

WTM/AB/IVD/ID4/8241/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11 (1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992

In respect of:

Noticee no.	Name of the Noticee	PAN
1.	Farmax India Ltd.	AADCB1600R
2.	Mr. M. Srinivasa Reddy, M D	AFTPM5606G
3.	Mr. Arun Pachariya	AEVPP6125N
4.	Vintage FZE	Not available
5.	Mr. Sanjay Aggarwal	AAFPA4428F
6.	Mr. Mukesh Chauradiya	AAVPC0966A
7.	Prospect Capital Ltd.	Not available
8.	John Behar Chief Executive -Prospect Capital Ltd.	Not available
9.	Mr. Nithish Bangera	ACAPB1000D
10.	India Focus Cardinal Fund	AABC19518D
11.	Highblue Sky Emerging Market Fund	AADCK9460G
12.	European American Investment Bank AG	FII Registration No. INASFD211608
13.	Cardinal Capital Partners	FII Registration No. INMUFD26321

The aforesaid entities are hereinafter referred to individually, by their respective names/ Noticee numbers and collectively as “the Noticees”

In the matter of Farmax India Ltd.

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1. The present matter emanates from a show cause notice dated July 31, 2017 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange board of India (hereinafter referred to as “**SEBI**”) to the 13 Noticees alleging that the Noticees had violated the following provisions of law:

- a. Farmax India Ltd. (hereinafter also referred to as “**FIL**” or “**Farmax**”) has violated the provision of Section 12A(a), (b), (c) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act, 1992”) read with Regulations 3(a),(b), (c), (d) and 4(1), 4(2)(f), (k), (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”).
 - b. M. Srinivasa Reddy has violated the provision of Section 12A(a),(b) and (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations.
 - c. Mr. Arun Panchariya (hereinafter also referred to as “**AP**”), Vintage FZE(hereinafter also referred to as “Vintage”), Mr. Sanjay Aggarwal, Mr. Mukesh Chauradiya, Prospect Capital Ltd. (hereinafter also referred to as “**Prospect**”), John Behar, Mr. Nithish Bangera, India Focus Cardinal Fund (hereinafter also referred to as “IFCF”), and Highblue Sky Emerging Market Fund have violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c) 3(d), 4(1) of PFUTP Regulations.
 - d. European American Investment Bank AG (hereinafter also referred to as “EURAM Bank”) and Cardinal Capital Partners have violated sections 12A(a), (b),(c) of SEBI Act, 1992 read with regulation 3(a),(b),(c),(d), 4(1) of PFUTP Regulations.
2. In view of the above, the Notices were called upon to show cause as to why suitable directions should not be issued against them under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992. SCN also contained the following documents as annexure:

Annexure No.	Details
1.	Copies of information received from FIL vide letter dated June 05, 2015 and July 9, 2015 are placed at and
2.	Copies of information received from local custodian DBS Bank vide email dated August 27, 2015
3.	Loan Agreement dated May 5, 2010

4.	Vintage's letter dated April 27, 2011 and February 23, 2012 also show that Mukesh Chauradiya was Authorized Signatory of Vintage
5.	Pledge Agreement dated May 05, 2010 signed between Farmax (as Pledgor) and EURAM Bank (as Bank)
6.	ESCROW account statement
7.	Farmax's bank account held with EURAM Bank (where GDR proceeds were deposited) and loan account of Vintage (held with EURAM Bank), investigation observed that only after Vintage repaid loan instalments, equal/ less amount of money was transferred from Farmax's EURAM Bank account to Farmax's India and UAE a/c on the same day
8.	Copy of Mr. M. Srinivasa Reddy's statement
9.	EURAM Bank's letter dated August 14, 2012
10.	Farmax, vide e-mail dated July 09, 2015, submitted that funds were transferred from its EURAM Bank a/c (where GDR proceeds were deposited) to Farmax International FZE without its knowledge.
11.	Email communications dated August 19 and 20, 2010 between Mr. Sanjay Aggarwal and Mr. Prasanth Reddy (Executive Director of Farmax),
12.	Transfer request form
13.	Details of GDR transactions as submitted by EURAM Bank
14.	Copy of the BSE email dated September 23, 2015 and NSE e-mail dated February 08, 2016, providing details of trades of India Focus Cardinal Fund and Highblue Sky Emerging market Fund on BSE and NSE in the scrip of FIL
15.	Copies of the BSE and NSE's emails dated March 18, 2016 providing details of sale of shares by BNY post termination of GDR facility
16.	Letter dated August 14, 2012 by which EURAM Bank intimated Vintage (now known as Alta Vista International FZE) that Alta Vista International FZE had not settled outstanding loan amount of USD 56.66 million (principal amount USD 56.43 million and interest amount USD 0.23 million), EURAM Bank realized part of the pledged security to cover amount of USD 56.57 million
17.	FIL's EURAM Bank statement
18.	Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website
19.	There is no Annexure 19.
20.	Details of directors of Ramsai Investment Holdings Private Limited
21.	There is no Annexure 21.
22.	Mr. Sanjay Aggarwal represented himself as director of Prospect before BNY and held email id with a domain name prospectcapital in the name of sa@prospectcapital.com
23.	Mr. Anant Kailash Chandra Sharma is director (since August 11, 2014 till date) and beneficial owner (since September 09, 2014 till date) of Highblue Sky Emerging Market Fund
24.	India Focus Cardinal Fund letter dated April 02, 2012 and AP's email dated July 12, 2010
25.	KYC documents of Highblue Sky Emerging Market Fund
26.	Vide, e-mail dated November 25, 2010, EURAM Bank asked FIL to contact AP for bank related queries. Copy of the email.
27.	E-mail communications of FIL with Mr. Sanjay Aggarwal and Mr. Nithish Bangera
28.	There is no Annexure 28.

29.	Copy of email dated February 03, 2010 from Mr. Nithish Bangera forwarding invoice of USD 25,000 received from Lead Manager to FIL
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3. Brief facts of the case, as narrated in the SCN are as under:

- (i) Farmax issued 4.25 million Global Depository Receipts (hereinafter referred to as “**GDRs**”) amounting to US\$59.925 million on June 29, 2010 and further issued 0.85 million GDRs amounting to US\$11.985 million on August 14, 2010 under green shoe option. Summary of the GDR issue (in two tranches) as provided by FIL is tabulated below:

GDR issue date	No. of GDRs issued (mn.)	Capital raised (USmn.)	Local custodian	No. of equity shares underlying GDRs	Global Depository Bank	Lead Manager	Bank where GDR proceeds were deposited	Stock exchange on which GDRs are listed
29-6-2010	4.25	59.925	DBS Bank, Mumbai	10,62,50,000	The Bank of New York Mellon	Prospect Capital Ltd. London	EURAM Bank, Austria	Luxembourg Stock Exchange
14-8-2010	0.85	11.985		2,12,50,000				
Total	5.10	71.91		12,75,00,000				

- (ii) On perusal of corporate announcements made by Farmax to Bombay Stock - Exchange (hereinafter referred to as “**BSE**”) during the period December, 2009 to August, 2010, it was observed that the company had informed BSE on April 27, 2010 that the Board of Directors of the Company at its meeting held on April 27, 2010 had approved issue of GDRs.
- (iii) Further, on June 29, 2010, Farmax informed BSE that, “... *the Company has successfully concluded placement of 4,250,000 Global Depository Receipts at US\$ 14.1 per Global Depository Receipt*”.
- (iv) Prospect Capital Ltd. was the Lead Manager of GDR issue of Farmax.
- (v) Vintage, an AP owned entity, signed a Loan Agreement dated May 5, 2010, as a borrower, with EURAM Bank for payment of subscription amount of US\$71.91 million

for GDRs of Farmax. The Loan Agreement was signed by AP as Managing Director of Vintage.

(vi) The following was inter-alia mentioned in the Loan agreement:

i. *“Nature and purpose of facility” is “To provide funding enabling Vintage FZE to take down GDR issue of 5,10,000 Luxembourg public offering and may only be transferred to EURAM account no. 580018, Farmax India Ltd.”*

ii. *“..it is hereby irrevocably agreed that the following securities and any other securities which may be required by the Bank from time to time shall be given to the Bank as provided herein or in any other form or manner as may be deemed by the Bank:*

1) *Pledge of certain securities held from time to time in the Borrower’s a/c no. 540012 at the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.*

2) *Pledge of the account no. 580018 held with the Bank as set out in a separate pledge agreement which is attached hereto as Annex 2 and which forms an integral part of this Loan Agreement.”*

(vii) Investigation observed that the account no. 580018 was the same where Farmax showed its GDR proceeds had been deposited.

(viii) From the above loan agreement, investigation observed that Vintage had availed of loan facility to the extent of USD 71.91 million from EURAM Bank to subscribe to the GDRs of Farmax. The loan amount was same as the GDR size of Farmax.

(ix) From examination of KYC documents, investigation observed that AP was the beneficial owner and Managing Director of Vintage as on June 06, 2007. From Vintage’s letter dated December 30, 2010, it was further observed that Mr. Mukesh Chauradiya was its director. Vintage’s letter dated April 27, 2011 and February 23, 2012 also show that Mukesh Chauradiya was Authorized Signatory of Vintage.

Therefore, investigation established that AP and Mr. Mukesh Chauradiya were managing affairs of Vintage and they were responsible for all acts and deeds of Vintage.

- (x) On the same day of the signing of the Loan Agreement, i.e. May 05, 2010, a Pledge Agreement was also signed between Farmax (as Pledgor) and EURAM Bank (as Bank). The Agreement was signed by Shri M. Srinivasa Reddy, Managing Director, on behalf of Farmax. The preamble of the Pledge Agreement states as under:

“By Loan Agreement K030510-001 (hereinafter referred to as the “Loan Agreement”) dated 05 May 2010, the Bank granted a loan (hereinafter referred to as the “Loan”) to Vintage FZE, AAH-213, Al Ahamadi House, Jebel Ali Free Trade Zone, Jebel Ali, Dubai, United Arab Emirates (the “Borrower”) in the amount of USD 71,910,000. The pledgor has received a copy of the Loan Agreement no. K030510-001 and acknowledges and agrees to its terms and conditions.”

The pledge created in the Pledge Agreement is stated below:

“2. Pledge

2.1 In order to secure any and all obligations, present and future, whether conditional or unconditional of the Borrower towards the Bank under the Loan Agreement and any and all respective amendments hereto and for any and all other current or future claims which the Bank may have against the Borrower in connection with the Loan Agreement- including those limited as to condition or time or not yet due-irrespective of whether such claims have originated from the account relationship, from bill of exchange, guarantees and liabilities assumed by the Borrower or by the Bank, or have otherwise resulted from business relations, or have been assigned in connection therewith to the Bank (“the Obligations”)the Pledgor hereby pledges to the Bank the following assets as collateral to the Bank:

2.1.1 all of its rights, title and interest in and to the securities deposited from time to time at present or hereafter (hereinafter referred to as the “Pledged Securities”) and the balance of funds up to the amount US\$ 71,910,000 existing from time to time at present or hereafter on the securities account(s) no. 580018 held with the

Bank (hereinafter referred to as the “Pledged Securities Account”) and all amounts credited at any particular time therein.

2.1.2 all of its right, title and interest in and to, and the balance of funds existing from time to time at present or hereafter on the account(s) no. 580018 kept by the Bank (hereinafter referred to as the “Pledged Time Deposit Account”) and all amounts credited at any particular time therein....

2.2 The Pledgor agrees to deposit with the Bank all dividends, interest and other payments, distributions of cash or other property resulting from the Pledged Securities and funds.

2.3 The Bank herewith accepts the pledge established pursuant to section 2.1 hereof.”

Further, following condition has been put in the Pledge Agreement for realization of the pledge.

“6. Realisation of the Pledge

6.1 In the case that the Borrower fails to make payment on any due amount, or defaults in accordance with the Loan Agreement, the Pledgor herewith grants its express consent and the Bank is entitled to apply the funds in the Pledged Account to settle the Obligations. In such case the Bank shall transfer the funds on the Pledged Accounts, even repeatedly, to an account specified by the Bank

6.2 Notwithstanding the foregoing, in the case that the Borrower fails to make payment on any due amount, or defaults in providing or increasing security, the Pledgor herewith grants its express consent and the Bank is entitled to realize the Pledged Securities (i) at a public auction for those items of Pledged Securities for which no market price is quoted or which are not listed on a recognized stock exchange or (ii) in a private sale pursuant to the provisions of Section 376 Austrian Commercial Code unless the Bank decides to exercise its rights through court proceedings. The Pledgor and the Bank agree to realize those items of the Pledged Securities for which a market price is quoted or which are listed on a stock exchange through sale by a broker publicly authorized for such transaction, a selected by the Bank

6.3 The Bank may realize the pledge rather than accepting payments from the Borrower after maturity of the claim if the Bank has reason to believe that the Borrower's payments may be contestable."

- (xi) As detailed herein above, Vintage had entered into Loan agreement with EURAM Bank as per which Vintage would be provided a loan only for the purpose of subscribing to the GDRs of Farmax. The Loan Agreement mentioned that the loan amount "... *may only be transferred to EURAM account No.580018 Farmax India Ltd...*". Therefore, investigation observed that subscription of GDRs was done through loan availed by Vintage from EURAM Bank and the security for the Loan Agreement was provided by pledging the proceeds of the GDR issue. The GDR issue was managed and structured by AP through the Loan Agreement (signed between EURAM Bank and Vintage) and Pledge Agreement (signed between EURAM Bank and FIL).
- (xii) From the examination of Loan Agreement, Pledge Agreement and ESCROW account statement, investigation established that all 5.10 million GDRs of Farmax (amounting to USD 71.91 million) were subscribed by only one entity, i.e., Vintage.
- (xiii) It was also observed that Farmax pledged GDR proceeds even before issuance of GDRs to secure the rights of EURAM Bank against the loan given by EURAM Bank to Vintage for subscription to GDR issue (as mentioned in Loan Agreement). Further, on perusal of the Pledge Agreement and Loan Agreement, investigation observed that bank account in which GDR proceeds were held, was in the name of the Farmax but the amount deposited in the account was not at the disposal of the company as same was kept as collateral even prior to issuance of GDRs for the loan availed by Vintage.
- (xiv) From examination of Farmax's bank account held with EURAM Bank (where GDR proceeds were deposited) and loan account of Vintage (held with EURAM Bank), investigation observed that only after Vintage repaid loan instalments, equal/ less amount of money was transferred from Farmax's EURAM Bank account to Farmax's India and UAE account on the same day. Thus, investigation concluded that the GDR proceeds were not at the disposal of Farmax.

- (xv) From the above, investigation concluded the Pledge Agreement allowed FIL to effectively finance the purchase of its own GDRs since it deposited the GDR proceeds as collateral for the loan extended by EURAM Bank to Vintage which was the sole subscriber to the GDR issue of FIL. Since the underlying of GDRs i.e., equity shares resulted in an increase of capital of the company without proper consideration, such arrangement was fraudulent in nature. Moreover, the same was not disclosed to the shareholders and investors.
- (xvi) Mr. M. Srinivasa Reddy, Managing Director of Farmax, signed the Pledge Agreement with EURAM Bank on May 05, 2010 and pledged GDR proceeds as collateral against loan availed by Vintage from EURAM Bank for the purpose of subscribing to the GDRs of FIL.
- (xvii) Investigation further observed that the Pledge Agreement was an integral part of Loan Agreement and vice versa and both were executed concurrently. Therefore, investigation concluded that Mr. M. Srinivasa Reddy had complete knowledge about the subscriber to GDR issue and the Loan Agreement and had understanding with Vintage.
- (xviii) GDR proceeds were deposited in Farmax's account no. 580018 held with EURAM Bank. Details of receipt of GDR proceeds in the Farmax.'s bank a/c maintained with EURAM Bank in Austria are as given below:-

Date of credit of funds	Credit amount (USD)
June 28, 2010	59,925,000
August 13, 2010	11,985,000
Total	71,910,000

- (xix) The details of realization of funds by Farmax out of GDR proceeds of US\$ 71.91 million is tabulated below:

Date of receipt of funds	Amount of funds received by Farmax in India (USD)
Aug 25, 2010	225,000
Sept 15, 2010	250,000

Date of receipt of funds	Amount of funds received by Farmax in India (USD)
Total	475,000

Date of receipt of funds	Amount of funds received by Farmax in its UAE subsidiary's a/c {Abu Dhabi Commercial Bank (ADCB) and Emirates NBD Bank} (USD)
Sep 01, 2010	1,000,000
Sep 09, 2010	500,000
Sep 09, 2010	1,000,000
Sep 15, 2010	750,000
Sep 21, 2010	1,000,000
Sep 22, 2010	2,000,000
Sep 30, 2010	1,250,000
Oct 05, 2010	3,000,000
Oct 05, 2010	2,500,000
Oct 08, 2010	2,000,000
Sep30, 2011	600,000
Total	15,600,000

(xx) Funds were transferred to various entities from Farmax's UAE subsidiary's, Farmax International FZE, account. In this regard, Farmax, vide e-mail dated July 09, 2015, submitted that funds were transferred from its EURAM Bank a/c (where GDR proceeds were deposited) to Farmax International FZE without its knowledge. Farmax further submitted that it was not aware of funds transferred from its Sharjah based subsidiary Farmax International FZE to some entities. In this regard, investigation observed the following:-

(a) On perusal of email communications dated August 19 and 20, 2010 between Mr. Sanjay Aggarwal and Mr. Prasanth Reddy (Executive Director of Farmax), it was observed that blank TT slips were given to Mr. M. Srinivasa Reddy for signing and handing it over to Mr. Mukesh Chauradiya (of Vintage). Investigation therefore concluded that Vintage itself couriered TT slips for transfer of money to Mr. Mukesh Chauradiya in UAE.

(b) On examination of the transfer request form for payment of money from FIL's a/c (maintained with EURAM Bank, where GDR proceeds were deposited), investigation observed that fax no. (+9713553047) on the transfer orders was

same as the fax no. from which Vintage sent its request for redemption of loan amount to EURAM Bank. Further, investigation observed that on the top of both documents name "Vintage" appeared. Investigation further observed that USD 2,50,000 which were transferred on September 15, 2010 from Farmax's EURAM Bank a/c to its Indian account, also originated from Vintage's fax no. (+9713553047).

- (xxi) Investigation therefore concluded that Farmax, in connivance with AP and its associates transferred USD 15.60 million from its EURAM bank account to the account of Farmax International FZE and AP controlled Vintage colluded with Farmax to divert the funds which caused loss to the Farmax as well as its shareholders to the extent of USD 15.60 million and the claim of Farmax that it was not aware of such transfers was false.
- (xxii) Cancellation of GDRs (conversion into equity shares):
 - (a) On perusal of the details of GDR transactions provided by EURAM Bank, it was observed that Vintage had transferred 12,58,000 GDRs to India Focus Cardinal Fund and 3,85,865 GDRs to Clariden Leu AG.
 - (b) All GDRs were subscribed by Vintage. GDRs were converted into equity shares and these shares were sold in the Indian Capital Market. Cancellation of GDRs started from August 09, 2010 and continued till December 04, 2012. During the period a total 12,56,000 GDRs (24.63% of total 5.10 million GDRs issued) were converted.
 - (c) India Focus Cardinal Fund was registered as sub account of FII-EURAM Bank from December 12, 2008 to July 19, 2011 and India Focus Cardinal Fund was granted transfer from EURAM Bank to another FII (FPI) Cardinal Capital Partners on July 20, 2011 and was registered as sub account of FII- Cardinal Capital Partners for the period July 20, 2011 to June 19, 2017.
 - (d) Highblue Sky Emerging Market Fund was registered as sub account under FII-KBC Aldini Capital Ltd. (June 18, 2010 to October 21, 2012) and thereafter sub account was transferred to FII-Golden Cliff (previously known as Vaibhav Investments Ltd.) for the period October 22, 2012 to February 28, 2017.

