates mentioned below, have been sent to OCL and DCEL by AFSPL. These holding statements are also annexures to the forensic auditor's report, which has been provided to the Noticee. and remarks on the same are as below:

DCEL/OCL	Holding statement as on date	Remarks
OCL	01/07/2017, 15/09/2017, 30/09/2017, 30/12/2017, 02/04/2018, 30/06/2018, 31/07/2018, 16/08/2018, 31/12/2018	<i>No sign and seal</i>
	30/09/2018	<i>Sign and seal of AF SPL</i>
	08/10/2018	<i>Sign and seal of NSDL</i>
DCEL	31/03/2017, 01/07/2017, 15/09/2017, 30/09/2017, 30/12/2017, 02/04/2018, 12/07/2018, 31/12/2018	<i>No sign and seal</i>
	30/09/2018	<i>Sign and seal of AF SPL</i>
	08/10/2018	<i>Sign and seal of NSDL</i>

55. While the statements have space for the seal and initials of AF SPL to be affixed on them, I note that the same have not been affixed.

56. AF SPL has submitted that as per its knowledge all the holding statements were duly stamped and signed and no unsigned statement was physically delivered to DCEL/ OCL.

57. I note here that AF SPL has not disputed the contents of the above mentioned holding statements that were provided to it as part of the annexures to the forensic auditor's report. AF SPL has also not provided any evidence to show that sealed and signed holding statements were physically delivered to DCEL and OCL, except making a bald statement that all statements were sent with seal and sign.

58. I also note that the entire transaction statement for the accounts of DCEL and OCL, from the opening of the account till January 2019, as furnished by NSDL, is also on record and was furnished to the Noticee as part of the forensic auditor's report, and the contents of these transaction statements have not been disputed by AF SPL. A comparison of these holding statements sent by AF SPL to DCEL and OCL with the transaction statement furnished by NSDL is tabulated below:

OCL		
Date	Status as per holding statement sent by AFSPL to Dalmia	Status as per transaction statement provided by NSDL
01/07/17	Units of 4 MF schemes available in account	Units of 4 MF schemes available in account
15/09/17	Units of 7 MF schemes available in account	Units of only 1 MF scheme available in account
30/09/17	Units of 7 MF schemes available in account	Units of only 1 MF scheme available in account
30/12/17	Units of 7 MF schemes available in account	Units of 7 MF schemes available in account
02/04/2018	Units of 7 MF schemes available in account	Units of only 1 MF scheme available in account
30/06/18	Units of 7 MF schemes available in account	Units of only 1 MF scheme available in account
31/07/18	Units of 7 MF schemes available in account	Units of only 1 MF scheme available in account
16/08/18	Units of 7 MF schemes available in account	Units of only 1 MF scheme available in account
30/09/18	Units of 6 MF schemes available in account	NIL
08/10/18	Units of 6 MF schemes available in account	NIL
31/12/18	Units of 5 MF schemes available in account	NIL

DCEL		
As on Date	Status as per statement sent by AFSPL to Dalmia	Status as per transactions statement provided by NSDL
31/03/2017	Units of 1 MF schemes available in account	Units of 1 MF schemes available in account
01/07/17	Units of 4 MF schemes available in account	Units of 4 MF schemes available in account
15/09/17	Units of 2 MF schemes available in account	Units of 2 MF schemes available in account
30/09/17	Units of 2 MF schemes available in account	Units of 2 MF schemes available in account
30/12/17	Units of 2 MF schemes available in account	Units of 2 MF schemes available in account
02/04/18	Units of 4 MF schemes available in account	NIL
12/07/18	Units of 2 MF schemes available in account	NIL
30/09/18	Units of 1 MF schemes available in account	NIL
08/10/18	Units of 1 MF schemes available in account	NIL

DCEL		
31/12/18	Units of 1 MF schemes available in account	NIL

59. From the above, I note that AFSPL has sent DCEL and OCL holding statements that do not reflect the true status of the holding in the account. For e.g., the statement of holding, as on 15/09/2017, sent by AFSPL to OCL, shows that units of seven (07) mutual fund schemes are available in the account as on this date. However, from the transaction statement from NSDL is seen, then units of only one (01) mutual fund scheme is available in the account, as on 15/09/2017. Similar status of holdings can be seen for the account of DCEL.

60. From the above observations, it can be seen that AFSPL has misrepresented the status of the holdings to DCEL and OCL. The statement of holdings sent to DCEL and OCL do not reflect the true status of the holdings and by sending such statements, AFSPL has actively concealed the fact that the mutual fund units of DCEL and OCL are actually not available in their accounts.

Giving holding statement purportedly signed and stamped by NSDL:

61. AFSPL has submitted that NSDL used to send CAS directly to OCL and DCEL at their respective address. Further, AFSPL has submitted that Mr. Bijay Agrawal, Treasury Head of Dalmia Group, had requested for a NSDL stamped demat statement from AFSPL via a WhatsApp chat between him and Noticee No. 2. However, the request was denied by Noticee No. 2 and no such statement was sent by him. The same is clear if the timing of the generation of the holding statement (9:56 AM on 08/10/2018) and the time of the WhatsApp chat (6:11 PM on 08/10/2018) is seen.

62. I note that NSDL has submitted that the stamp and signature on the said statement dated 08/10/2018 did not belong to it and hence, the same has not been provided by NSDL and/ or its officials. As per its policy, it only sends CAS, which are digitally

signed. With respect to delivery of CAS to any specific address, NSDL has submitted the following with its remarks:

Entity	Delivery of CAS	Address	Remarks
DCEL	CAS was sent in hard copy through ordinary post	H No.-130, Sector 530, Gautam Budh Nagar, Noida, UP	NSDL has stated that no CAS was returned undelivered. However, this address is non-existent.
OCL	CAS was sent electronically	<u>uditagri@gmail.com</u>	Dalmia Group has claimed that this email ID does not belong to them

63. In view of NSDL's submission that it does not issue signed and stamped holding statements, I am of the view that the holding statement, as on October 08, 2018, which purportedly was signed and stamped by NSDL, is not genuine. I further note that the impugned holding statement was obtained during forensic audit of the documents provided by the Dalmia Group. Investigation has noted that during the audit, AFSPL explained that such a holding statement was provided on the request of the Dalmia Group, as they wanted the holding statement on hard copy for their internal purpose. However, pursuant to personal hearing it has denied that such a statement was sent.

64. Therefore, I note that AFSPL has made contradictory submissions with respect to the holding statement purportedly stamped and signed by NSDL. On one hand, AFSPL has accepted that it provided such a holding statement at the request of the Dalmia Group, while pursuant to personal hearing it has denied that such a statement was sent. In this context, perusal of the WhatsApp chat between Noticee No. 2 and Mr. Bijay Agrawal (hereinafter referred to as "BA"), which has been provided by AFSPL after the personal hearing is relevant.

64.1. As per the WhatsApp chat, a reference to a statement directly from NSDL is first made by BA to AKM on 05/10/2018 i.e., before the statement dated 08/10/2018 was generated.

"[05/10/18, 11:03:41 AM] Vijay Dalmiya: But the statement directly from NSDL as of 30th September... Is very critical... We need the same for internal compliance... Requesting if that

*can be arranged urgently... Need your support..
[05/10/18, 11:08:26 AM] Awanish K Mishra: Sure sir"*

64.2. I note that the above conversation makes reference only to a statement from NSDL and not to a "signed and stamped" statement from NSDL. I also note here that this request has been made by the Dalmia Group for internal compliance.

64.3. The said statement has been generated on 08/10/2018 at 9:56 AM.

*"Depository Participant's Seal & Initials
Any discrepancy in the statement should be brought to the notice of "ALLIED
FIN.SERV.PVT.LTD" within one month from the date of the statement.*

****End of Report***
BKG001/dinesh/08-Oct-2018 09:56 AM/ 10061329 Page No. 1 Of 1"*

64.4. Further, on 08/10/2018, as 6:11 PM, BA has raised several queries, screen shot of one of which is as follows:

"[08/10/18, 6:11:27 PM] Vijay Dalmiya: Hi sir, below summarizing key critical things pending

*NSDL login and statement view – abhay is there in your office. Have asked him to go there tomorrow also to get this sorted. Need your support on same.
Stamped statement from nsdl – need some further info on same (as person name, address and designation , who is signing on it)"*

64.5. The language of this query implies that a NSDL statement had already been delivered to Dalmia Group and BA was seeking further information on the same viz., details of the person who is signing it, etc.

64.6. I also note here that Noticee No. 2, at 7:57 PM on the same day, has replied that he is trying his best to resolve all these queries.

