

THE TRUTH ABOUT NSEL

How Financial Technologies, which created an extensive ecosystem of exchange institutions across Asia and Africa, is demonised and systematically demolished for payment defaults at one of its subsidiaries owing to abrupt action by the Ministry of Consumer Affairs on the ill-advice of the Forward Markets Commission

Issued in the Interest of Public Information by
National Spot Exchange Limited (NSEL)
FEBRUARY 2015

PART-1

- National Spot Exchange Limited (NSEL) came into being to fulfil a vision/aspiration of the Government to create a common Indian market for trading of commodities. NSEL has germinated out of this purpose and had been conducting its operations within this framework due to which several State Governments granted it an e-Market registration | approval under APMC Act against the backdrop of the Model APMC Act. In the five years of its functioning, NSEL has had several achievements that are mentioned subsequently in this paper.
- However, the brokers had offered a trading strategy on one of the products to the well informed, highly sophisticated, qualified and high networth traders. NSEL strongly believed that the problem that arose could have been mitigated with a more calibrated and mature response from the Forward Markets Commission (FMC) | Department of Consumer Affairs (DCA) in the Ministry of Consumer Affairs, and had the FMC/DCA not acted in a manner that ultimately proved detrimental to the prospects of a common market, but also the potential of NSEL to play a much more meaningful role.
- The outcome of the sudden and abrupt action by the DCA has been extremely destructive that led to huge erosion of value and prospects of further development of spot exchanges in the country and will prove to be a major deterrent in creation of a national agricultural market. For NSEL it has been extremely painful. The share of the problem were put entirely on NSEL's parent company FTIL while the FMC | DCA chose to overlook the role and contribution of other players and instead focused only on FTIL, with a wide range of punitive actions, penalties and punishment.
- It is this unfair treatment that compelled NSEL to communicate with the wider public on various issues leading to the problem at NSEL and developments thereafter.
- The Paper explains the NSEL's point of view on various aspects regarding the problem. It also articulates the concerns of its parent company FTIL, which has faced unnecessary pain and punishment for no fault of it. Moreover, the 63000 shareholders of FTIL are being made the scapegoat for the sins of others. The information used in the preparation of this Paper is drawn from NSEL as also from FTIL, wherever it was found relevant and required.
- FTIL, however, is not associated with any aspect of the paper and thus not responsible for any points of view made in this Paper.

THE TRUTH ABOUT NSEL

How Financial Technologies, which created an extensive ecosystem of exchange institutions across Asia and Africa, is demonised and systematically demolished for payment defaults at one of its subsidiaries owing to abrupt action by the Ministry of Consumer Affairs on the ill-advice of the Forward Markets Commission

The Danger from Discrimination

Conspiracies that undermine the importance of institutions might sub serve the vested interests of a few, but will compromise the value that could belong to the majority including the nation as a whole. Discrimination against institutions by way of bias, unfair treatment, undue harassment and punishment could only dent and adversely affect the prospects for sustained growth that could otherwise add strength to the nation's value. What could be solved through a collective approach, if distorted and subjected to undue pressures and penalties could undermine the nation's interests in more than one way. Financial Technologies Group, despite its stellar contributions to the growth of Indian financial markets, has been subjected to a series of stringent actions in the last one and half years depriving it the due share for its utmost commitment in creating the state of the art financial market infrastructure that India can take pride in.

FTIL had the distinction of perhaps the fastest growing financial infrastructure group with exchanges spread across multiple geographies. It stood the scrutiny of stringent regulation of major international financial centers in which the group established exchanges. In a short time of less than a decade, it made Indian exchanges stand among the top league of global exchanges. The innovations in exchange development made by the FTIL group have become case studies for authorities planning similar development endeavors and strategies in several other emerging markets.

All this was wasted by certain people working for narrow interests, waiting for a minor accident to happen that they could turn into a major crisis and take this as an alibi to launch a massive assault against the Financial Technologies Group. An accident that happened at NSEL, arising from sudden stoppage of further issuance of certain commodity trading contracts by the regulatory authorities, that were made popular by brokers for their sophisticated and well informed traders and clients. In a similar situation anywhere in the world, regulatory institutions extend support including temporary liquidity provision as may be required to overcome the crisis. India too witnessed such support to institutions in the aftermath of the global financial crisis. Whereas in the case of NSEL/FTIL, it was like vengeance unleashed by certain officials with rash actions and harsh punishments, when the investigations were still going on and certain key issues were under consideration of the courts. Launch of investigations by multiple agencies, prescription of a series of punitive actions, subjecting the group executives to punishments and vilification campaigns in the public platforms to sully and destroy the image of the Group which through hard work, dedication and commitment created huge market infrastructure and ecosystem in India.

Who benefited from all this? Only the egos of a couple of officials, who were keen to destroy the group. But the claims of traders and clients remained unsettled. The recovery efforts which could have been given a big push as a collaborative endeavor are solely left to NSEL to deal with. Thousands of people who were depending on the group directly or indirectly lost jobs and incomes. The punitive actions and punishments directed against the promoters and key officials of the group have further eroded its ability to quickly respond and recover. The market activity greatly diminished. The opportunities for growth greatly marginalized. Ultimately, it is the nation that lost a great deal at the cost of keeping a couple of officials happy.

Can India afford such officials who could undermine national interest? How history will consider their actions is yet to be decided, but destroying value in pursuit of protecting the limited interests of a few competitors and in this process destroying the ability and capability of others will surely cost the nation a great deal.

It is time to reflect on what the country needs, who can deliver it and how certain people can make it vulnerable. And also how to protect Indian financial system from vested interests.

THE CONTOURS OF A CONSPIRACY

2007	<p>DECEMBER 19: Dr. K. P. Krishnan (KPK), the then joint secretary in the Union Ministry of Finance (MoF), had recommended that two state-owned institutions LIC and Nabard should be asked to divest their stakes in NCDEX (a rival of MCX) in favour of NSE (a private sector company) so that NCDEX can provide "credible competition" to MCX (ANX-1). The decision was questioned by MCX in a complaint to DCA in July 2012 (ANX-2). "it is because of this complaint that KPK all along had a personal vendetta against the group companies" the NSEL affidavit submitted to the Mumbai High Court Challenging the Ministry of Corporate Affairs draft proposal for the merger of NSEL with FTIL mentions.</p>
2008-10	<p>FTIL sets up MCX-SX as the third national stock exchange in India. It began with trading in currency futures and applied for full licence to commence trading in equities/bonds/and other approved market segments. Till MCX-SX began operations, currency trading, volumes in India were meager. With MCX-SX currency trading volumes in the country began to increase. The rival exchange adopted zero pricing for transactions in currency futures that deprived the new exchange (i.e. MCX-SX) of any revenue. MCX-SX had to seek the intervention of Competition Commission of India to redress its grievance that ultimately led to the rival exchange having to face penalty for unfair pricing practices by the Commission. Later MCX-SX application for stock market segments was rejected by the SEBI. MCX-SX had to seek the intervention of the Bombay High Court to obtain licence to trade in equity markets segments.</p>
2012	<ul style="list-style-type: none"> • APRIL 27: Department of Consumer Affairs issued a show cause notice to NSEL on certain aspects of its operation (ANX-3). • MAY 23: NSEL responded to the notice promptly by its reply dated May 23, 2012 (ANX-4) and made further follow up on the response to the DCA again on August 11, 2012 (ANX-5). • There was no reply or action from the Department of Consumer Affairs for more than a year, which is believed to have been satisfied on the issues raised in the notice. • OCTOBER 3: NSEL issued communication to all members with copy of same posted on company website giving details of communication received from the DCA and replies given by NSEL (ANX-6).
2013	<ul style="list-style-type: none"> • MAY 13: FMC wrote to DCA specifying the penalties that can be imposed under FCRA for violation of provision of FCRA. However, no penalty was ever levied on NSEL (ANX-7). • JULY 12: Department of Consumer Affairs issued a letter to NSEL to stop issuing fresh contracts. Such a letter which should have been held in utmost confidence between two institutions was leaked to the press (ANX-8). • JULY 12 AND 22: NSEL wrote to Department of Consumer Affairs on July 12, 2013 (ANX-9) and July 22, 2013 (ANX-10) stating that any abrupt and sudden measures of stoppage of contracts would severely dislocate and disintegrate the market functioning that could adversely affect the payment obligations. • JULY 19: FMC wrote to DCA that the exemption granted to NSEL was silent whether the exemption is applicable to all or specific provisions of the FCRA, thus, impliedly endorsing the legality of NSEL's contracts (ANX-11). This dispels the view expressed by the former Finance Minister that business at NSEL was illegal. • JULY 31: All exchange operations of NSEL had to be stopped due to the panic created in the market by the DCA's action (ANX-12). • AUGUST 4: FMC had a meeting with the defaulters about the stocks in position and payment obligations and received positive confirmation from them to the material and money involved (ANX-13). • AUGUST 6: DCA authorized FMC to take such measures as deemed fit against "any person, intermediary or warehouse connected with NSEL" (ANX-14). Whereas the entire focus and action of FMC since then has been solely directed against FTIL NSEL conveniently ignoring the other players i.e. the Defaulters & brokers. • AUGUST 12: FMC wrote to DCA stating there is an urgent need to secure the warehouse stocks and verify their quantity and quality (ANX-15). However, no required actions were taken in this regard by FMC later on. • DECEMBER 17: FMC declares FTIL as unfit to hold more than 2% equity in a recognized commodities exchange in India thus forcing FTIL to reduce its stakes in MCX from 26 percent to 2 percent.
2014	<ul style="list-style-type: none"> • AUGUST 18: Regulator FMC recommended the Government to consider merger of the spot commodity exchange with its promoter FTIL, followed by a second recommendation on October 17, 2014. • SEPTEMBER 19: GOI issued notification withdrawing exemptions given under Section 27 of FCRA to NSEL and other spot exchanges (ANX-16). The notification said that the exemption of June 5, 2007 was from the operation of the provisions of the said Act, thereby confirming NSEL stand that it is a general exemption from the Act. • OCTOBER 21: The Centre announced the NSEL would have to merge with its holdings company, FTIL. The Ministry of Corporate Affairs issued a draft order invoking Section 396 of the Companies Act for the merger. • NOVEMBER 13: FTIL challenges the Government order.

THE TRUTH ABOUT NSEL: A PRIMER

WHAT IS NSEL

- 1 A demutualised national electronic spot exchange setup as a limited liability company in 2005. Posted a turnover of Rs 7,67,000 Cr and pay-in & payout of Rs 2,80,156 Cr during 2008-13. Offered trading in 52 commodities of which 34 were agricultural. Had 800 members and 46,000 terminals.

WHO ENVISAGED THE NEED FOR SPOT EXCHANGES

- 2 The 10th five year plan (2002-2007); Union Budget 2004; Economic Surveys (2002-03|04); Agricultural Summit 2005 (inaugural address by the then Hon. PM) and the renowned Economist Mr. Swaminathan (2004) in an interview 'Needed: An Indian Common Market'.

WHO PROMOTED NSEL

- 3 FMC asked MCX to submit a concept paper for creation of spot exchanges. Hence, NSEL was promoted by MCX subsequently as MCX was in the business of trading in commodity futures segment, the view emerged that MCX's shareholding in NSEL be transferred to FTIL.

WAS ONLY FTIL GROUP PERMITTED TO SET UP SPOT EXCHANGE?

- 4 No. Spot Exchanges of similar nature such as NCDEX Spot Exchange Ltd and National APMC Limited were also allowed to operate.

WHY WAS FTIL GROUP CONSIDERED FOR SPOT EXCHANGE?

- 5 The excellent track record of FTIL group in making MCX a commodity exchange that assumed global stature within a very short time. Also for its innovative financial technologies for trading, clearing and settlement.

HAS FTIL MADE BIG PROFITS FROM NSEL?

- 6 FTIL has received no dividend or bonus from NSEL. On the contrary money has always been pumped in by FTIL. Neither FTIL nor its promoters or directors have benefitted to even a single paisa from NSEL. Dividends declared by FTIL are from its standalone profits.

WHO ARE NSEL's MAJOR PLAYERS AND PARTNERS?

- 7 NSEL had a network of alliances with clearing banks (such as SBI, Axis, HDFC, ICICI, Kotak); national depositories (NSDL, CDSL); public sector undertakings, (NAFED, FCI, MMTC etc) and other market participants. All leading brokers on BSE, NSE and MCX were members of NSEL.

IS NSEL A LEGAL ENTITY?

- 8 Yes. Its operations were always legal. NSEL wanted regulation/supervision by FMC from 2006, which was always under DCA. From 2011-12, FMC took-over direct supervision of NSEL. NSEL was not operating in a vacuum. FMC recommended to companies to procure from NSEL platform. FMC wrote to DCA that the exemption granted to NSEL was silent whether the exemption is applicable to all or specific provisions of the FCRA, thus, impliedly endorsing the legality of NSEL's business model. Obtained licence to operate from several state governments. In February 2013, the then FM inaugurated the equity segment of a Group company, MCX-SX.

IS IT A REGULATED INSTITUTION

- 9 Yes, in 2011 FMC wrote to DCA to request RBI to consider exempting NSEL regulated by the FMC from the purview of PSS act 2007, for its clearing and settlement function. It should be noted that clearing operations can be conducted by only regulated entities, that establishes the nature of NSEL as a regulated entity.

DESIGNATED AGENCY FOR REGULATION?

- 10 In August 2011, DCA designated FMC as the designated agency for providing "Oversight", "Protection of Investor Interests" and to "seek fortnightly information on the business of spot exchanges".

THE TRUTH ABOUT NSEL: A PRIMER

HOW NSEL COMPLIED WITH REGULATION

- 11 Since November 2011, NSEL provided fortnightly information to FMC as prescribed including details of commodity stocks. Replied to all communications from the DCA | FMC from time to time.

WHAT IS THE NATURE OF ACCIDENT THAT HAPPENED AT NSEL?

- 12 DCA | FMC abruptly stopped NSEL from further issuance of fresh contracts. Sudden and rash measures led to migration of commodities. NSEL not given any regulatory support to address the issue.

THE GENESIS OF THE PROBLEM

- 13 Creation of structured products by brokers for buying and selling of commodities followed by aggressive marketing. Lower returns in stock markets in 2011 | 12 induced the brokers to focus more on such contracts to derive revenue and returns.

ARE FTIL AND THE BOARD OF NSEL RESPONSIBLE?

- 14 FTIL, its board or the Board of NSEL is not even remotely connected with any of the brokers, clients or traders. No red flags raised either by the auditors of the NSEL or of the brokers or of the PSUs or by FMC or the brokers who visited warehouses more than 50 times.

HAS NSEL CREATED ANY SYSTEMIC CRISIS?

- 15 Reports of the RBI | Government reiterated that there is no systemic crisis from the NSEL problem. The clients were sophisticated, well informed of high net worth and they were buying and selling commodities as a part of business and booking income accordingly.

THE UNIVERSE OF CLIENTS AFFECTED

- 16 Claims of 33000 e-Series clients settled successfully. 7000 clients with claims exposure below Rs 10 lakh received 50% of the total settlement. 7 defaulters own upto 85% of the claim amount. NSEL has privity of contract with only 71 brokers. Only 6% of the clients account for 69% of the claim.

IMMEDIATE RESPONSE OF NSEL | FTIL

- 17 FTIL provided without prejudice a loan of Rs 179 cr to NSEL to pay the dues of small trading clients. Changed the management of NSEL and reconstituted its Board. It is extending legal, financial, infrastructure, personnel support to NSEL. Extending complete cooperation to the authorities.

WHAT IS THE JUDICIAL VIEW ON AFFECTED CLIENTS?

- 18 "The legalities of the transactions were quite expected to be known to the brokers and traders... The brokers were quite experienced... It is difficult to accept that the brokers and their clients were deceived by NSEL" -High Court of Mumbai in its order dated 22-08-2014.

IS THERE ANY CONSPIRACY BEHIND THE PROBLEM

- 19 There is a defined plan of action as evident abundantly in the execution to undermine the image of the FTIL and sabotage its reputation and future growth to favour competition. (See the next page)

HOW THE CONSPIRACY WAS PLANNED

- 20 DCA | FMC issued a show cause notice to NSEL in April 2012. NSEL promptly responded in May 2012 and followed up in August 2012. No action from DCA | FMC for over a year. No order issued to the show cause. Through a letter in July 2013 DCA | FMC ordered stoppage of issuance of fresh contracts that led to suspension of trading.

HOW A FAST GROWING FINANCIAL INFRASTRUCTURE GROUP FROM INDIA IS DEMOLISHED AND DESTROYED BY THE CONSPIRACY OF A FEW VESTED INTERESTS

WHO ACCENTUATED THE PROBLEM

- 21 DCA | FMC with abrupt actions. Brokers by mis-selling. Defaulters by diverting stocks after the problem broke out. Auditors of brokers who inspected the stocks several times failed to raise red flags. Field level functionaries of NSEL for lack of due diligence. Misinformation campaigns by vested interests.

FORCES BEHIND THE CONSPIRACY

- 22 Certain officials including the erstwhile Additional Secretary, DEA, MOF; the Chairman, FMC who thwarted orderly management of the problem by NSEL | FTIL by rash measures, while the investigations were still on, that further deepened the extent of the problem.

HOW THE GLOBAL REGULATORS ADDRESSED MARKET ACCIDENTS

- 23 The financial crisis of 2008 witnessed accidents of much larger scale and dimension but regulators showed great maturity and restraint in not destroying the ecosystem and ensured recovery of markets in an orderly manner.

WHAT HAS BEEN THE APPROACH OF INDIAN REGULATORS

- 24 Sudden and abrupt measures. Weakening of the institutions. No focus on recovery. No collaborative effort. Rash and damaging measures. Target only one group leaving the real offenders untouched.

