

## CLARIFICATIONS

1. Do we need to file memorials for every case separately or can we club the petitioners and respondents from each case into two memorials - one for petitioners and one for respondents?

**One memorial may be filed for SEBI (irrespective of whether SEBI is Petitioner or Respondent) and the other for the remaining parties (irrespective of whether they are Petitioner or Respondent).**

2. Since, in the first two cases, i.e. CERC vs. SEBI & SEBI vs. CERC, there are same parties, how is the counsel supposed to represent the parties. In other words, if a counsel represents Petitioner then is he supposed to represent CERC and SEBI both at the same time?

**Answer to first query may be seen.**

3. Whether the SLPs filed by FMC and CERC respectively have been instituted and admitted before the SC?

**Yes.**

4. Why did ACB and EXIL not approach Securities Appellate Tribunal before filing a writ before the Hon'ble High Court of Bombay?

**May not be answered.**

5. In Paragraph 6, wherein BCX files a review application to CERC for its August order, can you tell the date on which it filed the application?

**October 15, 2009.**

6. Was CERC aware of the fraudulent activities of EXIL before they came to light?

**No.**

7. In paragraph 18, SEBI (Brokers and Stock Brokers) Regulations, 1992 are mentioned but there are no such regulations. It is either SEBI (Stock-Brokers and Sub-Brokers)

Regulations, 1992 or SEBI (Brokers and Sub-Brokers) Regulations. Kindly clarify the same.

**Typo. It is SEBI (Stock Brokers and Sub-brokers) Regulations, 1992.**

8. Are the guiding regulations and bye-laws of EXIL pari materia to National Spot Exchange Ltd. (NSEL)?

**May not be answered. Please refer to para 1 and 2 of the Moot Problem.**

Otherwise, what are the bye-laws regulating it?

**Bye-laws need not be referred.**

Further, is EXIL incorporated under the Companies Act?

**Yes.**

9. Whether both BCX and EXIL are registered under the provisions of the Companies Act, 2013?

**Yes. Please refer to Section 2(20) of the Companies Act, 2013.**

10. Whether BCX and EXIL are pari materia to MCX and IEX?

**May not be answered. Please refer to para 1 and 2 of the Moot Problem.**

11. Is BCX the same as the MCX in India?

**May not be answered. Please refer to para 1 and 2 of the Moot Problem.**

12. Is the structure of EXIL similar to that of the IEX or PXIL in India?

**May not be answered. Please refer to para 1 and 2 of the Moot Problem.**

13. Whether the contracts in dispute are future or forward contracts?

**Both.**

14. In Paragraph 10, the term "futures contract" is used and further, it is written "futures/forward". Is the usage correct?

**Should be read to mean both future and forward contracts.**

15. Whether we can use any other legislation, notification, rules etc. by the Parliament or concerned commission, apart from the one mentioned in the moot problem?

**You may.**

16. Whether inter-ministerial deliberations can be taken into account in our case?

**You may.**

17. Regarding second contention, which jurisdiction is it related to?

**May not be answered. Please refer to para 12 of the Moot Problem.**

18. Whether the dates mentioned in Paragraphs 19 and 20 of the proposition i.e. July 5, 2017; July 28, 2017; Oct, 2017; July 5, 2017; be marked in year as 2018?

**No. Instead date mentioned at para 18, i.e. January 15, 2018, may be substituted with June 26, 2017.**

19. Whether Paragraph 4 point (c) is operative currently with reference to Paragraph 10 point (a)?

**May not be answered. Please refer para 10(b).**

20. Whether in Paragraph 4 point (c), the phrase 'outside the scope of FCRA' means outside the scope of the entire act or a particular section?

**FCRA is an Act.**

21. With reference to Paragraph 4 point (b) and Paragraph 5, whether the word 'regulatory oversight' means the same as the term 'jurisdiction'?

**Yes.**

22. The operative order by CERC, Para 4, point (d) states that BCX while trading in forward contracts in electricity approved by FMC shall be governed by CERC " since they are not inconsistent with the provisions of FCRA". In the first place if these forward contracts are not inconsistent with the provisions of FCRA thereby coming under the ambit of FMC, how does CERC exercise jurisdiction over them.

**Trading in forward contracts in electricity may be considered to be governed by more than one regulator, which are not inconsistent with each other, i.e. Acts/ Regulations governing CERC and FMC.**

23. In Paragraph 19, the term "regulatory uncertainty" is used. What is the meaning of this phrase with regards to proceedings against the commodity brokers?

**"regulatory uncertainty" in present case would mean the present or potential future action that might affect a trading market and its participants.**

24. What is the official name of the 'code of conduct' being mentioned in Paragraph 14 Line 6?

**Various circulars and instructions issued by FMC and commodity exchanges.**

25. Whether EXIL is an 'Over the Counter' (OTC) market?

**No.**

26. Do the NTSD contracts, permitted to EXIL, mandate actual delivery?

**Yes. Please refer to the concept and definition of NTSD contracts.**

27. Do the bye laws of EXIL mandate actual delivery or give option to seller or buyer to give or demand delivery, respectively?

**Refer to answer to query no. 26.**

28. What were the two components of the paired contracts traded in EXIL? Any other details of the nature of the paired contracts are requested (as to the duration of contract, etc.).

**Two components of the paired contracts were T+2 (buying short duration contracts) and T+21 (selling long duration contracts).**

29. Whether EXIL introduced Paired Contracts on its platform or the brokers themselves started trading in Paired Contracts on EXIL platform?