*"[08/10/18, 6:42:01 PM] Vijay Dalmiya: Msg sent to jayesh
[08/10/18, 7:57:24 PM] Awanish K Mishra: I am trying my best to resolve all these
[08/10/18, 8:46:06 PM] Vijay Damiya: Thanks*

64.7. This part of the WhatsApp chat does not corroborate the submission of Noticee No. 2 that he refused to send such a statement. Further, with AFSPL being a registered DP and Noticee No. 2 being its Director, they both would have been aware that NSDL does not issue such stamped and signed holding statements. However, the reply of Noticee No. 2 and the contents of the WhatsApp conversation lend credibility to the allegation that the statement was fabricated.

65. Therefore, reading the WhatsApp conversation dated 05/10/2018, together with the conversation on 08/10/2018, I am of the view that a request for receipt of a statement directly from NSDL was made by the Dalmia Group to AFSPL and such a holding statement, purportedly signed and stamped by NSDL, was received by the Dalmia Group. Further, I note that the submissions of Noticee Nos. 1 and 2 are not consistent and are also not corroborated by the WhatsApp chats. Therefore, on the basis of preponderance of probabilities, I hold that this false holding statement was provided by AFSPL to Dalmia Group and the same was not a genuine holding statement.

66. Further, a comparison with the actual transaction statements from NSDL shows that these holding statements, purportedly stamped and signed by NSDL, are also false and misleading in nature and do not reflect the true status of the holdings in the accounts of DCEL and OCL. The same is shown below:

OCL		
Date	Status as per holding statement sent by AFSPL to Dalmia	Status as per transaction statement provided by NSDL
08/10/18	Units of 6 MF schemes available in account	NIL

DCEL		
As on Date	Status as per statement sent by AFSPL to Dalmia	Status as per transactions statement provided by NSDL
08/10/18	Units of 1 MF schemes available in account	NIL

67. It may be noted here that while these holding statements are as on October 08, 2018, i.e., the status of the accounts is very close to the September 2018 quarter end; however, these statements were also false and misleading in nature.

68. The above discussion shows that there is a misrepresentation regarding the status of holdings of MF units in the accounts of DCEL and OCL (a) sending untrue holding statements to DCEL and OCL and (b) giving false holding statement purportedly signed and stamped by NSDL.

Issue No. 4: Whether there was a fraudulent transfer of MF units to the demat accounts of DCEL and OCL during December 2017 quarter end and March 2018 financial year end?

69. I note that OCL was a listed company till the time of its amalgamation with Odisha Cement Ltd. (now known as Dalmia Bharat Ltd.) in October 2018. Similarly, DCEL was a step-down subsidiary of Dalmia Bharat Ltd., which is a listed entity (as per Annual Report of Dalmia Bharat Ltd. for FY 2016-17). Hence, the investments of DCEL and OCL in mutual funds would be considered when preparing the unaudited and audited financial statements for OCL and Dalmia Bharat Ltd. Statutory auditors, when preparing these financial statements, apart from relying on holding statements sent by a DP, may also like to independently verify that the holdings are actually available in the demat accounts, as part of the learnings from the Satyam scam.

70. Hence, the holding statements sent to DCEL and OCL, as on 30/12/2017 and 02/04/2018 i.e., quarter end and financial year end are of importance. In this regard, I take note of the following:

70.1. The movement of MF units prior to these dates is as per the table below:

	DCEL	OCL
Date	Account status (as on date)	
December 29, 2017	Nil securities	Nil securities
December 30, 2017	Units of 2 MF schemes credited to account	Units of 7 MF schemes credited to account
December 31, 2017	Units of 2 MF schemes available in account	Units of 7 MF schemes available in account
January 01, 2018	Units of 2 MF schemes debited from account. Nil balance in account	Units of 7 MF schemes debited from account. Nil balance in account
March 30, 2018	Nil securities	Nil securities
March 31, 2018	Units of 2 MF schemes credited to account	Units of 7 MF schemes credited to account
April 01, 2018	Units of 2 MF schemes available in account	Units of 7 MF schemes available in account
April 02, 2018	Units of 2 MF schemes debited from account. Nil balance in account	Units of 6 MF schemes debited from account. Units of 1 MF scheme balance in account

70.2. The above movement of MF units, just prior to the end of December 2017 quarter and March 2018 financial year, clearly shows the intent of AFSPL in ensuring that the MF units were available in the demat account, as on December 31, 2017, and March 31, 2018, so that even if the statutory auditors chose to independently verify the holdings as on these dates, they would find the holdings to be intact.

70.3. This finding is further enforced by the following:

70.3.1. Release of units of DSP Blackrock Ultra Short Term Fund (ISIN-INF740K018P2): As seen from the table above, on December 30, 2017, 6,30,38,860 units of this MF scheme were released from ISSL to AFSPL. From examination of the subsequent movement of these units, it is seen that 1,26,02,182 units were moved to demat account of OCL, while 5,04,35,849 units were moved to the demat account of DCEL.

70.3.2. Further perusal of the transaction statement of OCL and DCEL shows that OCL was always holding 1,26,02,182 units of DSP Blackrock Ultra Short Term Fund (ISIN- INF740K018P2) from the beginning i.e., from May 16, 2017, when these units were first credited into the account. Similarly, DCEL was always holding 5,04,35,849 units of this scheme from very beginning i.e., May 31, 2017.

70.3.3. Similarly, precise movement of units of L&T Short Term Opportunities Fund (ISIN: INF917K01CL8), in terms of quantity, can be seen between ISSL and AFSPL and followed by movement from AFSPL to demat accounts of DCEL and OCL.

70.4. Hence, AFSPL ensured that the exact amount of MF units was credited to the demat accounts of OCL and DCEL to facilitate that there would be no discernible discrepancy if statutory auditors independently verified the holdings when preparing the financial statements.

71. I note that though technically it may not appear as misrepresentation since the MF units were in fact in the accounts as on these dates; however, as seen along with the attending circumstances, the conduct of the return of MF units to the accounts of DCEL and OCL on quarter and financial year end, appears, on preponderance of probability basis, to be driven by the objective of concealing the true state of affairs i.e., that the MF units were being used as collateral and were not unencumbered and would be debited again.

72. Therefore, I hold that there was a fraudulent transfer of MF units to the accounts of DCEL and OCL during December 2017 quarter end and March 2018 financial year end and the same was done to conceal the true state of affairs that the holdings were encumbered and would be debited again.

Issue No. 5: Whether MF units from the demat account of NEPL were fraudulently transferred and given as collateral to ISSL and status of MF units was fraudulently misrepresented to NEPL?

73. I note that there is no dispute on whether NEPL is a client of ASPL. There is also no dispute on the date of account opening regarding NEPL, which is on November 13, 2018. The allegation is that MF units from the account of NEPL were fraudulently transferred from its demat account and were used as collateral. In order to achieve this, it is alleged that the DIS, which used for transfer of MF units, was not issued to NEPL, while DIS issued to NEPL prior to this (first set) was found unused. It is further alleged that the details in the DPM system was not immediately entered when the first set of DIS was issued to NEPL. It is also alleged that a non-genuine statement of holding of MF units standing in the name of Mutual Fund Digi Locker (MFDL) was provided to NEPL.

74. In the above context, it needs to be seen whether the first set of DIS issued was unused and whether the second set of DIS was issued to NEPL at all and if not issued to NEPL, then whether this second set of DIS was used for transfer of MF units from the demat account of NEPL.

74.1. I note that DIS booklet with series 148211-148220 was issued on 13/11/2018 at the time of account opening. I also note that ASPL has not disputed the fact that this DIS booklet remained unutilized. Regarding the first and subsequent DIS booklets, AFSPL has submitted that the DIS booklets were issued after receiving request for the same from the concerned person of NEPL and originals in this regard were submitted with NSDL and that DIS booklet issued to NEPL was given to Mr. Rupinder Pal Singh, who had introduced NEPL to AFSPL.

74.2. I find that AFSPL could only provide the acknowledgement receipt for having issued DIS booklet with series 148241-250; however, it could not provide the request received from NEPL for issuance of a new DIS booklet. AFSPL has also

not commented on why a second DIS booklet was issued while the first one remained unutilized. Further, AFSPL has also failed to explain why the DIS booklets were handed over to Mr. Rupinder Singh (as claimed) without any authorization for the same on record. It is also on record that DIS booklet with series 148241-250 were used to transfer the mutual fund units from the account of NEPL. Further, on examination of the acknowledgement receipt for the DIS booklet 148241-250, I observe that it is undated. AFSPL has also not provided the DIS register, which would have shown the date when this booklet was issued and the mode of its issue.

75. Hence, when this acknowledgement receipt is viewed in light of these observations, I, on the basis of preponderance of probability, find that it is a non-genuine receipt. As AFSPL has not been able to furnish any record that the DIS booklet, which was used to transfer the MF units from the demat account of NEPL, was issued at the request of NEPL, I find that AFSPL has not been able to substantiate that the DIS booklet with series 148241-250 was issued to NEPL; however, it was used to transfer the mutual fund units from the account of NEPL.