IMPACT OF THE APPROACH OF GLOBAL REGULATORS

- 25 The markets recovered soon and so the institutional strength. Institutions in problem were given support that made resolution quicker. Institutions were given various types of support to overcome the crisis and resume growth.

THE IMPACT OF THE APPROACH OF INDIAN REGULATORS

- 26 Market has lost severely. Institutions that reached global league tables lost the privilege and position. Market momentum has diminished. Severe doubts and questions on the integrity of regulators and its approach have been raised.

HAS THE NATION BENEFITTED ANYTHING FROM THE OUTCOME?

- 27 The nation as a whole suffered huge loss in its march towards emerging as a global player in multi-asset-class exchanges, as also bringing financial inclusion through spread of markets.

HAS THE MARKET BENEFITTED ANYTHING FROM THE OUTCOME?

- 28 India lost its sheen as the most promising country with innovations in exchange infrastructure that FTIL pioneered and promoted in last two decades.

WHAT MESSAGE HAS IT SENT TO ENTERPRISES?

- 29 Response mechanism to crisis tend to be biased, not planned properly, abrupt and sudden and targeting a few leaving untouched others who have played a major role in the problem.

WHAT MESSAGE HAS IT SENT TO GLOBAL MARKETS?

- 30 Lack of maturity in dealing with complex problems. Biased and vindictive approach of penalizing without any efforts towards market recovery or client protection. Resort to measures inconsistent with global corporate laws.

HOW A FAST GROWING FINANCIAL INFRASTRUCTURE GROUP FROM INDIA IS DEMOLISHED AND DESTROYED BY THE CONSPIRACY OF A FEW VESTED INTERESTS

WHAT OBJECTIVES DID THE CONSPIRACY FULFILL?

- 31 Served the vested interests to protect and promote competitors of FTIL. Undermined the fast growing Group which set several benchmarks in exchange industry. Undermined the potential gain that India could have achieved.

HOW THE OUTCOME AFFECTED NSEL?

- 32 Disabled NSEL to overcome the crisis. A pragmatic approach could have enabled it to solve the crisis and yet make progress.

HOW THE OUTCOME AFFECTED FTIL

- 33 Lost the exchanges at distressed sale. Sold some of the subsidiaries. Closed market development initiatives. Subjected to multiple investigations. Harassed and penalised. Reputation of the promoters and key executives tarnished. Deprived of growth opportunities and market development.

HOW LEGAL IS THE PROPOSAL OF MERGING NSEL WITH FTIL?

- 34 FTIL has sought the intervention of the court in this regard.

CONSEQUENCES OF THE ILL-CONCEIVED MERGER

- 35 Will set a bad precedent. Create confusion among the international companies. Deprive shareholders of their due right to wealth creation. Adversely affect the prospects for recovery and growth.

THE EXPANSE OF FTIL GROUP EXCHANGES

- 36 Prior to the NSEL problem, FTIL has operated exchanges and ecosystem institutions spreading across 9 regulatory jurisdictions. First exchange Group from emerging markets to set up multi-asset-class exchanges in leading international financial centers.

TRACK RECORD OF FTIL EXCHANGES IN REGULATORY COMPLIANCE

- 37 Exchanges of FTIL operated in the most stringent regulatory jurisdictions in India and abroad and there is no history of any abuse or mal practices by any of the exchanges.

WHAT WERE THE ASPIRATIONS OF FTIL?

- 38 To show-case India as the leader in the financial markets infrastructure development. To create vibrant markets in bonds, energy, commodities, currencies, and equity that can make India a global market powerhouse.

HOW FTIL INITIATIVES WERE SABOTAGED?

- 39 By declaring FTIL not fit and proper merely based on audit reports that were prepared in a hurry often extending the brief and with elaborate disclaimers. No independent evaluation or assessment. Management not given opportunity to respond and represent.

WHAT NSEL | FTIL NOW ASPIRE AND SEEK?

- 40 To create innovative technologies and interventions that help development of markets and market culture. Seek fairness and recognition for its efforts in market development and support to recover and pursue growth.

CONTENT

	The Dangers from Discrimination	4
	The Contours of A Conspiracy	5
	The Truth About NSEL: A Primer	6
	WHY THIS PAPER?	14
	<i>The Real Picture on the Background of the Crisis</i>	
1	FINANCIAL TECHNOLOGIES	16
	<i>Distinction of Pioneering and Path-Breaking Contribution to Indian Financial Market</i>	
	The Pioneer	17
	The Path-Breaking Contribution	18
	The Spin-Off Effects of the Financial Technologies Group	18
	An Exchange Industry MNC from India	19
	Distinctions	20
	Extensive Ecosystem	21
	NSEL Crisis	21
	Rising to the Challenge	22
	Subjected to Unfair Treatment	22
	Looking Ahead	23
2	OUR PRIORITY	24
	<i>NSEL is committed to Expedite Recovery from the Defaulters, to Resolve the Crisis</i>	
	A Positive Action from the FMC could have led to a Productive Outcome	28
3	PRINCIPLES AND PRACTICE	30
	<i>Overlooking Principles of Fairness to Unjustly Punish the Financial Technologies Group</i>	
	If it is a Private Market Problem, Why Excessive Regulatory Zeal?	31
	Regulation: Can be it Discretionary or should it be Mandatory?	31
	Unfair Comparison with Earlier Crises	33
	Puzzling Attitude of Pick and Choose	33
	Questionable Application of 'Fit and Proper'	34
	FTIL is the Victim	35
	The Money Trail	35
	Should a Payment Crisis only Lead to Closing Down of the Exchange?	36
	Why the Approach Needs to Change	37
	Avoid Measures that could be Counter-Productive	37
4	THE BEGINNING AND THE BUSINESS OF NSEL	38
	Exemptions	41
	The Business of NSEL	41
	Major Aspects of NSEL Business	42
	Types of Contracts Traded	43
	Management of NSEL	43
	Organisational Chart	44
	NSEL: The Bright Side	44
5	THE CAUSE OF THE CRISIS	48
	<i>Abrupt Stoppage of Contracts by DCA FMC</i>	
	FMC DCA	49
	Brokers	50
	Management	50
	Misconception that NSEL was set up to defraud people	52
	Missing Stocks: How it could have Happened?	54
	Role of Employees	54

	No Red Flags to The Board	54
	Brokers and Trading Clients	56
6	SHORTCOMINGS OF THE REGULATOR	58
	<i>Failures of Regulatory Agency</i>	
	The Multiple of Audits...	60
	and the Aberrations	61
	What is Good Regulation?	62
	Designated Agency	63
	Points of Contact and Communication	64
	The Show Cause to NSEL	64
	The NSEL Reply	65
	Taking a Partisan View	66
7	WHY PURSUE ONLY FTIL	68
	<i>FMC showed Bias in Pursuing only FTIL leaving Other Players Untouched</i>	
	A Mature Way of Solving the Crisis	69
8	APPROACH OF OTHER REGULATORS	70
	<i>Comparison of FMC DCA Actions with those of Other Regulators in Other Crises</i>	
9	CRISIS MANAGEMENT	74
	<i>FTIL Extended All Support to NSEL to Resolve the Crisis</i>	
	Immediate Relief to Trading Clients	77
	Reconstitution of Board and Changes in Management of NSEL	77
	Other Efforts towards Recovery	78
	Complete Cooperation to Investigating Agencies	80
	Periodic Briefings to Government and Regulatory Authorities	80
	Recovery Efforts and Pursuing Defaulters	80
10	NSEL CLARIFIES	82
	<i>Clarifications on the Comments of the Chairman, FMC, on NSEL</i>	
	NSEL Responses to Specific Comments of the Chairman, FMC	83
11	CONTESTABLE PROPOSALS	88
	<i>Merger of NSEL with FTIL Proposed by FMC Not Consistent with Corporate Laws</i>	
	Why Merger Should Not Be Allowed to Happen	89
	Supersession of Management: Depriving Due Credit	90
12	LOOKING BACK	92
	<i>How the problem could have been better resolved.</i>	
13	ANNEXURE	
	Contracts In Dispute: Settlement Defaults at NSEL: What really happened?	94
	Delivery Process	95
	Chronology	96
	Guidelines for Members for Conduct of Business	100
	Recovery Efforts by NSEL	102
	Brief Summary of NSEL's legal efforts	104
	An Unhealthy Misinformation and Misunderstanding: How NSEL Crisis was Misinterpreted and Misunderstood	106

ABBREVIATIONS

APMC	Agricultural Produce Market Committee
CAG	Comptroller and Auditor General of India
CBI	Central Bureau of Investigation
CDSL	Central Depository Services (India) Ltd
CIBIL	Credit Information Bureau (India) Limited
DCA	Department of Consumer Affairs
ED	Enforcement Directorate
EOW	Economic Offences Wing
FAO	Food and Agriculture Organization of the United Nations
FCI	Food Corporation of India
FCRA (1952)	Forward Contracts (Regulation) Act, 1952
FMC	Forward Markets Commission
Gol	Government of India
HAFED	Haryana State Cooperatives Supply and Marketing Federation Limited
ICAI	The Institute of Chartered Accountants of India
LC	Letter of Credit
MAC	Monitoring and Auction Committee
MCA	Ministry of Corporate Affairs
MPID Act	Maharashtra Protection of Interest of Depositors (MPID) Act
NAFED	National Agricultural Cooperative Marketing Federation of India
NSDL	National Securities Depository Ltd
PMLA Act	Prevention of Money Laundering Act, 2002
PSS	Payment and Settlement Systems Act, 2007
TCs	Trading Clients
DEA	Department of Economic Affairs
MoF	Ministry of Finance
ANX	Annexure

*These Annexures are available in separate book named **PART-2***

Disclaimer:

The purpose of this note is to explain the NSEL | FTIL side of the story and views on the whole episode of the NSEL crisis. It is not intended either to undermine or disparage the work of various authorities involved in resolution of the crisis or to comment upon subjudice matters. It is also not an attempt to cover or camouflage the real reasons behind the crisis or to escape from the obligations. It is just to explain the whole incident from the way NSEL | FTIL looks at it. FTIL and its Group companies, the previous and the present Boards and the management of the Group and its companies disclaim any responsibility arising from this Paper.

The Paper is a collective feeling of the constituents, shareholders and beneficiaries productively engaged with the vast ecosystem of the group who are keen that the world be told the company side of the story, which the Paper would, hopefully do.

The Financial Technologies Group holds no grudge against any authority, government or others who were involved in various aspects of investigation and finding resolution to the crisis. While seeking application of fairness and lawful measures, NSEL | Financial Technologies has extended complete cooperation to all the authorities.

“ The NSEL-FTIL merger, the Government contends, is essential in the "public interest". But there is a serious flaw to this reasoning. The concept of limited liability is fundamental to equity investing. Going by it, FTIL, as the parent company for NSEL, may deserve to lose its entire investment in its subsidiary because of the latter's mismanagement. But to saddle it with the liabilities of NSEL beyond this, is an injustice to the firm's public shareholders. ”

The Hindu Business Line, October 27, 2014

“ Another great victory for the legal fraternity and a setback for the resolution of the NSEL debacle where Government is now messing the process up enormously. ”

Patrick Young, Exchange Invest Newsletter, October 30, 2014, Edition 372

A sample of comments from experts on the flaw | short comings in the merger proposal. The merger proposal is opposed by wide range of experts in India and abroad (ANX-17).

WHY THIS PAPER?

The Real Picture on the Background of the Crisis

It is not to avoid responsibility. It is neither an effort to undermine the importance of obligations nor an argument to comment on the authorities for which we have greatest respect and extended best of our cooperation and compliance, from the beginning and will continue to do so.

The Financial Technologies Group, is a large group that promoted nine multi-asset-class exchanges spread across Asia, Africa and the Middle East, many of them in collaboration with pedigree institutions and global and domestic investors. MCX-SX, the third national stock exchange and the first to be promoted by private enterprise had majority of the shareholders representing the government owned financial institutions.

Similar to any large financial group spread across different geographies and various market segments, FTIL too faced problem with one of its subsidiaries, the National Spot Exchange Ltd (NSEL). The causes behind the crisis and those who contributed to it are still under investigation.

However, as things have unfolded, it appears that the crisis is a result of a wide range of factors. Members | brokers who paired the commodities trading contracts and the regulator not analysing the data provided to them every fortnight by the exchange. The crisis emerged when the government stopped, in July 2013, with immediate effect, further issuance of new contracts by NSEL that led to liquidity pressures and settlement problem.

This time, the very nature of crisis is entirely different. There is no systemic risk, and it is about 13,000 trading clients and 24 defaulters who were caught up in the liquidity problem. Nearly 85 percent of the settlement obligation is from seven defaulter members and about 6 percent of 13000 trading clients currently account for 69 percent of the claim. The trading clients dealing with NSEL were all well informed, well educated, highly qualified, and of high net-worth. The trading took place between willing buyers and sellers, both sides being fully aware of the intricacies of trading along with associated risks and rewards.

The accident at NSEL was manageable. Nearly Rs 5,000 crore of assets of the defaulters that have been frozen and remain with the investigative agencies, (this is nearly as much as the settlement value of Rs 5,690 crore), is available for disposal and distribution among the trading clients once investigations are complete and clarity on legal process emerges.

The reactions to the crisis, however, remained one sided, all of which have been directed against the Financial Technologies Group. FTIL has nothing to do with any of the trading clients and never met any of them with regards to NSEL business. It was going by the briefings and reports as provided to the NSEL Board, by NSEL's management, that all was well and the minutes of which were noted in the FTIL Board meetings with effect from March 2011 when NSEL became a material subsidiary of FTIL. Immediately after the crisis, NSEL came out with an interim plan to support the small trading clients, with exposure less than Rs 10 lakh, utilising the without prejudice loan of Rs 179 crore granted by FTIL as a goodwill gesture. NSEL reconstituted the Board and revamped the management. It extended complete support to investigating agencies.

It is NSEL's parent company FTIL that suffered the most from the crisis. It has lost all its exchanges at substantial losses that it passionately built and incubated over a long period, even before the investigations in the matter are complete. FTIL and its promoter were declared not 'Fit and Proper'

though pioneering role was played by them in creating the state-of-the-art exchanges and ecosystem not seen even in the developed markets. The punitive actions even extended to custodial interrogation though whatever was asked was provided regularly.

The silent and sincere efforts of the Group in trying in every manner to resolve the crisis, within the four corners of the law, were overawed by the barrage of criticism, accusations, aspersions, all based on misinformation and misunderstanding that came from all over with no responsible authority trying to explain the real situation.

That is why it is thought that the NSEL | FTIL side of the story needs to be told to the world. For the accident originated | engineered by FMC | DCA and then to payment default (post August 4, 2013) committed by defaulters at one of its subsidiaries, the entire Group is paying the price. Not only injustice was meted on the FTIL, but added to it are other painful measures such as the hurry to declare promoters not 'fit and proper', the vilification campaign, unverified rumours, which have pushed the Group into a corner gasping for a little justice.

The merger of NSEL with FTIL which the Ministry of Corporate Affairs, on recommendation of the FMC, has proposed in a draft plan, is a complete contradiction to the democratic system and against the tenets of corporate law. Thousands of shareholders of FTIL will be deprived to enjoy the benefits of wealth creation and the very business that stood against the global competition and sustained success will wither away. Any measures of supersession of the management will expose the company to a quagmire of confusion and indecision that will surely decimate the prospects for an otherwise robust company having a clear vision for growth.

As things stand today, assets close to the settlement in dispute are frozen and available with the investigative agencies for early resolution of the crisis which shows that the trading clients money has not gone into thin air and is completely collateralized with real assets. NSEL, with all the required support from its parent, FTIL, is striving its best to recover the trading clients money from the 24 defaulters and even found success in full recovery of amount from two members with outstanding dues, which has already been distributed among the trading clients.

So far you have heard the side of the story that has unjustly punished the Group. We now seek your indulgence in spending a few minutes to listen to the hitherto "untold" story behind the crisis and what have been our efforts and intentions to resolve the crisis.

FTIL has always strived to make its growth a story for India to take pride in. Our exchanges and ecosystem institutions have demonstrated this spirit more than adequately.

We should now be given a fair chance to explain our stand, to recover and rebuild. It will be such a waste to demolish all that this Group has built in the interest of the country and its financial system, just to fulfill the wishes of a few, a minority who in the first place are the reason why the crisis took place.

1

Financial Technologies

Distinction of Pioneering and Path-Breaking Contribution to Indian Financial Market

FTIL pioneered multi-asset-class trading technologies that enabled markets in India spread their reach and access across the country. The exchanges and ecosystem that the Group created in the last one decade stand out for their superior standards in the design and development of financial markets infrastructure that are not seen even in some of the developed markets.

The engagement of FTIL in global and domestic exchange industries and ecosystem development prior to the crisis is very extensive and comprehensive.

FINANCIAL TECHNOLOGIES GROUP: The Ecosystem of Markets and Economic Empowerment



For India, the decade of the 1990s was a turning point. A new wave of economic liberalization that has dawned in the country after five decades of controlled policy environment unleashed an upsurge of enterprise and entrepreneurship for which India was known for centuries. It is around the same time that new-generation information technology companies, which made India as brand equity for global outsourcing, began to take shape and form. It was also the time when stock markets in India, which functioned under the closed confines of broker-dominated exchanges, began to emerge as corporate entities with greater focus on moving towards electronic trading and trade transparency.