- (e) India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold the equity shares (which they received post cancellation of GDRs) in Indian securities market. By October 31, 2012, India Focus Cardinal Fund sold all the shares which it had received post conversion of GDRs, i.e., 3,10,25,000 equity shares.
 - (f) Highblue Sky Emerging Market Fund received 3,75,000 equity shares post conversion of 15,000 GDRs. By January 24, 2013 it sold all the shares which it had received post conversion of GDRs.
- (xxiii) Sale of equity shares by entities in India: Investigation observed that underlying shares of GDRs were sold to Indian investors (during the period August 12, 2010 to January 23, 2013) by Vintage through sub accounts IFCF and Highblue Sky Emerging Market Fund.
- (xxiv) Termination of GDR issue by Global Depository:
- a) The Depository i.e. The Bank of New York Mellon ('hereinafter referred to as "**BNY**"), issued Termination Notice to holders of GDRs of Farmax on March 16, 2015. The GDR facility was terminated with effect from June 16, 2015. Out of total 12,75,00,000 underlying shares of GDRs, India Focus Cardinal Fund and Highblue Sky Emerging Market Fund sold 3,14,00,000 shares before termination of the GDR facility. After termination of the GDR facility, remaining 9,61,00,000 shares (12,75,00,000 – 3,14,00,000) were sold by BNY in India during the period from June 24, 2015 to September 11, 2015. Total 9,61,00,000 shares aggregating to INR 1,71,53,923.49 were sold on BSE and NSE. Shares were sold on BSE and NSE in the name of The Bank of New York Mellon (depository).
 - b) Total 12,75,00,000 shares of Farmax worth INR 53.48 crore were sold (pre and post termination of GDR scheme) in Indian securities market.
- (xxv) With regard to repayment of loan by Vintage, investigation observed the following:
- (a) Vintage repaid loan amount to EURAM Bank in several instalments aggregating to USD 15,480,200 till October 08, 2010 and thereafter defaulted on the loan payment. Vide letter dated August 14, 2012, EURAM Bank intimated Vintage (now

known as Alta Vista International FZE) that Alta Vista International FZE had not settled outstanding loan amount of USD 56.66 million (principal amount USD 56.43 million and interest amount USD 0.23 million), EURAM Bank realized part of the pledged security to cover amount of USD 56.57 million.

(b) From Farmax's EURAM Bank statement, investigation observed that on August 13, 2012, EURAM Bank adjusted USD 56.57 million from Farmax's bank account (where GDR proceeds were deposited) towards loan taken by Vintage.

(c) It was observed from examination of the annual report of Farmax for FYs 2011-13 that FIL had written off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). USD 56.60 million were written off by Farmax on account of loan default by Vintage for which security was provided by Farmax.

(xxvi) Investigation observed that loan default by Vintage to the extent of USD 56.60 million was paid from the proceeds of GDR issue of Farmax. Therefore, investigation concluded that shares sold by India Focus Cardinal Fund and Highblue Sky Emerging Market Fund are the shares which were issued without proper consideration.

(xxvii) Connection between various entities and Mr. Arun Panchariya:

- (a) According to an Administrative Fine Statement available on Dubai Financial Services Authority (DFSA) website, AP held positions with Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.), Vintage (now known as Alta Vista International FZE) and India Focus Cardinal Fund (Mauritius).
- (b) During the period January 2009 to May 31, 2010, Cardinal Capital Partners (CCP) held 100% shares of India Focus Cardinal Fund. AP held 100% shares of Cardinal Capital Partners. Thus AP was 100% shareholder of India Focus Cardinal Fund. AP also served as Chief Investment Officer of CCP in 2010.
- (c) Pan Asia Advisors Ltd. had a joint venture with the EURAM bank namely "Euram Bank Asia Ltd." (EBAL) (incorporated on August 23, 2009, dissolved in December 30, 2013) in which AP was director and president. AP resigned as president and member of board of the EBAL on September 22, 2011.
- (d) EURAM Bank was also registered as Foreign Institutional Investor (FII) in India (during the period November 21, 2008 to November 20, 2011). India Focus

Cardinal Fund was the only sub-account (during the period December 12, 2008 to July 19, 2011) of EURAM Bank.

- (e) KYC documents of Highblue Sky Emerging Market Fund were obtained and it was observed that it is having registered address at – C/o AURISS INTERNATIONAL LTD, 2ND FLOOR, WING A, CYBERTOWER 1, EBENE, CYBERCITY EBENE, MAURITIUS. E-mail address is mentioned as fundadmin@aurisse.com and contact no. is mentioned as +2304640077. In SEBI's records, company has mentioned e-mail id as saleem@aurisse.com. Google search reveals that Aurisse International Limited is based out of Mauritius and it was earlier known as Al Jabha (Mauritius) Limited wherein Mr. Mukesh Chauradiya was director and CFO in 2011. Examination of website of Aurisse International Limited reveals that it shares common address and contact number with Highblue Sky Emerging Market Fund.
- (f) Vide emails dated March 02, 2016 and April 29, 2016 Highblue Sky Emerging Market Fund provided shareholders and directors details of Highblue Sky Emerging Market Fund and Golden Cliff. Golden Cliff is 100% shareholder of Highblue Sky Emerging Market Fund since April 21, 2014. Summary of connection of Mr. Anant Kailash Chandra Sharma with Golden Cliff and Highblue Sky Emerging Market Fund is tabulated below:

Connection with Highblue Sky Emerging Market Fund		Connection with Golden Cliff	
1.	Director since August 11, 2014 till date	1.	Director since July 16, 2014
2.	Beneficial owner (100% shareholder) since September 09, 2014 (by virtue of being beneficial owner of Golden Cliff since September 09, 2014 which in turn is beneficial owner of Highblue Sky Emerging Market Fund since April 21, 2014) till date	2.	Beneficial owner (100% shareholder) since September 09, 2014 till date

- (g) Mr. Anant Kailash Chandra Sharma and AP are connected to each other as both were director in Sai Sant Advisory (India) Private Limited during a common period. Mr. Anant Kailash Chandra Sharma was director from December 01, 2009 to March 18, 2016 and AP was director from August 31, 2007 to October 20, 2010.
- (h) Mr. Anant Kailash Chandra Sharma and Mr. Mukesh Chauradiya are also connected to each other. Mr. Anant Kailash Chandra Sharma served as Additional Director of Alka India Limited (from December 01, 2009 till date) and Mr. Mukesh Chauradiya served as director of Alka India Limited from January 31, 2006 till June 01, 2010. Further, in Ramsai Investment Holdings Private Limited, Mr. Mukesh Chauradiya and Mr. Anant Kailash Chandra Sharma served as director from

August 17, 2010 to March 17, 2016 and from September 01, 2015 to March 18, 2016 respectively. AP was 99.98% shareholder in Ramsai Investment Holdings Private Limited (for the period 2009-2013) and director from February 04, 2008 to August 18, 2010.

- (i) Summary of connection of Reema Narayan Shetty with Highblue Sky Emerging Market Fund and Golden Cliff is tabulated below:

Connection with Golden Cliff		Connection with Highblue Sky Emerging Market Fund	
1.	Director from May 16, 2013 to August 01, 2014	1.	Beneficial owner (100% shareholder) from April 21, 2014 to September 09, 2014 (by virtue of being beneficial owner of Golden Cliff from September 12, 2013 till September 09, 2014 which in turn is beneficial owner of Highblue Sky Emerging Market Fund since April 21, 2014)
2.	Beneficial owner (100% shareholder) from September 12, 2013 to September 09, 2014		

- (j) Account Opening Form of India Focus Cardinal Fund available with EURAM Bank was examined. It was observed that Reema Narayan Shetty was authorized signatory of India Focus Cardinal Fund for the bank account held with EURAM Bank Austria as on June 02, 2011.
- (k) Mr. Anant Kailash Chandra Sharma who worked with AP, and Reema Narayan Shetty who worked with AP connected entity (India Focus Cardinal Fund), are associated with Highblue Sky Emerging Market Ltd. as beneficial owner. From the above examination and analysis of sale of converted shares of Farmax on BSE/ NSE by Highblue Sky Emerging Market Fund, it is observed that Highblue Sky Emerging Market Fund acted as conduit to AP for sale of shares of Farmax.
- (l) Vide, e-mail dated November 25, 2010, EURAM Bank asked Farmax to contact AP for bank related queries.
- (m) From the above, investigation concluded that India Focus Cardinal Fund, Highblue Sky Emerging Market Fund, EURAM Bank, Vintage, Mr. Mukesh Chauradiya, Mr. Sanjay Aggarwal, Prospect Capital Ltd., Mr. John Behar, Mr. Anant Kailash Chandra Sharma and Reema Narayan Shetty are connected to AP. In collusion with these entities and FIL, AP devised the fraudulent GDR issue of FIL.

(xxviii) Role of Mr. Sanjay Aggarwal/ Nithish Banger:

- (a) From the offer document of GDR issue of Farmax, investigation observed that La Richeesse Advisors Private Limited (herein after referred to as "La Richeesse") was Indian advisor to the Farmax for Farmax's GDR issue. Mr. Sanjay Aggarwal in his written submission dated July 23, 2015 submitted that he was owner of La Richeesse Advisors Private Limited and he along with Mr. Nithish Bangera (who was the only employee of La Richeesse Advisors P. Ltd.), handled the GDR matter of Farmax. Mr. Sanjay Aggarwal further submitted that the matter of Farmax was referred to him by one Shri. Jalaj Batra and post scrutiny of documents he (Mr. Sanjay Aggarwal) forwarded the documents to Mr. Arun Panchariya/ Prospect Capital Ltd.
- (b) E-mail communications of Farmax with Mr. Sanjay Aggarwal and Mr. Nithish Bangera were examined and it was observed that Mr. Sanjay Aggarwal and Mr. Nithish Bangera facilitated preparation of various documents/ agreements/ formats such as deposit agreement, placing agreement, documents/ undertaking/ declaration for trading on Luxembourg Stock Exchange, offering circular, Farmax board resolutions, Farmax's announcement on stock exchange etc. Investigation further observed that Mr. Sanjay Aggarwal and Mr. Nithish Bangera helped Farmax in opening bank account with EURAM Bank.
- (c) From the services rendered by Mr. Sanjay Aggarwal & M/s La Richeesse Advisors Private Ltd., investigation established that their role was equivalent to that of a Lead Manager's and they prepared engagement letter of Prospect Capital Ltd. and engagement letter of BNY. Further, they acted as agent to AP as they were acting as conduit between AP and the company even in November 2010 (3 months after GDR issue closure).
- (d) Above email correspondences exhibit that Mr. Sanjay Aggarwal and Mr. Nithish Bangera had the knowledge of fraudulent arrangement/ scheme of GDR issue of Farmax and in connivance with AP and his connected entities, facilitated the GDR issue of Farmax.
- (e) Therefore, investigation concluded that Mr. Sanjay Aggarwal and Mr. Nithish Bangera were responsible for creating entire infrastructure for Farmax and AP to bring out the fraudulent GDR issue of Farmax, providing formats for board resolution and filings with stock exchanges and helped in transferring funds from EURAM Bank to Farmax's subsidiary in UAE and from Farmax's UAE subsidiary to other accounts, etc. Mr. Sanjay Aggarwal and Mr. Nithish Bangera acted as

single point of contact between the company and all the concerned entities with regard to the GDR issue of Farmax.

(xxix) Role of Lead Manager, Prospect Capital Ltd./ John Behar:

- (a) Prospect was Lead Manager to GDR issue of Farmax. Prospect provided assistance and advice through all the phases of the offer process from preparation of the GDR offer documents till listing of GDRs.
- (b) Vide letter dated February 25, 2016, Pan Asia Advisors Ltd. provided directors details which showed that AP was director in Pan Asia Advisors Limited during the period August 30, 2006 to September 29, 2011 and Mr. John Behar was director in Pan Asia Advisors Ltd. during the period April 24, 2006 to April 01, 2008. Vide letter dated February 20, 2012, Pan Asia Advisors Ltd. submitted that AP held 100% shareholding in the company during the period July 2008 to January 2012. From the above, investigation observed that Mr. John Behar was connected to AP since 2006 and in connivance with AP and his connected entities he facilitated GDR issue of Farmax.
- (c) Further, from examination of escrow a/c statement, Loan and Pledge Agreement and Vintage's loan account with EURAM Bank, investigation concluded that Vintage was the sole subscriber for 5.10 million GDRs of Farmax. From this, investigation observed that Prospect (controlled by Mr. John Behar who had worked in AP controlled Pan Asia Advisors Ltd. as director), had provided false list of GDR subscribers in connivance with AP. Vide email dated February 03, 2010, Mr. Nithish Bangera sent invoice of USD 25,000 received from Lead Manager to Farmax.
- (d) From the above, investigation concluded that Prospect worked in connivance with AP/ his connected entities and Mr. Sanjay Aggarwal and Mr. Nithish Bangera to facilitate the GDR issue of Farmax.

(xxx) Role of Mr. Arun Panchariya:

- (a) Vintage obtained loan from EURAM Bank for subscription of GDR issue for which security was provided by Farmax by pledging its GDR proceeds. Further, Vintage defaulted on repayment of loan to EURAM to the extent of USD 56.60 million, thereby

GDR proceeds to that extent were adjusted by EURAM bank and subsequently written off by Farmax. USD 15.60 million were also written off by Farmax alleging the transfer of GDR proceeds to the tune of USD 15.60 million from its EURAM Bank account to UAE based subsidiary Farmax International FZE and further onwards to certain entities. AP connected FII-subaccount India Focus Cardinal Fund and Highblue Sky Emerging Market Fund converted the GDRs and off loaded the converted equity shares in the India securities market. Thereby according to the fraudulent scheme perpetrated, AP arranged loan for the subscription to GDRs, subscribed to GDRs, and sold the GDRs to FII-Sub accounts which, in turn, dumped the converted equity shares in the Indian securities market. Thereby, the issuance of GDR is a fraudulent scheme wherein Farmax misled the Indian investors by concealing the information of entering into pledge agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed and caused loss to the shareholders by writing off USD 72.20 million.

- (b) AP in connivance with Farmax devised and structured fraudulent scheme through his connected entities like Vintage FZE, EURAM Bank, Prospect Capital Ltd., Mr. Mukesh Chauradiya, Mr. Sanjay Aggarwal, Mr. Nithish Bangera M/s India Focus Cardinal Fund, M/s High Blue sky emerging market fund and M/s Cardinal Capital Partners etc.

(xxxi) Role of Mr. Mukesh Chauradiya:

- (a) Mr. Mukesh Chauradiya coordinated with Mr. Sanjay Aggarwal in facilitating the documentation for GDR issue of Farmax in connivance with AP. From examination of the copy of email correspondences between Farmax and Mr. Mukesh Chauradiya, investigation observed that he facilitated the bank account transactions and financial statements for Farmax's UAE based subsidiary.
- (b) He was Managing Director of the Vintage when Vintage defaulted on the repayment of loan availed by Vintage for subscription of GDRs of Farmax. Vintage's default on loan repayment affected Farmax to the tune of USD 56.60 million. From the above, it was concluded that Mr. Mukesh Chauradiya in connivance with AP, AP connected entities and Farmax facilitated the GDR issue of Farmax to commit fraud on Indian shareholders of the Farmax.

4. Based on the above-mentioned facts, as narrated in the SCN, the following has been alleged in the SCN:

- (i) Farmax issued 5.10 million GDRs amounting to USD 71.91 million in June and August, 2010. The entire GDR issue were subscribed by only one entity, i.e., Vintage.
- (ii) Vintage took a loan from EURAM Bank through a Loan Agreement dated May 05, 2010 to subscribe to the GDRs of Farmax. Farmax provided security towards the loan obtained by Vintage for subscribing to the GDRs of Farmax, through Pledge Agreement signed between Farmax and EURAM Bank, wherein Farmax pledged GDR proceeds against the loan availed by Vintage for subscription of GDRs of Farmax. The information of Pledge Agreement to the extent of USD 71.91 million was not disclosed by Farmax to its shareholders/investors.
- (iii) Mr. M. Srinivasa Reddy, Managing Director of Farmax, signed the Pledge Agreement with EURAM Bank. The aforesaid Pledge Agreement was an integral part of Loan Agreement entered into between Vintage and EURAM Bank. These agreements enabled Vintage to avail the loan from EURAM for subscribing GDRs of Farmax. The GDR issue would not have subscribed had Farmax not given any such security towards the loan taken by Vintage.
- (iv) Farmax made announcement on June 29, 2010 and August 14, 2010 on BSE that it had successfully concluded placement of GDRs and raised money. However, Farmax had signed pledge agreement with EURAM Bank on May 05, 2010 and pledged GDR proceeds as security against loan extended by EURAM Bank to Vintage before issuance of GDRs. Although existing shareholders and prospective investors were informed of the positive news that Farmax had received foreign capital through GDRs they were not informed of the activities of AP along with the connected entities, in such GDR issue. The fact that GDRs were issued pursuant to a fraudulent arrangement entered into by AP through Vintage, Prospect, EURAM Bank and FIL, was not in the public domain.

- (v) The arrangement of Pledge Agreement and Loan Agreement resulted in subscription of GDR issues of Farmax which was not disclosed but reported misleading news to the stock exchange which contained information in a distorted manner and might have influenced decision of investors.
- (vi) Farmax wrote off USD 72.20 million (USD 56.60 million in 2011-12 and USD 15.60 million in 2012-13). USD 56.60 were written off by Farmax on account of loan default by Vintage. Farmax gave misleading information regarding loan amounting to USD 15.60 million which was never extended to its UAE subsidiary and later written off it. The information of write off was deliberately concealed from the investors of Farmax. Farmax gave misleading, distorted information to its shareholders and caused loss to its shareholders to the tune of USD 72.20 million.
- (vii) The loan default by Vintage to the extent of USD 56.60 million was paid from the proceeds of GDR issue of Farmax. Therefore, shares sold by IFCF and Highblue Sky Emerging Market Fund (hereinafter also referred to as "Highblue") (who were allotted shares subsequent to conversion of GDRs of Farmax) were the shares which were issued without proper consideration. Since the underlying of GDRs i.e., equity shares, resulted in an increase of capital of Farmax without proper consideration, such arrangement was fraudulent in nature.
- (viii) AP was prime person in structuring the GDR issues. It was observed that AP controlled every stage of GDRs from issuance of GDRs to the sale of converted shares thereby committed fraud on Indian shareholders of Farmax. AP devised and structured the GDR issue in connivance with Farmax. AP connected entities were involved at all stages of GDR issue since AP controlled Vintage subscribed to GDR issues by entering into fraudulent loan agreement, AP connected EURAM Bank extended loan to Vintage and made AP controlled IFCF its sub account to facilitate off-loading of converted equity shares. IFCF and Highblue cancelled GDRs and off loaded converted shares, in the Indian securities market. AP controlled Vintage defaulted on loan

payment of USD 56.57 million which was written off by Farmax as Farmax had pledged GDR proceeds against this loan. Thus, AP devised GDR scheme along with Farmax wherein Farmax misled the Indian investors by concealing the information of entering into pledge agreement and informing GDR related news in a distorted manner to stock exchange which made investors believe that GDRs were genuinely subscribed and caused loss to the shareholders by writing off USD 72.20 million.