76. In fact, I take note that ASPL in its submission dated January 20, 2021, has admitted that after the MF units of NEPL were dematerialized, they were taken out of the demat account of NEPL and used as replacement for the MF units transferred from the demat accounts of DCEL and OCL, which had to be returned to DCEL and OCL. In support of its own submission, AFSPL has provided the following instance as tabulated below:

Sr. No.	Date	Event
1	27/11/2018	7,92,535 units of Axis Focused 25 Fund belonging to NEPL were dematerialized
2	27/11/2018	7,92,535 units were transferred out of NEPL demat account
3	28/11/2018	88,991 units of an L&T MF scheme were credited to demat account of OCL from AFSPL and these units were redeemed on the same day.

77. Therefore, I find that the transfer of MF units was fraudulent in nature as the DIS slips used for the transfer were not at all issued to NEPL. I also note that AFSPL has submitted that on December 01, 2018, NEPL raised an objection that its units have been taken without its permission and consent. The own submission of the Noticee that 88,991 units of an L&T MF scheme were credited to demat account of OCL lends credence to the allegation that the above said fraudulent transfer of MF units from the account of NEPL was for its use as collateral, as already mentioned above.

78. In the context of the above finding, it needs to be seen whether AFSPL has fraudulently misrepresented to NEPL the status of the MF units in its demat account by sending non-genuine holding statements.

79. Regarding the holding statement, AFSPL has submitted that the statement was sent to the email ID of the consultant as it was only the consultant who was dealing with the account of NEPL. Further, AFSPL has submitted that no fabricated statement was sent to NEPL.

80. I find that the account statement for NEPL was forwarded to the email ID made4hsbc@hotmail.com and the same is not denied by AFSPL. As per the welcome email sent by AFSPL to NEPL, the email ID of NEPL is dadass2000@gmail.com, which is the only email ID mentioned anywhere in the AOF of NEPL. This communication to made4hsbc@hotmail.com appears to have been sent without the authorization by the client as AFSPL has failed to provide any evidence of such authorization. I further find that AFSPL has furnished a holding statement, as on December 05, 2018, to NEPL, which showed that their MF units were lying in a demat account in the name of Mutual Fund Digi Locker (MFDL), a partnership firm

81. I note that as per NSDL guidelines, a demat account for a partnership firm is opened in the name of partners and not in the name of the firm. Therefore, the holding statement should have actually reflected the names of the partners of MFDL and not

the name of the partnership firm. Hence, the statement provided to NEPL is not a genuine statement.

82. I also note that investigation has found that the MF units transferred from the demat account of NEPL were first transferred to the demat account of MFDL, from there to demat accounts associated with Mr. Awanish Kumar Mishra from where they were transferred to the demat account in name of AFSPL and then given as collateral to ISSL.

83. Therefore, not only did AFSPL give a non-genuine holding statement in the name of MFDL and non-genuine explanation for transfer of units out of the account of NEPL, there was misrepresentation of holdings. The said statement misrepresented that as on December 05, 2018, the MF units transferred from the demat account of NEPL were available in the demat account named MFDL. However, when compared with the transaction statement of MFDL provided by NSDL, these units were not available in the account as on December 05, 2018. For e.g., the holding statement given by AFSPL shows that as on December 05, 2018, the account had a balance of 792,535 units of Axis MF Focused 25 Fund. However, from the transaction statement, it can be seen that all these units were debited from the account on November 27, 2018, itself and were transferred to another demat account held with AFSPL. Hence, the statement given to NEPL was not a genuine one and was given to NEPL to misrepresent the status of its holdings.

84. In view of the above discussion, including the admission by AFSPL, I hold that ASPL has fraudulently misrepresented to NEPL, the status of the MF units in its demat account by sending a non-genuine holding statement, while the MF units were actually fraudulently transferred for using as collateral by AFSPL.

85. Therefore, in summary, I find that

- 85.1. From the very start of the relationship with DCEL and OCL, AFSPL laid the groundwork to ensure that details of any transactions in these accounts would not come to the notice of DCEL and OCL. This was done by way of entering incorrect communication details in the DPM system of NSDL so that the CAS and transaction alerts would never reach the clients.
- 85.2. At the same time, DCEL and OCL were given the impression that their correct communication details are on record. This was done by sending them CMLs, which reflected the communication details given by DCEL and OCL. In fact, these details were completely different from the details captured in the DPM system of NSDL.
- 85.3. AFSPL has sent statement of holdings to DCEL and OCL which do not depict the true status of their holdings. AFSPL has knowingly misrepresented to DCEL and OCL that their units were available in their accounts as on a particular date, when actually these units were not in these accounts on those dates.
- 85.4. The holding statement, purportedly stamped and signed by NSDL, which was provided by AFSPL to DCEL and OCL at their request, was non-genuine and misleading in nature and did not reflect the true status of the holdings in the accounts of DCEL and OCL.
- 85.5. This conduct of AFSPL in actively concealing the status of the holdings of DCEL and OCL can also be seen in its email dated November 09, 2018, wherein it has confirmed that the holdings of DCEL and OCL are intact with it, whereas actually these accounts had nil holdings as on that date and had been posted as collateral with the clearing member, ISSL.
- 85.6. Just before quarter end 31/12/2017 and financial year end 31/03/2018, AFSPL ensured that it fraudulently transferred these MF units to the accounts of DCEL and OCL. As explained above, the reason could be to escape scrutiny of

independent auditor verification when finalizing financial statements. It is seen that immediately after the quarter and financial year ends, the MF units are again moved out of the accounts. It is noted that without prejudice to the above reason, the conduct of transfer of MF units was to only conceal the true state of affairs i.e., that the MF units were encumbered and that the holdings would be taken away soon again, thereby, making such transfers a fraudulent one on this score.

85.7. ASPL has fraudulently misrepresented to NEPL, the status of the MF units in its demat account by sending a non-genuine holding statement, while the MF units were actually fraudulently transferred for using as collateral by AFSPL.

Issue No. 6: If any or more than one or all of the issues in Issue Nos. 1-5 are determined in the affirmative, whether Noticees have committed fraud/ unfair trade practice and/ or fraudulent transfer of MF units as alleged in the SCN?

86. In the context of the above findings, it needs to be determined whether the above factual conclusions arrived at are a fraud, as alleged in the SCN. In this context, the relevant provisions alleged to have been violated by the Noticee is reproduced below:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves:—

...

(p) an intermediary predating or otherwise falsifying records

87. Before proceeding further, I also take note of the definitions of as per the PFUTP Regulations, which is reproduced below:

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

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

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

(4) a promise made without any intention of performing it;

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

(7) deceptive behaviour by a person depriving another of informed consent or full participation,

(8) a false statement made without reasonable ground for believing it to be true.

(9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly ...”

88.I note here that AFSPL has submitted that the present dispute regarding MF units worth approximately Rs. 344 crores, is primarily based on the frivolous allegation of fraud by the Dalmia Group. However, the factum of either AFSPL or the Dalmia Group having been involved in an act of fraud, is yet to be determined by the court of competent jurisdiction. The said question of fraud has been taken up by the EOW, New Delhi, and is pending trial/ adjudication before the court of competent jurisdiction. It has been submitted that till the time that the question of fraud is decided, any action taken against AFSPL would not only be arbitrary in law but highly prejudicial to the rights of AFSPL.

89.I note that the charge sheet filed by the EOW, New Delhi, has been filed under the following Sections of the Indian Penal Code, 1860: Sections 420,409 Section 467,468 and 471(dealing with Cheating and dishonestly inducing delivery of property, Criminal breach of trust, forgery of valuable security and using as genuine a forged document).

90. I note here that the above sections of the IPC pertain to cheating and forgery and one of the main element to be determined in the above proceedings is whether the signatures on the DIS used to effect transfer of MF units from the demat accounts of DCEL and OCL have been forged or not. As already noted in the preceding issue, this aspect is pending adjudication before the Hon'ble Court in which the charge sheet has been filed.

91. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly and healthy growth of the securities market and to promote investors protection. The offence of cheating, criminal breach of trust and forgery are different from the fraud under the PFUTP Regulations. Therefore, I am of the view that the present proceedings are independent of the proceedings already pending before the Hon'ble Court in which the EOW, New Delhi, has filed its charge sheet.

92. The question that arises in the present proceedings is whether the conduct of AFSPL is fraudulent in terms of the provisions of the PFUTP Regulations and whether such conduct is fraudulent and independent of the element of forgery, etc., which is pending before the Hon'ble Court having competent jurisdiction to determine the same. The question is of fraudulent and unfair trade practices under the SEBI Regulations.