India is a large country with vast geographic proportions and has the potential to create markets of big size and significance. However, for long, the country faced the limitations of logistics to spread the market activity across the nation. The technologies prevailing at that time, mostly from the global multinational corporations were prohibitively expensive, which made thousands of brokerage firms in India, many of them smaller in size, not being able to afford expensive technologies

THE PIONEER

It is at that time the pioneering role of FTIL came into finest display, which amazed even the developed markets. A small team led by Mr. Jignesh Shah, B.E. (Electronics), Mr. Dewang Neralla, B.E. (Computer Science) and Mr. Ghanshyam Rohira, B.E. (Computer Science), harnessing the skills they earned as engineers and a strong urge to place India on the map of the global capital markets, came out with trading technology through which brokers could trade multiple products in different exchanges using just one desktop. It was like a sort of revolution in trading technology in India where virtually every exchange, broker, sub-broker, and market intermediary have courted this product and vouched for its best performance. In securities industry, "ODIN" trading solution is like an i-Phone which everyone wanted. The only difference is that FTIL made it affordable to thousands of broking firms, small and big, individual and corporate, across the length and breadth of the country.

The trading technology that FTIL has developed had to meet the toughest standards. It has to match with the best that the competition was offering in terms of quality and robustness. It should be useful to thousands of broking firms. It has to clear the regulatory standards. It should be found acceptance by the exchanges. If it were to be extensively used, it needed to carry out enormous capacity building.

FTIL, with great focus and thrust on quality, robustness and cost effectiveness, has met all these challenges with great commitment. Very soon it emerged as the market leader (Number 1 in India and number 2 in the world) in trading technology, which even competitors used to hold in high regard. It has held leadership position for the past 15 years.

The optimally prized and process-efficient trading technology that FTIL has so passionately developed has enabled Indian stock markets to make a big leap in terms of expanding operations through the country and gaining access to millions of investors and institutions. The very fact that Indian stock markets have about half a million trading terminals, most of which are run on the technology provided by FTIL, spread across nearly 3000 towns and cities is a testimony to the immense contribution the company has made in India in making Indian stock markets truly national.

THE PATH-BREAKING CONTRIBUTION

A pioneer in technology solutions soon became a path breaker in the exchange industry. Even till early 2000s markets in India meant just stock markets. One or two products were traded on the exchanges that hardly reported volume of any size or significance. India was nowhere in the vicinity of globally recognized exchanges. It was an opportunity for FTIL to repeat the distinction that it achieved in creating world class products in exchange technology. Exchanges are the natural progression for the company as it has excelled in providing technology solutions that enabled transaction intensity and the presence spread across the geography. It then explored to enter into the exchange industry to set up state-of-the-art exchanges that India can take pride in.

It is this aspiration that led the Group to set up a wide range of exchanges in India. Not only setting up the exchanges, the Group is credited with the distinction of developing exchange - traded derivatives markets in virtually every sphere that India has witnessed in the post-reform period, which helped millions of businesses and enterprises to protect their business and growth from price risk.

Multi Commodity Exchange of India (MCX) was the first exchange from the Financial Technologies Group. MCX was given licence to trade in commodity futures, which it obtained based on the excellent track record of the promoters and the professional expertise to run modern financial market infrastructure institutions. FTIL got the licence for MCX purely on merit of their track record against intense competition from other players. Very soon MCX has brought back the glory that India once enjoyed in the leadership of commodity trading. India being the 'Sone ki Chidiya' was the attraction that pulled Columbus to Vasco da Gama to the East India Company to India. Mr. Jignesh Shah dreamt of making India, once again, "the commodity trading hub between Tokyo and London". The success of MCX has become a standard for exchange industry development in many emerging markets. Governments from various countries have approached the Financial Technologies Group to set up such successful financial markets infrastructure in their respective countries. At its peak, MCX had more than 2000 members with about 4.5 lakh trading terminals spread across 1500 cities and towns with an average daily trading to the tune of Rs 500 billion.

THE SPIN-OFF EFFECTS OF THE FINANCIAL TECHNOLOGIES GROUP

ECONOMIC BENEFITS	TECHNOLOGY BENEFITS	SOCIAL BENEFITS
<ul style="list-style-type: none"> • Efficient price discovery process • Diverse hedging products • Extensive market infrastructure • Market penetration across towns and cities • Collateral and risk management products 	<ul style="list-style-type: none"> • Indigenously developed cost-effective technologies • Low-cost real-time information dissemination • Innovative payment solutions 	<p>A nationwide study (A Million Jobs & A Million Opportunities) conducted by MCX and Tata Institute of Social Sciences, TISS, brought out numerous social benefits contributed by the Group that include:</p> <ul style="list-style-type: none"> • Employment opportunities across the country • Increased scope for self-employment opportunities • Financial access to local communities • Increased participation of the local talent and expertise • Growth of local entrepreneurship

AN EXCHANGE INDUSTRY MNC FROM INDIA

From the success of MCX came out the international forays of the Group in setting up exchanges in leading international financial centres covering important geographies of Africa, South East Asia and the Middle East. Dubai Gold and Commodities Exchange was set up in a joint venture with the Government of United Arab Emirates. It is for the first time that the Government of United Arab Emirates has entered into a joint venture with a private sector institution outside the country. DGCX, as it is known, very soon emerged as a major multi-commodity exchange in the Gulf region, a position it enjoys even now. Then followed a series of multi-asset-class exchanges in leading international financial centres. Singapore Mercantile Exchange within the regulatory jurisdiction of Monetary Authority of Singapore has emerged as a well-known exchange in South East Asia. Global Board of Trade, which was under the regulatory supervision of Financial Services Commission, Mauritius, was meant to be the gateway for growth opportunities in the fast-growing Africa region. On the eve of the launch of the Global Board of Trade in Mauritius, Navinchandra Ramgoolam GCSK, FRCP, Prime Minister of Mauritius was very gracious in thanking the Financial Technologies Group for "showing confidence in Mauritius and adding an entirely new dimension to our financial system by bringing knowledge, technologies, businesses and know-how that are generally found in the big financial centres of the world. To operate in Mauritius might be a relatively small step for GBOT, but this was a big stride in our economy." Global Board of Trade is now merged with Bourse Africa that the Group has set up in Botswana as a business strategy to focus on the entire Africa region, with its headquarters now located in Mauritius. Bahrain Financial Exchange under the regulatory jurisdiction of the Central Bank of Bahrain was envisaged for developing trading in various sukuk-based and Islamic capital market products that are assuming importance and prominence in a number of countries. Within a very short time the imprints of the Financial Technologies Group spread far and across multiple geographies and multi-asset-classes.

THE EXTENSIVE UNIVERSE OF EXCHANGES AND ECOSYSTEM INSTITUTION CREATED BY FINANCIAL TECHNOLOGIES



Exchanges promoted by FTIL are located in leading international financial centres, such as Singapore, Mauritius, Dubai, Botswana and Bahrain, in addition to Mumbai and Delhi, making it the first ever multinational company from emerging markets to hold exchanges across major geographic regions.

Back home, further innovations continued. One of the major problems affecting the Indian industry was electricity. Indian Energy Exchange was set up to create market-based solutions for price discovery and trading of electricity. MCX-SX, India's new stock exchange was established to offer a basket of stock market products so as to increase retail participation in the stock markets, which has been abysmally low. Further, NSEL was set up to create and develop a common market for agricultural produce by providing a nationwide electronic trading platform. Thus FTIL has created a unique basket of exchanges for all major asset classes, which is unique in global finance.

DISTINCTIONS

- MCX was ranked by the Futures Industry Association as the 3rd biggest commodity exchange in terms of number of contracts traded. MCX is the first listed exchange in India, which received phenomenal success by mobilizing US\$ 7 billion for an issue size of US\$132 million. It won the NASSCOM Social Innovation Honors 2010 for its flagship CSR Project Gramin Suvidha Kendra, the rural facilitation centre set up in a joint venture with India Post.
- Growth and Inclusion was the theme on which exchanges of the Financial Technologies Group were conducting business.
- MCX-SX was ranked at the 1st biggest exchange in terms of number of currency futures contracts traded by the World Federation of Exchanges.
- Indian Energy Exchange is the biggest energy exchange in India in terms of electricity traded. The exchange was reported as leading to a second industrial revolution by a lead story in Economic Times (July 9, 2011).
- NBHC was the largest collateral and warehouse management company in the private sector in India. It rose to become the largest facilitator of bank credit against agricultural commodities through warehouse receipt based finance.
- Dubai Gold and Commodities Exchange even now enjoys the distinction of a premier exchange in the entire GCC region.
- Atom had the distinction of being India's leading digital transaction platform, which received the India SME Innovation Award for 'An Innovative Payment Solution for SMEs'.
- All exchanges of the Financial Technologies Group were widely held, consisting of pedigree investors from domestic and international markets. The Group exchanges had predominant shareholding of the public sector financial institutions. For instance, banks and financial institutions held 88.8 percent of the shareholding of MCX Stock Exchange promoted by the Group. The group had the benefits of several visionaries, senior bureaucrats, independent professionals, academicians serving in the Board, with every institution run by a team of independent professionals.

MCX: A MISSION FOR THE NATION				
of INDIA	by INDIA	in INDIA	to INDIA	for INDIA
The underlying of commodity futures traded on the exchanges are all important aspects of the Indian economy. Be it agricultural commodities, bullion, metals, or energy, all are essential for the growth of the nation. Commodity exchanges help in efficient price	The development of the entire commodity futures market is solely shouldered and driven by Indian enterprises and professionals, and these markets are run and managed by Indian talent. Traders, investors, technology professionals, brokers, bankers,	All the progress and development of commodity exchanges take place and stay in India. Pricing, trading, hedging, research, employment, income generation, and job creation take place in India, benefitting millions who are gainfully employed either in business or jobs or numerous enterprises. A major	Commodity exchanges are playing a pivotal role in the Indian economy. They offer a variety of benefits to a large number of stakeholders through efficient price discovery, price risk management through hedging, and effective planning of production and consumption. They directly benefit millions of producers and consumers,	Unlike capital markets, commodity markets in India are not driven by either foreign institutional investors or companies. The entire ecosystem of constituents of commodity markets, including farmers, corporations, traders, producers,

discovery as well as offer risk management alternatives to producers and consumers of these commodities.	intermediaries, and so on reflect Indian talent and skills and represent the most successful story of market development in post-independent India.	contributor to the revenue of the state and Central governments as stamp duty, service tax, professional tax, and income tax, these exchanges support the rural development programmes of the government and strengthen its financial inclusion strategies.	which include farmers, entrepreneurs, traders, individuals, SMEs, corporations, and investors. They also indirectly benefit millions of ecosystem partners like warehouse operators, collateral management services, logistic support providers, information vending services, and other service providers.	consumers, and other stakeholders, are based and residing in India.
--	---	---	---	---

- Mr Jignesh Shah, promoter of FTIL is the only Asian to be recognized as 'Dominant Financial & Futures Industry Leaders', by the Futures Industry Association (US), a glory that he shared with the likes of US Treasury Secretary, Tim Geithner, CME's Craig Donohue and Terry Duffy, ICE's Jeffrey Sprecher and BATS' Joe Ratterman.
- He brought the first FII investment in MCX, and then listed it with an outstanding success. Honoured as 'Young Global Leader' by the World Economic Forum, 'Entrepreneur of the Year' by E&Y and the 'Exchange Industry Person of the Decade' at the India International Gold Convention.
- His focus on development of 'Social Business enterprises' generated over a million jobs that blended social interest with inclusive growth, and yet ensuring highest returns to shareholders.
- He was keen on putting India on top of the map of the global exchange industry.

EXTENSIVE ECOSYSTEM

To be successful, exchanges require support in the form of capacity building, which FTIL has carried out in a unique manner. Exclusive arrangements for providing these support systems were made. National Bulk Handling Corporation was providing risk and collateral management facilities. TicketPlant was providing cost effective and customized real time data support and solutions to the exchange industry community. FTKMC was engaged in the development of extensive domain knowledge development and management across various stakeholders, including regulatory institutions, exchanges and intermediaries, corporates, banks and financial institutions, investors and the academia. Atom was providing innovative payment solutions. The ecosystem institutions so thoughtfully designed were contributing services to not only the exchanges of the Group but also other institutions from India and a number of emerging markets.

NSEL CRISIS

It might be ironical, but it was not FTIL that mooted the proposal of the spot exchange. FTIL was only keen on developing exchange industry solutions and setting up multi-asset-class exchanges. The idea of National Spot Exchange came in the context of the keen desire of the Government of India to create a nationwide common market for commodities (see Page no. 39). The Government invited various institutions for consultations on setting up of electronic spot exchange to which MCX responded by submitting a proposal.

The Government gave the responsibility of regulation in respect of oversight, protection of investor interests and provision of periodic information by commodities exchanges on all major operational aspects to the FMC. On several platforms, MCX has been advocating amendment to the FCRA Act to further widen the scope of the commodity derivatives markets as also sought a complete regulatory framework for the spot exchanges by the Forward Markets Commission.

These developments more than adequately dispel rumours spread by certain vested interests, that NSEL was created by FTIL with the sole purpose of defrauding the people. (Please refer to Chapter 5)

The accident at NSEL happened when trading clients sequenced certain commodity trading contracts to maximise return. When the Government instructed NSEL to stop all contracts, immediately, market intermediaries | trading clients were caught in a liquidity problem, disrupting the smooth settlement programme that had been going on since the inception of the exchange.

ISING TO THE CHALLENGE

FTIL extended all support to NSEL to resolve the crisis. As an interim measure, without prejudice loan of Rs 179 crore was given to NSEL to pay the smaller trading clients with exposure upto Rs 10 lakh. The NSEL Board was reconstituted and the management revamped. NSEL extended full cooperation to the investigating authorities, including EOW, CBI, ED as also the Committees that the Government has set up to study the NSEL crisis. FTIL has been supporting NSEL through financial and human resource support to explore various avenues of crisis resolution that are legally possible. NSEL, with support from FTIL, has been taking all measures required legally to proceed against defaulters to recover the money.

FTIL did all what was expected from a responsible corporate when one of its subsidiaries came into a problem.

SUBJECTED TO UNFAIR TREATMENT

- Investigation by multiple agencies in the same issues
- Though investigations are not complete and the promoters not held guilty, they are subjected to excessive harassment
- Rumours that have no basis and far from reality
- Relief and recovery measures of the FTIL are not recognized
- Continuous threats in terms of mergers and change of the Management of FTIL which are adversely affecting the recovery process and crisis resolution



- Loss of Exchanges and ecosystem ventures at distress that FTIL has pioneered and so passionately developed
- Closure/sale of companies
- Loss of business growth
- Job losses in group companies affecting hundreds of families
- Decline in the commodity exchange business after the exit of the promoters
- Loss to scores of small businesses that depended on the FTIL group for various support services

While action was taken against NSEL and FTIL for its sincere efforts to find a solution to the crisis, was most unjust and unfair, all other players responsible for the crisis such as the defaulters and brokers were left out. FMC has focused only on NSEL and FTIL, with actions that proved detrimental to FTIL, and was put at risk prospects and fortunes of thousands of investors, employees and other stakeholders. These actions, which

were never heard or seen as any time in the past when a company was extending its fullest cooperation to resolve the crisis, included custodial interrogation of the promoter and key governing and managerial personnel of the exchanges, declaring the promoter as not fit and proper, threatening with the mergers and supersession of management, which are not consistent with the corporate conduct of civil societies in democracies.

The immature manner in which FMC handled the accident at NSEL only highlighted its own shortcomings and led to NSEL and FTIL becoming even more aggrieved party than these were before.

In the outrage that emerged after the crisis and the intense lobbying by certain sections of brokers and trading clients, a few major facts about NSEL are being completely side-stepped. The contracts in dispute formed just 17 percent of the total business of NSEL since inception. Except the contracts that faced problem, the settlement of e-series contracts was conducted smoothly and successfully. When the exchange was abruptly stopped by the DCA | FMC to issue further contracts and the operations were closed, the exchange had a total of 46,000 clients with outstanding dues. Claims of 33,000 clients of e-Series contracts were settled successfully. Clients with exposure below Rs 10 lakh whose number is 7,000 received 50 percent of their claims. The claims of 6,000 clients are under the process of settlement. Of the Rs 5,690 crore of settlement, seven defaulters own upto 85 percent and six percent of the clients, which is equivalent to 781 clients who traded through 71 brokers with whom the exchange has privity of contract, (the clients have their own client-broker agreements with brokers under the Rules, Regulations and Bye-Laws), account for 69 percent of the claim.

The accident at NSEL has affected FTIL in the worst possible manner. The Group lost exchanges, profitable businesses, and growth opportunities. Its ability to create world class institutions is severely eroded and dented.

Our parent company FTIL is fully seized of the problem at NSEL and is committed to extend fullest cooperation and support in an early resolution of the crisis.

We urge and request all those who believe in enterprise and the potential of India to lead the financial markets development to appreciate the relevant concerns and extend their support and cooperation in overcoming this crisis.

LOOKING AHEAD

WE EARNESTLY REQUEST THAT:

The actions of the Government be spread across all the entities that have contributed to the crisis, including the Forward Markets Commission, the then Additional Secretary, DEA, brokers, trading clients and defaulters. NSEL has been needlessly punished and so has the Financial Technologies Group.

Assets of the defaulters worth Rs 5,000 crore have been seized for attachment by the EOW, which is close to the Rs 5,690 crore settlement due. The Government should take all the measures possible to dispose of these assets in order to bring an early resolution to the crisis.

FTIL and the managerial professionals be absolved from the not 'Fit and Proper' declaration by the FMC, which was made without proper examination and investigation of all factors concerned and without considering the judicial process currently in progress.

The focus should be on the recovery of dues from the defaulters rather than taking vengeful measures against FTIL group that will destroy the ecosystem of exchanges and benefit competing exchange groups.

NSEL should be allowed to take every measure to resolve the crisis without undermining its power and potential by hasty measures of merger with FTIL or supersession of FTIL management, which can actually prove counter-productive in solving the problem.

2

Our Priority

NSEL is committed to Expedite
Recovery from the Defaulters,
to Resolve the Crisis

NSEL is committed to taking all the steps required and extending complete cooperation for an early resolution to the crisis through recovery of trading clients' money from the defaulters. FTIL has already provided ad-hoc without prejudice relief to NSEL to support small trading clients with exposure upto Rs 10 lakh and is helping the exchange with financial, infrastructure and personnel support to speed up the recovery process from the defaulters.