- (ix) Mr. Mukesh Chauradiya held key position in Vintage (was Managing Director during period when Vintage defaulted on loan), facilitated GDR issue of Farmax in connivance with AP and Farmax in a fraudulent manner. He was AP's close associate and was authorized signatory of Vintage and facilitated the GDR issue of Farmax. Vintage defaulted on loan of USD 56.57 million when he was the Managing Director and authorized signatory of Vintage. He collaborated with AP, Farmax and Vintage and performed the role assigned to him and thus acted as party to fraudulent scheme
- (x) Farmax furnished wrong information to SEBI by providing false list of GDR subscribers.
- (xi) The corporate announcements dated June 29, 2010 and August 14, 2010 made by Farmax to BSE reported misleading news which contained information in a distorted manner and might have influenced decision of investors.
- (xii) Mr. Sanjay Aggarwal assisted by Mr. Nithish Bangera facilitated GDR issue of Farmax (preparation of agreements, documents, opening of FIL's bank account in UAE, incorporation of FIL's UAE subsidiary) in connivance with AP and his connected entities i.e. Prospect and Mr. Mukesh Chauradiya, they acted as conduit to AP.
- (xiii) Vintage was the sole subscriber of GDR issue of Farmax and Vintage subscribed to the GDR issue by taking a loan from EURAM Bank to the extent of USD 71.91 million and the security for the said loan was the GDR proceeds

of FIL. AP is beneficial owner of Vintage. Vintage repaid loan to the tune of USD 15.48 million and defaulted on the loan thereafter. Outstanding loan amount of USD 56.57 million was adjusted by EURAM Bank from Farmax's EURAM Bank Account. On account of default by Vintage, USD 56.60 were written off by Farmax. Highblue and IFCF, received GDRs, converted them and sold converted shares worth INR 51.77 crore pre termination of the GDR program, on Indian stock exchanges. Post termination of GDR facility shares worth INR 1.71 crore were sold. Therefore, it was concluded that shares sold by IFCF and Highblue and shares sold by BNY, the Depository Bank, post termination of GDR facility were the shares which were issued without proper consideration as Vintage defaulted on loan repayment. Hence, Vintage along with AP, IFCF and Highblue, was responsible for the loss of INR 53.48 crore inflicted on the shareholders of Farmax jointly and severally.

- (xiv) Prospect was Lead Manager which facilitated (documentation, listing, sourcing etc.) the GDR issue of Farmax. Prospect and its Chief Executive officer Mr. John Behar were connected to AP.
 - (xv) AP is beneficial owner of Cardinal Capital Partners. EURAM Bank is also connected to AP. As FIIs, Cardinal Capital Partners and EURAM Bank did not make investment and were registered as FII only to facilitate the AP connected IFCF in off-loading the converted equity shares of Farmax. Thus, by performing the role assigned to them in connivance with AP connected entities, Cardinal Capital Partners and EURAM Bank acted as parties to fraudulent scheme of GDR issue of Farmax.
5. A supplementary show cause notice was also issued to Noticee nos. 3, 4 and 10 calling upon these Noticees to show cause as to why suitable directions, including disgorgement, should not be issued against them in addition to the directions specified in the SCN dated July 31, 2017. A supplementary show cause notice was also issued to Noticee no. 1 on August 26, 2019 asking it to show cause as to why suitable directions including direction to bring the money back to the extent of loan default should not be issued against it. The SCN and the two supplementary SCNs are collectively also referred to as "SCN".

Hearing, Replies and Written Submissions:

6. The SCN was delivered through post to all the Noticees except Noticee no. 2, 3, 4 and 13 (Noticee nos. 3, 4 and 13 being overseas entities). Vide letter dated December 17, 2018, the SCN was delivered at an alternate address of Noticee no. 2. As requested by Noticee no. 9, Mr. Nithish Bangera, inspection of documents was provided to him on October 16, 2017 and additional documents were also provided to him vide letter dated October 27, 2017. The Noticee no. 9 vide letter dated November 14, 2017 sought additional documents. Vide letter dated November 22, 2017, Noticee no. 9 was informed that the additional documents being sought by him had not been collected during investigation. Vide letters dated December 12, 2017 and January 22, 2018, Noticee no. 9 made another request for the additional documents and sought cross examination of entities whose statements had been relied upon. Noticee no. 9 also submitted letter dated April 12, 2018, December 12, 2018, December 19, 2018 and January 25, 2019 making the same requests. Inspection of documents was also provided to Noticee no. 6, Mr. Mukesh Chauradiya on April 17, 2018 and to Noticee no. 5, Mr. Sanjay Aggrwal on February 11, 2019, as requested. Meanwhile, replies to the SCN were received from certain Noticees, which have been detailed in the following paragraphs.
7. Noticee no. 9 was granted an opportunity to cross examine Mr. Srinivasa Reddy and Mr. Sanjay Agarwal on January 07, 2019 and January 10, 2019, respectively. On the scheduled date Mr. Srinivasa Reddy did not appear for cross examination. Vide email dated January 09, 2019 Noticee no. 9 withdrew his request for cross examination of both Mr. Srinivasa Reddy and Mr. Sanjay Agarwal. Noticee no. 9 also filed Appeal No. 485/2019 before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") seeking a direction to SEBI for providing him with certain documents such as certified copies of certain emails relied upon in the SCN. Vide order dated the December 03, 2019 the Hon'ble SAT observed the following:

"Heard the appeal at the stage of admission. Learned senior counsel for the respondent submitted that the orders are yet to be passed in the proceedings and all the grievances of the appellant can be made before the

Whole Time Member. He also fairly submitted that the proceedings can be possibly disposed of within six months from today. In view of the said statement, the appeal is disposed of at this stage with no orders as to costs."

8. The Hon'ble SAT vide its order dated June 05, 2020, extended the aforesaid period of six months for concluding the proceedings, till August 15, 2020.
9. Subsequent to the order dated December 03, 2019 passed by Hon'ble SAT, the Noticee no. 9 again approached SEBI vide letter dated February 01, 2020 submitting reply to the SCN and reiterating his request for documents.
10. An opportunity of personal hearing was granted to all Noticees on February 24, 2020, (except for the overseas entities Noticee nos. 3, 4 and 13 since the SCN could not be delivered to them) before the present quasi-judicial authority. Vide letter dated February 06, 2020, Noticee no. 9 requested for an adjournment of hearing. Vide letter dated February 16, 2020 and March 11, 2020, Noticee no. 9 again requested for the same/similar documents. Vide letter dated February 18, 2020, Noticee no. 9 was advised to appear for hearing on March 03, 2020. Vide letter dated February 16, 2020 Noticee no.9 submitted a final list of documents / clarifications that he requested from SEBI.
11. Since, the SCN was yet to be delivered to the overseas Noticee no. 3, 4 and 13, vide letter dated January 14, 2020 addressed to Noticee no. 3, Noticees no. 3 and 4 were informed regarding the issuance of SCN and was further informed that the copy of the said SCNs are also available at SEBI website. The said letter also stated that since Noticee no. 3 was the 100% beneficial owner of Noticee no. 4 therefore, the communication to Noticee no. 3 shall also constitute service of SCN to the Noticee no. 4 as well. The letter dated January 14, 2020 was duly delivered. Delivery of SCN to Noticee no. 13 was effected through the Office of International Affairs of SEBI.
12. With respect to the hearing for all Noticees scheduled on February 24, 2020, the notice for hearing was delivered to all Noticees except overseas Noticee no. 13. With respect to Noticee no. 10, it was noted that an Official Liquidator has been appointed

with respect to this Noticee and the hearing notice was delivered to the Official Liquidator.

13. On February 24, 2020, Noticee nos. 6, 7, 8 and 12 appeared for the hearing and made submissions. Noticee no. 9 appeared for hearing dated March 03, 2020 and made submissions. Noticee no. 1 and 2 sought adjournment to the hearing and a fresh date of hearing was granted on March 03, 2020. Since, the hearing notice pertaining to Noticee nos. 1 and 2 could not be delivered at a short notice, therefore, the hearing for Noticee nos. 1 and 2 was rescheduled to March 18, 2020. Noticee no. 5 also sought an adjournment of the hearing dated February 24, 2020 and another opportunity of hearing was granted to him on March 18, 2020. On March 18, 2020 Noticee no. 2 appeared and made submissions on behalf of Notices nos. 1 and 2. Noticee nos. 1 and 2 were given 10 days time to file further submissions, if any. However, in the date of passing of this order no such further submissions have been received from Noticee nos. 1 and 2 neither any request for extension of time for filing such written submissions have been received from these Noticees. Noticee no. 5 did not appear for hearing on March 18, 2020 and requested for an adjournment due to lockdown related to Covid-19. Vide his letter dated May 26, 2020, Noticee no. 5 has requested no order be passed in the matter without affording an opportunity of personal hearing to him. It has further been submitted in the said letter, the timeline for passing the order mentioned in the order dated December 03, 2019 does not apply in his case as he had never filed any appeal. The Hon'ble SAT, by its order dated June 05, 2020 gave time till August 15, 2020 to pass a final order in the matter. An opportunity of personal hearing was again afforded to Noticee no. 5 on June 22, 2020 which was availed by the said Noticee through his authorised representative, through video conference.

14. Noticee nos. 1, 5, 6, 7, 8, 9, 11 and 12 have submitted replies to the SCN. Noticee no. 2 has not filed any separate reply but adopted the reply of Noticee no. 1, during the hearing. Vide reply dated August 19, 2017, FIL (Noticee no. 1) has submitted as follows:

- (i) FIL was not aware of the pledge agreement until April 17, 2012. EURAM Bank sent the Pledge Agreement to FIL when FIL requested EURAM bank to

transfer GDR amount to its account. EURAM Bank had sent a mail for reconfirmation of pledge agreement dated June 14, 2011 in which they had mentioned that the interest rate of the loan agreement is changed to 0.25% and other terms and conditions of the pledge agreement will remain unchanged. Later again on December 12, 2011 EURAM bank had sent an email to FIL saying that it had not received the original pledge agreement and requesting FIL to send signed and notarized letter. However, FIL had not responded to the same. Therefore, if EURAM Bank did not have the signed agreement dated May 05, 2010 with them on 19.12.2011 then how did it release the loan amount to Vintage. This clearly shows that EURAM Bank has created a fake Pledge Agreement with the help of blank papers signed by Mr. Srinivasa Reddy in good faith, at a later date.

- (ii) In the Pledge Agreement dated May 05, 2010 the amount of the loan given to Alta Vista (formerly, Vintage) for which the pledge is created is USD 71,910,000. On the day the balance in the account of FIL was zero. Therefore, it was impossible for FIL to give pledge to some third party for the amount which they did not possess. FIL did not know how much amount they were going to receive in the GDR issue as only on August 13, 2010 the account balance was USD 71,910,000 and the said amount was collected only when the GDR were oversubscribed and before that FIL was totally unaware of the pledge amount.
- (iii) The Board of Directors of FIL was not aware of the GDR proceeds process as it was very new at the time and they entirely trusted Mr. Sanjay Agarwal and Mr. Nithish Bangera as they introduced themselves as Chartered Accountant and Company Secretary. These two people had drafted various documents for the GDR issue and took several signatures from Mr. Srinivasa Reddy on blank papers as part of documentation. They asked him to sign several blank documents as it was not possible for him to travel to Austria at that time for documentation. Even the Board of Directors of FIL were not aware of the subscribers of the GDR until they were given a list by Prospect Capital which they believed. However, from SEBI they got to know that Vintage was the sole subscriber of the GDRs.
- (iv) GDR amount was not at disposal of FIL as rightly stated in the SCN and this shows that they were cheated by AP and EURAM Bank by not disclosing to

them the Pledge Agreement that was created against the GDR amount. Since FIL was not aware of the situation until EURAM Bank had intimated it about the Pledge Agreement on 2013 and therefore it was not aware of the terms and conditions of the said Pledge Agreement.

- (v) EURAM Bank had couriered certain documents along with Pledge Agreement to FIL in April 2012, these documents contained forged document showing that FIL had signed the Pledge Agreement. It also contained a file containing a forged document showing that FIL had signed the reconfirmation of this agreement on June 14, 2011. However as mentioned earlier vide communication dated December 19, 2011, EURAM Bank had informed that they did not have the original copy of the Pledge Agreement. This clearly shows that they had created a fake Pledge Agreement with the help of blank papers signed by Mr. Srinivasa Reddy at a later date.
- (vi) Since FIL was not aware of the Vintage Loan Agreement so they were also not aware of the transaction between EURAM and Vintage in relation to GDR amount. However FIL received 475000 USD in two tranches on August 25, 2010 and September 15, 2010 from EURAM bank and so the FIL management believed that they would get the remaining GDR amount so the management didn't suspect anything wrong with the issue. If there was a fraud then FIL would not have got 475000 USD from EURAM Bank.
- (vii) FIL was in no way benefited from this issue and company has lost the market capital and credibility due to GDR issue and it was a victim of the fraud perpetrated by AP with EURAM Bank and others. It is observed that the Pledge Agreement was executed on May 5, 2010, months before the GDR issue which was on June 29 2010 but the amount in the Pledge Agreement exactly matches the GDR amount raised. This clearly shows that the entire issue was planned by AP and EURAM Bank.
- (viii) Mr. Srinivasa Reddy was not aware of the Pledge Agreement until April 17, 2012 when informed by EURAM Bank. The sign on the pledge agreement is that of Mr. Srinivasa Reddy, he is not denying it. But in the process of GDR issue, Mr. Sanjay Agarwal had made him sign on blank documents as it was not possible for Mr. Reddy to travel to Austria. It is noted that with respect to the Pledge Agreement the notary has mentioned that Mr. Reddy had signed the Pledge Agreement in front of him but on the given date Mr. Reddy was not

in Mumbai and never met the notary. From this it is clearly evident that EURAM Bank colluded with AP. As they had manipulated so many things even the forensic graphological report could have been manipulated. This can be observed in the email communications of FIL with EURAM Bank wherein FIL has requested EURAM bank to transfer GDR amount to FIL Indian account and stop unauthorized transaction. Mr. Srinivasa Reddy is not conversant in English and assigned blank documents for GDR issue as requested by Mr. Sanjay Agarwal and Mr. Nithish Bangera. In fact when FIL sought transfer of GDR proceeds to its India account, EURAM Bank said that the code word for the transfer was missing. If there is no code word how would they have transferred the other amounts.

- (ix) Mr. Srinivasa Reddy had signed blank TT forms as asked by Mr. Sanjay Agarwal and Mr. Nithish Bangera believing that they would be used to transfer amount to FIL Indian bank account but without their knowledge the amount was transferred to a FIL subsidiary from where it has been transferred to AP entity accounts. FIL has not received EURAM Bank account statement for these periods. After knowing about about these transfers later when FIL contacted EURAM Bank to transfer amount to India they have not accepted TT slips which FIL sent to them and this shows clearly that they colluded with AP.
- (x) FIL denies that they colluded with AP as they were the one affected by this fraud. The money was meant to be used for the company expansion and they were nowhere connected to AP. FIL has filed a case against AP in India and have been following up with this rigorously and it has even written letters to various statutory authorities internationally and in India explaining its case and seeking help to get the GDR amount. If FIL had colluded with AP then there was no reason for it to file the case and FIL has not received any money from the above 15.6 million in any mode. FIL wants the GDR amount back and wants to revive the company. It has not benefited from this fraud and from the correspondence with EURAM bank it is clear that FIL was pressurizing it to provide account statement and give clarity on every issue and in fact EURAM bank had asked FIL to contact AP who was introduced by them as Accounts Officer.

- (xi) FIL had informed SEBI vide letter dated 07.07.2015 that Bank of New York Mellon (BNY) was cancelling GDR and selling shares in Indian market but there was no response from SEBI and a huge volume of shares were sold in the Indian market and they made huge amount of money. FIL had also written to BNY to stop cancelling GDR but they never responded. this is the first time FIL is coming to know about the number of shares sold pre and post termination of GDR and the amount that was made by selling those shares. FIL Is shocked to know that 53 crores has been looted.
- (xii) AP resigned from the post of director of EURAM bank due to the pressure put by FIL and after the resignation EURAM Bank intimated FIL about the Pledge Agreement. This clearly shows that AP was the main culprit.
- (xiii) FIL is not aware of High Blue Sky Emerging Market Fund or Mr. Anant Kailash Chandra Sharma and Reema Narayanan Shetty.
- (xiv) Due to this GDR issue FIL's market cap has declined and the promoters have not sold any shares of FIL from the date of the activity till today though they have been going through severe financial crisis and it shows their commitment and towards the company
- (xv) With regard to the writing off of the pledged amount, FIL had followed Indian Accounting Standards and based on professional advise it forcibly wrote off the GDR amount of 72.2 million as there was no other option.
- (xvi) As per the SEBI investigation, it is clear that AP was the mastermind in the GDR issue. FIL had genuinely believed Mr. Sanjay Agarwal and had done this GDR issue, FIL had not colluded with AP or others. FIL had written several mails to ADCB bank to get statements after which they requested the bank to block the account. They even filed a case on AP and others in India and wrote to statutory authorities. FIL even contacted foreign law firm to file a case against EURAM Bank to get back the GDR amount. The law firm had given a positive legal opinion but for filing the case huge legal fees was it required and FIL could not bear the fees. Still FIL had contacted International Litigation Funder and had requested them to fund their case, they had agreed to fund the case, they had even sent agreement for the same but later AP had influenced them and they had not responded to a FIL.

- (xvii) FIL never made any misleading statement to Stock Exchange they believe that GDR issue had been fully subscribed based on EURAM Bank statement and the list is provided by Prospect Capital.
- (xviii) After getting the Loan Agreement FIL got to know that AP was the Managing Director of Vintage.
- (xix) Huge sums of money was transferred from ADCB bank account of FIL's Dubai subsidiary without their knowledge. All withdrawal forms were sent through fax from Vintage office of which AP is the owner. This can be established by seeing the top of the money transfer forms with the name of the company from which the fax was sent is mentioned. After transferring the funds to the ADCB bank account FIL's Dubai subsidiary the funds were transferred to some other entities such as Alchemy International, Hind Cargo, Avon Corp, Asahi Infra etc. Later on FIL had come to know that some of these companies were banned by SEBI for dealing in securities markets fraudulently along with AP. Moreover in one of the transfer request forms sent from the Vintage office the signature of the client was in the box mentioned for the signature of the Accounts Officer of the bank. In spite of the same EURAM Bank transferred the money. This proves that they were simply using the scan copy of the signature of the MD of FIL for committing the fraud. In one of the internal emails from your EURAM Bank sent to AP which had been wrongly sent to FIL, EURAM Bank clearly mentioned that they were not responding to the mails of FIL until they get a green signal from AP.
- (xx) During the period that money was transferred from EURAM bank account of FIL to ADCB Bank account of FIL Dubai, EURAM Bank did not forward any bank statement for the period, which point to their collusion with AP.

15. Vide reply dated Mr. Sanjay Agarwal (Noticee No.5) has submitted as follows:

- (i) The decision to enter into agreement with respect to issue and placement of GDRs and other terms & conditions of the agreement was to be decided among company, Merchant Bankers & other entities involved. No way he or La Richeesse or any other employee of La Richeesse had the power to take decisions regarding terms & conditions of the agreement, hence, in this case

his role was only limited upto the instructions received from the company/ client.