93. In this regard, the ratio of Hon'ble Supreme Court in the matter of Kanaiyalal Baldev Bhai Patel v. SEBI [(2017) 143 SCL 124 (SC)], in the context of "unfair trade practice" is apt for reproduction.

"Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'."

94. The findings already rendered shows the nature of conduct surrounding and involving transfer of impugned MF units from the accounts of DCEL and OCL and using them as collateral by AFSPL for transactions of entities other than DCEL, OCL and other Dalmia affiliated entities, while DCEL and OCL, as legal entities, were made to believe that the impugned MF units in the demat accounts were intact and the same had not been used as collateral. In order to perpetuate this state of affairs and shield the same from legal entities of DCEL and OCL, the Noticees had entered incorrect details in the DPM system of NSDL relating to the contact details of DCEL and OCL, so that if any transfer of MF units happens from the demat accounts of DCEL and OCL, they are not alerted of such transfers. Further, DCEL and OCL, as legal entities, were made to believe that there was no such transfer of MF units by sending them false holding statements, false representations and sharing false holding statement purported to be signed and stamped by NSDL. The Noticees perpetuated this state of affairs by transferring the MF units back to the demat accounts of the DCEL and OCL at regular intervals, including at quarter and financial year end, so that DCEL and OCL were made to believe the impugned MF units were intact in their demat accounts. As submitted by the Noticee itself, at a later stage, MF units from account of another client, NEPL, were again, without its knowledge, transferred from its demat account for replacing the MF units of DCEL/ OCL, which had already been given as collateral to ISSL.

95. The above conduct breaches ethical standards and good faith dealings between DCEL and OCL and NEPL on one hand and AFSPL on the other hand who were engaged in business transactions and qualifies as an “unfair trade practice”.

96. The above conduct is also fraudulent as it involves knowing misrepresentation of the truth or concealment of material fact on the holdings of MF units by different means such as sending false holding statements, false representations and sharing false NSDL holding statement. Sending such false holding statements and sharing false NSDL holding statement amounts to falsifying the records of the AFSPL as an intermediary. Further, the acts of transfer of MF units from DCEL and OCL for the

purpose of using as collateral deceitfully and making use of MF units of NEPL as replacement for the MF units of DCEL and OCL, deceptively, are also fraudulent in nature. Therefore, I find that the conduct as elaborated above is fraudulent and prevented under the provisions of the PFUTP Regulations.

97. I further hold that the act of transferring the MF units back to the demat accounts of DCEL and OCL at regular intervals, including quarter and financial year end, so that DCEL and OCL were made to believe that the impugned MF units are intact in their demat accounts are fraudulent transfers within the larger deceptive, fraudulent and unfair trade practice committed by ASPL.

98. I now also proceed to examine whether the above said fraud and unfair trade practice could be maintainable against AFSPL even if the aspect of forged DIS was not determined. I note that the evidence of forged DIS is meant to prove whether the transfer of MF units from the demat accounts of DCEL, OCL and NEPL is fraudulent. I note if other relevant materials are on record to indicate the fraud, the aspect of whether the DIS was forged or not becomes irrelevant. In that scenario, the forgery of DIS only acts as additional or corroborative evidence. On the other hand, even if the forgery is not established, it may establish a collusion. However, the same does not dilute the larger gamut of deceptive, fraudulent and unfair trade practice. Further, as regards NEPL, I have taken note of the submissions of the Noticee that the MF units were transferred from the demat account of NEPL to replace the MF units transferred from the demat accounts of DCEL/ OCL, which had been given as collateral.

99. Therefore, I hold that AFSPL has caused fraudulent and unfair treatment to DCEL, OCL and NEPL and has violated the provisions of Regulations 3 (a), 4(1) and 4(2)(p) of the PFUTP Regulations, as alleged in the SCN. Hence, the violation of the provisions of Regulations 3 (a), 4(1) and 4(2) (p) of the PFUTP Regulations, as alleged in the SCN against AFSPL stand established.

Issue No. 7: Whether the above acts of the Noticees were at the behest and in the knowledge of employees and/ or office bearers of the Dalmia Group?

100. I also take note of the defense of collusion of employees and/ or office bearers of the Dalmia Group raised by ASPL in its replies dated January 01, 2020, October 05, 2020, and January 20, 2021. I further note that the determination of the role of employees and/ or office bearers of the Dalmia Group is not the subject matter of the SCN. If the claims of AFSPL and Mr. Awanish Kumar Mishra are scrutinized, the same may result into findings relating to non-parties, who are not before me as Noticees and as such, it would be beyond the scope of these proceeding to examine these submissions of AFSPL or to take on record their defense against the allegations made by AFSPL and Mr. Awanish Kumar Mishra.

101. However, it is relevant to examine, in case there is a collusion whether such collusion could alter the findings of fraud against the Noticees. For a moment, even if the collusion is assumed to be present, the conduct of the Noticees in entering incorrect details in DPM system of NSDL relating to the contact details of DCEL and OCL, so that if any transfer of mutual funds happen from the demat accounts of DCEL and OCL, they are not alerted of such transfer, making DCEL and OCL to believe that there was no such transfer of mutual fund units by sending false holding statements, false representations and sharing false NSDL holding statement, transferring the MF units back to the demat accounts of the DCEL and OCL at regular intervals, including quarter and financial year end, for forming a false impression that the impugned MF units are intact in their demat accounts, qualifies as fraud against the legal entities of DCEL and OCL. The possible collusion of employees and/ or office bearers of the Dalmia Group does not make any of the entire gamut of deceptive, fraudulent and unfair trade practice, as permissible legal acts.

102. Therefore, whether AFSPL was party to this fraudulent conduct on its own or it was done along with the collusion of employees and/ or office bearers of the Dalmia

Group does not alter or change in any way the nature of the conduct of AFSPL. Its conduct remains fraudulent, deceptive and unfair irrespective of whether there is involvement of any of the employees and/ or office bearers of the Dalmia Group. In fact, the submissions of AFSPL made in this regard lend credence to the finding that it has undermined the good faith and integrity that it was expected to demonstrate towards its clients viz., the companies DCEL, OCL and NEPL.

Issue No. 8: Whether violations of the respective clauses of the provisions of the DP Regulations 1996, DP Regulations 2018 and relevant SEBI Circulars as alleged in the SCN stands established?

103. Before proceeding further, I would like to refer to the relevant provisions of the SEBI regulations and circulars that the Noticees have alleged to have violated. The same are reproduced below:

DP Regulations 1996

Participants to abide by code of conduct.

20AA. *The participant holding a certificate of initial or permanent registration shall, at all times, abide by the Code of Conduct as specified in Third Schedule.*

**THIRD SCHEDULE
CODE OF CONDUCT FOR PARTICIPANTS**

1. *A participant shall make all efforts to protect the interests of investors.*
2. *A participant shall always endeavour to—*
 - (a) ...
 - (b) *ensure that all professional dealings are effected in a prompt, effective and efficient manner;*
 - (c) ...
 - (d) ...
3. *A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.*
4. *A participant shall be prompt and diligent in opening of a beneficial owner account, dispatch of the dematerialisation request form, rematerialisation request form and execution of debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners.*
5. ...
6. ...
- ...

16. A participant shall follow the maker—Checker concept in all of its activities to ensure the accuracy of the data and as a mechanism to check unauthorised transaction.

...

19. A participant shall ensure that it has satisfactory internal control procedures in place as well as adequate financial and operational capabilities which can be reasonably expected to take care of any losses arising due to theft, fraud and other dishonest acts, professional misconduct or omissions.

...

22. A participant shall ensure that good corporate policies and corporate governance are in place.

DP Regulations 2018

Participants to abide by code of conduct

37. The participant holding a certificate of registration shall, at all times, abide by the Code of Conduct as specified in Part A of Third Schedule.

THIRD SCHEDULE

Part-A

CODE OF CONDUCT FOR PARTICIPANTS

1. ...

2. A participant shall always endeavour to—

(a) ...

(b) ensure that all professional dealings are effected in a prompt, effective and efficient manner;

(c) inquiries from investors are adequately dealt with;

(d) grievances of investors are redressed without any delay.

3. A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.

4. ...

5. A participant shall endeavour to resolve all the complaints against it or in respect of the activities carried out by it as quickly as possible, and not later than one month of receipt.

...

9. A participant shall not divulge to other clients, press or any other person any information about its clients which has come to its knowledge except with the approval/authorisation of the clients or when it is required to disclose the information under the requirements of any Act, Rules or Regulations.

10. A participant shall co-operate with the Board as and when required.

...

13. A participant shall not neglect or fail or refuse to submit to the Board or other agencies with which it is registered, such books, documents, correspondence, and papers or any part thereof as may be demanded/requested from time to time.