FTIL by itself has not committed any breach of governance standards or market abuses. It is a well-run company, with close to 60,000 public shareholders, an accomplished Board and a dynamic management, that has steered this company from being a start-up in early 2000s to one of the most respected and widely regarded technology solutions company that pioneered multi-asset-class trading segments, which stood the tests of competition from global majors such as IBM. Cost-effective and efficient technology solutions enabled Indian financial markets to expand the reach and access nationwide, benefiting millions, including financial institutions, intermediaries, investors and other stakeholders.

Since its inception, FTIL has not received any complaint from exchanges or intermediaries, which are its biggest clients and customers. Even competing institutions used to buy technology solutions from FTIL, which is a testimony for its integrity and business ethics. There was never any regulatory action of any sort though the exchange and ecosystem ventures of the Financial Technologies Group were operating in several regulatory jurisdictions in India and abroad.

FTIL never received any subsidy, land or financial or fiscal support from any state or Central government. It has contributed significantly to tax generation in the form of corporate income tax, service tax, transaction tax, stamp duty and other levies and charges from various institutions from time to time.

FTIL is a first-generation enterprise that created new standards and benchmarks on potential and possibility of financial markets development.

Despite FTIL being in the private sector, it has contributed significantly to the growth of public capital markets. FTIL is the one that took India to the global league tables in regard to exchange operations in major segments, such as commodities, currencies and energy.

It enabled several key and strategic sectors, working with a wide range of commodities to hedge, manage risk and discover prices to promote efficient production, procurement, sales and distribution.

A nationwide study by a leading research institution, Tata Institute of Social Sciences (TISS), described MCX one of the erstwhile Financial Technologies Group Companies in one catch line: "A Million Jobs and a Million More Opportunities".

The Financial Technologies Group has expanded its operations and sphere of influence and in this process conceived and created some of the best exchange and ecosystem ventures, which stand out as a distinct achievement and accomplishment from any emerging market economy in the world.

As it was expanding its sphere of influence across various asset classes in new market segments coming up in different geographies across the world, it engaged in numerous businesses connected with technology and exchange industry and in the process set up several subsidiaries, one of which was National Spot Exchange Limited (NSEL).

The genesis of NSEL came in the background of the desire of public policy and the Government of India to create a common commodities market in which a nation wide electronic platform for spot trading in commodities assumes significance. Reports of the Government have often mentioned the need for such an institutional mechanism to provide transparent and market-determined process to the producers of commodities. MCX, the flagship commodity futures exchange of the Financial Technologies Group, had several rounds of discussion with the Government in taking forward the spot exchange initiative. It is worthwhile to note that NSEL was not set up by FTIL but by MCX in 2005. It was only later on that shares held by MCX and its nominees in NSEL were transferred to FTIL as the current legislation was not conducive to commence greenfield spot trading and agriculture being a subject governed by different state governments with a Model APMC legislation, having promulgated by the Union Government and adopted by 16 state governments. Subsequently, an exemption was granted by the Ministry of Consumer Affairs, Food & Public Distribution, Government of India, to NSEL to conduct nationwide trading in one-day forward contracts. This was not a privilege extended to just NSEL, as similar exemptions were granted to all the other exchanges running similar platforms such as NCDEX promoted NSPOT and NMCE promoted National APMC.

While several agencies of regulation, government and investigation are currently involved in examination and study of various issues leading to the payment crisis, the MCA has suddenly come up with a proposal to merge NSEL with FTIL in contravention of the long established conventions of corporate law and conduct. Subsequently, newspaper reports hinted that the MCA is contemplating supersession of the management of FTIL, which is again a contravention of the established norms of economic freedom.

THE PERTINENT QUESTIONS THAT EMERGE IN THIS CONTEXT ARE:

- Is it fair to impose harsh and unjust actions on FTIL for payment defaults at one of its subsidiaries?
- Is it consistent with the local legislative and legal framework?
- Is it in accordance with the established conventions and practices?
- Is it in the good spirit of domestic and global corporate law?
- Has the regulator | government contemplated similar initiatives for companies that have experienced crisis that are much more grave and serious?
- Is the regulator | government succumbing to the demands of vested interests and a minority against a large majority of thousands of shareholders, employees and other stakeholders of FTIL justifiable?
- Are the proposed and management supersession aimed at only to settle the claims of a few high network trading clients against, the livelihoods of scores of people and families that directly or indirectly depend on the success of the FTIL justifiable?
- Is it fair for the government to deprive FTIL genuine investors/shareholders their due share in the progress of the company?

If the Government is keen on settling the claims of a few high network trading clients and a few brokers whose demand and persistence is leading it to take such unusual measures as considering merger and supersession of the FTIL Board and management, why cannot it direct its efforts to any of the following actions?

WHY CANNOT:

- The Government extend help and support to the three-member Committee set up by the Bombay High Court to dispose of the confiscated assets of the defaulters and utilise proceeds for the settlement?
- The brokers who have large role in the marketing, selling and trading of the defaulted contracts be investigated and forensic audit of their entire chain of operations be conducted?
- Strict action be taken against defaulter members who are evading payment?
- A fast track Court be set up to expedite recovery of dues from the defaulters and liquidate their assets?
- The PMLA (Prevention of Money Laundering Act 2002) be amended to enable proceeds of assets attached by the ED to go to the trading clients rather than the Government?

The amount close to the claim amount is already available in the form of collateral with the investigating agencies. It is expected that the Government, regulatory authorities and investigating agencies will sell the confiscated assets first towards settlement of the claims of the trading clients.

The Financial Technologies Group has created millions of new stakeholders in the financial system, giving opportunities to earn, grow, and seek sustainable livelihoods. It created and nurtured new market segments and expanded the product ranges to serve a multitude of purposes such as investing, hedging and seeking newer opportunities for wealth creation. Governments, regulators and other development institutions from various countries used to visit the Financial Technologies Group to know and learn how it was able to create such a success story of sustainable financial market infrastructure growth and

development with such an extensive ecosystem and a large engagement of numerous stakeholders. Countries were keen to partner with the Financial Technologies Group to replicate the success that the Financial Technologies Group has managed in India, in their respective countries. The whole country expectantly looked at the Financial Technologies Group for leading to new directions of growth and maturity in Capital and Financial markets.

All this came to an abrupt halt just because of payment defaults at one of its subsidiaries. Government and regulatory authorities could have surely recognized the power of enterprise that the Financial Technologies Group has built, the impeccable record of conduct it has displayed in public markets, the unblemished achievement of enriching thousands of its shareholders with uninterrupted dividend payout for 36 consecutive quarters, getting accolades and recognition from global and domestic institutions, including multilateral institutions such as UNCTAD, FAO, and should have extended a helping hand to the Financial Technologies Group to overcome the crisis, which could have enabled it to solve the settlement crisis quickly and take the country towards the next generation of growth and development in the financial markets. The world over it is not uncommon for the Government to give temporary and ad-hoc support to institutions in crisis. If the US and European regulators and governments would have adopted the same stance as that of the Indian Government and the FMC, there would not have been anything of US or European finance left by now. Globally, Governments and crisis-hit institutions have always worked hand in hand in solving the problem and enabled both to reach recovery within a short time, which proved helpful to investors, customers and other constituents of the economy and finance. Unfortunately in the case of the Financial Technologies Group, it was nothing but vilification and witch-hunt from all sides, be it the government or the regulator or the agencies that have pressed it into a corner disabling its power to recover and redress quickly.

Even without assistance and support and despite being under constant and continuous harassment, NSEL is determined to get itself out of the crisis and redress grievances of the claims of trading clients. It is extending cooperation and actively coordinating with the courts and other agencies towards realization of dues from the defaulters that could lead to an early settlement. In all these efforts, FTIL is fully supporting NSEL, both with personnel and finance.

FTIL and NSEL are not allowed to do even this in a planned and orderly manner with continuous threats of mergers and supersessions, which are not only unjust but could best be ascribed as measures of plain expropriation of a successful enterprise.

A POSITIVE ACTION FROM THE FMC COULD HAVE LED TO A PRODUCTIVE OUTCOME

It is surprising to note that the FMC has never let NSEL management handle recovery with focus and never partnered NSEL's recovery effort. In fact, the FMC kept taking decisions to destabilize recovery and keep defaulters away from being the focal point.

If the DCA had accepted NSEL's suggestion of orderly closure of the market in July 2013, this episode would not have happened. This fact is being stated not for pointing fingers but to clarify to those who have alleged that this model was deliberately wrongly designed, which is far from truth.

Globally, post-global market crisis, it called for creation of stability and isolation of risk whereas despite Financial Stability and Development Council (FSDC) being in place, the FMC through its various actions in fact has enhanced and accentuated the risk for the FTIL Group due to its hurried decision on declaring FTIL as not Fit and Proper. Overtime, enough evidence was there which clearly proved this point but by then NSEL had been disadvantaged.

From July 2013 to September 13, 2013 the Board at NSEL was trying to come to grips with the problem and understand the problem caused by the defaulters. By August 2013, NSEL filed its complaint against defaulters with the EOW. Later, the EOW registered the complaint of the trading clients. On December 13, 2013, the FMC declared FTIL and key officials of the FTIL Group, including the promoter of FTIL, CEOs of MCX and MCX-SX as not 'Fit and Proper' without proper hearing and consideration, which was ritualistically followed by SEBI (in case of MCX-SX) and Central Electricity Regulatory Authority (in case of IEX) despite regulatory compliance in both these exchanges being of the highest order, with an instruction for the FTIL Group to sell its stake in respective exchanges. This was also followed by each regulatory institution organizing forensic audit in each of the exchanges (i.e., NSEL, MCX, IEX and MCX-SX). Meanwhile, NSEL was busy making settlement agreements with defaulters to recover money or obtain collaterals, but the FMC refused to approve the agreements provoking the aggrieved parties moving to the MPID court for ratification of agreements, which later got embroiled in litigations. Finally, NSEL got court order in such cases and now competent authority is trying to sell the assets of the Defaulters. The process has been periodically interceded with recovery of assets, dialogues and negotiations for settlement, cases against NSEL | FTIL and cases against defaulters. Now when things were getting stabilized and a high-powered High Court Committee was constituted to look into the entire process of recovery, the FMC has come out with yet another vindictive and damaging proposal of recommending the MCA to merge NSEL with FTIL and subsequently change FTIL's management, which is quite in contradiction to the established conventions of corporate law and could only prove counter-productive as other measures of the FMC have been since the beginning of the crisis. The recurring theme of FMC has been non-cooperation, destabilization and hostility with the NSEL management which has further delayed recovery process and destroyed the growth prospects of a fast-growing financial markets group such as FTIL, which had taken India to the top of the league tables in several aspects of market depth.

Dealing with such complex issues require the support of the government and the FMC should have sought this support. Instead, the FMC chose to dump NSEL and make it extinct as an Exchange and damage the prospects of the FTIL group for a reason not very noble.

Though the Government in 2011 designated the FMC to provide oversight, safeguarding investor interest and collection of periodic information from the national spot exchanges, the latter did not initiate enough measures to conduct these vital functions that were required for sustained growth of spot exchanges.

Though FMC in their communication dated August 12, 2013 to DCA proposed actions under their power, FMC did not even appoint forensic auditors on defaulting entities, and also did not take effective and prompt steps for ceiling of warehouses. Instead it went ahead only with the preconceived objective of framing FTIL.

3

Principles and Practice

Overlooking Principles of Fairness to Unjustly Punish the Financial Technologies Group

While FTIL and NSEL have been pursuing and fulfilling obligations, within the framework available in the legal sphere, to ensure recovery and to attend to the interests of the affected constituencies, the treatment that was meted out to them by the various authorities has been plain unjust, in a great hurry, contravening and in contradiction of principles of fairness that need to be applied to a company working towards crisis resolution.

If it is a Private Market Problem Why Excessive Regulatory Zeal?

Regulation: Can it be Discretionary or should it be Mandatory?

Unfair Comparison with Earlier Crisis

Puzzling Attitude of Pick and Choose

Questionable Application of Fit and Proper

Differences in Definitions

The Money Trail

Should a Payment Crisis Only Lead to Closing Down of the Exchange?

Why the Approach Needs to Change

Avoid Measures that could be Counter-Productive

The manner in which the accident at NSEL was handled is a cause of concern. The way it was addressed by various agencies, including the regulatory authorities raises far more important issues that could cause anxiety and disquiet for those people who believe in free markets and fair justice. A complete and comprehensive review of the whole episode what contributed to the crisis and how it was managed subsequently – brings into light the importance of balance and maturity in handling crisis such as this, which unfortunately is in severe shortcoming in this case. In democracies and free markets, crises are not uncommon. If the authorities go into excessive overdrive, demolishing everything that is remotely connected with the issue in the name of resolution of the crisis, the image and ability of India to emerge as a major and mature economic power will come into serious doubt and dispute.

There is so much of misconception, misinformation, misreading, misunderstanding and misinterpretation around the whole crisis that it has made it into a sordid drama where players who should have taken the responsibility of finding a solution to the crisis went beyond their brief, leading to a complex situation arising.

The NSEL accident is not something that the world has not known in the past or that has never taken place. The context of the crisis is also not something so unusual. The question that only comes to mind is how and why there was so much hurry on destroying a vast ecosystem that has great potential to grow and contribute to India's progress, which was carefully built over long years, in the name of solving a crisis just to fulfill the demands of a few high networth trading clients who themselves are also to be blamed, in the first place, for the crisis to happen?

The way it was dealt with raises more questions than answers. Here are a few that are quite puzzling and perplexing.

IF IT IS A PRIVATE MARKET PROBLEM, WHY EXCESSIVE REGULATORY ZEAL?

The big issue about NSEL is about its regulation. The Forward Markets Commission, which regulates the commodity exchanges in India, disowned the regulation of the spot exchange saying that it is not under its purview, while, the Department of Consumer Affairs, Government of India through various notifications entrusted the FMC with regulation of spot exchanges and oversight which are core issues that form any regulatory mandate. Assuming for a moment that the FMC is not responsible for spot market business, then why is it so keen on punishing the promoters of NSEL for payment defaults that took place in the private market. In fact, some of the Government committees set up initially to investigate the issue observed that the affected parties were few and niche and this crisis did not cause any systemic problem. In that case what could be the motivation for the FMC to take exceptional and extraordinary interest in this issue?

REGULATION: CAN IT BE DISCRETIONARY OR SHOULD IT BE MANDATORY?

The institution that received it (i.e. the FMC) and the department that issued it (i.e. the DCA) belong to the same ministry until Sept. 2013 but the interpretation to the circular is entirely different. In its letter dated August 5, 2011, the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, under which the Forward Markets Commission was functioning had sent a circular to the Commission with the subject as **"Regulation of National Spot Exchanges" (ANX-18)**. In its letter dated 10 August 2011, the FMC advised the spot exchanges to submit information on a fortnightly basis **(ANX-19)**. Three important regulatory terms were used in these letters, entrusting the responsibility to the Forward Markets Commission: **"providing oversight", "safeguarding investor interest", "submitting information on a fortnightly basis"**. Globally, these three words form the bulk of the regulation in any market but is rather strange why FMC chose not to fulfill these functions entrusted to it.

How FMC was entrusted with the responsibility of regulation of the national spot exchanges, such as provision of oversight, safeguard investor interest and collection of periodic information.	How the regulatory functions entrusted to the FMC as the designated agency were selectively ignored for the last two years prior to the crisis and only pursued against NSEL and Financial Technologies after the crisis
What is advised	How it was ignored
<p>FMC letter Dated 10th August 2011</p> <p>To The Managing Director, National Spot Exchange stated:</p> <p>"I am directed to enclose herewith a copy of the letter from the Department of Consumer Affairs nominating Forward Market Commission as the 'Designated Agency' for providing oversight over all the Spot Exchanges, which have been granted exemptions under Section 27 of the FCRA. The Spot Exchanges may please note the content of the said letter for further necessary action at their end. It may also be mentioned that the Exchanges would be required to forward a return on a fortnightly basis to the Commission. The reporting format will be indicated to you shortly." Excerpt from letter from Ministry Consumer Affairs, Food and Public Distribution to the FMC dated August 5, 2011</p> <p>"In order to safeguard the interest of the investor and to ensure that the conditions stipulated for grant of exemption are complied with, the competent authority has decided to nominate the Forward Markets Commission as a Designated Agency for providing oversight over all the Spot Exchanges which are granted exemption under section 27 of the Forward Market Contract Regulation Act, 1952.</p> <p>4. In view of the above FMC may ensure that the conditions stipulated for grant of exemptions are complied with. In case, there is any breach of conditions subject to which exemption is granted, the FMC will be competent to take action deemed necessary and fit."</p>	<p>The Notification from the Ministry of Consumer Affairs, Food and Public Distribution, Government of India nominating the FMC as a designated agency for regulation of the National Spot Exchanges, including providing oversight, protection of investor interests and periodic collection of information was not implemented by FMC in a serious manner.</p>
What is advised	It was only NSEL and FTIL that were targeted
<p>Gazette Notification dated 6th August 2013</p> <p>"(ii) Settlement of all outstanding one day forward contracts at National Spot Exchange Limited shall be done under the supervision of Forward Markets Commission and any order or direction issued by the FMC in this regard shall be binding upon the National Spot Exchange Limited and any person, intermediary or warehouse connected with the National Spot Exchange Limited, and for this purpose, the Forward Markets Commission is authorized to take such measures, as it deems fit."</p>	<p>Whereas the Government notification clearly said the Forward Markets Commission should take all those measures relevant to the settlement of outstanding, including NSEL, any person, intermediary or warehouse connected with the crisis, the FMC chose to pursue action only against FTIL and NSEL. But no action initiated against the defaulters and the brokers.</p>

UNFAIR COMPARISON WITH EARLIER CRISES

Loose comments and comparisons about NSEL crisis abound in the media and public platforms comparing it to the earlier stock market crises. Harshad Mehta and Ketan Parekh's crises, which are normally brought to comparison, are completely different and out of context to the NSEL crisis as could be evident from the following:

EARLIER CRISES (HARSHAD MEHTA, KETAN PAREKH, NSDL, SATYAM)	NSEL CRISIS
Diversion of banks' money into stock price appreciation	There is no diversion of any sort of money from any Institution to NSEL. Instead money has gone to banks
Clients did not know the background of the stocks in which they were trading	Clients are fully aware of the commodities in which they are trading
Lakhs of clients and investors	The Exchange's privity of the contract is with 148 brokers
Money invested by clients have diminished or evaporated with fall in the price of stocks	Collateral and assets close to the tune of affected money of the clients (about Rs 5690 cr) is secured and now is with the EOW
Exchanges in which the clients lost money were not involved in recovering money	NSEL, the exchange, and FTIL, its promoter, are striving hard to recover the money lost by the trading clients from the defaulters
Both these crises have contributed to huge systemic risk	There is no systemic risk involved as mentioned by various committees including that of RBI Government of India
Happened in the financial markets where the value of the assets depleted and does not match with what the clients lost	Took place in the real economy where the value of assets attached by the EOW as collateral matches with that of the claims
In the NSDL IPO problem, 13.58 lakh retail investors were affected	Less than 1000 clients account for nearly 70 percent of the claim.
In the case of Satyam, the parent company itself admitted to lapses and the Board and the Management were not in a position to conduct normal business and fulfill obligations owing to the crisis	The parent company is not connected with the crisis in any manner. The Board and the Management are in total control of the parent company business ensuring smooth conduct of the business and fulfilling all obligations.