- (ii) He denied that he had acted as agent to Mr. Arun Panchariya and acted as conduit between AP and FIL. He only coordinated between FIL and Prospect Capital Ltd./ AP and denied that he was connected to/ associated with AP other than professional engagement.
- (iii) He did not have knowledge of fraudulent arrangement/ scheme of GDR issue of FIL in connivance with AP and his connected entities. He was only adviser of the company & the final decision to do every act rested with the company and its Board of Directors. Hence, he was not involved in decision making process.
- (iv) With regard to the Loan Agreement, he is not responsible and liable for the same since he was not party of the loan agreement. He was advisor to the company and was nowhere involved in preparation/vetting of the said agreement.
- (v) He has been made a scapegoat just to broaden the ambit of investigation without any documentary evidence and bald allegations have been made.
- (vi) The email enclosed at Annexure 11 to the SCN only proves my contention that he was only coordinating. He received email from Mr Mukesh Chauradiya and informed the director that they need to carry out certain formalities.
- (vii) The SCN has not shown and has not been able to prove his connivance with AP which establishes that bald allegation of him being an associate of AP has been levelled. This further establishes that serious charge of fraudulent and unfair trade practice has been levelled without any evidence, documentary or otherwise, which is devoid of merit.
- (viii) He was not a director of Prospect Capital Limited. He had not used/created /owned/operated any email id sa@prospectcapital.com. He has already submitted evidence from UK Company Law website and UK- FCA website vide letter dated November 11, 2016 during the course of investigation that he was neither director nor share holder nor decision maker in Prospect Capital.
- (ix) He was assigned various tasks related to GDR issue which includes preparation of various documents formats such as deposit agreement, placing agreement, documents/ undertaking/ declaration for trading on Luxembourg

Stock Exchange, offering circular, etc. and was nowhere involved in decision making process.

- (x) It is common knowledge that the legal advisers are not involved in day to day affairs of the company. In the board meetings, broad policy decisions are taken and the actual implementation at cutting edge level is done by directors along with the other employees. Legal advisers, do not monitor on daily basis the implementation of the decisions or interfere in the same. While levelling the allegations in the Notice, it has been ignored and overlooked that legal advisers are not involved in day to day affairs of the company and they do not monitor on daily basis the day to day activities, which lies in the domain of directors.
- (xi) He had prepared documentation of GDR issue, opening of bank accounts and incorporation of Farmax's UAE Subsidiary as he was assigned to do above mentioned work.

16. Vide reply dated March 03, 2018 Mr. Mukesh Chauradiya (Noticee no. 6) has submitted as follows:

- (i) He was never the director or Managing Director of Vintage FZE as alleged in the SCN. He has tried to collect documents from Jebel Ali Free Zone Authority (JAFZA) UAE to prove that he was never director or MD, however, the authority has denied him the information without a court order. In a letter dated December 28, 2010 addressed to EURAM Bank, JAFZA has stated that Noticee no. 6 was a manager of Vintage.
- (ii) He was only an employee of Vintage, the subscriber to the GDR of Farmax. Vintage was fully owned and controlled by AP which is mentioned in the SCN itself.
- (iii) Under the implementing regulations number 1/92 pursuant to Law No.9 of 1992 of FZE Regulation under which Vintage was registered as a Free Zone Enterprise (FZE) stipulated that FZE was to have a single owner, in this case was AP who was beneficial and legal owner.
- (iv) AP was initially the sole director, later on his brother replaced him. Noticee No. 6 was never a director or MD. Even in his resident permits his designation is always mentioned as General Manager and not as director/ MD.

- (v) Even in letter dated October 1, 2009 written by Vintage to ADCB it can be seen that he was referred as General Manager since September 2005 and the letter was signed by AP himself.
- (vi) Noticee no. 6 has also submitted copy of his employment card issued by JAFZA where he has been mentioned as an employee not a director or MD of Vintage.
- (vii) From a copy of the visa issued to AP by JAFZA valid from 12.1.2010 to 11.01.2013, it can be seen that AP was the MD of Vintage. The beneficial ownership of Vintage is also owned by AP who owned 99.99% of its shares.
- (viii) The administrative fine statement passed by DSA imposing a fine of USD12,000 on AP also clearly indicates that AP was the licensed director in relation to vintage FZE.
- (ix) Key decision-making powers in Vintage such as availing loans from banks, subscribing to GDRs or other investments and repayment of loans were with the owner and director of vintage FZE which was AP or his brother.
- (x) On the Loan Agreement dated May 5, 2010 between EURAM Bank and Vintage FZE as mentioned in an Annexure 3 of the SCN in the GDR issue of Farmax, AP signed as MD of Vintage. In the Loan Agreement dated May 30, 2008 between EURAM Bank and Vintage, AP had signed as MD of Vintage. Somewhere in 2010 after AP set up EURAM Bank Asia limited in JV with EURAM Bank and got it UAE DIFC license there were concerns with respect to conflict of interest raised by EURAM Bank as AP was also signing, verifying transaction documents as President of EURAM Bank Asia, post which, AP, while continuing as the sole beneficiary owner of Vintage stepped down as director and was replaced by his brother. Also, on account of the above conflict Noticee no. 6 was instructed by AP to sign certain documents. With regard to the specimen signature format dated June 6, 2007 AP's name had been mentioned solely as owner in the second and Noticee no. 6's name appears as one of the persons with signing authority.
- (xi) Noticee no. 6 he did not get any other advantage monetary or otherwise from what has been done by him except for salary received as an employee of Vintage.
- (xii) Noticee no. 6 signed the redemption requests for loan as and when AP generated liquidity.

- (xiii) There is a letter that Noticee no. 6 has signed where his designation is wrongly mentioned as directed MD.
- (xiv) Noticee no.6 cannot be blamed for fraud on account of certain corporate noncompliance by Farmax and its officials. Noticee No. 6 as no connection with Prospect Capital Limited. As an employee of Vintage Noticee no. 6 had no connection with Vintage signing a Loan Agreement and loan for subscribing to GDR of Farmax. He had no role to play in the same and was not instrumental in arranging loans.
- (xv) Merely by being an employee of Noticee no. 6 cannot be deemed to be managing the affairs of Vintage along with AP.
- (xvi) Noticee no.6 had never held any beneficial or any other interest with any of the entities such as IFCF, Cardinal Capital Partners Limited, High Blue Sky Emerging Market Fund, Golden Cliff, KBC Aldini Capital Limited or the Bank of New York Mellon.
- (xvii) Noticee no. 6 he was holding one or two shares of Vintage FZE Holdings Private Limited which is normal business practice and nothing sinister can be attributed to him on account of the same. Merely by being on the Board as Nominee Director on Ramsai it does not make Noticee n.6 connected in any sense other than existing relation of employer and employee. He also admits that he was on the board of Alka India Limited as Nominee Director but no adverse inference can be drawn from the same.
- (xviii) Noticee no. 6 denied that Vintage had committed any fraud on the Indian shareholders. None of the commissions and omissions of Vintage constitute any offense or violation or any of the provisions of the security laws in India. As an employee of Vintage he had no role to play in any of the acts committed by Vintage. Therefore, Noticee n. 6 denied all the allegations against him contained in the SCN.

17. Vide reply dated February 23, 2020 and written submissions dated March 04, 2020 Prospect Capital Ltd. (Noticee no. 7) and John Behar (Noticee no.8) have inter alia submitted as follows:

- (i) They denied all the allegations in the SCN

- (ii) Prospect Capital Limited (Prospect Capital) is a Financial Conduct Authority (FCA) regulated corporate finance advisory company based in London, primarily engaged in raising capital for companies, including international companies. Mr. John Behar is the Chief Executive Officer of Prospect Capital. The majority of the work done by Prospect Capital has been in the private markets rather than the public listed markets, typically arranging debt and private equity for companies with a genuine use of funds. Prospect Capital has always applied high standards of conduct, enjoying a wholly compliant and unblemished record in its field for over the 14 years to the present day since becoming authorized.
- (iii) During the years 2006-2007, Prospect Capital provided third party consultancy services to a merchant banking company called Pan Asia Advisors Limited (PAA), whose Promoter was Mr. Arun Panchariya. These services were for the preparation of an application to the FCA to register PAA for regulated corporate finance advisory activities and subsequently to oversee compliance reporting and other ongoing compliance responsibilities. It is stated that these consultancy services were carried out on a day to day basis primarily by Mr. John Behar who was registered as a Director of PAA in this context. It is humbly submitted that neither Mr. Panchariya nor any of his companies have ever had any ownership interest in Prospect Capital which is, and remains, an entirely independent UK regulated company wholly owned by Mr. John Behar. As such there is no "connection" between Mr. John Behar, Prospect Capital and Mr. Arun Panchariya beyond the provision of professional services.
- (iv) Post incorporation of PAA, Mr. Behar was asked to stay with the Company to manage compliance, reporting and other administrative matters, while he continued to run his own regulated company simultaneously. He was engaged with PAA only from 17.10.2006 till 09.11.2007 which is evident from the Financial Services Register of United Kingdom. At no point during this period was Mr. Behar involved in, or aware of any fraudulent activity.
- (v) Thereafter in 2010, Prospect Capital was once again approached by Mr. Panchariya, with whom Mr. Behar had maintained a cordial professional relationship, this time to lead manage a series of GDR issues on the Luxembourg Stock Exchange for Indian companies. It is submitted that the typical role of the lead manager in Lux GDR issue is to obtain commitments

from investors and then manage the technical documentary process of creating and listing the GDR's on the Luxembourg Stock Exchange, and then finally obtain signed subscription agreements from the investors who decide to proceed. However, in the present case Prospect was not responsible for finding investors, since, Mr. Sanjay Aggrawal, Noticee no. 5, the Indian advisor for FIL's GDR issue informed Prospect that this GDR issue was pre-sold i.e. that investors willing to subscribe were already identified. Therefore, job of Prospect was strictly limited to the documentary process of working with legal counsel to create the prospectus and provide other documents required by the Luxembourg Stock Exchange in order to complete a listing of GDR's. Thereafter, Prospect Capital in good faith sent subscription letters to the investors which Mr. Aggarwal had identified after he provided their details.

- (vi) The SCN itself notes that La Richesse Advisors Private Limited was carrying out the functions of a lead manager.
- (vii) In view of the above said it is submitted that the work required to be done by Prospect Capital was inconsequential, it is also evident from 25,000 USD paid to Prospect Capital as fees towards the said transaction, which is modest in comparison with normal Lead Manager fees. Furthermore, had Prospect Capital been responsible for finding the investors it would have charged a placement fee, however, since it had not undertaken, or contributed in any way in the process of finding or finalizing the investors, no such placement fees was charged by Prospect Capital.
- (viii) The role of Prospect Capital in the issue of the GDR on the Luxembourg Stock Exchange was strictly confined to the technical/ bureaucratic process of performing due diligence on the issuer and processing all the paperwork required to list formally on the exchange. Prospect Capital did not source the issuer or the subscribers, it provided no advice on structure, and was not involved in any other aspect of the process, it simply followed the regulations and stock exchange requirements for KYC and managed the listing process.
- (ix) Neither Prospect Capital nor Mr. John Behar had any knowledge that the subscribers to the issue were not genuine subscribers. Prospect Capital and Mr. Behar was only sent subscription agreements at the time of the issue which they duly completed in the normal way.

- (x) At no point there was “connivance” between Prospect Capital and/ or Mr. John Behar with Mr. Arun Panchariya or any of the other parties to the fraud as described. Both Prospect Capital and Mr. John Behar acted in good faith, and in a manner compliant with the relevant regulations, to execute specific professional tasks.

18. Vide replies dated February 01, 2020 and February 16, 2020, Mr. Nithish Bangera (Noticee no.9) has submitted as follows:

- (i) The email copies which are part of the annexure to the Investigation Report are fake and forged and were not sent by Noticee no. 9. As per SEBI letter dated October 25, 2019 the email address of Nithish Bangera is nithish2008@googlemail.com which is not his email ID. The copies of email given during inspection contains even other email other than nithish2008@googlemail.com.
- (ii) As per Section 65B of the Indian Evidence Act, 1872 if email is only evidence then certified copies of the email should be handed over to the Noticee. However that has not been done. As per section 65B of the Indian Evidence Act, 1872 soft copies of email relied upon should be forwarded to the Noticee, however even after 15 requests in three years after issue of SCN he has not received soft copies of the emails. The IP address used for sending the first email is still not disclosed.
- (iii) SEBI has initiated proceedings against Noticee no. 9 on the basis that he being employee of advisory company which has advised and helped in preparation of documents and provided certain formats and Photocopies of Email's provided by Mr. Srinivasa Reddy which shows communication between Noticee no. 9 and Farmax was the only evidence provided against Noticee no.9.
- (iv) On Inspection of this email provided by Mr. Srinivasa Reddy to Noticee no.9 found that same is not mailed by him and accordingly he has denied writing of the said emails. IP address from where the emails were sent using my personal email ID remained unanswered. Certain pages are also missing from these email copies.

- (v) SEBI produced statements of Mr. Srinivasa Reddy that Noticee no.9 had obtained bank token of Farmax. However, the inspection files shows, emails written by Farmax wherein it reflects that Farmax had handed over the bank token to one Mr. Rajubhai of Ahmedabad. Hence, the statement of Mr. Srinivasa Reddy cannot be relied upon as his own documents are contradictory to his own statement.
- (vi) It was also pointed out that as per the Notary and as per SEBI, Mr. Srinivasa Reddy had signed the Pledge Agreement. However, Mr. Srinivasa Reddy made contradictory statement that he had not signed the Pledge Agreement. Hence, once again making contradictory statement, in turn, statement of such person cannot be relied upon for any investigation.
- (vii) As per SEBI, the GDR proceeds were never received by Farmax, in fact the loan taken from EURAM Bank was in turn repaid back from the GDR proceeds. However, Mr. Srinivasa Reddy made a complaint that the GDR proceeds have been siphoned off by Panasia and others. We have no reason not to believe on SEBI and EURAM Bank as to non-receipt of GDR proceeds. Hence, statement of Mr. Srinivasa Reddy once again cannot be relied upon.
- (viii) Moreover, when asked for consideration received by Noticee no. 9 for working with Farmax for GDR issue no documentary evidence was produced either by SEBI or by Mr. Srinivasa Reddy. His name is not reflecting in the fund flow.
- (ix) Neither SEBI nor Mr. Srinivasa Reddy had produced any documentary evidence disclosing relation of Noticee no. 9 with any of the other 12 Noticees in the SCN. In fact it is Mr. Sanjay Aggarwal, Noticee no. 5 categorically made a statement that Noticee no. 9 had resigned from his company La Richesse Advisors Private Limited with effect from March 31, 2010 and the investigation period starts from June 10, 2010 to August 10, 2010. Hence, there is a third party statement to prove that Noticee no. 9 was not associated with any of the other 12 Noticees during the investigation period.
- (x) Period of Investigation is June 01, 2010 to August 31, 2010. Noticee no. 9 had resigned from the Indian Advisory Company on March 31, 2010 i.e 2 months before the Investigation Period.
- (xi) Noticee no. 9 denied preparing / providing / advising in preparation of various documents / agreements / formats etc. during the period of investigation. He

was only the employee of the advisory company who had resigned much before the GDR issue.

- (xii) He had not sent the emails as alleged.

19. Vide reply dated September 12, 2017 Emerging Market Opportunities Fund, previously known as High Blue Sky Emerging Market Fund (Noticee no. 11) has replied as follows:

- (i) Noticee no. 11 holds a category one global business license issued by Financial Service Commission of Mauritius. It receives fund from investors which it in turn invests in shares and securities across the globe. Their investors are foreign corporate and institutional investors, none of the investors are Indians or non-resident Indians. As in the case of mutual fund /hedge fund their investors are entitled to redeem the investment with them as and then the desire.
- (ii) It denied all the allegations made against it in the SCN. GDRs were issued on August 20, 2010 and cancellation was done on December 4, 2012 which was much prior to the appointment of Mr Anant Sharma that is 11th August, 2014. Highblue has no connection with AP, none of its investment belongs to AP or its connected entities. Aurisse is the management company of High Blue Sky and they provide service such as accounting, NAV calculations, registered office, maintenance of book of account etc.
- (iii) The shares sold by Highblue are the shares which were issued without proper consideration however such information wasn't available on public platform nor on BSE or NSE so it was very hard for any fund to know that the shares were issued without proper consideration.
- (iv) Vide reply dated July 10, 2018 it has further stated that whenever there is a redemption request from any of the investors, the fund has to liquidate holdings and redeem in accordance with the law.

20. Vide reply dated March 21, 2020 EURAM Bank (Noticee no.12) has submitted as follows:

- (i) There is not a single finding against EURAM Bank as an FII (which is the jurisdictional scope of the investigation and the resultant SCN) in either the SCN, or otherwise, that it has itself violated any provision of the SEBI Act, the PFUTP Regulations; more so, there is not even any allegation of breach of the extant FII Regulations by EURAM Bank. The SCN is predicated entirely and seeks to fasten liability on EURAM Bank on the averment that EURAM Bank is connected with AP and on the fact that EURAM Bank was the FII to a sub-account, IFCF, that admittedly SEBI granted registration to on the basis of its independent scrutiny, and which in turn may have been part of a scheme and be related or connected to persons that violated provisions of the SEBI Act and the PFUTP Regulations.
- (ii) EURAM Bank is no longer registered with SEBI as an FII, and has not been so since 2011. In fact, EURAM Bank had stopped all trading activities as FII and the relevant sub-account has been allowed to be transferred by SEBI itself by its letter dated July 20, 2011. Therefore, it would be wholly unfair and unjust to penalize it for alleged infractions of a sub-account and persons that traded before EURAM Bank ever got registered as an FII and continued to trade independently and with other persons well after the sub-account had been transferred.
- (iii) From its inception, EURAM Bank has been owned privately and at no point has AP, who is the primary suspect in the alleged wrongdoing, owned any shares in EURAM Bank.
- (iv) With an objective of providing additional investment opportunities to its clientele in Asia, EURAM Bank registered with SEBI as an FII (registration no. INASFD21 1606) in the year 2008. In the same year, IFCF was registered with SEBI as a sub-account after due scrutiny of its background and having found IFCF to have satisfied its selection criteria. Before forwarding IFCF's application to SEBI, EURAM Bank, as an FII, undertook the Know Your Customer check on IFCF as prescribed by SEBI and on such basis, forwarded IFCF's application to SEBI, as required under the FII Regulations. IFCF was granted permission to register and trade in Indian securities market by SEBI after an independent assessment of its background and qualification by SEBI. All transactions undertaken by IFCF in the Indian securities market were undertaken by IFCF on its own volition, without any assistance or advice from

- EURAM Bank. The GDRs and the underlying equity shares that were the subject matter of SEBI's investigation were acquired by IFCF independently with funds raised by it on its own (not through EURAM as a bank), and not in its capacity as a sub-account, and it is only the sale orders in respect of such underlying equity shares that were undertaken by IFCF through EURAM Bank.
- (v) In the year 2009, EURAM entered into a business relationship with AP, based on AP's assurances that he will be able to generate business opportunities for EURAM Bank in the Middle East by introducing high net worth individuals in the region to EURAM Bank for its private banking business. EURAM Bank, which had been active in the service, relying upon such assurances, formed a joint venture with AP in Dubai in order to grow its client base in the region. The joint venture was proposed to be named, Euram Bank Asia Limited (EBAL). EURAM Bank was to own the majority interest in EBAL, and EBAL was registered with the Dubai Financial Authority under the Category-3 license, which did not allow it to undertake any credit or investment business directly. EBAL thus entered into a referral arrangement with EURAM Bank pursuant to which, EBAL, which was being operated by AP on a day to day basis was to refer clients to EURAM Bank and in exchange, was to be paid a fee. AP was the president of EBAL and also its director. Unfortunately, the operations did not materialize as expected, and EURAM Bank wound down the joint venture and before doing so, alerted the Austrian authorities of suspected money laundering activities by AP and entities and persons connected with him. At no time did EBAL deal in or provide any assistance in connection with any transaction related to the Indian securities market. In June 2011, EURAM decided to stop operating as an FII since the business opportunities it had anticipated did not materialize. On July 20, 2011, IFCF was granted permission by SEBI to transfer the sub-account to Cardinal Capital Partners (CCP).
- (vi) As a result of the investigation into AP's dealings in GDRs under a previous SCN dated September 19, 2014, the Austrian Financial Authority (FMA) and the White-Collar Crime and Corruption Authority (WkStA) initiated both, civil and criminal proceedings against EURAM Bank and its management. The office of WkStA also instructed a business expert to examine and report on the business model of providing loans to Vintage for the purchase of the GDRs.