14. A participant shall ensure that the Board is promptly informed about any action, legal proceedings, etc., initiated against it in respect of material breach or non-compliance by it, of any law, Rules, regulations, directions of the Board or of any other regulatory body.

...

16. A participant shall follow the maker—Checker concept in all of its activities to ensure the accuracy of the data and as a mechanism to check unauthorised transaction.

17. A participant shall take adequate and necessary steps to ensure that continuity in data and record keeping is maintained and that the data or records are not lost or destroyed. It shall also ensure that for electronic records and data, up-to-date back up is always available with it.

...

22. A participant shall ensure that good corporate policies and corporate governance are in place.

Appointment of compliance officer

81. A depository and a participant shall appoint a compliance officer who shall be responsible for monitoring the compliance of the Act, rules and regulations, notifications, guidelines, instructions, etc., issued thereunder and for redressal of investors' grievances.

Obligations on inspection by the Board

86. (1) It shall be the duty of the depository, a participant, a beneficial owner, an issuer or its agent whose affairs are being inspected or investigated, and of every director, officer and employee thereof, to produce to the inspecting officer such books, securities, accounts, records and other documents in its custody or control and furnish him with such statements and information relating to his activities as a depository, a participant, a beneficial owner, an issuer or its agent, as the inspecting officer may require, within such reasonable period as the inspecting officer may specify.

(2)...

(3) The inspecting officer, in the course of inspection or investigation, shall be entitled to examine or to record the statements of any director, officer or employee of the depository, a participant, a beneficial owner, an issuer or its agent.

Repeal and savings

98. (1) ...

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been taken or contemplated under the repealed regulations before the commencement of these regulations shall be deemed to have been done or taken or commenced or contemplated under the corresponding provisions of these regulations.

SEBI Circular CIR/MIRSD/16/2011 dated August 22, 2011, on "Simplification and Rationalization of Trading Account Opening Process"

Para 3.ii.a: Know Your Client (KYC) form capturing the basic information about the client and instruction/check list to fill up the form (Annexure-2)

Para 7: In case the stock broker is also a depository participant, he can use the same KYC form (as specified in Annexure-2) for basic details and take additional information pertaining to demat account.

SEBI Circular CIR/MRD/DP/01/2014 dated January 07, 2014, on "Delivery Instruction Slip (DIS) Issuance and Processing"

Monitoring of DIS

6. Upon issuance of DIS booklets or loose slips to BO, the DPs shall make available immediately the following details of the DIS to the depository system electronically:

a. the DIS serial number,

b. BO ID,

c. date of issuance, and

d. any other relevant detail as decided by the depository.

104. As already determined above, the Set 1 AOFs for DCEL and OCL i.e., the physical AOFs furnished by AFSPL are non-genuine. This has been determined on the basis of certain circumstances, such as, non-existent address in physical AOF for DCEL, the absence of the pre-print of DDMMYYYY, while all the physical AOFs of AFSPL, including the one sent through email, had the pre-print of DDMMYYYY, and absence of signature of the authorized signatories across their photographs. It has also been determined that the pages pertaining to important communication details for DCEL and OCL appear have been replaced by AFSPL in the physical AOFs. Further, it has been determined that AFSPL also sent non-genuine holding statements to DCEL, OCL and NEPL in order to misrepresent to them the actual status of the holdings in their accounts. Hence, I note that AFSPL has not maintained high standards of integrity expected from it as a SEBI registered DP.

105. While it has been determined that certain documents on record are non-genuine and have played a role in the fraudulent, deceptive and unfair trade practices carried out of AFSPL, I note here that if the Directors and Compliance Officer of AFSPL had put in place policies and procedures, such as, internal controls, maker checker concept, etc., then the same would have generated red flags/ alerts to bring to their notice the occurrence of these acts. For e.g., a working maker-checker system in place would have brought to the notice of the Directors and Compliance Officer of the mismatch between data captured in the DPM system and the data sent in the CMLs to the clients. Similarly, robust internal controls would have ensured that the frequent debits to and credits from the demat accounts of DCEL and OCL the details of the first DIS booklet issued to NEPL would have been entered immediately into the NSDL system.

106. Hence, with respect to the findings on AOFs, data entered in the DPM system, CMLs sent to the clients, providing non-genuine holding statements to clients, including the one purportedly stamped and signed by NSDL, regular debit and credit of MF units from their accounts, issuance of DIS booklets to NEPL, transfer of MF units from the account of NEPL, etc., I note that AFSPL has failed to put in place satisfactory internal control procedures and maker-checker concept in place which could have either prevented commission of such acts, or if committed brought to the notice of the Directors and Compliance Officer of AFSPL.
107. With respect to incorrect email ID being mentioned on change request form and change of email ID and mobile number in the DPM system for accounts of DCEL and OCL, AFSPL has submitted that no changes/ alterations were done in the AOF of OCL and DCEL. With regard to change of details, such as, email ID and mobile number for clients in the DPM system, I note that as per NSDL requirements the DP must obtain a physical paper request from the client or a request through email or through the website of the DP as such changes can only be effected by the DP and not by NSDL and records relating to such change requests are to be maintained by the DP for the stipulated period.
108. The allegation against AFSPL is that for OCL it processed a change request form, dated October 04, 2018, for change of email ID to aggrawal.bijay@dalmiabharat.com. This request form was signed by Mr. Bijay Agrawal who, as per the board resolution of OCL, is not the authorized signatory for the account of OCL. For DCEL, in the DPM system, on October 04, 2018, AFSPL changed the email ID to agarwal.bijay@dalmiabharat.com and mobile number to 9999329975. However, AFSPL could not provide the change request form, in support of these changes made in the details of DCEL. In this regard, I note the following:

- 108.1. With regard to changes made for OCL, I note that an incorrect email ID was captured in the DPM system of NSDL by AFSPL. The email ID captured is “aggrawal.bijay@dalmiabharat.com”, while the actual email ID is “agrawal.bijay@dalmiabharat.com”. More importantly, I note that AFSPL should not have acted on the change request form itself since it was not signed by any of the persons authorized to handle the demat account of OCL. I find that AFSPL has not provided any reply to this allegation and has not explained why it made changes to the DPM system of NSDL. NSDL has confirmed the changes and that it is only the DP who can make the changes to the DPM system.
- 108.2. With regard to changes made for DCEL, AFSPL has not been able to provide the documentation to support the changes and neither has it offered any explanation as to why it made the changes.
109. Hence, I find that AFSPL made changes in the details of OCL and DCEL in the DPM system without exercising adequate due diligence and without having adequate supporting documents/ request from authorized signatory to make such a change. AFSPL has not maintained a high standard of integrity, diligence and has not effected its professional dealings in an efficient manner. As already mentioned above, it did not have a maker-checker system and good corporate policies in place, which would have prevented the occurrence of such events.
110. With regard to observation that AFSPL did not transfer the MF units into other demat accounts of DCEL and OCL, it has been submitted that such transfer was supposed to be conditional on the fact that MF units worth Rs. 344 crores approx., which were already being used as collateral, would be replaced with other collateral by the Dalmia Group. For this purpose, Mr. Puneet Dalmia offered OCL shares worth Rs. 700 crores but the same could not be transferred as these were suspended due to amalgamation process. I note here that the MF units were no longer in the accounts

of DCEL and OCL, as they had already been given as collateral. It has already been established that AFSPL has caused unfair treatment to DCEL and OCL in a fraudulent manner by use of the MF units from their accounts as collateral. This is established irrespective of whether there was collusion with employees or directors of the Dalmia Group. Hence, determining this allegation in view of the violations of DP Regulations is not required.

111. With regard to the observation that MF Units were transferred from the account of OCL even though the DIS used for transferring these units mentioned the wrong ISIN, AFSPL has submitted that mentioning of incorrect ISIN was a clerical mistake and client had telephonically assured to rectify the DIS. In this regard, I note the following:

111.1. DIS bearing number 152721 had the incorrect ISIN mentioned on it but was used to effect the transfer of the securities from the account of OCL. From the submissions of AFSPL, it is clear that it was aware of the incorrect ISIN mentioned on the DIS but still went ahead and executed the transfer of securities. Its submission that the client had telephonically agreed to rectify the mistake cannot be accepted. No record of this telephonic conversation has been provided and even if such a conversation had taken place, it was the duty of AFSPL to not to effect the transfer due to incorrect ISIN being mentioned on the DIS. Further, AFSPL has provided details of whether it followed up with the client for rectification of the DIS.