PUZZLING ATTITUDE OF PICK AND CHOOSE

Notwithstanding where the issue stands, either in respect of public or private domain or who has the power to regulate, the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, following the crisis, issued a notification dated August 6, 2013, stating that the FMC is authorized to take such measures as it deems fit in the settlement of all outstanding one-day forward contracts at National Spot Exchange and the said notification makes it binding on the exchange, any person, intermediary or warehouse connected with National Spot Exchange to abide by it.

Whereas all measures of the FMC were directed at NSEL and its promoter FTIL, why measures such as forensic audit, extensive investigations are not directed towards defaulters, brokers, warehouses, intermediaries and clients involved in the crisis. If the crisis is made out of the participation of all, then why punishment is directed against only FTIL and NSEL.

QUESTIONABLE APPLICATION OF 'FIT AND PROPER'

A cursory glance at the manner in which Fit and Proper guidelines are enforced by the Forward Markets Commission on FTIL shows several inconsistencies. The Fit and Proper order was passed without any independent fact finding inquiry by the FMC. The FMC relied solely upon the audit report of Grant Thornton, which had very limited scope of review within a limited period of time. The Audit report was prepared without Management response (i.e. a completely one sided story) and had a clear disclaimer that it cannot be used for legal purposes which was subsequently changed at the instance of the FMC. The FMC acted in undue haste without giving FTIL and its promoters a fair chance and sufficient time to cross-examine the audit report that led to such drastic action having irreversible consequences.

The following criteria determine Fit and Proper status and how FTIL and its promoters meet them:

FINANCIAL STATUS:

FTIL and its promoters are financially very sound. FTIL has a strong balance sheet with robust reserves and network.

EDUCATIONAL QUALIFICATIONS OR EXPERIENCE:

FTIL is a pioneering company in designing state-of-the-art financial market solutions and its promoters are not just highly qualified but are considered as visionaries of creating new-generation markets in India and abroad.

ABILITY TO CARRY ON THE REGULATED ACTIVITY COMPETENTLY, HONESTLY AND FAIRLY:

The Financial Technologies Group has multi-asset-class exchanges functioning in international financial centres, such as Singapore, Mauritius, Dubai, Bahrain and Botswana. After elaborate due diligence and assessment of the promoters, the licence for these exchanges are issued by the monetary authorities and regulators of security markets of the respective jurisdictions. Investors in FTIL have received excellent returns in terms of price appreciation and dividend declared for 36 continuous quarters. The Financial Technologies Group's exchanges in India, such as MCX and MCX-SX, are subjected to annual statutory and regulatory audits, which found no problems with the regulatory and compliance standards at the exchanges. FTIL or any of its group companies do not have any claims pending with any of its bankers, lenders, customers, vendors or employees. The IPO of MCX received phenomenal response of mobilizing nearly US\$ 7 billion of subscription to an issue size of US\$132 million. Leading auditors are engaged to examine the businesses of FTIL and its Group companies. FTIL and its group companies received numerous awards and citations in various international and domestic forums.

REPUTATION, CHARACTER, RELIABILITY AND FINANCIAL INTEGRITY:

The reputation of the promoters is so high that once MCX-SX the new stock exchange promoted by the Group began its membership drive, it evinced unprecedented interest with road shows that received resounding success. The character was without any blemish, focusing on how to expand the sphere of markets in India and reward the investors. Growth and Inclusion was the theme that was promoted for the exchanges, which dominated the character of the group. FTIL and the Group ventures delivered beyond what was promised, demonstrating a high degree of reliability. When exchanges in India used to shut operations briefly during the sun outage, FTIL showed how this could be overcome, which was later followed by other institutions. FTIL promoted MCX-SX reduced the time gap for crediting the clients with money, making it available before the trading time, thus enormously helping the liquidity position of the brokers and clients. On the financial integrity issue, FTIL or any of its Group companies do not have any record of any disputes regarding payments or claims or financial obligation to any of its constituents.

FTIL and the promoters of FTIL fulfill all the criteria of financial soundness, fitness and probity. Yet for a crisis in one of the subsidiaries, hasty and undue punishment is awarded to FTIL and its promoters causing severe damage to the reputation and business prospects of the Financial Technologies Group

FTIL IS THE VICTIM

The affected parties in the NSEL crisis are many. However, first and foremost are the promoters of FTIL who lost greatly in terms of reputation, management of exchanges that they have created and developed, erosion in the company value, potential loss of business, opportunity cost involved in entire energy being diverted to the crisis resolution, etc. The group companies of FTIL were the next to get affected as regulatory actions forced FTIL to sell reputed exchange ventures in distress such as Singapore Mercantile Exchange, MCX, IEX and National Bulk Handling Corporation, the stakes of which were picked up by pedigree institutions such as the NYSE Group, Intercontinental Exchange, Kotak Bank, TVS led group and private equity firms. Some other companies were closed down. Reduced business led to several job cuts.

On the clients whose money is stuck with the defaulters, the exchange's view has been that these are trading clients in commodities who are fully aware of the nature of the product that they traded and the counter parties with which they dealt in trading of the product. The Hon'ble Bombay High Court in its order dated August 22, 2014, opined the same regarding this constituency (**ANX-20**).

Brokers are the next group who knew the product very well, provided funding to their trading clients, earned huge commissions from the trade, inspected warehouses on behalf of the clients and found these to be in order without bringing any shortcoming or deviance to the attention of the exchange administration. The very brokers who are now seeking action against the promoters, had mis sold the products after doing their due diligence. Both the trading clients and brokers knew, from the VAT invoices, their respective counter-parties (which are now defaulters). Unlike the anonymous trading that takes place in the stock markets, in NSEL, in the contracts paired by the brokers, trade took place between two parties fully knowing about each other, without direct contact.

NSEL was submitting information on all the trading and the stock position in each of the warehouses across India once in a fortnight to the FMC, which too did not raise any concerns to the NSEL and its Board. The entire communication channel was between the MD & CEO of NSEL and FMC | DCA.

The major shortcoming of the handling of the crisis is that several measures have been taken and proposals made without proper examination and consideration of correct facts, issues in dispute, manner in which stakeholders have been affected, comments and actions on matters that are sub-judice, and disregard for the need to conduct the investigations in a fair and transparent manner. Focus has only been on protecting the interests of 13,000 trading clients backed by 148 brokers of which just 6 percent currently account for 69 percent of the settlement amount in question.

It is high time that a more objective and fair view on the NSEL crisis be appreciated and communicated by all the authorities concerned.

THE MONEY TRAIL

Extensive investigations were carried out to ascertain whether any money or proceeds from NSEL were diverted to FTIL or any of its promoters. After extensive investigations by the Government and the investigating authorities and a series of interrogations, over the last one year, by specialized agencies such as EOW, ED and CBI it was found that there is no evidence of NSEL or FTIL or its promoters receiving any benefit from the money being exchanged on the NSEL platform. This has also been confirmed by the Bombay High Court order of August 22, 2014.

The question that arises is that when it is established and proven that neither NSEL nor FTIL nor its promoters are beneficiaries of anything that happened in the NSEL crisis, then why they should be subjected to unwarranted pain and punishment.

The trail clearly shows money flowing into the account of the 22 defaulters and does not involve the promoters or the management of FTIL. This makes the punitive actions taken against FTIL and its promoters unfair and unjust.

Amount receivable from defaulting members as on August 31, 2013 from the period commencing August 1, 2013 as stated by Sharp & Tannan Associates (**ANX-21**)

(RS. CRORE)

S.N.	MEMBER NAME	AMOUNT RECEIVABLE
1	AASTHA MINMET INDIA PVT LTD	23.87
2	ARK IMPORTS PVT LTD	719.42
3	BRINDA COMMODITY	14.01
4	JUGGERNAUT PROJECTS LTD	219.2
5	LOIL CONTINENTAL FOOD LTD	338.4
6	LOIL HEALTH FOODS LTD	287.48
7	LOIL OVERSEAS FOODS LTD	85.19
8	LOTUS REFINERIES PVT LTD	252.56
9	METKORE ALLOYS & INDUSTRIES LTD	98.08
10	MOHAN INDIA PVT LTD	575.08
11	MSR FOOD PROCESSING	9.05
12	N K PROTEINS LTD	964.89
13	NAMDHARI FOOD INTERNATIONAL PVT LTD	51.07
14	NAMDHARI RICE & GENERAL MILLS	10.45
15	NCS SUGARS LIMITED	58.85
16	P D AGROPROCESSORS PVT LTD	637.55
17	SHREE RADHEY TRADING CO	34.59
18	SPIN COT TEXTILES PVT LTD	38.26
19	SWASTIK OVERSEAS CORPORATION	100.83
20	TAVISHI ENTERPRISES PVT. LTD.	333.01
21	VIMLADEVI AGROTECH LIMITED	14.02
22	WHITE WATER FOODS PVT LTD	84.87
23	YATHURI ASSOCIATES	424.64
24	SANKHYA INVESTMENTS**	6.29
25	TOPWORTH STEELS & POWER PVT. LTD.**	159.46
	TOTAL	5541.12

** Topworth and Sankhya have settled almost all their dues

SHOULD A PAYMENT CRISIS ONLY LEAD TO CLOSING DOWN OF THE EXCHANGE?

The need for common Commodities markets in India was espoused on various occasions by agricultural economists (Dr. M.S. Swaminathan), the then finance minister (Mr. Chidambaram) and the then Prime Minister (Dr. Manmohan Singh) as also by international organisations such as the Food and Agriculture Organization (Rome). The evolution of the spot exchange was the outcome of an initiative to create a national level common market for commodities and free the buyers and sellers of the agricultural commodities from the clutches of the middlemen. It was only in one of the numerous products that NSEL was offering that the large scale payment defaults occurred. Typically, both the national spot exchanges were offering a number of products and at NSEL, the settlement of all the e-Series contracts, involving about 33000 investors were done in an orderly manner with payments made according to the schedule. Only contracts paired by the brokers faced problem, following the instruction of the DCA to NSEL to stop issuing further contracts with immediate effect, the defaulters suddenly began to freeze payment and divert physical stock. This created a liquidity problem which led to the crisis at NSEL, the impact of which has adversely affected the Financial Technologies Group.

The important issue is just because one product failed or was caught in a malpractice, should it lead to the closure of the very spot exchange business that was established to bring into India more reforms?

WHY THE APPROACH NEEDS TO CHANGE

Even after this fallout, the focus is not about what is in hand that could be settled. Rather efforts are being made to make this more complex and create a long and tiresome litigation that does not benefit anyone, more so the trading clients who are expecting their dues from the defaulters.

CURRENT SITUATION	ACTION REQUIRED FOR A PRODUCTIVE OUTCOME
Assets equivalent to the claims of the trading clients have been frozen and are available with the investigative authorities (EOW)	Dispose the assets frozen and other collaterals available for the settlement and distribute the sale proceeds to the trading clients
The promoter company has extended a bridge loan of Rs 179 crore to settle the claims of the small trading clients. FTIL is further assisting and helping NSEL with financial support and staff to strengthen its recovery process	Extend support to FTIL and NSEL to further intensify the recovery measures against defaulters
NSEL has initiated recovery action against the defaulters. Recovery from two members is already completed which was distributed to the trading clients	Investigate and conduct forensic audit of the defaulters to know where the stocks stored in the warehouses have gone
FTIL and NSEL are cooperating with the Government, FMC and other investigating agencies to bring an early conclusion to the NSEL crisis	Let the judicial process that is in motion be completed and avoid taking abrupt and ad-hoc actions that will lead to contest and litigation, which will drag the crisis for a long time. Set up fast track Court to expedite recovery of dues from the defaulters and liquidate their assets. Amend PMLA to enable proceeds of assets attached to go to the trading clients rather than the Government

AVOID MEASURES THAT COULD BE COUNTER-PRODUCTIVE

Instead of finding a quick solution to the crisis by sale of assets frozen of the defaulters and also evolving a mechanism for revival of the spot exchange, the pursuit is going in a manner that could lead to prolonged litigation. It is important to look at how the two measures proposed recently could turn out to be more detrimental, leading to more delay at arriving a suitable solution to the crisis.

The recommendation of the FMC for merger of NSEL with FTIL is out of place as the FMC is neither competent nor privileged to recommend such a move when many issues in regard to NSEL are still being investigated by various agencies and several matters are under consideration of the courts. The draft order of the MCA to propose merger of NSEL with FTIL has been widely criticized and condemned by all across for the bad precedent that such a measure would set in the Indian corporate sector by destroying the concept of limited liability as also create new worries among the foreign investors. To settle the claims of a few trading clients by putting the thousands of genuine investors/shareholders of Financial Technologies at risk is something unheard in any corporate history. And how logical would be the putting up the prospects of majority of people who were never connected with the crisis at NSEL, by solving the problem of a minority who have taken risk fully knowing the implications?

Secondly, the talk about the supersession of FTIL management is very demotivating for FTIL and is unfair treatment for the promoters and the management who have been striving, in the last one year, to recover the dues of the trading clients from the 22 defaulters and working towards an early resolution of the crisis. The promoters and the management of FTIL have received punishment very high and disproportionate to the crisis that occurred in one of the subsidiaries of FTIL.

4

The Beginning and the Business of NSEL

There is a perception created among the public that National Spot Exchange Limited was created to get some quick benefits, which is far from the truth. In its five years of functioning, it has been meeting all obligations. The crisis would not have been of such proportion if the DCA, on advise of the FMC, would not have stopped NSEL from further issuance of contracts with immediate effect.

BUSINESS OVERVIEW

TOTAL TURNOVER (2008-2013) More than Rs 7,67,000 crore	TOTAL CONTRACTS (number) About 500
TOTAL VOLUME (number) More than 1,000 crore lots	TOTAL TRADING CLIENTS (number) About 2.27 lakh
TOTAL PAY-IN & PAY-OUT Rs 2,80,156 crore	NUMBER OF TERMINALS About 46,000
NUMBER OF DELIVERY LOCATIONS 147	NUMBER OF COMMODITIES TRADED 52 (of them about 34 are agri)
SERVICE TAX PAID (2008-2013) More than Rs 28 crore	NUMBER OF MEMBERS About 800

FACT SHEET

- ☒ There was a keen desire to create an Indian common market for Commodities and to remove restrictions on internal trade in commodities. The 10th Five year plan (2002-2007) noted that "There are a number of other statutory controls, either arising from Essential Commodities Act, 1955 or other statutes, which discourage the private sector from taking up various infrastructure ventures. The stock and storage limits, restrictions on inter-state and inter-district movement of food grains, controls on blending and processing of oilseeds, Prevention of Food Adulteration Act (PFA), 1954, FPO, etc. are responsible for the slow growth of infrastructure and marketing development. This has adversely affected the potential of private sector initiatives and, consequently, agricultural development. Therefore, steps would be taken for dispensing with major control measures or reforming many of them, coupled with the removal of high fiscal levies." (para 5.1.142).
- ☒ In his budget speech (Union Budget 2004) Mr. Chidambaram, the then Union Finance Minister observed that "India must become a single market for all products, particularly agricultural produce. The existing Acts governing agricultural produce marketing committees have outlived their utility. The Government has circulated a model law. So far, ten states have initiated legal or administrative action for 'direct marketing' and 'contract farming' arrangements in line with the model law. I urge all states to enact the model law at an early date."
- ☒ Dr M. S. Swaminathan, noted economist observed that "We must develop mechanisms for giving the power of scale to small producers both in the production and post-harvest phases of farming. The mismatch between production and post-harvest technologies should end". (Excerpt from the interview of Dr. M. S. Swaminathan with Latha Jishnu, 'Needed: An Indian Common Market', in Business World (21 June 2004)
- ☒ Dr. Manmohan Singh, the then Prime Minister, inaugurating the Agriculture Summit, 2005, said, that the "new deal" required reversing the declining trend in investment in agriculture, stepping up credit flow to farmers, increasing public investment in irrigation and wasteland development, increasing funds for research and development, creating a common single market in the country, investing in rural healthcare, education, electrification, rural roads, futures markets, insurance against risk in farming and forging public-private partnerships. He sought suggestions from the summit on how a financial window could be created for long-term capital flows into agriculture **(ANX-22)**.
- ☒ Economic Survey of India has also highlighted several times the importance of strengthening of the agricultural marketing in which the role of the spot exchanges assumes significance **(ANX-23)**.
- ☒ NSEL was thus established as an endeavour to fulfill the Government plans of creating and developing a common market for commodities including agricultural produce by providing a nationwide electronic trading platform with wide participation of a large number of stakeholders in the agricultural commodity ecosystem.