All these investigations and reviews have since been concluded, and EURAM has been cleared of all charges and allegations and the loans granted to Vintage have been found to be commercially sound and compliant with all laws. The Dubai Financial Authority also undertook an investigation of EBAL's role and activities in AP's alleged wrongdoing and closed the investigation on August 8, 2012 having concluded that EBAL had not committed any wrongdoing.

- (vii) Per SEBI's own finding, the only link between the two, EURAM Bank and AP, is restricted to the setting up of the joint venture entity, EBAL, which has in any case been wound up, and even before it was shut, it had no business or operations relating to the Indian securities markets. In any event, as had been stated earlier, far from having any links with AP, EURAM Bank complained to regulators against AP for suspected money laundering. Thus, EURAM Bank has always acted in a bonafide manner and has been responsible in its reporting obligations.
- (viii) It may be noted that unlike CCP - the other accused FII-AP does not hold a single share in EURAM Bank. In light of the above, it is humbly submitted that the allegation that EURAM Bank is "connected to AP" is tenuous and wholly unsubstantiated by any facts or findings.
- (ix) EURAM Bank's only pecuniary interest in the entire scheme of things was restricted to just the interest it would get from the loan made available to Vintage; EURAM Bank lost out on that too as Vintage defaulted on repayment of the facility.
- (x) EURAM Bank was the FII for IFCF only for a limited period of time- up till July 20, 2011 after which CCP became the FII for IFCF. As per details from NSE and BSE, a large chunk of the trade activities by IFCF happened after such transfer of account. It may be appreciated that even prior to any adverse finding against IFCF, EURAM Bank had suspended acting as an FII for IFCF.
- (xi) The allegations of a) fraudulent or manipulative conduct; b) creation of false market; c) engaging in unfair trade practice is wholly unsubstantiated and unwarranted. There is no evidence against EURAM Bank in the investigation to sustain such serious allegation. These are serious Charges that have independent elements and require a detailed investigation, substantiation by evidence and specific finding before a charge can be made out. In the present

case, there is absolutely no finding or record against EURAM Bank for leaving itself engaged in any fraudulent or manipulative conduct or for that matter, deployed an unfair trade practice.

- (xii) As pointed to earlier, SEBI has already investigated a similar matter and the Hon'ble Member had addressed such issues in his order dated September 5, 2017, ruling in favour of EURAM Bank. Placing reliance on the doctrine of issue estoppel it submitted that, in light of the previous decision of the Hon'ble Whole Time Member, covering essentially the same facts and addressing the same issues, here to EURAM Bank must be granted similar relief and the charges against it be dropped.
- (xiii) In the present case, the period under investigation, as stated in the preliminary paragraph of the SCN, was June 01, 2010 to August 31, 2010. The first SCN in the matter was issued only on July 31, 2017 after a period of almost seven years. The present hearing is happening almost a decade after the investigation period. It is submitted that, this, by no stretch, could be construed as a reasonable period of time. As such, in view of the enormous delay, and in the interest of justice, the proceedings ought to be dismissed on the ground of laches.

Consideration of submissions and findings:

21. I have considered the allegations made against the Noticees in the SCN and the Annexures to the SCN as well as the supplementary SCNs and the replies submitted by the Noticees as well as the oral submissions made by them during the personal hearing and written submissions made by some of them. At the outset it would be relevant to refer to the provisions of law mentioned in the SCN which the Noticees have been alleged to have violated. The relevant extracts are as follows:

Relevant extract of provisions of SEBI Act, 1992:

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

Section 12A: No person shall directly or indirectly,-

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

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

(d)

Relevant extract of provisions of PFUTP Regulations, 2003:

“Regulation 3 - Prohibition of certain dealings in securities

No person shall directly or indirectly

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

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

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

(1) 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 fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a).....

(b).....

...

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)...

(h)...

.....

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(l).....

(m).....

.....

(r) Planting false or misleading news which may induce sale or purchase of securities;.....”

22. Before proceeding with the merits of the matter, it would be appropriate to deal with certain preliminary contentions raised by the Noticees. Noticee no 12 has raised an issue pertaining to the proceedings suffering from delay and laches. In this regard, I note from SEBI order dated June 16, 2016 that investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. The investigation *prima facie* revealed that in many of the GDR issues, money for subscribing to GDR was availed as a loan by the subscribers, from a foreign Bank wherein the issuer company gave security for such loan taken by the subscribers, by pledging/creating charge on the GDR issue proceeds. It was also observed that such subscribers which were overseas entities subscribed the GDRs without any valid consideration and sold the underlying shares in the securities market in India. Accordingly, where such *modus operandi* was *prima facie* observed such GDR issues were examined. SEBI initiated investigation as and when it came to know about such GDR issues where issuer companies have adopted such *modus operandi* as referred to above. Since, the GDRs are issued abroad and related transactions were carried out outside India and the foreign bank and subscribers were situated outside India, SEBI had to call information from the various entities situated abroad. Such information included *inter alia* the details of (a) issuer companies, (b) custodian of securities, (c) overseas depository, (d) overseas banks, (e)

subscribers of GDR issue, (f) lead manager, (g) various transactions, etc. These information were not readily forthcoming. Therefore, SEBI had to approach the foreign regulators for assistance in procuring information from the concerned entities situated outside India. The foreign regulators had also to collect this information from the concerned entities and then to furnish to SEBI. The process of collection of information or documents in these matter was complex, tedious and time consuming. As stated above, investigation was initiated in respect of 59 GDR issues made by 51 Indian Companies during the period 2002 to 2014. FIL was one such company who made one of such GDR issue where similar *modus operandi* was also observed and the investigation was completed in March, 2017. I note that after completion of the investigation, the SCN was issued to the Noticees on July 31, 2017. I note that service of SCN to some of the overseas Noticees in this matter could not be effected on their respective addresses as available on record and therefore, service of SCN on such Noticees could be completed only in January 2020, through overseas regulator/ on alternate addresses, after considerable efforts. It is further noted that there is no provision in the SEBI Act, 1992 which provides limitation period for taking action for the violation of the provisions of the Act or the Regulations made thereunder. In terms of Section 24(1) of the SEBI Act, 1992, any contravention to the provisions of SEBI Act and the Rules and Regulations framed thereunder is punishable with imprisonment for a term which may extend to the period of ten years and thus there is no limitation for initiating action for the same. In Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

“....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case.

Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice....”

23. In the facts and circumstances of the present matter, I note that the investigation has been conducted and proceedings have been initiated in reasonable time. In the matter of Jindal Cotex Ltd. and others Vs. SEBI (Appeal No. 376 of 2019 decided on 05.02.2020) while dealing with an appeal emanating from the similar GDR issue wherein a plea of delay was also taken by the appellant therein, Hon’ble SAT observed as under:

“.....Arguments on delay in investigation and consequently affecting natural justice are also devoid of any merit in the matter since this Tribunal is aware of the complexity involved in the entire manipulative GDR issue; how long it took SEBI to gain information relating to the various entities from multiple jurisdictions in the matter of PAN Asia Advisors Limited (Supra) and Cals Refineries Limited (Supra) etc.....”

In the aforesaid facts and circumstances, I find that there is no delay in the present matter and the contention of Noticee no. 12 in this regard is untenable.

24. I note that Noticee nos. 5, 6 and 9 had sought an inspection of documents which was granted to them. Notice no. 9 sought certain documents vide letters dated August 21, 2017, and October 04, 2017. I note that Noticee no. 9 was provided an opportunity to inspect documents on October 16, 2017 which he availed and additional clarifications were also provided to him vide letter dated October 27, 2017. He sought further documents through his letter dated November 14, 2017. Vide letter dated November 22, 2017, he was informed that the additional documents being sought by him had not been collected during investigation. Vide letters dated December 12, 2017 and January 22, 2018, Noticee no. 9 made another request for the same/ similar documents and sought cross examination of entities whose statements had been

relied upon. He also submitted letter dated April 12, 2018, December 12, 2018, and December 19, 2018 making the same request. I note that Noticee no. 9 was granted an opportunity to cross examine Mr. M. Srinivasa Reddy and Mr. Sanjay Agarwal on January 07, 2018 and January 10, 2019 respectively. On the scheduled date Mr. Srinivas Reddy did not appear for cross examination. Vide email dated January 09, 2019 Noticee no.9 withdrew his request for cross examination of Mr. M. Srinivasa Reddy and Mr. Sanjay Agarwal. Noticee no.9 also filed Appeal No. 485/ 2019 before the Hon'ble SAT seeking a direction to SEBI for providing him with certain documents such as certified copies of certain emails relied upon in the SCN. The said appeal was disposed of by Hon'ble SAT vide its order dated December 03, 2019. Subsequent to the said order of the Hon'ble SAT, the Noticee no. 9 again approached SEBI vide letter dated February 01, 2020 submitting reply to the SCN and reiterating his request for documents. Vide letter dated February 17, 2020, Noticee no. 9 reiterated request for providing same/similar documents/information which was made by him in his previous 16 letters. The observations with regard to the documents/information sought by Noticee no. 9, as tabulated in his letter dated February 17, 2020, are as follows:

Sr. No.	Documents/ clarifications sought	Observation
1.	As per SEBI letter no. EFD/DRA1/RJB/TVB/FARMAX/2019/28424 dated October 25, 2019 and inspection documents the address of Nithish Bangera is Shop No. 6, Shree Siddivinayak Co-op Housing Society Plot No. 422, Panvel 410206 Maharashtra which is not my address, no documentary evidence as to why SCN was not issued to Nithish Bangera residing at Panvel and why the same was issued to me.	This is a clarification being sought by the Noticee no. 9 and is not a request for particular document. Hence, the request is not tenable.
2.	As per SEBI letter no. EFD/DRA1/RJB/TVB/FARMAX/2019/28424 dated October 25, 2019 the email address of Nithish Bangera is nithish2008@gmail.com which is not my email is whereas the copies of email given during inspection contains email other than nithish2008@gmail.com . No documentary evidence given as to why the email id given by Farmax does not match with the inspection documents.	This is in the form of argument by Noticee no. 9 and is not a request for document. Further, all copies of email records, available with SEBI have been provided to Noticee no. 9. Hence, the request is not tenable.
3.	As per section 65B of the Indian Evidence Act, 1872 if email is the only evidence then certified copies of email should be handed over to the noticee. However, neither SEBI nor Farmax has certified the email to be true.	The emails of whose certified copies have been sought were exchanged between FIL and Noticee no. 5/9. Originals of such emails are not available

		with SEBI. Scanned copies of the print outs of emails, as available on record, has already been provided to the Noticee. Hence, requested of certified copy of the emails is not tenable.
4.	As per section 65B of the Indian Evidence Act, 1873 soft copies of email relied upon should be forwarded to the noticee however even after 16 request letters and 3 years to the SCN and 10 years of GDR issue I am yet to receive soft copies of email. Reliance is placed on Supreme Court order in the matter of Anvar P.V. Vs. P.K. Basheer & Ors. Which states that email if relied upon it should be shown on the computer.	This is an argument made by the Noticee and is not a request for document and hence not tenable.
5.	IP address used for sending the forged emails is still not disclosed even after ten years of investigation period.	This is an argument without any documentary proof on behalf of Noticee no.9. Hence, the request is not tenable. IT is noted that the Annexure to SCN mentions the email address and does not rely on any IP address.
6.	Genuineness of email is yet to be authenticated	This is an argument without any documentary proof on behalf of Noticee no.9. Hence, the request is not tenable.
7.	As per SEBI directions during personal hearing I have written letters to Farmax,Google mail, cyber crime,Emco Limited, however one of them chose to reply, leave aside confirming authenticity of the email	Not pertaining to proceedings before SEBI. This is a mere assertion on part of Noticee no.9 and not tenable.
8.	In Police Complaint surname written in Chauradiya and not Bangera the surname is not mine	Surname mentioned in the complaint made to police by FIL is not relevant to present proceedings as SEBI after conducting separate investigation under Section 11C of the SEBI Act, 1992 has found that Noticee no. 9 was involved in the matter.
9.	Did Emco Limited confirm whether any email sent from their email id nvbangera@emcindia.com	This request is a query. Therefore , such request is untenable.
10.	Did La Richesse confirm whether any email sent from their email id nithis@larichesse.in	This request is a query. Therefore , such request is untenable.
11.	Why address of NB shown as Panvel	This request is a query. Therefore , such request is untenable.
12.	What was the address of NB during the investigation period June to August 2010	This request is a query. Therefore , such request is untenable.

13.	Whether La Richeesse Advisors confirmed usage of email after my resignation	This request is a query. Therefore , such request is untenable.
14.	What was the internet IP address	This request is a query. Therefore , such request is untenable.
15.	Can the emails be shown on computer	This request is a query. Therefore , such request is untenable.
16.	Can the emails be forwarded	This request is a query. Therefore , such request is untenable.
17.	Any payment made of working for the GDR issue after resigning from LA Richeesse in March 2010	This request is a query. Therefore , such request is untenable.
18.	Any shares given for working on the GDR issue	This request is a query. Therefore , such request is untenable.
19.	Whether notice involved in any other GDR issue	This request is a query. Therefore , such request is untenable.
20.	Any GDR given for working on the GDR issue	This request is a query. Therefore , such request is untenable.
21.	Any documents which contain noticee's signature	This request is a query. Therefore , such request is untenable.
22.	Any document which contains noticee's photo	This request is a query. Therefore , such request is untenable.
23.	Has noticee signed any of the bank documents	This request is a query. Therefore , such request is untenable.
24.	Why Farmax balance sheet did not disclose GDR fraud	This request is a query. Therefore , such request is untenable.
25.	Why noticee not invited during product launch	This request is a query. Therefore , such request is untenable.
26.	Why noticee name not in the fund flow picture	This request is a query. Therefore , such request is untenable.
27.	Why email pages are missing	This request is a query. Therefore , such request is untenable.
28.	Why email pages are not as per date	This request is a query. Therefore , such request is untenable.
29.	Why the time of email do not go ascending r descending order	This request is a query. Therefore , such request is untenable.
30.	How can we rely on emails given by Farmax when they refuse signing of agreement before notary	This request is a query. Therefore , such request is untenable.
31.	As per email dated May 01, 2011 Bank token was given to Rajubhai in Ahmedabad why noticee name included in it	This request is a query. Therefore , such request is untenable.

32.	When SEBI passed order on GDR issue in 2011 why Farmax filed complaint n 2013	This request is a query. Therefore , such request is untenable.
33.	Why Farmax auditor did not report about GDR fraud	This request is a query in respect of auditor for non-reporting of GDR fraud. Therefore , such request is untenable.
34.	Why Farmax directors report did not disclose GDR fraud	This is merely a query. Therefore , such request is untenable.
35.	As per SEBI no GDR funds received however Farmax complaint states GDR fraud above 300 crores	This is submission/assertion and is not seeking of document or inspection.
36.	As per SEBI no GDR funds received however Farmax annual report states GDR invested in subsidiary	This is submission/assertion and is not seeking of document or inspection.
37.	SEBI passed GDR order in 2011 why Farmax GDR order was not passed till date	This is merely a query and not tenable.
38.	Evidence showing any relation with Arun Panchariya	Any evidence relied upon in the SCN has already been provided as given in para 2 above. This is merely a query and not tenable.
39.	Evidence showing any relation with Prashanth Reddy	-Do-
40.	Evidence showing any relation with Malha Reddy	-Do-
41.	Evidence showing any relation Vintage FZE	-Do-
42.	Evidence showing any relation with India Focus Cardinal Fund	-Do-
43.	Evidence showing any relation with Cardinal Capital Partners Ltd.	-Do-
44.	Evidence showing any relation with Ababil Start Tradding	-Do-
45.	Evidence showing any relation with Ace Consultancy FZE	-Do-
46.	Evidence showing any relation with Al Jabha Accounting Services	-Do-
47.	Evidence showing any relation with Alchemy International FZE	-Do-
48.	Evidence showing any relation with Antariksh Trading FZE	-Do-
49.	Evidence showing any relation with Asahi Infra & Project Ltd. FZE	-Do-
50.	Evidence showing any relation with Bin Ahmed Gypsum and Décor	-Do-
51.	Evidence showing any relation with Hind Cargo Trasnport	-Do-
52.	Evidence showing any relation with Maars Software International Ltd.	-Do-
53.	Evidence showing any relation with MIC Middel East FZE	-Do-
54.	Evidence showing any relation with RPL International Trading FZE	-Do-

55.	Evidence showing any relation with Avon Corporation Ltd.	-Do-
56.	Evidence showing any relation with Sanjay Aggarwal	-Do-
57.	Evidence showing any relation with Mukesh Chauradiya	-Do-
58.	Evidence showing any relation with Panasia	-Do-
59.	Evidence showing any relation with Depository BNY	-Do-
60.	Evidence showing any relation with Prospect Capital Ltd.	-Do-
61.	Evidence showing any relation with John Behar	-Do-
62.	Evidence showing any relation with Cardinal	-Do-
63.	Evidence showing any relation with See Dragon	-Do-
64.	Evidence showing any relation with Higblue Sky	-Do-
65.	Evidence showing any relation with Golden clip	-Do-
66.	Evidence showing any relation with Luxembourg Stock Exchange	-Do-
67.	Evidence showing any relation with Aksh Optifibre Ltd.	-Do-
68.	Evidence showing any relation with Aqua Logistics Ltd.	-Do-
69.	Evidence showing any relation with Jindal Cotex Ltd.	-Do-
70.	Evidence showing any relation with Nakoda Ltd.	-Do-
71.	Evidence showing any relation with Nissan Copper Ltd.	-Do-
72.	Evidence showing any relation with Syncom Healthcare Ltd.	-Do-
73.	Evidence showing any relation with Euram Bank	-Do-
74.	Evidence showing any relation with any of the accused	-Do-
75.	Evidence for any payment received from Arun Panchariya	-Do-
76.	Evidence for any payment received from Prashant Reddy	-Do-
77.	Evidence for any payment received from Malha Reddy	-Do-
78.	Evidence for any payment received from Pan Asia Advisors Ltd.	-Do-
79.	Evidence for any payment received from Vintage FZE	-Do-
80.	Evidence for any payment received from India Focus Cradinal Fund	-Do-
81.	Evidence for any payment received from Cardinal capital Partners Ltd.	-Do-
82.	Evidence for any payment received from Ababil Star Trading	-Do-
83.	Evidence for any payment received from Ace Consultancy FZE	-Do-
84.	Evidence for any payment received from Al Jabha Accounting Services	-Do-