111.2. With regard to inability of AFSPL to provide the acknowledgement receipt for the first DIS booklet (series number 151661-680), purportedly issued to DCEL on February 21, 2017, AFSPL has submitted that all available acknowledgement receipts have been deposited with NDSL. Further, issuance of DIS has not been disputed by OCL/ DCEL and more than 150 DIS were executed by them. In this regard, I note that as per NSDL guidelines, when issuing the DIS booklet to any client, the DP is required to

retain the acknowledgement receipt which states that the DIS booklet has been issued to the client. Further, NSDL has confirmed that the acknowledgement receipt for DIS booklet with series number 151661-680 has not been provided to it by AFSP. Hence, the reply of AFSP in this regard cannot be accepted.

111.3. With respect to incorrectly mentioning of DIS series on the acknowledgment of third DIS booklet, with series number 154481 to 154500, purportedly issued by AFSP to OCL on July 09, 2018, AFSP has submitted that all acknowledgement receipts have been deposited with NSDL. I find that AFSP has not replied on the actual finding of incorrectly mentioning of the series number on the acknowledgement receipt.

112. In view of the above, with respect to the above findings, I find that AFSP has not ensured that its professional dealings are effected in an efficient manner and has also not been diligent in execution of DIS for its clients.

113. With respect to the finding related to issuance of DIS to NEPL, AFSP has submitted that DIS booklets were issued after receiving request for the same from the concerned person of NEPL and originals in this regard were submitted with NSDL. DIS booklet issued to NEPL was given to Mr. Rupinder Pal Singh, who had introduced NEPL to AFSP. In this regard, I note the following:

113.1. The finding with respect to issuance of DIS to NEPL is tabulated below:

DIS Series	Date of Issue	Date when entered in DPM system	Used for transfer of MF units	Proof of issuance
148211-148220	13/11/2018 (at time of account opening of NEPL)	30/12/2018	No. This booklet is with NEPL.	Not applicable
148241-148250	27/11/2018	27/11/2018	Yes	Not provided by AFSP

113.2. Further, AFSPL has submitted that it handed over the DIS booklet to a certain Mr. Rupinder Pal Singh, who was the financial advisor of NEPL and had introduced NEPL to AFSPL. I note here that as per NSDL guidelines, a DP can hand over the DIS booklet to a person who is authorized by the client to collect the DIS. AFSPL has not submitted any such authorization from NEPL which permitted the DP to give the DIS to Mr. Rupinder Pal Singh. Hence, I cannot accept the submission of AFSPL in this regard. In view of the above, since the acknowledgement receipt for DIS booklet with number 148241-142850 is held to be non-genuine, I find that this booklet was never given to NEPL and was used to transfer the MF units from the account of NEPL. Therefore, I find that AFSPL has not ensured that its professional dealings with NEPL were effected in a prompt, effective and efficient manner.

114. I note that DIS booklet with series number 148211-148220 was first issued by AFSPL to NEPL at time of account opening and as per Clause 6 of SEBI Circular CIR/MRD/DP/01/2014 dated January 07, 2014, AFSPL was supposed to immediately update its details of the in the DPM system. However, details of this DIS booklet were entered in the DPM system on 30/12/2018 i.e., after another DIS booklet was issued in the name of NEPL. Hence, I find that AFSPL is in violation of the provisions of this circular.

115. With respect to the allegation that AFSPL could not provide certain information for verification during the forensic audit, such as, the DIS issue register for verification, backup emails, etc., AFSPL has submitted that it has co-operated with SEBI and the forensic auditor in the best way possible and all available documents were submitted as and when required. In this regard, I note the following:

115.1. In terms of NSDL guidelines, a "DIS Issuance Register" should be maintained, which should have details such as Client's name, Client ID, unique identification number (serial number) of DIS (start and end), date of issue and mode of issue. In case the DIS booklet is delivered by hand, name

of the person to whom it is handed-over (address as well as contact telephone number(s) in case of authorized person) along with his/her signature should be obtained on the DIS Issuance Register.

115.2. I note that the forensic auditor had sought the DIS issue register during the audit and has observed that this register was not provided during the audit. Apart from making a bald statement that it has provided all relevant documents during the audit, AFSPL has not attached any supporting document to justify the same. I note that AFSPL has not, even at this stage, produced the original of the DIS Issuance register or copy of the same, as part of the reply to this SCN, which would have showed that it does maintain such a register.

115.3. Further, other information, such as, back up of emails from email IDs used by AFSPL, details of second DIS issued to NEPL, etc., were sought by the forensic auditor from AFSPL and the same were not provided. I note that even at this stage, AFSPL has not provided these details.

115.4. Further, vide SEBI letter dated June 10, 2019, AFSPL was advised that its forensic audit would be undertaken and that the auditor is authorized to seek information as required. Despite clear directions from SEBI to co-operate with the auditor, AFSPL has not provided the information/ documents, as required.

116. In view of the above, I am unable to accept the submission of AFSPL and find that it has not co-operated with SEBI and has failed to produce books/ documents/ correspondence, as was demanded from it during the forensic audit/ investigation. I note that either AFSPL did not have the information that was sought from it or it has not furnished the same when it was sought.

117. With respect to the allegation that AFSPL did not have any compliance officer and no such information/ records were submitted by AFSPL during the course of investigation, AFSPL has submitted that it has co-operated with SEBI and the auditor in all respects and all information has been provided. In this regard, I note the following:

117.1. In terms of Regulation 81(1) of the DP Regulations 2018, a DP is required to appoint a compliance officer who shall be responsible for monitoring the compliance of the securities laws.

117.2. I note that the forensic auditor has reported that they did not come across any compliance officer and no such information/records was submitted by DP to them. AFSPL has also not submitted any information in reply to this allegation.

118. Hence, I am constrained to hold that AFSPL did not have a compliance officer during the investigation and is in violation of this requirement placed on it under the DP Regulations 2018.

119. With respect to AFSPL failing to inform SEBI about the penalty imposed on it by NSDL for non-compliances pertaining to its inspection, AFSPL has not provided any reply in its regard. I note that as per Clause 14 of the Code of Conduct prescribed for DPs in the DP Regulations 2018, a DP is required to keep SEBI promptly informed about any action, legal proceedings, etc., initiated against it in respect of material breach or non-compliance by it, of any law, rules, regulations, directions of SEBI or of any other regulatory body. Hence, I find that AFSPL is in violation of Clause 14 of the Code of Conduct prescribed for DPs in the DP Regulations 2018. I also find that AFSPL has not met the obligations placed on it during examination of its affairs by SEBI.

120. The above established violations of the DP Regulations also point out to the fact that AFSPL has not maintained a high standard of integrity in its dealings with its

clients. Its professional dealings have not been effected in an efficient manner and it has not addressed the grievances/ queries of its clients in a timely manner. Further, AFSPL has not put in place internal control procedures and a maker checker system in place, which would have kept a check on unauthorized transfers.

121. In view of the above, the findings in this issue are summarized as below:

121.1. AFSPL has not maintained a high standard of integrity when opening the demat accounts of DCEL and OCL, entering data in the DPM system, sending CMLs to DCEL and OCL and sending holding statements to DCEL, OCL and NEPL.

121.2. AFSPL did not have a maker-checker system and internal controls in place.

121.3. AFSPL made changes in the details of OCL and DCEL in the DPM system without having adequate supporting documents/ request received from authorized signatories to the accounts, to make such a change.

121.4. Execution of DIS with incorrect ISIN for OCL, could not provide acknowledgement receipts for issuance of DIS booklets to DCEL, incorrect series mentioned on acknowledgement receipt.

121.5. AFSPL could not provide the request received from NEPL for issuance of a new DIS booklet vide which the transfers of MF units of NEPL were carried out.

121.6. Details of the first DIS issued to NEPL were not immediately entered into the DPM system.

121.7. AFSPL did not have a compliance officer during the investigation.

121.8. AFSPL has failed to produce books/ documents/ correspondence, as was demanded from it during the forensic audit/ investigation.

121.9. AFSPL did not inform SEBI about penalty levied on it by NSDL.

122. In view of the above findings, I note that AFSPL has violated the following:

- 122.1. Clauses 1, 2(b), 3, 4, 16, 19 and 22 of the Code of Conduct read with Regulation 20AA and Regulation 98(2) of the DP Regulations 1996,
- 122.2. Clauses 2(b), 2(c), 2(d), 3, 5, 9, 10, 13, 14, 16, 17 and 22 of the Code of Conduct read with Regulation 37 of the DP Regulations 2018,
- 122.3. Provisions of SEBI circulars CIR/MIRSD/16/2011 dated August 22, 2011, and CIR/MRD/DP/01/2014 dated January 07, 2014,
- 122.4. Regulation 81(1) of the DP Regulations 2018 and
- 122.5. Regulations 86(1) read with 86(3) of the DP Regulations 2018

Issue No. 8: If Issue Nos. 6 or 8 or both are answered in affirmative, then whether Noticees are responsible for these violations?