WHAT IS A SPOT EXCHANGE?

- In the APMC, physical presence of buyers and sellers is compulsory. Sellers bring stock, auction is conducted, buyers make payment and lift physical delivery
- Spot Exchange provides trading between a large number of buyers and sellers located in different parts of the country, settled by tender of warehouse receipt, because a buyer not physically present at the location cannot take physical delivery
- It involves tender of document of title, which makes it a forward contract under proviso (1) to Sec 2 (i)
- If it also provides intra-day trading facility, it becomes forward contract under proviso (2) to Sec 2 (i)
- Hence, Spot Exchanges are actually "Delivery based Forward Exchange", notwithstanding they are known as "Spot Exchange"

Terminology used in Spot Exchanges

WHAT IS FORWARD CONTRACT?

- Sec 2 (f): a contract for delivery of goods, which is not a ready delivery contract
 - There is no tenure defined for a forward contract. A forward contract can be for one day or one year or any period for that matter
- Sec 2 (i): ready delivery contract: delivery and payment within 11 days

However if there is:

- Proviso (1) : tender of document of title
- Proviso (2) : settlement by difference
- Proviso (3) : dispensing with delivery by any means;

then it ceases to be a ready delivery contract and becomes a forward contract ipso facto

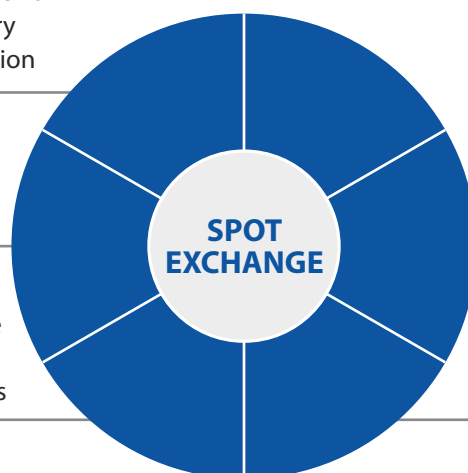
- If a contract is a forward contract, then the period of 11 days is not applicable

ECONOMIC RATIONALE

Extends marketing support to small and marginal commodity producers /owners by giving them electronic access to large number of buyers spread across the country resulting in higher price realisation

Facilitates risk transfer

Facilitates electronic nationwide auction, including forward and reverse auctions in commodities



Connects electronically buyers and sellers from the states it operates in

Clearing & settlement of funds and stocks

EXEMPTIONS

In exercise of the power under Section 27 of the Forward Contracts (Regulation) Act, 1952, the Central Government exempted all forward contracts of one-day duration for the sale and purchase of commodities traded to facilitate trading on the national spot exchanges with certain conditions laid down for the exemption.

Such exemption was given to NSEL on June 5, 2007 (**ANX-24**), to NCDEX promoted NSPOT on July 23, 2008 (**ANX-25**) and to National Agriculture Produce Marketing Company of India Ltd (National APMC) on August 11, 2010 (**ANX-26**).

CONDITIONS FOR EXEMPTIONS ARE:

- No short sale by members of the Exchange shall be allowed
- All outstanding positions of the trade at the end of the day shall result in delivery
- National Spot Exchange Ltd. shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place
- All information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency
- The Central Government reserves the right to impose additional conditions from time to time as it may deem necessary
- In case of exigencies, the exemption will be withdrawn without assigning any reason in public interest

THE BUSINESS OF NSEL

The National Spot Exchange Limited is a limited liability company promoted by MCX in the year 2005 and not by FTIL. Subsequently shares held by MCX and its nominees were transferred to FTIL.

In October 2008, NSEL commenced operations providing an electronic trading platform to willing participants for spot trading of commodities, such as bullion, agricultural produce, metals etc. Like NSE and BSE, NSEL has its registered trading members, commonly referred to as brokers, who execute commodity trades on the NSEL platform on behalf of and in accordance with the instructions of their respective clients across India.

MAJOR ASPECTS OF NSEL BUSINESS

CORPORATE OVERVIEW

INCORPORATION	Set up as a demutualized corporatized exchange on May 18, 2005 as a company under The Companies Act, 1956
PROMOTER	Multi Commodity Exchange of India Ltd (MCX)
NATURE OF BUSINESS	Operating as national level electronic spot exchange providing platform to trade in commodities
REGULATORY MINISTRY	Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Govt. of India
DESIGNATED AGENCY	Forward Market Commission, an agency that regulates trade in forward trading in commodities contracts
LICENCES NSEL OBTAINED	NSEL has obtained licences from several state governments under respective state APMC Acts before dealing in agricultural produce with delivery centres in Maharashtra, Karnataka, Gujarat, Orissa, Rajasthan, and Madhya Pradesh
BASIS FOR TRADING IN FORWARD CONTRACTS	Exemption under Section 27 FCRA, granted by Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution (June 5, 2007)
SIMILAR ENTITIES	NCDEX Spot Exchange Limited; National APMC Ltd

NETWORK OF ALLIANCES

<input checked="" type="checkbox"/> CLEARING BANKS <ul style="list-style-type: none"> • Axis Bank • Bank of India • HDFC Bank • ICICI Bank • IndusInd Bank • Kotak Mahindra Bank • State Bank of India 	<input checked="" type="checkbox"/> DEPOSITORIES <ul style="list-style-type: none"> • Central Depository Services (India) Ltd (CDSL) • National Securities Depository Ltd (NSDL)
<input checked="" type="checkbox"/> CLEARING BANKS <ul style="list-style-type: none"> • Bihar • Delhi • Gujarat • Madhya Pradesh • Maharashtra • Orissa • Rajasthan 	<input checked="" type="checkbox"/> DEPOSITORIES <ul style="list-style-type: none"> • SBI for Coffee Board of India • Haryana State Cooperatives Supply and Marketing Federation Limited (HAFED) • National Agricultural Cooperative Marketing Federation of India Limited (NAFED) • Tamil Nadu Cooperative Marketing Federation Ltd • Gujarat Agro Industries Corporation Limited • Maharashtra State Agriculture Marketing Boards • Western Ghats Agro Growers Ltd • Belarusian Universal Commodity Exchange (largest commodity exchange in East Europe region) • IL&FS • Government of Orissa, Andhra Pradesh, • Maharashtra, Gujarat, Tamil Nadu, MP, etc.
<input checked="" type="checkbox"/> WAREHOUSE LOCATIONS <p>Government agencies and Public Entities like FCI, NAFED, MMTC, STC, Cotton Corporation of India</p>	

TYPES OF CONTRACTS TRADED

Contrary to the general impression created in the public mind space that NSEL was created and functioning solely on trader contracts, which led to the problem, NSEL has designed numerous types of contracts that were serving various constituents of the real economy.

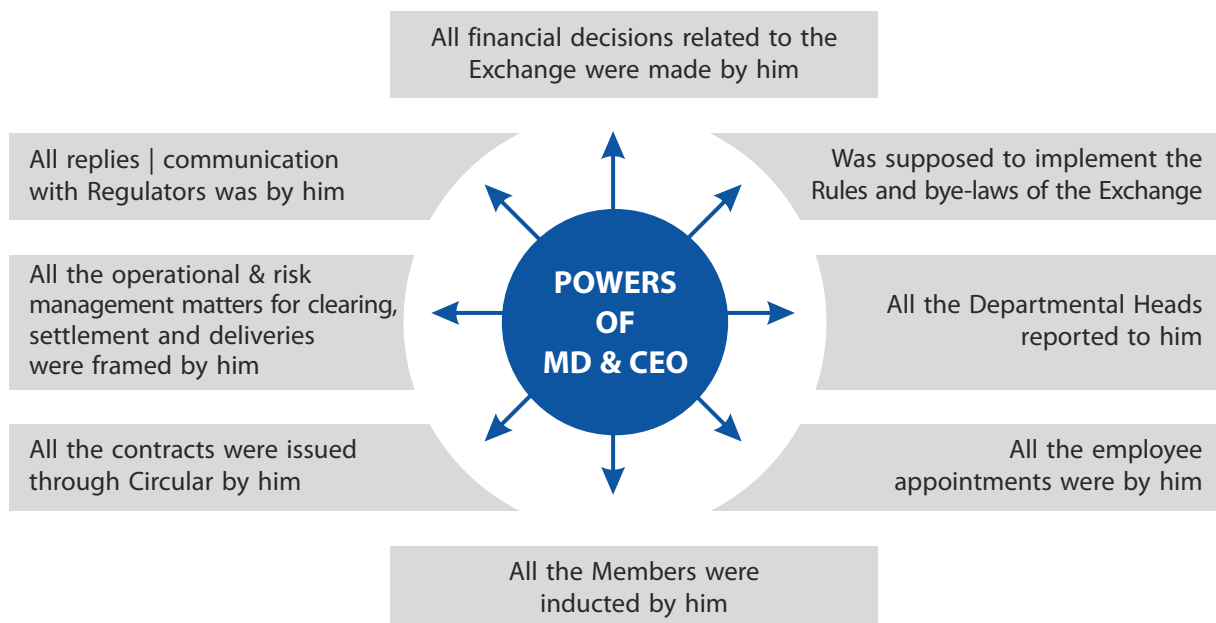
THE CONTRACTS INCLUDED:

- **FARMER'S CONTRACT:** Only farmer is seller, smaller trading unit, price quotation without APMC cess and prices are higher than Minimum Support Price. Market hours: 10 am to 4 pm
- **TRADERS' CONTRACT:** APMC cess paid commodity, large trading unit, anybody can be buyer or seller, strict quality norms are imposed and settlement adjustment done if norms are not met. Market hours: Agri-10 am to 6 pm and Non Agri- 10 am to 11.30 pm
- **AUCTION CONTRACT:** Trading is done for the specific commodity related to certain brand and bidding is open for only a few hours.
- **FORWARD AUCTION:** Government contracts are undertaken with bodies like NAFED, MMTC and FCI through Forward Auction. Seller defined auction session
- **REVERSE AUCTION:** HAFED, NAFED used reverse auction mechanism for Cotton and paddy procurements
- **e-Series CONTRACT:** Product for the retail clients. The commodity units bought is to be held in demat account. Market Hours: 10.30 am to 11.30 pm on weekdays
- Physical procurement business & LC business (outside Trading Platform)

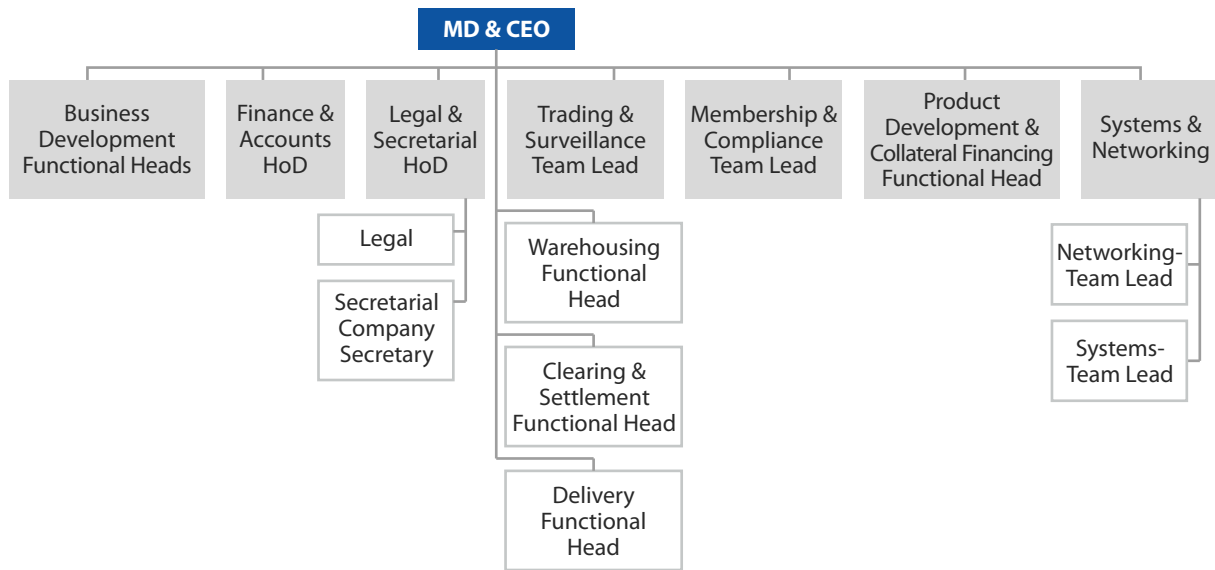
MANAGEMENT OF NSEL

NSEL had a Board of Directors consisting of six non-executive directors drawn from different experiences in the agriculture economy and ecosystem. The day to day functioning of the management of the exchange was carried out by the one & only Executive Director i.e. the Managing Director and Chief Executive Officer under the Rules, Regulations and Bye-Laws of the Exchange.

ALL DECISIONS WERE TAKEN BY THE MD & CEO



ORGANISATIONAL CHART



NSEL had all major departments, working independently, such as Membership, Trading and Surveillance, Clearing and Settlement, Warehousing, Delivery, Business Development and Finance. All the departments were headed by Departmental Heads who in turn were reporting to the MD & CEO

NSEL: THE BRIGHT SIDE

National Spot Exchange Limited (NSEL), which commenced live trading on October 15, 2008, was the first commodity spot exchange of the country. It is currently facing a settlement crisis.

Electronic spot exchange is a new concept altogether. There was no provision in State APMC Act to allow spot exchanges to function. It took a lot of time to explain to state governments how NSEL would be beneficial to the farmers. However, some states have still not amended their APMC Acts.

This is the first electronic spot market to obtain licence under APMC Act in Maharashtra, Karnataka, Gujarat, Orissa, Rajasthan and MP and has carried out trades in all states by enabling farmers to sell their produce to bulk consumers.

Apart from enabling farmers to sell their produce, it has also enabled government companies like MMTC and PEC Limited to sell their imported pulses to bulk buyers. The companies like Hindustan Zinc were also able to sell major part of their processed silver on NSEL platform using a single window. In fact in many cases like FCI, FMC was the one that recommended to them the commercials of procuring on NSEL platform **(ANX-27)**.

Various trade matching solutions provided by NSEL that benefited farmers, consumers, bulk buyers and government agencies are:

- **CONTINUOUS AUCTION BY MATCHING ORDERS ON PRICE TIME PRIORITY:**

NSEL had successfully conducted trading, clearing and settlement operation in T+0 trading cycle, thereby enabling to pay to the farmers on the same day without charging for any service rendered. The Gujarat State Agriculture Marketing Board has compared NSEL price data with the mandi auction price on continuous basis and observed that NSEL prices are higher than mandi auction price by at least 1.5 percent to 2.5 percent on continuous basis.

- **FORWARD AUCTION MODEL IMPLEMENTED FOR FCI:**

NSEL had implemented forward auction model for sale of wheat under OMSS by FCI. During 2010-11, FCI sold around 1.48 lakh mt of wheat through NSEL in Delhi NCR region. This was a pilot project carried out for FCI, in which NSEL provided NSEL services without charging any fee from FCI. Based on NSEL performance, FCI was thereafter looking at expanding electronic auction of wheat through NSEL across the country.

- **FORWARD AUCTION MODEL FOR SALE OF COTTON BALES ON BEHALF OF NAFED:**

NSEL had implemented a transparent electronic auction model for NAFED for sale of cotton bales. NAFED has used NSEL services and sold around 8.73 lakh cotton bales worth around Rs 850 crore to major exporters and spinning mills through NSEL platform within a span of 3 months with a very minimal cost and it was a win-win situation for both NAFED and the buyers, who were major exporters and spinning mills.

- **ELECTRONIC AUCTION FOR MMTC, PEC, NINL, STC AND NAFED:**

NSEL has conducted electronic auction of pulses through its platform on behalf of government agencies engaged in import of pulses. Due to transparent operational procedure, even the small trading clients and mills were able to procure pulses through the NSEL platform under the auction model. Similarly, NSEL had implemented an auction model for sale of pig iron by NINL (Nilanchal Ispat Nigam Limited) through its platform, which enabled NINL to reach out to a large number of buyers across the country.

- **FORWARD AND REVERSE AUCTION MODEL FOR HAFED:**

NSEL had implemented auction sessions for Hafed, whereby they had used NSEL platform to sell paddy, bajara and other food grain items. They were able to realize a higher price, compared to traditional tender method, due to competitive bidding by a large number of buyers from across the country.

IMPACT OF NSEL INTERVENTION

- NSEL commenced its operation in Bihar and Orissa for creating direct market linkage between farmers and upcountry buyers, exporters, processors, etc. In Bihar, the scenario was pathetic, because of absence of institutional marketing support. There was no mandi auction mechanism existing in Bihar. In Orissa, though the mandi system existed, hardly any auction happened in any of the mandis. Presence of government agencies to carry out MSP operation in maize in these states was negligible. As a result, farmers were constrained to sell maize at below MSP to local traders, while the local traders were making good margin in selling such stock to exporters. As a result of NSEL intervention, the price realization by farmers increased by more than 10 percent, while the exporters were able to buy maize directly from farmers through the NSEL platform.