85.	Evidence for any payment received from Alchemy international FZE	-Do-
86.	Evidence for any payment received from Antariksh Trading FZE	-Do-
87.	Evidence for any payment received from Infra & Project Ltd. FZE	-Do-
88.	Evidence for any payment received Bin Ahmed Gypsum and Décor	-Do-
89.	Evidence for any payment received from Hind Cargo Transport	-Do-
90.	Evidence for any payment received from Maars Software International Ltd.	-Do-
91.	Evidence for any payment received from MIC Middle East FZE	-Do-
92.	Evidence for any payment received from RPL International Trading FZE	-Do-
93.	Evidence for any payment received from Avon Corporation Ltd.	-Do-
94.	Evidence for any payment received from Sanjay Aggarwal	-Do-
95.	Evidence for any payment received from Mukesh Chauradiya	-Do-
96.	Evidence for any payment received from Panasia	-Do-
97.	Evidence for any payment received from Depository BNY	-Do-
98.	Evidence for any payment received from Prospect Capital Ltd.	-Do-
99.	Evidence for any payment received from John Behar	-Do-
100.	Evidence for any payment received from Cardinal	-Do-
101.	Evidence for any payment received from See Dragon	-Do-
102.	Evidence for any payment received Highblue Sky	-Do-
103.	Evidence for any payment received from Golden Clip	-Do-
104.	Evidence for any payment received from Luxembourg Stock Exchange	-Do-
105.	Evidence for any payment received from Heman	-Do-
106.	Evidence for any payment received from Aksh Optifibre Ltd.	-Do-
107.	Evidence for any payment received from Aqua Logistics Ltd.	-Do-
108.	Evidence for any payment received from Jindal Cotex Ltd.	-Do-
109.	Evidence for any payment received from Nakoda Ltd.	-Do-
110.	Evidence for any payment received from Nissan Copper Ltd.	-Do-
111.	Evidence for any payment received from Syncom Healthcare Ltd.	-Do-
112.	Evidence for any payment received from any of the accused	-Do-
113.	Evidence for any payment received from Euram Bank	-Do-

114.	Whether notary has confirmed my presence at the time of signing the Pledged Agreement	-Do-
115.	Whether banker has confirmed my presence at the time of signing agreement	-Do-
116.	Whether any investor has confirmed my presence	-Do-

25. Noticee no. 9 has raised a number of queries as referred above which are untenable.

Apart from that, I note that he has sought original emails purportedly sent by him to FIL when he was working for La Richesse Advisors Private Ltd. Noticee no. 9 has relied on Section 65B of the Evidence Act, 1872 to seek the certified copies, soft copies etc. of the same. Moreover, I note that the impugned emails were exchanged between FIL and the Noticee no. 9 himself or Noticee no. 5 and therefore, the original of the emails will be available with the persons amongst whom emails were exchanged and request for the original is untenable. The Noticee no. 9 has also not denied that he was an employee of La Richesse. FIL which is the recipient of these emails have confirmed the exchange of emails related to the GDR issue with Noticee nos. 5 and 9 which corroborates these emails. As copies of all the documents relied upon by SEBI in the SCN has been already provided to Noticee no. 9 and other documents sought by the Noticee no. 9 do not form part of the record, I find that all the documents pertaining to Noticee no. 9 was made available which was enough for him to defend himself or to make proper representation against the proposed action and therefore no prejudice has been caused to Noticee no. 9 in defending his interest and contesting the allegation made against him in the SCNs. I note that the Noticee no. 9, instead of submitting a proper reply to the SCN on time has repeatedly sought documents and information which has no bearing on the present matter and there is no likelihood that SEBI will have such information. For example, *inter alia* he sought the following information/documents: i) Why Noticee not invited during product launch; and ii) When SEBI passed order on GDR issue in 2011 why Farmax filed complaint in 2013 iii) Why Noticee name not in the fund flow picture iv) any document which contains Noticee's photo v) As per email dated May 01, 2011 Bank token was given to Rajubhai in Ahmedabad why Noticee name included in it. Information such as these cannot be reasonably expected to be available with SEBI nor are germane to the present matter. This clearly shows that the Noticee no. 9 was not interested in submitting a reply to the SCN but only indulged in seeking unwarranted and

untenable information and thus making an effort to delay and stonewall the present proceedings.

26. In this regard, it would also be apt to refer to the observations of the Hon'ble SAT in the matter of Mayrose Capfin Pvt. Ltd. Vs SEBI (Appeal No.20 of 2012 decided on 30.03.2012) wherein the Hon'ble SAT observed as under:

“...no prejudice has been caused to the appellant on this count as the extract of the relevant trade logs and order logs pertaining to the appellant was made available which was enough for him to defend himself or to make proper representation against the proposed action.”

In the present case also, I find that the Noticee no.9 has been provided with the relevant documents relied upon in the SCN which are enough for him to defend his case and therefore, the contention of the Noticee no.9 in this regard is not tenable.

27. On the merits of the case, as per SCN, FIL i.e. Noticee no. 1 issued 4.25 million GDRs representing 10,62,50,000 shares of FIL, amounting to US\$59.925 million on June 29, 2010 and further issued 0.85 million GDRs representing 2,12,50,000 shares of FIL, amounting to US\$11.985 million on August 14, 2010. Noticee no. 2 is the MD of Noticee no. 1. Noticee no. 5 and 9 who were the owner and employee, respectively, of La Richesse, who were the Indian advisors to FIL for its GDR issue. Noticee no. 7 was the lead manager to the said issue of GDR and Noticee no. 8 is the MD of Noticee no. 7. Local custodian for GDR issue of FIL was DBS Bank, Mumbai and BNY was the global depository bank. GDRs were listed on Luxembourg Stock Exchange. The said issue of GDR of FIL involving 5.1 million GDRs representing 12,75,00,000 underlying shares of FIL, was subscribed by only one subscriber i.e. Noticee no. 4. Noticee no. 3 and Noticee no. 6 was MD and director (subsequently MD also), respectively, of Noticee no. 4. For subscribing to the GDR issue of FIL, Noticee no. 4 took a loan of USD 71.91 million from Noticee no. 12 which is a bank, under the loan agreement dated May 05, 2010. On the very same day another agreement for pledge was signed between Noticee no. 12 and FIL whereby FIL pledged its GDRs proceeds, as a security for the loan availed by Noticee no. 4 for subscribing to the GDR issue of FIL. Out of total GDR proceeds of USD 72.20 million, USD 4,75,00 were received

by FIL in its Indian Bank account, USD 15.6 million were transferred to Farmax International FZE – Sharjah based subsidiary of FIL from where it was further transferred to different entities. Noticee no. 4 repaid loan amount to Noticee no. 12 aggregating to USD 15,480,200 till October 08, 2010 and thereafter, defaulted on the loan payment. As a result, on August 13, 2012, Noticee no. 12 realized part of the pledged security (subscription amount paid by Noticee no. 4) to the extent of USD 56.57 million. Regarding GDRs, SCN alleges that some of the GDRs subscribed by Noticee no. 4 were transferred to Noticee no. 10 and 11, the entities connected to Noticee no. 3, who after converting them into underlying equity shares of FIL, sold them in the Indian securities market. The GDR facility was terminated by BNY, the overseas depository, with effect from June 16, 2015. Out of total 12,75,00,000 underlying shares of GDRs, Noticee no. 10 and 11, sold 3,14,00,000 shares of FIL before termination of the GDR facility. After termination of the GDR facility, remaining underlying 9,61,00,000 shares of FIL were sold by BNY in India. Noticee no. 13 is holding 100% beneficial interest in Noticee no. 10 and Noticee no. 3 holds 100% beneficial interest in Noticee no. 13. SCN also alleges that Noticee no. 4 to 13 were connected entities of Noticee no. 3. The allegations levelled in SCN shows that the Noticees were part of a fraudulent scheme relating to the GDR issue of FIL.

28. I note that FIL and Noticee no. 2 have not denied the existence of the Loan Agreement as well as the Pledge Agreement, both dated May 05, 2010 but have stated that the signature on the Pledge Agreement of Noticee no. 2 is forged. I also note that FIL has stated that Noticee no. 2 had signed blank documents and handed over them to Noticee no. 5 and 6 for the purpose of GDR issue. I find these two arguments contradictory. If the stand of FIL is that signed documents which included pledge agreement were handed over by it to Noticee no. 5 and 6, then, it is not open for FIL to plead that signature of Noticee no. 2 on the pledge agreement were forged. I note that, as admitted by Noticee nos. 1 and 2, handing over signed blank documents implies that the signatory is authorizing whatever purpose these documents will be used for. Thus, it is clear that the Pledge Agreement was executed based on the signed blank papers provided by FIL and its MD i.e. Noticee no. 2. Therefore, FIL cannot question the validity of the same at this stage before this quasi judicial authority and the validity of such Pledge Agreement can only be questioned before the appropriate forum. If there is any document which is claimed to be wrongly

executed the law applicable provides appropriate remedy for rectification of such document in order to declare the same non est before the appropriate forum at the earliest. If FIL was aggrieved it should have taken the appropriate step in this regard at the earliest opportunity before appropriate forum and no such claim can be entertained in these proceedings. Further, I note that in its reply FIL has submitted that first time it came to know about the pledge agreement on April 12, 2012. In the same reply, FIL has also submitted that Noticee no. 12 had sent two emails dated June 14, 2011 and December 12, 2011 with regard to pledge agreement. Therefore, any reasonable person with ordinary prudence could have enquired and would have known the scope of pledge agreement especially when the plea of FIL before this quasi judicia authority is that it had never entered into any pledge agreement. These submissions by FIL show that ignorance of pledge agreement pleaded by FIL and Noticee no. 2 is afterthought and they were aware of the existence of pledge agreement since its inception as borne out and further corroborated from the fact that it passed a resolution in its Board of Directors meeting with regard to the same as discussed in para 29 below. Thus, FIL and Noticee no. 2 were aware of the Pledge Agreement as on the date of passing of board resolution.

29. In this regard, it is further noted that a resolution was passed by the Board of Directors of FIL on January 30, 2010 which resolved to open the EURAM Bank account of FIL for purpose of receiving GDR proceeds and authorised Noticee no. 12 to use the funds deposited in the said bank account as security in connection with loans, if any. Specifically, the said resolution dated January 30, 2010 passed by the board of FIL, provided as follows:

“Resolved further that the Bank be and is hereby authorised to use the funds so deposited in the aforesaid bank account as security in connection with loans if any as well as to enter into any escrow agreement or similar arrangement if and when so required.”

The resolution clearly shows that it provided for authorisation to use the funds to be deposited in the EURAM bank account, as security in connection with loans, if any. I note that at the time of the Resolution there was no loan which FIL had taken from EURAM Bank. The board of FIL ought to have questioned the existence of such a

loan. I find that there is nothing on the record to suggest that board did raise any question to such resolution. This shows that FIL was aware of the Pledge Agreement.

30. FIL has also submitted that management of FIL and Mr. M. Srinivasa Reddy, MD of FIL (Noticee no. 2) did not possess expert knowledge relating to GDR issue and relied upon the guidance of AP (Noticee no. 3)/and his connected entities who were the lead managers, Indian advisor to the issue etc. As noted above, resolution of the board of directors of FIL dated January 30, 2010 clearly authorises Noticee no. 12 (EURAM bank) to use the funds deposited in the FIL's EURAM bank account as a security in connection with loans, if any. SCN alleges that Noticee no. 5 and 9 advised FIL on various issues/documents pertaining to GDR issue of FIL including drafting of board resolutions. Therefore, the said resolution also must have been provided by the Noticee no. 5 and 9, however, passing of such a resolution by FIL wherein it was contemplated to pledge entire funds kept therein for securing the loan taken, if any, without questioning the same gives rise to a reasonable inference that FIL and Noticee no. 2 were aware of such arrangement. By virtue of this pledge agreement though GDR proceeds were deposited in the overseas bank account of FIL, however, the amount deposited in the account was not at the free disposal of FIL as same was kept as collateral prior to issuance of GDRs for the loan availed by sole subscriber to GDRs i.e. Noticee no. 4. It is further argued by FIL that it had received a list of allottees of GDRs from the Lead Manager i.e. Noticee no. 7 (Prospect Capital Limited) and had believed the same to be true. I note that at the time of GDR issue the funds were received into the EURAM Bank account of FIL only from one person i.e. Noticee no. 4. Therefore, FIL should have suspected the veracity of the list of subscribers purportedly provided by Prospect, from this very fact. The list of subscribers to the GDR issue could also have been sought/cross checked from the Overseas Depository Bank. Being a listed company, FIL ought to have known the subscribers to its issue and the omissions by FIL gives rise to a reasonable inference that Notice nos. 1 and 2 were aware of the whole fraudulent scheme devised by Noticee no. 3 and played their assigned role and this fraudulent scheme would not have been possible without the active participation of the issuer company, FIL and its MD, Noticee no.2. Therefore, the contention of FIL and Noticee no. 2 that they were unaware of the process of GDR issue and trusted Noticee no. 3 and its related entities and Noticee no. 7, is not tenable.

31. I note that the Loan Agreement dated May 05, 2010 executed between Noticee no. 4 and Noticee no. 12 stated that Pledge of the account no. 580018 (FIL's EURAM Bank account wherein GDR proceeds were received) was an integral part of the Loan Agreement. Moreover, the preamble of the Pledge Agreement dated May 05, 2010 executed between FIL and EURAM Bank referred to the Loan Agreement. I also note that a perusal of the aforesaid Loan Agreement and Pledge Agreement reveals that Noticee no. 12 granted loan to Noticee no. 4 specifically for subscription of GDRs of FIL, since the Loan Agreement mentioned the loan amount "*... may only be transferred to EURAM account No.580018 Farmax India Ltd...*". This fact has not been denied by FIL or Noticee no. 2. The Loan Agreement and Pledge Agreement were part of a scheme where subscription of GDRs of FIL was done through loan availed by Noticee no. 4 from Noticee no. 12 for which the security was provided by FIL by pledging its GDR proceeds with Noticee no. 12. I note that the purpose of GDR issue is to raise further capital from overseas market for the company. If the same proceeds are pledged for the purpose of facilitating the subscriber to subscribe to the GDR issue, then the purpose of raising capital itself is defeated. Therefore, I find that this artificial arrangement for the issuance and subscription of the GDR issue of FIL was fraudulent and would not have been possible without the participation of Noticee nos. 1 and 2.

32. FIL has submitted that it has made efforts to realise the GDR proceeds including writing to Noticee no. 12, making effort to proceed against Noticee no. 12, Noticee no. 4 and Noticee no. 3, etc. in foreign courts as well as filing a First Information Report against them in India. It is observed that FIL has purportedly filed a First Information Report which is being investigated by CID, Telangana, regarding the GDR issue on October 29, 2013, the outcome of which has not been informed even after the passage of more than six years, while a purported legal opinion was taken by FIL from an advocate in June 2013. Even if such a contention is accepted, I note that the same cannot be a ground to mitigate the direct involvement of FIL, as a GDR issuer, in the fraudulent scheme and diversion of the proceeds of the GDR issue. I note that, from the year 2011 onwards FIL was well aware that GDR proceeds had not been remitted to its Indian bank account. Moreover, as per FIL's own submission, Noticee no. 12 informed it about the existence of the Pledge Agreement in April 2012.

Thus, delay in initiating legal proceedings in spite of the apparently huge loss suffered by the company, raises doubt about the bonafide of FIL and it appears that issuer companies of several other GDR matters wherein such fraudulent schemes have been investigated have taken a similar defence. The futility of filing a complaint in India whereas the fraud involved overseas party also points to the fact that filing a police complaint by FIL was an eyewash and an afterthought. There is also no reasonable explanation as to why FIL did not pursue the legal proceedings in Austria even after seeking a legal opinion. Be that as it may be, I also note that Hon'ble SAT in Transgene Biotech Ltd. Vs. SEBI (Appeal No. 599 of 2019 dated February 11, 2020) while dealing with similar plea of filing of FIR, in a similar case, observed as under:

“5. Before this Tribunal the only contention raised by the appellant was that they have not committed any fraud nor defrauded any investor and in fact the appellants were victims of fraud and forgery committed by one Mr. Nirmal Kotecha and his associates. It was contended that the promoters/ or directors of the company never received the GDR proceeds nor misappropriated it. Such contention was repelled by the WTM in the impugned order and cannot be accepted by us as we find that the appellants have not denied the fact that the company had made two GDR issues nor has denied the fact that the proceeds of the two GDR issues were transferred to various entities as brought out in the show cause notice. The only defense is that such transfer was made on the advice of Mr. Nirmal Kotecha on whose advice the company floated a subsidiary in Hong Kong and entered into agreement with Asia First Technologies Ltd. (AFTL) and SyMetric Sciences Inc. (symetric) for purchase of technology and thus the diversion of the GDR proceeds was done at the behest of Mr. Nirmal Kotecha cannot be believed. The contention that the first information report has been lodged against Mr. Nirmal Kotecha cannot be a ground to mitigate the direct involvement of the appellant in the fraudulent scheme and diversion of the proceeds through two other entities.....”

33. With respect to allegation of transfer of GDR proceeds from FIL's EURAM Bank account to the account of Farmax International FZE, its UAE subsidiary, FIL in its reply has submitted that Noticee no. 2 had signed blank TT forms as asked by Noticee no. 5 and 6 believing that they would be used to transfer amount to FIL's Indian bank

account but without their knowledge the amount was transferred to a subsidiary of FIL, from where it has been transferred to AP entity accounts. As discussed above, FIL and Noticee no. 2 were aware and active participant in the fraudulent scheme devised by Noticee no. 3. The present allegation of transfer of funds to its subsidiary and the explanation furnished by FIL in its reply has to be seen in that backdrop otherwise a listed company and its MD would not have handed over signed TT slips to third parties without any due diligence and without asking some basic questions regarding the need for blank signed TT forms. FIL has further contended that the transfer forms for the transfer of GDR proceeds from FIL's EURAM Bank account to the account of Farmax International, FZE, its UAE subsidiary originated from the fax number of Noticee no. 4 and has therefore submitted that the diversion of funds was orchestrated by AP in connivance with Noticee no 4 which is an AP entity. In this regard, I note that the transfer request of amounts to from FIL's EIRAM Bank account to its Indian bank account also originated from the same fax number. In view of this fact, I am inclined to believe that FIL and Noticee no. 2 were both aware of the transfer of funds from FIL's account with EURAM bank where the GDR proceeds were deposited, to the bank account of its UAE subsidiary. FIL has not provided any explanation as to why the transfer request pertaining to its Indian Bank account also originated from the Fax Number of Noticee no. 4. Moreover, FIL has failed to explain how it had no control over the bank account of its own subsidiary and funds were transferred onwards from the bank account of Farmax International, FZE, to various entities which as per SCN were connected to Noticee no. 3. Thus, I find that the diversion of GDR proceeds from the EURAM Bank account no. 580018 of FIL to Farmax International, FZE, and thereafter to other entities could not have been possible without the active participation of Noticee nos. 1 and 2 and these Noticees were aware of the artificial arrangement for the subscription to GDRS and the diversion of GDR proceeds. This finding further corroborates the earlier finding that FIL and Noticee no. were aware and part of the fraudulent scheme devised by Noticee no. 3.