123. As already held above, it has been established that AFSPL has violated provisions of the DP Regulations 1996, DP Regulations 2018 and certain SEBI circulars. It has also been established that the conduct of AFSPL has been fraudulent, deceptive and unfair trade practice and that it had unfairly treated its clients DCEL, OCL and NEPL. As such, it now remains to be determined whether the Noticees are responsible for these violations.
124. I note that any company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. In terms of Section 179 of the Companies Act, 2013, the Board of Directors of a company shall be entitled to exercise all such powers and do all such acts and things as the company is authorized to exercise and do. Therefore, the Board of Directors, being responsible for the conduct of the business of a company, are liable for any non-compliance of law and such liability shall be upon the individual Directors also. Here I would like to refer to the observations of Hon'ble Supreme Court of India in the matter of *N Narayanan vs. Adjudicating Officer, SEBI* decided on April 26, 2013, wherein the Court observed as follows:

“33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.”

125. As per MCA records, I note the following details of the Directors of AFSPL during the investigation period:

Sr. No.	Name	Designation	DIN	Date of Appointment	Date of Cessation, if any
1	Mr. Awanish Kumar Mishra	Director	07215140	29/09/2016	-
2	Mr. Himanshu Arora	Additional Director	06652829	15/12/2017	17/01/2019
3	Mr. Jitendra Kumar Tiwari	Additional Director	07215126	15/12/2017	07/03/2019

126. The directors are statutorily expected to exercise due care and diligence as expected from a prudent person, which among other things, entails running the affairs of the company within the four walls of the relevant statutory provisions. I note for the contravention of law committed by the company, apart from the company, the Directors of company, who at the time of the contravention, were having knowledge of the said contravention or the directors whose neglect contributes to the contravention of law, are liable for the said contravention. This principle is embodied in Sections 27(1) and 27(2) of the SEBI Act.

127. With regard to Noticee No. 2, Mr. Awanish Kumar Mishra, I note the following:

127.1. He is aware of all major communications with the Dalmia Group, viz., initial communication with Dalmia Group prior to account opening (January 03,

2017), email from Dalmia Group mentioning that their MF units are not to be utilized as collateral (November 07, 2018), etc.

127.2. In one of his communications with SEBI, during the investigation, when he was providing additional information, he has designated himself as the Managing Director of AFSPL.

127.3. Many documents uploaded on the MCA website during the investigation period have been signed by him.

128. Therefore, I note that, as a Director of AFSPL, he had the main responsibility for all its operations and activities. Therefore, he is liable for the violations of the provisions of the DP Regulations under the principle espoused in Section 27(1) of the SEBI Act.

Noticee No. 3 and 4:

129. I also note that the liability of Directors also arises if the offence/ contravention is attributable to any neglect on the part of them. There is no material on record to indicate that the other directors, viz., Noticee Nos. 3 and 4, in the instant case have taken any steps to prevent AFSPL from committing the violations that have been established. Therefore, the other Directors are liable under this ground as well.

130. For Noticee Nos. 3 and 4, I note from Form No. Dir-12 uploaded by AFSPL that they have been appointed as Additional Directors w.e.f. 15/12/2017, in the 'Professional' category and have also been designated as 'Non-Executive Directors'. I also note that both of them have given their consent to act as Directors in AFSPL.

131. With regard to Noticee No. 3, Mr. Himanshu Arora, I note that he has submitted that he joined as a Manager in AFSPL and was always paid as a Manager. Noticee No. 2 asked him to be appointed as an Additional Director to comply with requirement of NSE; however, he had no intention to be appointed as Director and his name was never approved in AGM of AFSPL, as required by law. However, from MCA records I note that Noticee No. 3 has given his consent to act as a Director in AFSPL.

Further, there is an undated Board resolution, wherein it has been decided to appoint him as an additional director in AFSPL since 15/12/2017. Further, as part of his statement, given on oath to SEBI, the Noticee has submitted that he worked as Manager (IT) and while he was given the post of compliance officer for both broker and DP function of AFSPL, he only handled IT related work. I note that NSDL has also submitted that as per its records, Noticee No. 3 was the compliance officer of AFSPL w.e.f. July 22, 2017. Hence, while he may have been appointed as a Manager and may have continued to receive remuneration of a Manager, I note that he has consented to act as a Director in AFSPL and his appointment has been approved by the Board of AFSPL. Further, by his own admission, he was appointed as the compliance officer for the depository participant function of AFSPL and hence, would also be responsible for all regulatory compliances in that area.

132. While Noticee No. 3 claims that he had no authority to approve, sign documents or do any type of transaction on behalf AFSPL, I note from MCA records that he has signed the adopted financial statements of AFSPL for FY 2017-18, in his capacity as Additional Director. Hence, this submission cannot be accepted.
133. Noticee No. 3 has further submitted that he had sent his resignation vide letter dated 14/06/2018 and has provided an email in this regard. He further submitted during his statement recording that he had resigned on January 01, 2019, and his last day with AFSPL was January 31, 2019. He also provided his resignation letter dated January 17, 2019, which states that his resignation is w.e.f. January 17, 2019. I note that this resignation letter has been received by AFSPL as it bears the stamp of AFSPL and sign of Mr. Awanish Mishra. Further, the Noticee himself has uploaded the Form No. Dir-11, notice of resignation, to the MCA website as this form has been digitally signed by him. Hence, his resignation has taken effect from January 17, 2019, and his email dated 14/06/2018 cannot be accepted.
134. While there is no material on record to show his direct role in the execution of fraudulent transfer of MF units from the accounts of DCEL, OCL and NEPL, I note

that in his capacity as the Director and Compliance Officer for AFSPL, Noticee No. 3 had the responsibility to put in systems in place to ensure that such violations did not occur or at the very least, would have raised alerts/ red flags regarding the same. As the Director and compliance officer, he has neglected in his responsibility and duty to put in place systems that would have prevented the occurrence of such a fraud. However, I note the following:

134.1. He became the Director and Compliance Officer after the accounts of DCEL and OCL were opened. Hence, it can be reasonably inferred that he was not aware of the non-genuine AOFs, capturing of incorrect data in the DPM system and sending of non-genuine CMLs to DCEL and OCL.

134.2. After he became the Director and Compliance Officer, he was in a position to know about the frequent debit/ credit of MF units from the demat accounts of DCEL and OCL. There is no evidence to show that he raised any issues as to why there is movement of MF units from accounts that are purely demat accounts and not trading-cum-demat accounts.

134.3. Further, he has not raised any issues when holding statements, which are non-genuine as they did not reflect the true status of the holdings, were sent to DCEL and OCL. As already shown above, these holding statements with incorrect status of the holdings have played a major role in the fraudulent transfer of MF units from these accounts.

134.4. He failed to prevent the unauthorized changes that were made to the details of DCEL and OCL in the DPM system in October 2018.

134.5. With respect to NEPL, he failed to put in place systems to ensure that the details of DIS were entered into the DPM system as soon as the same was issued. Further, a non-genuine holding statement was also sent to NEPL.

135. Therefore, with respect to Noticee No. 3, I note that there is sufficient material on record to show that he has neglected his duties and responsibilities as the Director

and Compliance Officer of AFSPL and has not taken sufficient steps to prevent the occurrence of the violations.

136. With regard to Noticee No. 4, I note that as per material available on record, the SCN has been served on him. However, he has neither replied to the SCN nor has he appeared for a personal hearing. His appointment as an Additional Director has been approved by the Board of AFSPL w.e.f. 15/12/2017 and he has resigned w.e.f. 07/03/2019. I note that in his capacity as the Director for AFSPL, Noticee No. 4 had the responsibility to ensure that such violations did not occur. As a Director, he had neglected in this responsibility that would have prevented the occurrence of such a fraud.
137. In view of the above, I note that there is sufficient material on record to show that Mr. Awanish Kumar Mishra was in charge of the affairs of AFSPL at the time when the violations have occurred. Further, from the submissions of AFSPL and Mr. Awanish Kumar Mishra, he was aware of the execution of fraudulent transfer of MF units from the accounts of DCEL, OCL and NEPL. Hence, I hold him responsible for the violations of the provisions of the DP Regulations 1996, DP Regulations 2018 and SEBI circulars on KYC and DIS. I also hold Mr. Awanish Kumar Mishra responsible for violation of Regulations 3(a), 4(1) and 4(2)(p) of the PFUTP Regulations.
138. Further, Mr. Himanshu Arora, in his capacity as director and compliance officer of AFSPL for the DP function, has neglected in his responsibility to put in places systems and procedures that would have alerted/ raised red flags when these violations have occurred. I also hold that Mr. Jitendra Kumar Tiwari, as Director of AFSPL, has neglected to take steps to prevent the occurrence of the violations and the fraud. Hence, I hold them responsible for the violations of the provisions of the DP Regulations 1996, DP Regulations 2018 and SEBI circulars on KYC and DIS.