**Paired Contracts were introduced by EXIL.**

30. What are the durations of the two legs of the paired contracts on the EXIL platform?

**Refer to answer to query no. 28.**

31. Whether the commodity brokers have fulfilled all the disclosure requirements that are specified in the statute?

**Please see whether any action has been initiated for non-disclosure?**

32. Whether the SFIO, while conducting the investigation, exceeded the power conferred on them by statute?

**If so, this may be a ground to moot.**

33. Whether Show Cause Notices issued to 190 brokers were on the basis of SFIO report?

**Yes.**

34. Whether any Designated Authority was appointed to initiate enquiry proceedings against the 190 brokers?

**Yes.**

35. Whether the Show Cause Notices issued to 190 brokers were under adjudication proceeding or enquiry proceeding?

**Enquiry proceedings.**

36. Whether the Show Cause Notices issued to the 190 brokers were for ascertaining their fit and proper criteria?

**Yes.**

37. Who appointed the Designated Authority to initiate enquiry proceedings against the 10 brokers?

**Appointed of the Designated Authority was done in terms of SEBI Act, rules and regulations made there under.**

38. Whether the Show Cause Notices issued to the 10 brokers were issued by the Designated Authority?

**Yes.**

39. In Paragraph 18, was the Show Cause Notice issued by the Designated Authority? If yes, whether the SCN issued by the Designated Authority was by a Whole Time Member or Chairman?

**SCNs were issued by the Designated Authority.**

40. In Paragraph 18, SEBI appointed Designated Authority to enquire into the proceedings against 10 brokers. What is the status of report of Designated Authority?

**The report of the Designated Authority was submitted to the Designated Member when the matters were heard before the Supreme Court.**

41. How can SEBI file a criminal complaint under "erstwhile FCRA" as given in Para 18 of the Moot Proposition?

**Good question. Open for moot.**

42. Paragraph 14 merely states that the EOW took cognizance of the criminality perpetrated on the EXIL platform. However, it fails to mention the specific entities against which action was initiated. It is given in Paragraph 17 that EOW had initiated criminal proceedings against 10 brokers, who were trading on the EXIL platform. While in Paragraph 20, the ACB asserts that the EOW had initiated action against EXIL and their promoters. This implies that EOW had not initiated proceedings against the 10 brokers. Could you please clarify the factual discrepancy as to whether the 10 brokers had been proceeded against or not by the EOW?

**Para 20 says that "ACB submitted that other enforcement agencies have already initiated action against EXIL...". This does not say that EOW has initiated action, but other enforcement agencies, which may include CBI, Income Tax, etc.**

43. Whether SEBI has issued Second show cause notice to the entities in pursuance to first show cause notice? If issued, what is the purpose of Second show cause notice?

**Second SCN was issued pursuant to SFIO Report to ascertain the fit and proper status.**

44. Paragraph 19, "ACB inter alia stated that EXIL, its promoters, and its directors had adopted various tactics such as media publications, etc. to avoid their liability and diverting the

attention of enforcement and regulatory authorities away from them towards the 200 members/ brokers.”

Paragraph 21, “ACB further submitted that other enforcement agencies have already initiated action against EXIL and their promoters under IPC and MPID Act, hence appropriate action has been initiated against the perpetrators of EXIL scam.”

In both these paragraphs, ACB has made opposite claims, initially ACB claimed that directors and promoters have avoided their liability and later they claimed that appropriate actions have been taken.

**Both the claims are infact complementing each other.**

45. Paragraph 20 states that the 200 broker entities have various subsidiaries acting within the stock market which collectively hold 30% of the entire market. Are we to assume that SEBI has taken action against the subsidiaries as well apart from the 200 brokers?

**No.**

46. What is the extent of relationship between the parent entities and the subsidiaries?

**Not the issue to moot.**

47. With reference to Paragraph 14 Line 7, 'As per the EOW..... under FCRA ', whether the 200 entities were regulated under the Electricity Act or not? If yes, under which provision of the Electricity Act, 2003?

**200 entities were admitted members of EXIL and governed under relevant Act/ regulations.**

48. What is meant by authorized grid connected entities as referred to in Para 12 of the Moot Proposition?

**An entity who is eligible to buy or sell electricity and is connected to the grid. The entities including but not limited to, Distribution Licensees, Generators, Consumers and Open Access Users can become Grid-connected Clients.**

49. The RIL report states that the entities listed were not limited to authorised grid connected entities. What is the extent of charges levelled against these entities and the current state of investigations?

**No charges were levelled against such entities.**

50. In Paragraph 14, “EOW took cognizance of the complaint forwarded by FMC, investigated the EXIL scam and forwarded their interim report dated April 14, 2015 to SEBI”.

However, at that time SEBI did not have regulatory oversight over the commodity derivatives brokers as FMC got merged with SEBI on September 29, 2015. Then why did the EOW submitted the report to SEBI and not FMC?

**Typo. The report was submitted to FMC.**

51. Who acts as the ultimate regulator of the commodity brokers practising in EXIL?

**With whom such brokers or members are registered with.**

52. Whether the notification dated June 5, 2007 granting exemptions from operation of FCRA in certain cases applicable to EXIL?

**No. The moot problem is silent on this aspect.**

53. Whether the commodity brokers charged by SEBI for violation of FCRA had any previous registration. Whether the brokers have applied for fresh registration under FCRA?

**May not be answered. The answer to the same can be found in the Moot Problem itself.**