34. In this regard, the Hon'ble SAT in Jindal Cortex Ltd. Vs. SEBI (Appeal No. 376 of 2019 decided on February 05, 2020) observed as under:

“9..... The modus operandi adopted in all such cases have been similar i.e. the subscriber to the GDR issue (Vintage here) taking a loan from a foreign bank/ investment bank (EURAM Bank here) enabled by a Pledge Agreement signed between the issuer company (JCL here) and the loaner bank. This arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR.....”

35. I note that the corporate announcements made by the FIL were false and misleading and the following material information were also suppressed viz. (i). execution of Loan Agreement dated May 05, 2010 by Noticee no. 4 for obtaining loan from Noticee no. 12 for subscribing the GDR issue of FIL, (ii) execution of Pledge Agreement dated May 05, 2010 between FIL and Noticee no. 12, for pledging the GDR proceeds to provide security for the loan taken by Noticee no. 4, and (iii) Noticee no. 4 was the only subscriber of 5.10 million GDR issued by FIL. I find that all these events were critical information for the investors to take an informed decision regarding their investment in the securities of FIL. I, thus, find that the corporate announcements made by FIL on June 29, 2010 and August 14, 2010 regarding allotment of GDR issues had the potential to mislead the investors and/or influence the price of the scrip of FIL and/ or created a false impression in the minds of the investors that the GDR issue was fully subscribed whereas the FIL itself had facilitated subscription of its GDR issue wherein the subscriber i.e. Noticee no. 4 obtained loan from Noticee no. 12 for subscribing to the GDR issue of FIL, and FIL secured that loan by pledging the GDR proceeds with Noticee no. 12 and, in this connection, FIL did not receive GDR proceeds to the extent of USD 56.66 million from Noticee no. 12 as the Noticee no. 4 defaulted on the repayment of loan as a consequence of which Noticee no. 12 invoked its pledge on the remaining GDR proceeds of FIL. Moreover, FIL and Noticee no. 2 also diverted USD 15.60 million to UAE subsidiary of FIL, Farmax International FZE and thereafter to other entities related to Noticee no. 3. I also find that in addition to make misleading disclosures, FIL failed to make material disclosures regarding execution of loan agreement and pledge agreement dated May 05, 2010.

36. With regard to the writing off of the pledged amount, FIL has submitted that it had followed Indian Accounting Standards and based on professional advice it wrote off the GDR amount of 72.2 million as there was no other option. As mentioned earlier, FIL had pledged its GDR proceeds of USD 71.91 million against the loan availed by Noticee no. 4. In terms of pledge agreement, FIL could utilize its GDR proceeds only up to the extent of amount repaid by Noticee no. 4 and there was a possible obligation on FIL for an amount INR 252.82 crore in FY 2010-11 and INR 251.56 crore (kept with EURAM Bank in fixed deposit) on the date of balance sheets i.e. March 31, 2011 and March 31, 2012, respectively, in the event of default of repayment of loan by Noticee no. 4 which is contingent liability in nature which was subsequently defaulted. From the examination of the Annual Report of FIL for FYs 2010-12, it has been observed that FIL has not disclosed the contingent liability for amount kept with EURAM Bank in fixed deposit. I am of the view that FIL should have mentioned its contingent liability in the form of the Pledge Agreement dated May 05, 2010 between FIL and Noticee no. 12. I note that in Annual Report for FY 2011-12, FIL mentioned that *"...the company had amount of INR 2515.62 mn as fixed deposit as on March 31, 2012 with M/s EURAM Bank....M/s EURAM Bank has adjusted the total balance available in our account against settlement of purported (without prior intimation/ notice to M/s Farmax India Limited) loan taken by Alta Vista International FZE vide letter of realization dated August 14, 2012 from EURAM Bank.....The management is unsure in quantifying the associated cost subject to which an amount of INR 2515.62 mn."* However, this appears to be a post-facto disclosure which has been made by FIL after the GDR proceeds have been realized by Noticee no. 12 and after FIL's shareholders had suffered the loss.

37. From the above, I note that the actions of FIL and Notice no. 2 were in the furtherance of the fraudulent scheme of issue of GDRs and has resulted in 'fraud' as defined under the PFUTP Regulations, 2003. In this respect, it would be appropriate to refer to the Order of the Hon'ble SAT dated October 25, 2016 in Appeal No. 126 of 2013 (Pan Asia Advisors Limited vs. SEBI) wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that:

"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in

India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud.”

38. Therefore, I find that the Noticee no. 1, FIL has violated the provisions of Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1), (2)(f), (k), (r) of PFUTP Regulations, 2003 and Noticee no. 2, Mr. M. Srinivasa Reddy has violated Section 12A(a), (b), (c) of SEBI Act, 1992 read with Regulations 3(a), (b), (c), (d) and 4(1) of PFUTP Regulations, 2003.

39. The SCN alleges that, the sole subscriber to the GDRs of FIL i.e. Noticee no. 4, whose beneficial owner was Noticee no. 3, obtained loan from Noticee no. 12, an entity connected with Noticee no. 3, for subscription of GDR issue for which security was provided by FIL by pledging its GDR proceeds. Further, the SCN observes that Noticee no. 4 defaulted on repayment of loan to Noticee no. 12 to the extent of USD 56.60 million, thereby GDR proceeds to that extent were adjusted by Noticee no. 12 and subsequently written off by FIL. USD 15.60 million were also written off by FIL which were transferred by FIL from its EURAM Bank account to the account of its subsidiary based in UAE, i.e. Farmax International, FZE, and further from Farmax International, FZE's bank account to certain other entities. The SCN also alleges that entities connected to Noticee no. 3 i.e. Noticee no. 10 (who was also the subaccount of FIL i.e. Noticee no. 12 and 13), and Noticee no. 11 were recipients of the GDRs and converted the GDRs and off loaded the converted equity shares in the India securities market. The SCN alleges that Noticee no. 12, 10 and 11 were all connected to Noticee no. 3.

40. Based on the same the SCN alleges that, Noticee no. 3 arranged loan for the subscription to GDRs, subscribed to GDRs through Noticee no. 4, and sold the GDRs to Noticee no. 10 and 11 i.e. FII-Sub accounts, who in turn, dumped the converted equity shares in the Indian securities market. The SCN further states that Noticee no. 3 in connivance with FIL devised and structured fraudulent scheme through his connected entities like Noticee no. 4, Noticee no. 12, Noticee no. 7, Noticee no. 6, Noticee no. 5, Noticee no. 9, Noticee no. 10, Noticee no. 11 and Noticee no. 13. The SCN also alleges that Noticee no. 10, 11, 12, 4, Mr. Anant Kailash Chandra Sharma and Reema Narayan Shetty were connected to Noticee no. 3. In collusion with these entities and FIL, Noticee no. 3 devised the fraudulent GDR issue of FIL. As per SCN, the connections between Noticee no. 3 and different entities were as under:

1	Pan Asia Advisors Ltd. (now known as Global Finance and Capital Ltd.)	Noticee no. 3 was director (April 24, 2006 to September 29, 2011) and 100% shareholder (July 01, 2008 to January 20, 2012)
2	Vintage FZE (Noticee no. 4) (now known as Alta Vista International FZE)	Noticee no. 3 was Managing Director as on May 05, 2010 as well as beneficial owner
3	India Focus Cardinal Fund (IFCF) (Noticee no. 10)	Noticee no. 3 was director from August 22, 2008 to October 28, 2010, Investment Officer (100% shareholder) and beneficial owner
4	Cardinal Capital Partners Limited (Noticee no. 13)	Noticee no. 3 was beneficial owner and 100% shareholder
5	EURAM Bank, Austria (Noticee no. 12)	Noticee no. 3 connected Pan Asia Advisors Ltd. had joint venture with Noticee no. 12, namely, EURAM Bank Asia Limited.
6	Euram Bank Asia Limited	Noticee no. 3 was director and President (resigned on September 22, 2011)
7	Mr. Mukesh Chauradiya (Noticee no. 6)	Noticee no. 3 was beneficial owner of Noticee no. 4 in which Noticee no. 6 i.e. Mr. Mukesh Chauradiya served as Managing Director and director. In Ramsai Investment Holdings Private Limited, where Noticee no. 3 was holding 99.98% shares (for the period 2009-2013) and was director for the period from February 04, 2008 to August 18, 2010 wherein Noticee no. 6 was director in the same company (first appointment from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016).
8	Mr. John Behar (Noticee no. 8)	Noticee no. 3 and Noticee no. 8 were director in Pan Asia Advisors Ltd. wherein Noticee no. 3 was promoter/ director (April 24, 2006 to September 29, 2011)- Noticee no. 8 was director (April 24, 2006 to September 29, 2011) of Pan Asia Advisors Ltd.

		Noticee no. 8 provided professional advice to Noticee no. 3 regarding Pan Asia Advisors Ltd.
9	Prospect Capital Limited (Noticee no. 7)	Noticee no. 7 is wholly owned and managed by Noticee no. 8 who is connected to Noticee no. 3. Noticee no. 5 represented himself as director of Noticee no. 7 before BNY and held email id with a domain name prospectcapital in the name of sa@prospectcapital.com
10	Mr. Anant Kailash Chandra Sharma	<p>Noticee no. 3 and Mr. Anant Kailash Chandra Sharma were directors in Sai Sant Advisory (India) Private Limited:</p> <p>Noticee no. 3 was director from August 31, 2007 to October 20, 2010</p> <p>Anant Kailash Chandra Sharma was director from December 01, 2009 till March 18, 2016.</p> <p>Noticee no. 3's brother Mr. Satish Ramswaroop Panchariya is promoter of Alka India Limited. Anant Kailash Chandra Sharma was also additional director in Alka India Limited since December 01, 2009. Noticee no.3's brother Mr. Satish Ramswaroop Panchariya and Mr. Ashosk Ramswaroop Panchariya are directors in Alka India Limited since October 05, 2011 and April 29, 2005 respectively, till date.</p>
11	Highblue Sky Emerging Market Fund (Noticee no. 11)	Mr. Anant Kailash Chandra Sharma is director (since August 11, 2014 till date) and beneficial owner (since September 09, 2014 till date) of Noticee no. 11. Mr. Anant Kailash Chandra Sharma is connected to Noticee no. 3.
12	Golden Cliff (previously known as Vaibhav Investments Limited)	<p>Mr. Anant Kailash Chandra Sharma is director (since July 16, 2014 till date) and 100% beneficial owner (since September 09, 2014 till date) of Golden Cliff. Anant Kailash Chandra Sharma is connected to AP.</p> <p>Reema Narayan Shetty was director and 100% beneficial owner (from September 12, 2013 till September 09, 2014) of Golden Cliff. She was authorized signatory for the bank account of Noticee no. 3 connected entity Noticee no. 10 - India Focus Cardinal Fund which was maintained with EURAM Bank, Austria i.e. Noticee no. 12.</p>
13	KBC Aldini Capital Ltd	Mr. Daniel Baumslag is director of KBC Aldini Capital Ltd. (since August 03, 2015 till date) and Noticee no. 11 (from March 05, 2010 to May 16, 2011). Mr. Daniel Baumslag was 100% shareholder of Noticee no. 11 (from March 05, 2010 to June 14, 2011). Mr. Anant Kailash Chandra Sharma is connected to Noticee no. 3 and Anant is beneficial owner and director of Noticee no. 11.

41. I note that Noticee no. 3, appears to be the common thread which runs through Noticee no. 3 to 13 and each stage of the fraudulent transactions which ultimately resulted in the loss of USD 72.20 million to FIL. I note that there was an increase in the capital of FIL through issue of GDRs for which FIL did not receive commensurate consideration. The GDRs were subscribed by Noticee no. 4 which was a wholly owned entity of Noticee no. 3 and the funds for the same was obtained, as a loan from Noticee no. 12 based on a pledge of the GDR proceeds by FIL to Noticee no. 12. In the Jindal Cotex case (supra) the Hon'ble SAT has held that this arrangement itself vitiates the entire issue of GDR as it is through an artificial arrangement supported by the company itself which enables the subscription to the GDR. I note that entire GDR proceeds did not reach the Indian bank account of the company (FIL) against those GDRs issued. In this case, the beneficiary of this scheme appears to be, in the first stage, Noticee no. 4 who received allotment of 5.10 million GDRs of FIL but defaulted on the loan taken from Noticee no. 12 to the extent of USD 56.60 million and based on the Loan Agreement and Pledge Agreement dated May 05, 2010 the outstanding loan amount was realized from GDR proceeds. Therefore, Noticee no. 4 did not have to pay full consideration for the GDRs and received GDRs of FIL worth USD 56.60 million for free. I note that Noticee no. 3 was the beneficial owner of Noticee no. 4. Thereafter, Noticee no. 4 transferred the GDRs to certain entities which included Noticee no. 10 (which was also wholly owned by Noticee no. 3) and Noticee no. 11 (which was connected to Noticee no. 3) which sold the converted equity shares in the Indian market and made money. I note that in the matter of the Pan Asia (supra) the Hon'ble SAT has discussed the role of Noticee no. 3 in six GDR matters wherein the modus operandi adopted was similar. In the Pan Asia matter (supra) the lead manager was also an Noticee no. 3 owned entity, Pan Asia Advisors Ltd. In the said matter the Hon'ble Tribunal has observed as follows:

“Even though all GDRs were not converted and sold, it is apparent that the modus operandi adopted by the appellants was not only to create an artificial impression that the GDRs have been subscribed by foreign investors, but also to create an impression that after the GDR issue, investors in India have started subscribing to the shares of issuer companies when in fact the shares were sold and acquired by the entities controlled by AP. In these circumstances inference drawn by SEBI that

at every stage of the GDR issue, the acts committed by the appellants constituted fraud on the investors in India cannot be faulted.”

42. I find that said scheme of issue of GDRs of FIL constitutes ‘fraud’ and I find that Noticee no. 3 connived with FIL and Noticee no. 2 to structure the fraudulent issue of GDRs wherein the shareholder of FIL suffered a loss to the tune of USD 72.20 million. I note that Noticee no. 4 was also a wholly owned entity of Noticee no. 3 and was part of the fraudulent scheme wherein without paying consideration/subscription money, it received allotment of GDRs in violation of law. Some of such GDRs were transferred by Noticee no. 4 to Noticee no. 10 and 11 who after converting them into underlying shares of FIL, sold the shares in the Indian securities market and thus made the profit as mentioned in para 45 below. Therefore, Noticee no. 3, 4 10 and 11 all are jointly and severally liable to disgorge the profit made by them. Therefore, I conclude that Noticee no. 3 and Noticee no. 4 have violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

43. I note that Noticee no. 10 was wholly owned by Noticee no. 3. With regard to Noticee no. 11, I note that it has accepted that the shares sold by it were issued without any consideration. It has made submissions that Mr. Anant Kailash Chandra Sharma not being its director/ beneficial owner during the period when it sold shares of FIL. However, I note that apart from the connection through Mr. Anant Kailash Chandra Sharma, Noticee no. 11 was connected to AP through the following entities:

- (a) Reema Narayan Shetty who was its beneficial owner from April 21, 2014 (The entity Golden Cliff became the beneficial owner of the Noticee no. 11 from April 21, 2014 onwards and Reema Narayan Shetty was the beneficial owner of Golden Cliff since September 2013) who also happened to be the Authorized Signatory for IFCF which was wholly owned by Noticee no. 3.
- (b) From October 22, 2012 onwards Noticee no. 11 is the sub-account of Golden Cliff, whose beneficial owner was Reema Narayan Shetty from September 2013 onwards.

- (c) The management company of Noticee no. 11, Aurisse International Ltd. is connected to AP through Noticee no. 6 - Mukesh Chauradiya who was its director and CFO in 2011 and Noticee no. 11 has the same address and contact number as Aurisse International Ltd.

44. From the above, I am of the view that Noticee no. 11 was connected to Noticee no. 3. I also observe that, Noticee no. 10 and Noticee no. 11 being funds which invest money of foreign corporate and institutional investors, as submitted in the reply of Noticee no. 11, should have exercised utmost due diligence in taking investment decisions. The Noticee no. 11 has not provided any reason for it to invest in GDRs of FIL and thereafter, converting and selling the equity shares except a general defense that sale is as per redemption request by the investors and Noticee no. 10 has not provided any explanation at all. I note that the connection between Noticee no. 3 and Noticee no. 10 and 11, coupled with the fact that these Noticees sold equity shares on conversion of GDRs issued without any consideration, and their inability to provide any rationale for the conversion and sale, leads to a reasonable inference that Noticee no. 10 and 11 were also part of the fraudulent scheme of issuance of GDRs of FIL without any consideration and subsequent sale of the converted equity shares in the Indian securities market. In view of the same, I find that IFCF (Noticee No. 10) and Highblue (Noticee No 11) have violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

45. As per the SCN, the summary of the sell trades of India Focus Cardinal Fund (IFCF) and Highblue Sky Emerging Market Fund in the scrip of FIL on BSE and NSE is placed below

Name of entity	No. of shares sold		Total no. of shares sold	Trade value (INR)		Total trade value (INR)
	BSE	NSE		BSE	NSE	
India Focus Cardinal	1,38,62,734	1,71,62,266	3,10,25,000	33,23,82,919.20	18,50,26,184.30	51,74,09,103.50
Highblue Sky Emerging Market Fund	2,37,500	1,37,500	3,75,000	1,60,476.85	97,197.50	2,57,674.35
Total	1,41,00,234	1,72,99,766	3,14,00,000	33,25,43,396.10	18,51,23,381.80	51,76,66,777.85

46. I also note that Noticee no. 10 and 11 were recipients of GDRs of FIL (from Noticee no. 4, which was owned by Noticee no. 3) which had been issued illegally without any consideration based on a fraudulent scheme and Noticee nos. 10 and 11 had sold the shares after converting the GDRs into shares of FIL, in the Indian market and made gains. Noticee no. 10 has made an illegal gain of Rs.51,74,09,103.50/- and Noticee no. 11 has made an illegal gain of RS. 2,57,674.35/- by selling underlying equity shares which were obtained by converting GDRs which had been issued fraudulently as part of an artificial arrangement as discussed in the previous paras. I note that Noticee no. 10 is wholly owned by Noticee no. 3 and Noticee no. 11 is connected to Noticee no. 3. In view of this, having regard to the close connection and role played by the Noticee nos. 3, 4 10 and 11, they should be made jointly and severally liable to disgorge the said illegal gain by Noticee no. 10 and 11. I find that the gains made by these Noticees by selling such shares is liable to be disgorged since the shares were issued illegally.