Further, I also hold them responsible for the violation of Regulations 3(a), 4(1) and 4(2)(p) of the PFUTP Regulations.

Issue No. 9: If answer to Issue No. 8 above is affirmative, then whether any directions are required to be issued against the Noticees?

139. I note that in the preceding issues, the following has been held in the affirmative against the Noticees:

139.1. The Noticees have caused fraudulent and unfair treatment to DCEL, OCL and NEPL and has violated the provisions of Regulations 3 (a), 4(1) and 4(2)(p) of the PFUTP Regulations

139.2. The Noticees are in violation of provisions of DP Regulations 1996, DP Regulations 2018 and SEBI circulars dated August 22, 2011, and January 07, 2014.

140. I note that the Noticees have been show caused as to why directions to return MF Units, which have been fraudulently transferred from the accounts of DCEL, OCL and NEPL, should not be issued against them. Though it has been established that the Noticees have indulged in fraudulent conduct with their clients DCEL, OCL and NEPL, I note that any directions of this nature cannot be contemplated in this proceedings for the following reasons:

140.1. At present, the Hon'ble Court of the Chief Metropolitan Magistrate, New Delhi is seized of the issue of forgery of the signatures of the authorized signatories on the DIS for transferring the MF units from the demat accounts of DCEL and OCL. The determination of issue of forgery is beyond the jurisdiction of this forum. However, AFSPL and Mr. Awanish Kumar Mishra have contended that Mr. Puneet Dalmia and employees of DCEL and OCL were aware at all times that their MF units were being used as collateral with ISSL. The matter

is essentially a private dispute between DCEL, OCL and NEPL, on one hand and AFSPL, on the other hand.

140.2. SEBI is not right forum for adjudication of private disputes and this fact has been held in various judgments of the Hon'ble SAT, such as, Ibrahim Ahmed vs. SEBI (Appeal No. 40 of 2009), MCS Ltd. vs. SEBI (Appeal No. 107 of 2008) and Hameed Ullah alias Tony Ullah (Appeal No. 123 of 2008).

140.3. The current proceedings are limited to determine the enforcement action in case it finds violations of any of the provisions of securities laws that are administered by it. In the instant case as well, the SCN aims to determine whether the Noticees have violated provisions of the DP Regulations and those of the PFUTP Regulations. The SEBI Act does not envisage any adjudication of disputes by SEBI i.e., the statute concerned has not provided for adjudication of such disputes.

141. Therefore, in view of the above, I hold that directions in the nature of returning of the MF units in the instant case being an outcome of determination of forgery and private disputes is beyond the jurisdiction in the current proceedings. DCEL, OCL and NEPL are at liberty to seek its private law remedies by approaching the competent court/statutory arbitration forum as per extant law for determination of disputed entitlements.

142. It has been established that the Noticees are responsible for the violations of the provisions of the DP Regulations 1996, DP Regulations 2018, PFUTP Regulations and SEBI circulars. Therefore, for these violations, the Noticees are liable for:

142.1. Issuance of appropriate directions under Sections 11B(1) and 11(4) read with Section 11(1) of the SEBI Act, 1992, and Section 19(1) of the Depositories Act, 1996 and

142.2. Imposition of monetary penalty under Sections 11B(2) and 11(4A) read with Sections 15HA (penalty for fraudulent and unfair trade practices) and 15HB (penalty for contraventions where no separate penalty has been provided) of

the SEBI Act and Sections 19(2) and 19G (penalty for contraventions where no separate penalty has been provided) of the Depositories Act, 1996.

143. The provisions of the above sections are reproduced below:

SEBI Act

Penalty for fraudulent and unfair trade practices

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

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Depositories Act

Penalty for contravention where no separate penalty has been provided.

19G. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

144. I note that in view of the Noticees having committed fraudulent acts and unfair trade practice, the Noticees are liable for imposition of monetary penalty under Section 15HA of the SEBI Act. For the other violations under the DP Regulations and relevant SEBI circulars, the Noticees are liable for monetary penalty under Section 15HB of the SEBI Act and Section 19G of the Depositories Act.

145. Further, I note that the SEBI Act and the Depositories Act both provide for the same factors that are to be taken into consideration when determining the quantum of penalty to be levied. These factors are as below:

- 145.1. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default
- 145.2. the amount of loss caused to an investor or group of investors as a result of the default
- 145.3. the repetitive nature of the default.
146. I note that investigation has not brought out the amount of disproportionate gain or unfair advantage that has been made as a result of the default of the Noticees. Further, there is no material to show that the default of the Noticees is repetitive in nature. Further there is no material on the quantum of loss in view of the fraud committed by the Noticees.
147. I note that AFSPL is a SEBI registered intermediary and in that capacity, its role is to safeguard the interests of investors and its clients. As a depository participant, it acts as an interface between the Depositories and the investors. Investors keep their securities in dematerialized form as it is a safe and convenient way to hold securities. It is this very aspect of safety that AFSPL has undermined with its conduct, which has been found to be fraudulent, deceptive and an unfair trade practice. AFSPL has undermined the good faith, ethical standards and integrity that it was expected to show, as a registered intermediary, when dealing with its clients. Hence, in the interests of the securities market, its orderly development and for the protection of investors rights, it is essential to impose suitable directions and penalty on the AFSPL and the other Noticees, who are its Directors.
148. With respect to Mr. Awanish Kumar Mishra, it has been found that the violations were done with his involvement, while the other two Directors were found to have violated the provisions covered in the SCN by their acts of neglect. For Mr. Himanshu Arora, he was not only a Director but was also appointed as the Compliance Officer for AFSPL. Therefore, the same needs to be taken into account while levying directions and imposing penalty.

149. Considering the above factors, directions and monetary penalty, appropriate to the nature of the violations observed are incorporated in the operative part of this Order.

ORDER

150. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992, and Sections 19(1), 19(2) and 19G of the Depositories Act, 1996, read with Section 19 of the SEBI Act, 1992, hereby issue the following directions:

150.1. AFSPL and Mr. Awanish Kumar Mishra are restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of seven (07) years from the date of this Order.

150.2. Mr. Awanish Kumar Mishra is restrained from associating with a listed entity, a material subsidiary of a listed entity or a SEBI registered intermediary in any capacity, either directly or indirectly, in any manner whatsoever, for a period of seven (07) years from the date of this Order.

150.3. Mr. Himanshu Arora is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of three (03) years from the date of this Order.

150.4. Mr. Jitendra Tiwari is restrained from accessing the securities market and from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever, for a period of one (01) year from the date of this Order.

150.5. The following penalty is levied on the Noticees:

Under Section	AFSPL	Awanish Kumar Mishra	Himanshu Arora	Jitendra Tiwari
Section 15HA of the SEBI Act, 1992	Rs. 2,00,00,000/- (Rs. Two Crores only)	Rs. 2,00,00,000/- (Rs. Two Crores only)	Rs. 10,00,000/- (Rs. Ten lakhs only)	Rs. 5,00,000/- (Rs. Five lakhs only)
Section 15HB of the SEBI Act, 1992	Rs. 50,00,000/- (Rs. Fifty lakhs only)	Rs. 50,00,000/- (Rs. Fifty lakhs only)	Rs. 2,00,000/- (Rs. Two lakhs only)	Rs. 1,00,000/- (Rs. One lakh only)
Section 19G of the Depositories Act, 1996	Rs. 50,00,000/- (Rs. Fifty lakhs only)	Rs. 50,00,000/- (Rs. Fifty lakhs only)	Rs. 2,00,000/- (Rs. Two lakhs only)	Rs. 1,00,000/- (Rs. One lakh only)
Total	Rs. 3,00,00,000/- (Rs. Three Crores only)	Rs. 3,00,00,000/- (Rs. Three Crores only)	Rs. 14,00,000/- (Rs. Fourteen lakhs only)	Rs. 7,00,000/- (Rs. Seven lakhs only)

151. Needless to say that in view of the prohibition on sale of securities, during the period of restraint, the existing holding, including units of mutual funds, of all the Noticees shall remain frozen.

152. The penalty shall be paid by the Noticees within a period of forty-five (45) days, from the date of receipt of this order. Payment can be made online by following the below path at SEBI website www.sebi.gov.in

ENFORCEMENT → Orders → Orders of Chairman/Members → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html> and selecting Type of Category as 11B orders.

153. The Order shall come into force with immediate effect.

154. If there is a failure to pay the penalty, as mentioned above, SEBI may recover the amount from the Noticee as per applicable law.

155. A copy of this Order shall be sent to the Noticees, the stock exchanges, depositories and RTAs for information and necessary action.

Sd/-

DATE: July 02, 2021

PLACE: MUMBAI

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**