- Financial Times, London devoted a full page article on an NSEL initiative in Bihar, which was based on a field survey conducted by its team of reporters **(ANX-28)**.
- NSEL also got FOW, London (Futures and Options World) award for "Best Exchange in Product Innovation in South East Asia and Australasia" for this initiative **(ANX-29)**.
- NSEL launched cardamom contract for the farmers of Kerala. Through this initiative, farmers were able to sell cardamom directly to exporters and realize a higher price. NSEL was helping the farmers in grading and sorting of cardamom, so that they could fetch higher price based on the quality of stock. It has been quoted by independent agencies that farmers were getting at least a 10 percent higher price through the NSEL initiative.
- Apart from trading operation, NSEL had carried out cotton procurement on behalf of NAFED under the Price Support Scheme operation conducted by the Government of India. Since 2008, NAFED had appointed NSEL as its agency for procurement of cotton from farmers in Andhra Pradesh. Due to its linkage with farmers and farmers' societies, NSEL had successfully conducted cotton procurement from farmers, carried out ginning and pressing of cotton and handed over cotton bales to NAFED. NSEL had issued direct account payee cheques to around 14000 farmers in this operation, while the total size of operation was around Rs 206 crore. NSEL had made timely payments to all the farmers and there was not a single complaint from farmers against its operation. NSEL performance was very much appreciated by the Government of Andhra Pradesh.

In general, the impact of NSEL intervention on various stakeholders was:

BENEFITS TO FARMERS:

- Realising the best possible price at the time of sale of agricultural produce
- Trade and payment guarantee
- Direct linkage with a large number of buyers spread across the country, not dependent upon the local traders only to buy their produce
- Access to pan-India market to sell their produce
- Alternative marketing channel so as to compare NSEL price with mandi auction and then to decide where to sell. This also leads to increase in bargaining power
- Power to quote their own selling price, not dependent upon the buy price quoted by the buyers. Hence, a farmer is not merely a spectator but also a contributor in price discovery process. In the mandi auction system, only the buyers quote their buy price, while the farmers cannot quote their selling price
- Increase in holding capacity, because farmers could deposit their goods in the NSEL warehouse and obtain a loan from a bank against pledge of warehouse receipt. Hence, there was no compulsion to sell immediately

BENEFITS TO TRADERS:

- Common national level transparent platform for buying and selling of commodities
- Procurement and disposal of huge quantity possible due to a large number of buyers connected with the Exchange
- Expansion of trading activities to multiple commodities was available on the electronic trading platform. A trader present in a mandi could procure various commodities arriving in the mandi and sell the same on the NSEL platform, because buyers for various commodities were readily available

BENEFITS TO CORPORATES | PROCESSORS | EXPORTERS | IMPORTERS:

- Customized services relating to storage and logistics
- Availability of professional services for grading and standardization
- Purchase department could buy various commodities across the country available on NSEL platform
- During the intervening period, goods could be stored in the NSEL warehouse, where proper upkeep and safety was guaranteed by NSEL
- Complete avoidance of hassles relating to physical market operations
- Reduction in cost of intermediation, leading to savings in cost of procurement
- Saving on brokerage or commission payable to procurement agents or infrastructure cost incurred by them, in case they set up their own procurement centre

GENERAL BENEFITS:

- Reforms in agriculture marketing, leading to increase in farmers' price realization and reduction in consumer paid price. This is achieved through reducing the chain of intermediation
- Transparent spot price discovery, leading to growth of structured spot market
- Employment generation, without any load on exchequer. At every delivery centre, there was employment opportunity for 5 to 10 personnel
- NSEL was a complementary market for derivative traders

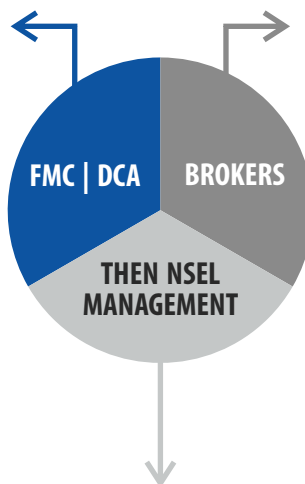
5

The Cause of the Crisis

Abrupt Stoppage of Contracts by DCA | FMC

FMC/DCA letter of sudden and abrupt stoppage of further issuance of contracts by NSEL without proper consideration and assessment on the likely impact, triggered the payment default that escalated into a crisis.

Wrote to RBI that NSEL can conduct clearing operations that makes the latter a regulated entity | No response to the replies given by NSEL to the show cause notice for more than a year | Issued a letter instead of a proper order on the action following show cause notice | Sudden stoppage of new contracts without proper assessment on the impact of market disintegration | Not heeded the requests of NSEL on the consequences of sudden stoppage of contracts | Held meetings with defaulters yet no action taken against them. With 85 percent defaults accounted for by 7 defaulters, quick action against them would have resolved the crisis faster | No action against brokers | Action only against NSEL | FTIL



The then management of NSEL had functional autonomy and was the sole point of contact with FMC. The Board of NSEL, never had any direct contact with the FMC as also the latter has never approached or written to the Board on any concern that they might be having on the operations of the exchange. No red flag raised to the Board of NSEL

Created structured contracts involving buying and selling of commodities | Overlooked the exchange advice informing risks involved in buying and selling of commodities | Aggressive marketing and mis-selling | Instances of funding clients | Lured the clients as profit from commodity trading could be booked as business income against which business losses could be offset to save tax | Have strong legal and compliance departments that made them aware of the nature of buying and selling and risks involved | Visited warehouses numerous times as C&F agents of their trading clients (nearly 50 times over a three year period) and yet not raised red flags any time | Audit firms of broking firms showed inventories held in trading as annexures in the balance sheets of the respective firms | Instances of executing certain orders without client consent | Did not once raise or bring to the notice of NSEL Board any irregularity

The real cause of the crisis is the abrupt action of the FMC either on its own or through its recommendations to DCA without considering sensitivities as relevant to the markets and going full force on NSEL | FTIL without initiating a comprehensive action that could have included all the players. In a way, it is FMC on its own or as a department of the DCA which has created the crisis in the first place and escalated it further that lead to market disintegration which ultimately resulted in payment default.

The manner in which FMC created and contributed to the crisis could be explained by the following:

- On August 5, 2011 FMC wrote to DCA to request RBI to consider exempting NSEL regulated by the FMC from the purview of Payment & Settlement System (PSS) Act 2007, for its clearing and settlement function (**ANX-30**).
- Since its operations commenced in 2007, NSEL had around 800 members which included large listed brokers of NSE, BSE, with big legal and compliance departments. NSEL offered trading in as many as 43 commodities, of which 34 were agriculture commodities. It had approximately 46 thousand trading terminals, while delivery locations were spread across the country to as many as 147 centres.
- On April 27, 2012, Department of Consumer Affairs issued a show cause notice to NSEL on certain aspects of its operation. NSEL responded to the notice promptly by its reply dated May 23, 2012 and August 11, 2012.
- There was no reply or action from the Department of Consumer Affairs for more than a year which is believed to have been satisfied on the issues raised in the notice.
- On July 12, 2013 Department of Consumer Affairs issued a letter directing NSEL to stop issuing fresh contracts. Such a letter which should have been held in utmost confidence between two institutions, was leaked to the press.
- NSEL wrote to Department of Consumer Affairs on July 12 and 22, 2013 stating that any abrupt and sudden measures of stoppage of contracts would severely dislocate and disintegrate the market functioning that could adversely affect the payment obligations.
- On July 19, 2013, FMC wrote to DCA that the exemption granted to NSEL was silent whether the exemption is applicable to all or specific provisions of the FCRA, thus, impliedly endorsing the legality of NSEL's business model.
- On July 31, 2013, all operations of NSEL had to be stopped.
- On August 4, 2013, FMC had a meeting with the defaulters about the stocks position and payment obligations and received positive confirmation from them to the material and money involved.
- On August 6, 2013, DCA authorized FMC to take such measures as deemed fit against "any person, intermediary or warehouse connected with NSEL". Whereas the entire focus and action of FMC since then has been solely directed against FTIL | NSEL conveniently ignoring the other players i.e. The Defaulters and the Brokers.
- In view of the brokers and the defaulters being completely left out of the investigations and follow up, default of payments began to take place from August 19, 2013.
- Any strong action by FMC | DCA against the 7 defaulters who accounted for 85% of the defaults could have led to a much more positive outcome and early resolution of the crisis. Rather, FMC was focusing on only FTIL by imposing severe penalties, pushing for punishments, and declaring it not fit and proper without waiting for the outcome of the investigations or the judicial process.

- The above clearly shows that the accident at NSEL occurred majorly on account of measures of FMC | DCA that resulted in payment default instead of avoiding the crisis in the first place. Once the crisis took place these actions have further accentuated the crisis rather than aiming at a quick and smooth resolution.

BROKERS

- Created structured product involving contract for buying and selling of commodities on NSEL platform
- Overlooked the exchange advice to inform risks involved in buying and selling of commodities to the clients
- Aggressive marketing and mis-selling in violation of Exchange's circulars
- Instances of funding clients
- As it was a business involving buying and selling of commodities principals of business income and offsetting expenses were applied
- Have strong legal and compliance departments that made them aware of the nature of buying and selling and risks involved
- Active as C&F agents for the Trading clients, they visited warehouses numerous times (nearly 50 times during a 36 month period) and yet not raised red flags any time
- Audit firms of broking firms showed inventories held in trading as annexures in the balance sheets of the respective firms.
- Instances of executing certain orders without client consent (approximately 3,00,000 client code modifications)
- Did not once raise or bring to the notice of NSEL Board any irregularity
- Majority of the big brokers were C&F agents and verification of stocks on behalf of their clients was their responsibility

THEN NSEL MANAGEMENT

The then management of the NSEL, which had the privilege of full functional autonomy, was saying as late as August 2013 that commodities existed in the warehouses. The management at that time was the sole point of contact with FMC or DCA which had communications of various nature. The Board of the NSEL, never had any direct contact with the FMC or the DCA as also the latter has never approached or written to the Board on any concern that they might be having on the operations of the exchange. Even the show cause notice issued to NSEL was addressed to the then Managing Director and CEO and the Board was never informed of the same. Neither the DCA nor FMC nor the Broking firms nor the management ever raised any red flag to the Board that could have alerted them to take any preventive action.

FACT SHEET



NSEL CONTRACTS

There is an impression created that NSEL has introduced the contracts that came into problem with a view to make quick profits, which is not the case. A wide range of contracts were traded at NSEL, including (a) Farmers contracts, (b) Auction Contracts, (c) Forward Auction, (d) Reverse Auction, (e) e-Series contracts, (f) Traders contracts, and also physical procurement business and LC business. Traders used all these contracts as also paired some of these as an arbitrage strategy to maximize returns.



BUSINESS

It is also wrong to say that the entire business of NSEL was built on the contracts that came into problem. During the period 2008-13 NSEL turnover was to the tune of Rs 7,67,000 crore with volume being more than 1000 crore lots. During this period, it has carried out pay-in and pay-out of Rs 2,80,156 crore. It had 147 delivery locations and paid service tax to the tune of Rs 28 crore. It has nationwide spread of 800 members, with 46000 terminals in which 52 commodities were traded of which 34 were agricultural commodities. It is wrong to say the whole business of NSEL revolved around the defaulted contract. Out of total 702 contracts launched only 29 (around 4%) contracts were unsettled due to the member defaults.



BUSINESS INCOME AND NOT INVESTMENT

Trading clients were booking income earned from NSEL products as business income which was being offset with losses. This itself demonstrates that they took it as a business activity involving buying and selling.



ORDERLY SETTLEMENT OF e-SERIES CONTRACTS

The settlement of the e-Series contracts in gold, silver and other commodities, which involved approximately 33000 investors, were being conducted in an orderly manner.



CAUTION TO TRADING CLIENTS

NSEL has been giving the brokers with whom it had privity of contract sufficient caution against advertising fixed or guaranteed return on NSEL platform. Typical to any market, as the trading clients were making good returns from pairing the contracts, brokers who marketed these products were not enforcing this discipline and caution while making aggressive sales. Brokers were even extending financing to their trading clients who were interested in trading of the contracts through pairing.



PRIVITY OF THE CONTRACT

Privity of the contract is between the brokers who sold the product and their trading clients who bought it. It is the brokers who marketed and sold the product and identified the trading clients. The brokers are the ones who should have cautioned them on the risks associated with the product, in which they failed. It is the brokers who chose the commodity counterparties while entering into these contracts and who were expected to conduct due diligence.



EXPLANATIONS AND CLARIFICATIONS

NSEL has provided explanation and clarification immediately to the regulatory authorities and the government on any issues raised by them on any aspect of the operations and business. The last of such explanation was provided in August 2012. No order was issued following the submission of the detailed explanation to the show cause notice. Instead a letter from the DCA in July 2013 to stop issuing fresh contracts unleashed and accentuated the problem.

MISCONCEPTION THAT NSEL WAS SET UP TO DEFRAUD PEOPLE

A brief sequence of events given below destroys the falsehood created by certain sections casting aspersions on FTIL that it has set up NSEL with the sole purpose of making undue gains.

2002

- The Economic Survey 2002-03 of the Government of India argued, "High investments together with entrepreneurial skills required for creation and managing the market infrastructures have to come from private sector."

2003

- Economic Survey 2003-04 reported that "an inter-Ministerial Task Force set up by the Ministry of Agriculture suggested a package of reform measures, such as amendments to the State APMC Act to encourage development of competitive agricultural markets in the private and cooperative sectors, and deregulation of marketing system to promote private investment in marketing infrastructure".

2004

- Subsequently, in the address to the nation on June 24, 2004, the then Prime Minister, Mr. Manmohan Singh spoke about the need to see the creation of a 'single market' across the country for both manufactured and agricultural produce. Soon, the then finance minister, while presenting the Union Budget for 2004-05 on July 8, 2004 stated, "India must become a single market for all products, particularly agricultural produce."

2005

- Subsequently, the then Prime Minister at the inauguration of the Agricultural Summit 2005 in New Delhi on April 9, 2005 reiterated the need for creating "a common single market in the country".
- NSEL was incorporated as a demutualized corporatized exchange as a company under The Companies Act, 1956.
- It can be noted that NSEL was originally promoted by MCX. Later, in view of regulatory concerns of regulated commodities exchanges holding equity shareholding in spot exchanges, the shareholding of MCX were transferred and consolidated with FTIL.

2006

- Soon after the establishment of NSEL, in a meeting on 'monitoring & forecasting of prices (domestic and international) of agricultural commodities' held under the chairmanship of the Secretary (Department of Consumer Affairs) on May 24, 2006 at the office of the FMC, it was decided, among others, that the commodity exchanges to submit a concept paper on the creation of the national spot exchange **(ANX-31)**. Subsequently, in a letter dated June 2, 2006, FMC formally asked MCX to submit a concept paper **(ANX-32)**. This was followed by a reminder letter from FMC dated 11 July 2006 **(ANX-33)**.
- Accordingly, on July 18, 2006 a "Concept Paper on Creation of a National Spot Market" was submitted by MCX to the Ministry of Agriculture in the government of India **(ANX-34)**. Thereafter, in December 18, 2006, NSEL submitted to FMC a business model for launching of National Spot Exchange **(ANX-35)**.

2007

- NSEL wrote to DCA and FMC proposing that spot exchanges should be monitored/supervised by FMC. On May 21, 2007, FMC suggested the conditions for the exemption leaving two points proposed by NSEL, i.e. supervision by FMC and contracts delivery period not to exceed 11 days **(ANX-36)**. Therefore, it is improper to allege that NSEL wanted to be an unregulated market or NSEL violated conditions.
- On June 5, 2007, Department of Consumer Affairs in the Ministry of Consumer Affairs, Food and Public Distribution issued a notification, in exercise of the powers conferred on the Central Government by Section 27 of the FCRA, exempting all forward contracts of one day duration for the sale and purchase of commodities traded on NSEL from operation of the provisions of FCRA subject to certain conditions.
- Subsequently, by its letter dated August 5, 2011, the Central Government nominated FMC as the 'designated agency' referred to in condition iv of its notification dated June 5, 2007.

2011

- As directed by FMC through letters dated 23 November, 2011, from 30 November 2011 onwards, NSEL has been sending detailed fortnightly reports to FMC, which contained trading & operational data including warehouse-wise stock position data **(ANX-37)**.

All of the above shows, that NSEL was a legitimately and fundamental set-up based on the vision of the Government of India to develop a common single national market for Commodities. Not only that, NSEL also achieved many distinctions in the four years of its operation as detailed below.

BUSINESS & ACHIEVEMENTS OF NSEL

- NSEL commenced live trading on its electronic platform from October 15, 2008. It started trading with agricultural commodities with contracts designed for farmers followed by for traders. NSEL took licenses under various State APMC Act in states such as Gujarat, Maharashtra, Rajasthan, Madhya Pradesh, Karnataka, and Orissa.
- NSEL carried out various kinds of trades on behalf of the government agencies.
- NSEL also launched innovative e-Series contracts starting with e-Gold in 2010 for trading in precious and base metals in demat form, which was highly popular amongst the retail clients for its smaller trading and delivery denomination.
- NSEL had around 800 members which included large listed brokers of NSE, BSE, with big legal and compliance departments. NSEL offered trading in as many as 43 commodities, of which 34 were agriculture commodities. It had approximately 46 thousand trading terminals, while delivery locations were spread across the country to as many as 147 centres. NSEL had empaneled around 10 clearing banks.
- NSEL was the only exchange to receive FOW awards for best innovation for two consecutive years. The path breaking work of NSEL in the field of agricultural commodities was appreciated in renowned publications like Financial Times.
- Thus all the trading which was going on at NSEL for four years can't be washed away as intended by the promoter to defraud the people.

MISSING STOCKS: HOW IT COULD HAVE HAPPENED?