47. I note that the SCN states that Noticee no. 10 was registered as sub account of FII- EURAM Bank from December 12, 2008 to July 19, 2011 and Noticee no. 10 was granted transfer from EURAM Bank to another FII (FPI) i.e. Noticee no. 13 - Cardinal Capital Partners on July 20, 2011 and was registered as sub account of FII- Cardinal Capital Partners for the period July 20, 2011 to June 19, 2017. Underlying shares of GDRs were sold to Indian investors during the period August 12, 2010 to October 31, 2012 by Noticee no. 10. I also note that the beneficial owner of Noticee no. 13 was Noticee no. 3 and therefore, it was an extension of Noticee no. 3 himself. I also note that Noticee no. 10 was the only sub account which Noticee no. 13 ever registered and Noticee nos. 10 and 13 were registered on the same date. In view of the same, there is no doubt that Noticee no. 13 was also part of the fraudulent scheme of issue of GDRs of FIL wherein Noticee no. 3 owned entities were used at every stage and it was incorporated solely for the purpose of acting as FII to Noticee no. 10. Without the role of Noticee no. 13, the fraudulent scheme could not have been completed and the shares of FIL could not have been dumped in the Indian securities market. Therefore, I am of the view that Noticee no. 13 has violated sections 12A(a), (b),(c) of SEBI Act, 1992 read with regulation 3(a),(b),(c),(d), 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

48. Regarding the role of Noticee no. 12, it is noted that it had provided loan to Noticee no. 4 for subscribing to the issue of GDRs of FIL, in terms of loan agreement and pledge agreement both dated May 05, 2010. Interestingly, the security for said loan was not provided by the borrower i.e. Noticee no. 4. In fact no collateral or security (even not in the form of GDRs which were subscribed by Noticee no. 4 from the said loan taken from Noticee no. 12) for the said loan was provided by the Noticee no. 4. The security of the loan was provided by Noticee no. 4 and accepted by Noticee no. 12, by way of pledge on the subscription proceeds of FIL which were paid by the Noticee no. 4 after availing loan from Noticee no. 12. The structure of the said loan transaction speaks for volume in itself, wherein a lender provides a loan to borrower without taking any security from the principal borrower rather accepts entire security from the third party to say guarantor (i.e. FIL). The said structure of the loan transaction clearly indicates that Noticee no. 12 was part of the fraudulent scheme of issue of GDR of FIL. It would not be out of place to mention here that Noticee no. 12 has been found involved in the various other GDR issues of Indian companies investigated by SEBI. Further, I note that Noticee no. 12 had a joint venture with Noticee no. 3 in the year 2009 i.e. Euram Bank Asia Ltd. (EBAL) which has not been denied by Noticee no. 12. I am of the view that this fact establishes that Noticee no. 3 and Noticee no. 12 were connected, since, entering into a joint venture implies that the two entities know each other well enough to trust each other to pursue common business interests. I also note that vide email dated November 25, 2010, Noticee no. 12 had stated that FIL should contact Noticee no. 3 for any bank related query. Noticee no. 12 has not provided any explanation for this email. Further, as found above, it is also incomprehensible that a bank who had given loan to Noticee no. 4 did not ask for any security from Noticee no. 4 itself but agreed to give loan on the security entirely provided by a third party i.e. FIL and of something which was not in the possession of FIL, as on the date of entering into the pledge agreement i.e. May 05, 2010. As stated above, loan agreement provided that Noticee no. 12 shall disburse the loan amount only in the bank account of FIL, on which it had created a pledge by virtue of the pledge agreement entered into with FIL. All this indicates that Noticee no. 12 was well aware and part of the fraudulent scheme. Moreover, Noticee no. 12 was registered as FII with SEBI during November 20, 2008 to November 20, 2011 and during this time it had only one sub account, i.e. Noticee no. 10. Therefore,

from these facts, I find that Noticee no. 12 was also part of the fraudulent scheme wherein Noticee no. 12 took a registration as an FII with SEBI for the sole purpose of facilitating the sale of shares by the sub account -Noticee no 10. Without the role of EURAM Bank as FII the fraudulent scheme could not have been completed and the shares of FIL could not have been dumped in the Indian securities market. Therefore, I am of the view that Noticee no. 12 has violated sections 12A(a), (b),(c) of SEBI Act, 1992 read with regulation 3(a),(b),(c),(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

49. I note that the submission of Noticee no. 7 that its role was confined to only the technical and paperwork aspect of the issue cannot be accepted as the records say otherwise. I note that during investigation FIL has provided a copy of Placing Agreement entered between Lead Manager i.e. Noticee no. 7 and FIL, which *inter alia* specified the services provided by Lead Manager for GDR issue and the list of services included distribution of material to investors, evaluating indications of interests etc. FIL has also provided copy of Escrow Agreement entered into among 1) FIL 2) Noticee no. 12 and 3) Noticee no. 7, which stated that the Noticee no. 7 had entered into a placing agreement with FIL to procure investors for the subscription of GDRs. Moreover, Noticee no. 7 and 8 have not provided any explanation as to why Noticee no. 7 issued the letter dated June 28, 2010 giving details of list of GDR holders along with address and subscription amount for 42,50,000 GDRs which turned out to be incorrect. Noticee no. 7 and 8 has submitted that they had sent subscription agreements at the time of the issue. It shows that Noticee no. 7 and 8 were aware that the issue was subscribed by one subscriber and they deliberately provided a list of subscribers which was not correct, as a part of the fraudulent scheme. Moreover, I note that Noticee no. 7 had earned a fee of USD 25,000 for the service rendered which Noticee no. 7 has not denied. As mentioned above, Noticee no. 3 and Noticee no. 8 were director in Pan Asia Advisors Ltd. wherein Noticee no. 3 was promoter/ director (April 24, 2006 to September 29, 2011) and Noticee no. 8 was director (April 24, 2006 to September 29, 2011) of Pan Asia Advisors Ltd. Also, Noticee no. 8 provided professional advice to Noticee no. 3 regarding Pan Asia Advisors Ltd. Thus, Noticee no. 8 was connected to Noticee no. 3 who devised the whole fraudulent scheme of issue of GDR of FIL. At the time of the GDR issue of FIL, Noticee no. 8 was also a director of a company owned by Noticee no. 3 and Noticee

no. 7 was wholly owned by Noticee no. 8. Therefore, the connection between Noticee no. 7/8 and Noticee no. 3, is well established. In the Pan Asia matter (supra) the Hon'ble SAT has examined the role of a lead manager in a GDR issue and observed as follows:

“Thus, the investors in India were made to believe that in the global market the issuer companies have acquired high reputation in terms of investment potential and hence the foreign investors have fully subscribed to the GDRs, when in fact, the GDRs were subscribed by AP through Vintage which was wholly owned by AP. In other words, PAN Asia as a Lead Manager and AP as Managing Director of PAN Asia attempted to mislead the investors in India that the GDRs have been subscribed by foreign investors when in fact the GDRs were subscribed by AP through Vintage. Any attempt to mislead the investors in India constitutes fraud on the investors under the PFUTP Regulations.”

50. Thus, Noticee no. 7 and 8 being part of the fraudulent scheme devised by Noticee no. 3, provided the false list of GDR subscribers to FIL and misled the Indian investors regarding the demand for the GDRs issued by FIL in the foreign market. Therefore, I find that Noticee no. 7 and 8 have violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

51. The SCN also states that Noticee no. 5 and 9 were responsible for creating entire infrastructure for FIL and Noticee no. 3 to bring out the fraudulent GDR issue of FIL which included providing formats for board resolution and filings with stock exchanges and helping in transferring funds from account of FIL with EURAM Bank to FIL's subsidiary in UAE and from FIL's UAE subsidiary to other accounts, etc. Noticee no. 5 and 9 acted as single point of contact between FIL and all the concerned entities with regard to the GDR issue of FIL.

52. I note that the emails mentioned in Annexure 27 of the SCN exchanged amongst Noticee no. 5, 9 and FIL, mainly deals with seeking copies of certain documents such

as MoA, AoA of FIL, Placement Agreement, photos of directors etc. I note that, vide email dated June 28, 2010, Noticee no. 5 had provided the draft of the disclosure to the stock exchange that FIL eventually made to the stock exchange. Noticee no. 5 had also provided the copies of the draft resolutions which were required to be passed by the board of FIL for the purposes of GDR issue. Noticee no. 9 was also a recipient of these email which points to the fact that he was also in the know of the arrangement. During the hearing held on June 22, 2020, the authorised representative of Noticee no. 5 submitted that Noticee no. 5 did provide the draft resolutions to FIL, however, which resolution was exactly passed by FIL, is not known to him, as the resolution passed by FIL is not part of the record. I note that no draft resolution has been produced by Noticee no. 5 to show that the draft resolution provided by him did not contain pledging of the bank account where GDR proceeds were to be kept. Moreover, I note that vide an email dated August 19, 2010 (which is available at Annexure 11 of the SCN) blank TT slips were sought from FIL by Noticee no. 5 and the same were directed to be forwarded to Noticee no. 6 who was an employee of Noticee no. 4 and an associate of Noticee no. 3. As an Indian advisor to FIL, there was no rationale for Noticee no. 5 to seek blank transfer slips from the issuer company to be forwarded to the subscriber of the issue. This fact alone would have raised reasonable apprehension of wrongdoing in the mind of Noticee no. 5, had he not been involved in the fraudulent scheme of issue of GDR. In fact, reasonably speaking, it was the subscriber who would need to make the payment to the bank account of the issuer. Noticee no. 5 has not provided any explanation for this email sent by him to FIL except stating that he was coordinating between Noticee no. 3 and FIL and that he was acting on directions. As a reasonable person and most definitely as 'advisor' to the issue this should have been a red flag for Noticee no. 5, a chartered accountant by profession, when bank TT slips were sent to the subscriber of the GDR issue. This email points to a reasonable inference that Noticee no. 5 was aware of the Pledge Agreement, between FIL and Noticee no. 12, which secured the loan taken by Noticee no. 4 by pledging the GDR proceeds of FIL and was also a party to the diversion of the funds from FIL's account with Noticee no. 12 to Farmax FZE, the UAE subsidiary of FIL since the TT slips that he directed to be sent to Noticee no. 4 were used for diversion of funds from the EURAM Bank account of FIL. In view of the above, I find that Noticee no. 5 was also a party to the fraudulent scheme and facilitated fraud related to the GDR issue of FIL. Therefore, I hold that

Mr. Sanjay Agarwal has violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

53. With respect to Noticee no. 9 - Mr. Nithish Bangera, I note that he was an employee of La Richeesse which was the Indian Advisor to the GDR issue and one of the emails designate him as Vice President. I note that he played a part in facilitating the documentation for the said GDR issue which was itself fraudulent as discussed in previous paras. From a perusal of the emails exchanged between FIL and Noticee no. 9, I note that there appears to be a few emails details of which are as follows:

- email dated January 02, 2010 raising an invoice,
- email dated January 05, 2010 regarding write up on directors, company etc.,
- email dated February 03, 2010 forwarding the invoice from lead manager,
- email dated February 10, 2010 seeking copies of certain documents related to the directors,
- email dated June 28, 2010 seeking copies of certain documents such as MoA, AoA etc.

54. As per the letter dated March 31, 2010 issued by La Richeesse submitted by Noticee no. 9, he ceased to be an employee of La Richeesse on March 3, 2010 and he was relieved from his duties. This fact has also been submitted by Noticee no. 5 in his statement before SEBI dated July 23, 2015. However, I note that after the purported resignation from La Richeesse he had written an email dated June 28, 2010 to FIL seeking copies of MoA, AOA etc. Moreover, I note that another email was sent on June 28, 2010 by Noticee no. 5 stating that Noticee no. 9 will be travelling to Hyderabad to collect certain documents from the officials of FIL. If Noticee no. 9 had indeed resigned on March 31, 2010 then it would not have been possible for him to collect documents on behalf of La Richeesse on June 28, 2010. Therefore, it appears that Noticee no. 9 continued to work for La Richeesse even after March 31, 2010, either in his personal capacity or an employee. Noticee no. 9 was also a recipient of the mail wherein Noticee no. 5 directed FIL to forward Blank TT Slips to Noticee no. 6 who was employed with Vintage (Noticee no. 3) the subscriber. Noticee no. 9 has claimed that his personal email ID which he used to send the email on June 28, 2010

was hacked as on June 28, 2010 he was not employed with La Richeesse. I note that he has not produced any evidence to support this claim of hacking. I also note that he had used the same email address to send emails also on February 10, 2010 and January 19, 2010, i.e. during his employment with La Richeesse. The Noticee no. 9 has contended that he is not the same Nithish Bangera against whom investigation was conducted by SEBI in the present matter. In this regards, I note that the investigation was in relation to the GDR issue of FIL and the entities related to it. I note that the investigation found that Mr. Sanjay Aggarwal and Mr. Nithish Bangera were the owner and Vice President, respectively of La Richeesse who was the Indian Adviser to the GDR issue of FIL. Noticee no. 9, i.e. Mr. Nithish Bangera has not disputed that he was employed with La Richeesse. Therefore, Noticee no. 9 is the same Nithish Bangera which is referred to in the Investigation Report and the SCN is rightly issued to him. Finally, I also note from the manner in which Noticee no. 9 has sought details of documents and information from SEBI gives rise to a reasonable inference that he was abreast of the GDR issue of FIL and he also played a role in the fraudulent scheme perpetrated by FIL and AP and related entities and Noticee no. 9. In view of the above, I find that Noticee no. 9 was also a party to the fraudulent scheme and facilitated fraud related to the GDR issue of FIL. Therefore, I hold that Mr. Nithish Bangera has violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

55. The SCN has alleged that Noticee no. 6 coordinated with Noticee no. 5 in facilitating the documentation for GDR issue of FIL in connivance with Noticee no. 3. From examination of the copy of email correspondences between FIL and Noticee no. 6, the SCN has alleged that he facilitated the bank account transactions and financial statements for FIL's UAE based subsidiary. The SCN alleges that he was Managing Director of Noticee no. 4 when Noticee no. 4 defaulted on the repayment of loan availed by it for subscription of GDRs of FIL and Noticee no. 4 default on loan repayment affected FIL to the tune of USD 56.60 million. The SCN alleges that Noticee no. 6 in connivance with Noticee no. 3, his connected entities and FIL, facilitated the GDR issue of FIL to commit fraud on Indian shareholders of the FIL. From Noticee no. 4's letter dated December 30, 2010 addressed to Noticee no. 12, SCN alleges that Noticee no. 6 was the director of Noticee no. 4. Noticee no. 4's letter

dated April 27, 2011 and February 23, 2012 also show that Noticee no. 6 was Authorized Signatory of Noticee no. 4. Based on this the SCN alleges that Noticee no. 3 and Noticee no. 6 were managing affairs of Noticee no. 4 and they were responsible for all acts and deeds of Noticee no. 4. The SCN also alleges that Noticee no. 6 was an associate of Noticee no. 3 and that in a company named Ramsai Investment Holdings Private Limited, where Noticee no. 3 was holding 99.98% shares (for the period 2009-2013) Noticee no. 6 was director from February 04, 2008 and second appointment from August 17, 2010 till March 17, 2016.

56. Noticee no. 6 has submitted that he was never the director or Managing Director of Noticee no. 4, as alleged in the SCN, he was only an employee of Noticee no. 4, the subscriber to the GDR of Farmax. Noticee no. 4 was fully owned and controlled by Noticee no. 3 which is mentioned in the SCN itself. He has stated that somewhere in 2010 after Noticee no. 3 set up EURAM Bank Asia limited in JV with Noticee no. 12 there were concerns with respect to conflict of interest raised by Noticee no. 12 and on account of the above conflict he was instructed by Noticee no. 3 to sign certain document.

57. I note that Noticee no. 6 was connected to Noticee no. 3 through various other entities owned by Noticee no. 3 such as Ramsai and Alka India Ltd. and he was a director in both these companies. I also note that the KYC documents of Noticee no. 4 state that Noticee no. 6 was an Authorized Signatory of Noticee no. 4. In fact, in the letter dated December 30, 2010 requesting Noticee no. 12 to classify Noticee no. 4 as an 'eligible counterparty', Noticee no. 6 has been mentioned as director of Noticee no. 4, which he claims to be a mistake. I also note that in the Loan agreement dated February 14, 2011 between Noticee no. 4 and 12 for the purpose of availing loan for subscription of GDRs of Rasoya Proteins Ltd., Noticee no. 6 was again mentioned as Managing Director. Therefore, it is too much coincidence of mistake that Noticee no. 4 repeatedly designated Noticee no. 6 as a director on more than one occasion by mistake. From his directorship in various entities controlled by Noticee no. 3 and the fact that he was an Authorized Signatory for Noticee no. 4, I find that he was not a mere employee but a close associate of Noticee no. 3 and as such Noticee no. 6 was aware of the scheme devised by Noticee no. 3 for various GDR issues and was a party to the fraudulent scheme related to the GDR issue of FIL. I also note that

Noticee no.6 has been alleged to be involved in 14 GDR issues involving fraudulent schemes orchestrated by AP and he has already been debarred in one such case for a period of 1 year vide order dated February 20, 2020 passed in the matter Visu International Ltd. Therefore, I find that Noticee no. 6 has violated Sections 12A(a), (b), (c) of SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) 3(d) and 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.

58. The violations committed by the Noticees in planned and structured manner, as noted above, whereby, camouflage of GDR issue was created to misled the Indian investors. Such acts are prejudicial to the interest of the investors and the securities market. Such acts calls for issue of directions as contemplated under the SEBI Act, 1992.

Directions:

59. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby direct that:

- (i) Farmax India Ltd. (Noticee No. 1), shall continue to pursue the measures to bring back the outstanding amount of USD 72.20 million into its bank account in India. It is clarified that Mr. M. Srinivasa Reddy, Noticee No. 2 and all other present directors of Noticee No. 1 shall ensure the compliance of this direction by Noticee No. 1 and furnish a Certificate from a peer reviewed Chartered Accountant of ICAI along with necessary documentary evidences to SEBI, certifying the compliance of this direction.
- (ii) Noticee No. 1 is restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of this order.

- (iii) Mr. M. Srinivasa Reddy (Noticee no. 2) is restrained from accessing the securities market and further prohibited from buying, selling or dealing in securities, directly or indirectly, in any manner whatsoever or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of this order.
- (iv) Noticee no. 3 and 4 are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of these Noticees shall also remain frozen.
- (v) Noticee no. 5 is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of this Noticee shall also remain frozen.
- (vi) Noticee no. 6 is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years beginning from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of this Noticee shall also remain frozen.
- (vii) Noticee no. 7 and 8 are barred from rendering services in connection with instruments that are defined as securities in Section 2(h) of Securities Contracts (Regulation) Act, 1956, in the Indian market or in any way

dealing with them, directly or indirectly, for a period of two years, from the date of this order.

- (viii) Noticee no. 9 is hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years beginning from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of this Noticee shall also remain frozen.
- (ix) Noticee no. 10 and 11 are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities including units of mutual funds, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of two years beginning from the date of this order. During the period of restraint, the existing holding of securities including units of mutual funds of these Noticees shall also remain frozen.
- (x) Noticee no. 3, 4, 10 and 11 are further directed to disgorge illegal gains of Rs. 51,74,09,103.50/- and Rs. 2,57,674.35/-, made by Noticee no. 10 and 11, respectively, alongwith interest of 12 % p.a., within a period of 45 days from the date of this order. Having regard to the close connection and role played, the liability of Noticee no. 3, 4, 10 and 11 shall be joint and several. In case, Noticee no. 3, 4, 10 and 11 fail to comply with the said direction, they shall be restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in the securities market, till the actual payment of disgorgement amount or till the completion of the debarment directed at sub-para (x) above, whichever is later. This direction is without prejudice to any other action including action for recovery of such amounts from these Noticees which may be initiated by SEBI.

- (xi) The amount, as directed to be disgorged in sub-para (x) above, shall be paid to SEBI by way of a Demand Draft favouring "Securities and Exchange Board of India" payable at Mumbai.
- (xii) Noticee no. 12 and 13 are hereby warned to ensure that all its future dealings in the Indian securities market be done strictly in accordance with law.

60. This Order comes into force with immediate effect.

61. A copy of this Order shall be forwarded to the Noticees, recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action.

62. A copy of this order may also be sent to the RBI, Enforcement Directorate and Ministry of Corporate Affairs for information and necessary action, if any.

-Sd-

Date: July 14, 2020

Place: Mumbai

ANANTA BARUA

SECURITIES AND EXCHANGE BOARD OF INDIA