Throughout, the FMC maintained that the crisis emerged out of a warehousing problem. In reality, the FMC was provided periodic (fortnightly) information on the stock of commodities held in the warehouses by the executive management of NSEL. The MD & CEO had repeatedly assured that stock position was comfortable. Even after the crisis, the MD & CEO made public statements that the stocks in the warehouses were more than the value of the settlement. Trading members of NSEL belonging to the public sector have conducted separate inspection of the warehouses, on select basis, through CAG approved auditors and found no shortages or lapse in the warehouses. Additionally, brokers also have visited warehouses nearly 50 times over a 36 month period to confirm stock positions and raised no concern. NSEL statutory and internal audit reports, periodically brought out, also found no deviance or deficiency in this regard. When all these measures have never raised any red flag over the stocks in the warehouses, blaming the NSEL Board and FTIL for missing stocks and attributing motives is plain unjust and unfair. Thus, the action being initiated against the non-executive members of the NSEL Board, FTIL and the promoters of FTIL are not justifiable in this context.

In a meeting FMC held with all the players on August 4, 2013, it was assured by the brokers and The Defaulters that the money and stocks relating to trades remained adequate. The situation however drastically changed thereafter. There could be a possibility that once the Government caused sudden stoppage of business, some of the defaulting members with a view to protect their positions might have migrated the stocks from the designated warehouses. This further accentuated the liquidity position leading to default in the settlement. The possibility of banks cutting off their credit lines without the stocks in place might also have induced them to shift the stocks out of the warehouses. Such a scenario could be expected in any financial markets business and not just in NSEL. Sudden stoppage of business will create panic in the market that will lead members to try to get away from the responsibility and obligations, which happened in the case of NSEL also.

ROLE OF EMPLOYEES

The NSEL business was spearheaded and conducted by the MD & CEO, who enjoyed complete autonomy and functional freedom. The role of the top management of NSEL and officials entrusted with different functions and responsibilities is under investigation for any possible lapses and deviances from established practices of risk management and due diligence. While NSEL has now revamped the entire management team, it will comply with any actions required to be taken in case if any involvement of the staff in any action leading to the crisis is established.

NO RED FLAGS TO THE BOARD

Since the commencement of trading in October 2008, NSEL Board laid down systems, processes and risk management framework like margins, auction, etc., by virtue of various circulars and instructions under the Rules and bye-laws of NSEL. All these instructions were legally binding on the market participants and the officials of NSEL were to ensure that they were followed. This practice is similar to banks where the Board of Directors lays down the instructions and if these are not followed the relevant officials are held responsible and the directors are responsible only if they were complicit in committing any irregularities.

HOW WAS THE BOARD TO KNOW WHEN?

- A** The MD & CEO of NSEL confirmed in all the Annual reports that there was no fraud or irregularities and this was backed by a Management Representation signed by the MD & CEO.
- B** Statutory and internal auditors did not mention any shortcomings in stocks in warehouses or operations of NSEL.
- C** In some cases, auditors approved by CAG verified that stocks were in place at warehouses and never raised any concern.
- D** Brokers who visited the warehouses multiple times as C&F agents of their respective Trading Clients never made any complaint of any shortage in commodity stocks.
- E** FMC which used to get fortnightly statements on the stocks in warehouses since November 2011, never pointed any deficiency of any manner.
- F** There was no concern expressed or communicated to the Board by any quarter.
- G** The MD & CEO of NSEL submitted quarterly compliance reports to FTIL Board since March 2011 after NSEL became a material subsidiary of FTIL (**ANX-38**). These reports did not highlight that anything was amiss.
- H** MD of the exchange confirmed to the entire Board on July 30, 2013 (**ANX-39**), to the FMC on August 4, 2013 (**ANX-40**) and also gave public statements as late as mid-August 2013 that stocks in excess of the outstanding settlement were available in warehouses.
- I** The contracts were approved by the Board to work as in the case of Topworth, Metkore where commodities were available at closure of market. There was detailed documentation, VAT paid and received and booking of profits / losses by trading clients on account of commodities traded. Different departments at NSEL headed by different AVPs managed over 20 staff each. There was absolute distinction between trade, warehouse, delivery and settlement departments. The same staff handled e-series contracts also where everything was found in order and the contracts were settled for over 33,000 trading clients. Therefore the organizational structure laid down was fool proof. There were proper systems & processes implemented and verified by statutory auditors, knowledgeable brokers and clients participated in the products and the activities were monitored by FMC/DCA.

When so many agencies never raised any concerns on the stocks in the warehouses, putting all the blame on the NSEL Board, who was dependent on statements coming from any of the above sources, is not fair.

BROKERS AND TRADING CLIENTS

- The Brokers sold the contracts to their trading clients as a structured product in violation of two NSEL circulars dated February 7, 2012 and August 2012 which prohibited promise/guarantee of assured returns by any member, and that is how the popularity of the contracts increased. The volumes in these types of contracts increased only during 2012-13. During 2012-13, the equity markets were not doing well and many brokers and their trading clients started participating in the T+2 and T+25 contracts with a view to make trading profits.
- All the brokers and their trading clients who traded on NSEL are experts and knowledgeable and participated in the contracts after duly assessing the risks. All the trading clients made financial gains through trading commodities until July 2013 when the market was halted due to government directions.
- The contracts on NSEL were traded by large listed brokerage houses. These brokers have large legal and compliance teams and are operating in equity and commodity futures markets as well. These brokers have participated in NSEL only after exercising due diligence. Brokers pushed client investment in a particular NSEL contract due to higher yield they could get for the clients and higher brokerage they could charge from their clients. Many brokers sold this product as a part of portfolio management and also made loans available where client's paid only 10-20 percent and the balance money was deployed as loan taken by the client from the brokers, which earned the brokers additional return on money lent. The clients got lured due to fixed cost of borrowing and a higher returns against the commodities trading.
- Further, several brokers acted as C&F agents for their trading clients and visited (50 times over a 36 month period) warehouses (of the defaulting members) storing the commodities under intimation of NSEL for stock verification and never complained or brought to the notice of NSEL about missing or shortfall in commodities. Further their audit firms have also certified inventories and reported the same in the annexures to the balance sheets of the respective broking firms.
- The police found that in some instances the broking houses used their clients' accounts, without their (clients') information and consent for doing purchases. The brokers altered the rules for their personal benefit.
- Essentially, a distinct aspect came to the EOW's notice during their investigation, which was also mentioned in their charge sheet - that a big broking firm assured its trading clients about the security of their invested money, besides the existence of stocks in the warehouses.
- The defaulting members are operating entities and were having huge bank limits as well. Prima facie it was impossible to detect that irregularities were being committed as the warehouse inspections by market players did not raise any alarms. It appears that many of these defaulters have repaid the banks out of the funds received from trading at NSEL. The defaulting members are willful defaulters.
- Further, these defaulting sellers issued VAT invoices in the name of the trading clients as late as until June 30, 2013.
- Throughout the vilification campaign against the Financial Technologies Group, the impression that was created was that of innocent trading clients were duped by NSEL and thus needed to be helped with great urgency. It took more than a year till Hon'ble Justice, in it's Order given on August 22, 2014 in the Criminal Bail Application No. 1263 of 2014, observed as under.

OBSERVATIONS MADE IN THE ORDER GIVEN BY HON'BLE JUSTICE ABHAY M THIPSAY J



There is great substance in the contentions advanced by the learned counsel for the applicant that the brokers through whom the so called trade transactions were entered into, do have their own legal team and a full knowledge of how the market operates. The legalities of the transactions were quite expected to be known to the brokers and the traders who do not hesitate to term themselves as 'investors', and they were expected to assess the legalities of the transactions. The brokers being quite experienced, and the investors being informed persons, it is apparent that the issue of illegality of the transactions raised by them is not out of their concern to adhere to legalities, but in order to project the applicant as the main offender, rather than the defaulting parties... Though the case has been projected as a 'scam of Rs 5600 crore', it needs to be kept in mind that these amounts have not been received by NSEL. As already observed, it is difficult to accept that the brokers and/or their clients for whom they were working were 'deceived' by NSEL in as much as in all probability, the brokers and the investors were well aware that they were not entering into a genuine sale and purchase contract. When there is a clear and obvious possibility that these persons knew about the transactions, the 'deception' if any, caused to them cannot be said to have been caused by the nature of the transactions and, at the most, they can be said to have been misled by a propaganda that 'investing' money in those transactions was safe. The money invested has not come to NSEL, but has gone to the borrowers, i.e., bogus sellers. It is the borrowers who have been benefited by the transactions and the money of 'investors' has gone to them. The names of 25 different companies who are the defaulters have been mentioned in the FIR itself. Thus, though projected a 'scam of Rs 5600 crores', the ill-gotten amount has not gone to the applicant, or for that matter, to NSEL. In fact, it is not the case of anyone

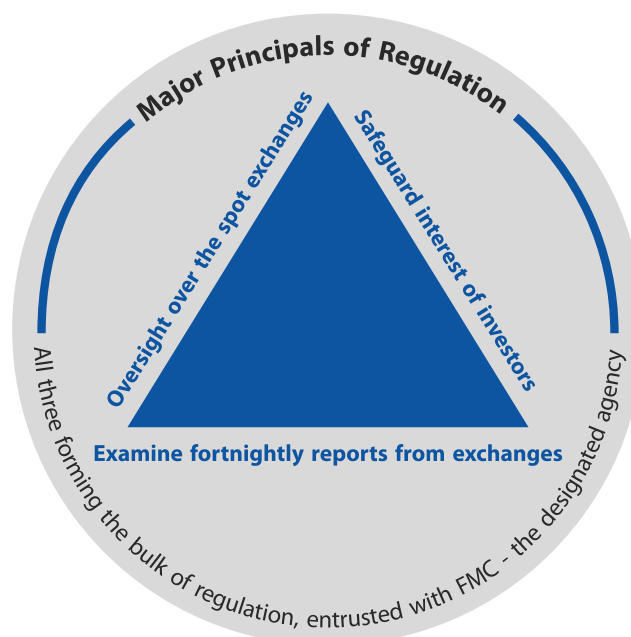


6

Shortcomings of the Regulator

Failures of Regulatory Agency

There is enough to substantiate that in the NSEL crisis, regulatory shortcoming is abound. Virtually every aspect of regulation such as oversight, investor interest, fortnightly reporting of critical data were entrusted to the designated agency, i.e., FMC. Post-crisis, the regulator went into an overdrive, just focusing on one institution leaving others that have jeopardized speeding up the recovery and an early resolution to the crisis. This further heightened the impact of the crisis but both FMC and DCA ignored this fact. Why?



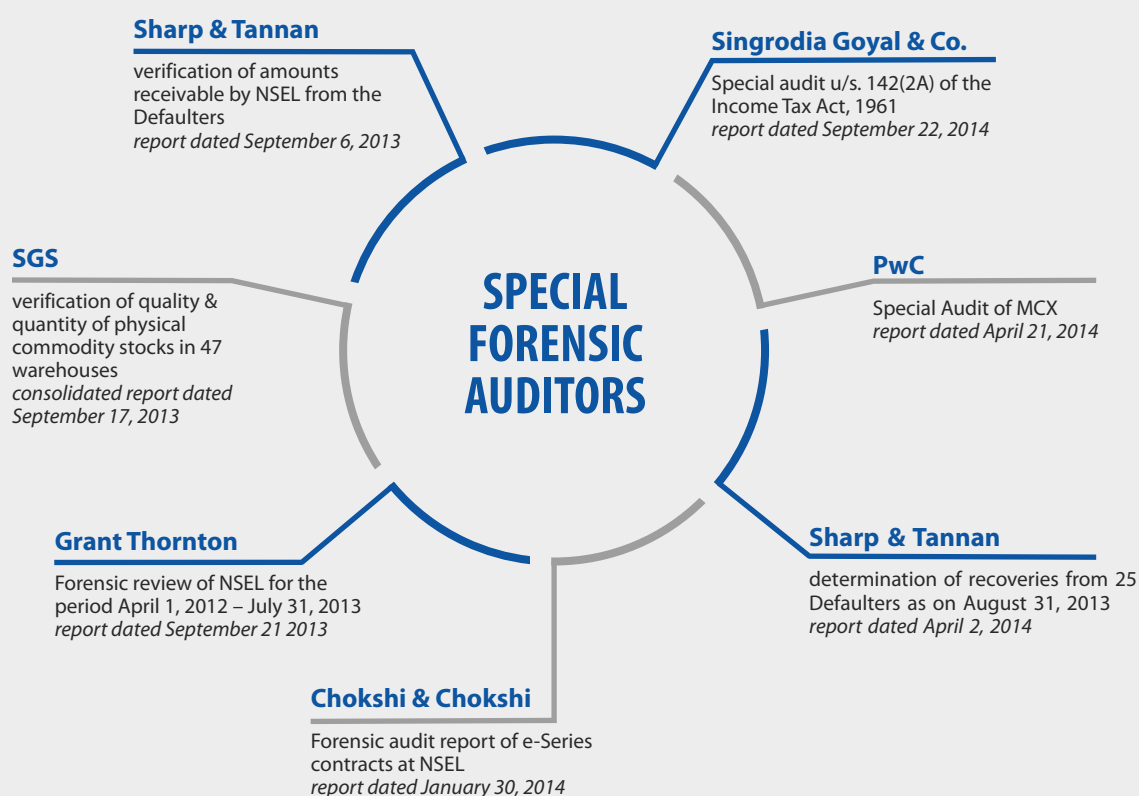
FACT SHEET

- ☒ The then, MD of MCX, had repeatedly requested the Government that the Forward Markets Commission be entrusted with the regulation of the national spot exchanges. All the exchanges promoted by FTIL are regulated and it was keen from the beginning that NSEL too be regulated.
- ☒ In accordance with the need to create a regulatory framework for the functioning of the national spot exchanges, the following measures were taken:
- ☒ In any regulatory structure, the most critical aspects are "Oversight", "Investor Interest" and "reporting", for all of which the FMC was nominated as the Designated Agency. NSEL was providing to the FMC, on a fortnightly basis, information on various aspects of the business that include (a) Price Statement, (b) Summary of Trade Participation, (c) Top Ten Participants, (d) Margin Collection, and Price Volatility, (e) Stocks in Warehouses, and (f) Investor Grievances.
- ☒ All the communications from the Forward Markets Commission to NSEL was addressed to the Managing Director & CEO, who was responding and providing clarifications from time to time. Even the show cause notice issued to NSEL by DCA on April 27, 2012 was addressed to the MD & CEO with no reference or copy to either the NSEL Board or to FTIL. The replies to the show cause were provided by the MD & CEO, NSEL, to the FMC on which there was no further action or initiative, which made him to believe that the issues raised were explained to satisfaction till the DCA ordered stoppage of fresh contracts on NSEL platform, on July 12, 2013.
- ☒ In November 2012, Mr Ramesh Abhishek, FMC Chairman, sought specific clarifications from NSEL erstwhile MD & CEO regarding price formation and financing type of transaction at NSEL. The erstwhile MD & CEO response was also recorded in the minutes dated November 8, 2012 **(ANX-41)**. Thereafter, there was no communication. This shows that FMC was convinced at that point of time or it would have taken action immediately. Even as of May 2013, DCA was only contemplating, imposing penalty on NSEL. The crux of the issue is that FMC was of the view that NSEL was not exempted from all provisions of FCRA, but NSEL was of the view that section 27 exemption was from all provisions of FCRA. If it was a general exemption, there would have been no violation by NSEL and the show cause notice of April 2012 was not required. DCA could not come to a conclusion if FMC was right or NSEL was right. However, they issued the market stoppage instruction in July 2013, pending legal advice, as admitted by them **(ANX-42)**. However, it became apparent that FMC was all along misleading DCA, which was relying on FMC for inputs as it was an expert body under FCRA. This is evidenced by the letter dated July 19, 2013 of FMC wherein FMC admitted that the exemption notification of June 2007 does not specify if the exemption is from all or specific provision of FCRA. If FMC was unsure, it should have told so earlier to DCA, not after stopping the Market. So the conspiracy of FMC is obvious.
- ☒ Immediately after the crisis, Department of Consumer Affairs wrote to the FMC in August 2013 that "settlement of all outstanding one-day forward contracts at NSEL shall be done under the supervision of the Forward Markets Commission where it will be binding upon the exchange, any person or intermediary or warehouse connected with NSEL". However, the FMC chose to put all pressure and focus only on NSEL and FTIL by resorting to such extreme and unwarranted measures such as declaring FTIL & its promoters not fit and proper, coercing MCX to force FTIL to sell its stake, failing which no fresh contracts will be issued to it and frequently coming out with statements not consistent with the care and concern that a regulatory authority should exercise on issues, which are still under investigation and sub-judice and finally recommending merger of NSEL with FTIL and change of management of FTIL. Why no action on brokers & the Defaulters against whom there was a clear money trail?
- ☒ A regulatory institution is expected to make complete investigation and examination of the issue before coming up with any assertion and should cover all those related to the problem to get a complete and comprehensive picture. From the very first day, FMC has just targeted NSEL and FTIL, and began to make statements that are contestable and initiating actions that are not justifiable. Through this, the regulatory authority tried to shift the lapse and negligence on its part by taking stern actions on the basis of unsubstantiated claims made by the brokers and their trading clients who in the first place were the cause and contributors to the crisis. Perhaps in no regulatory regime such unjustified actions can be found even for academic reference, just targeting one company, which has fully committed to cooperate to resolve the crisis and has been compliant with various measures prescribed since the crisis broke.

THE MULTIPLE OF AUDITS...

The audit reports based on which several actions were initiated against FTIL, its promoters and the management were full of disclaimers and deviation from the terms of reference. Quite a few audit reports went beyond their brief to present certain aspects that created undue concerns on various aspects of operations that led to unwarranted actions and punishment on the promoters and management of FTIL.

Subsequent to the crisis on directions of FMC, a series of audit firms were engaged to assess various aspects of the functioning of NSEL and to ascertain where the problem arose and escalated. The list of special forensic auditors engaged for various examinations and studies include:

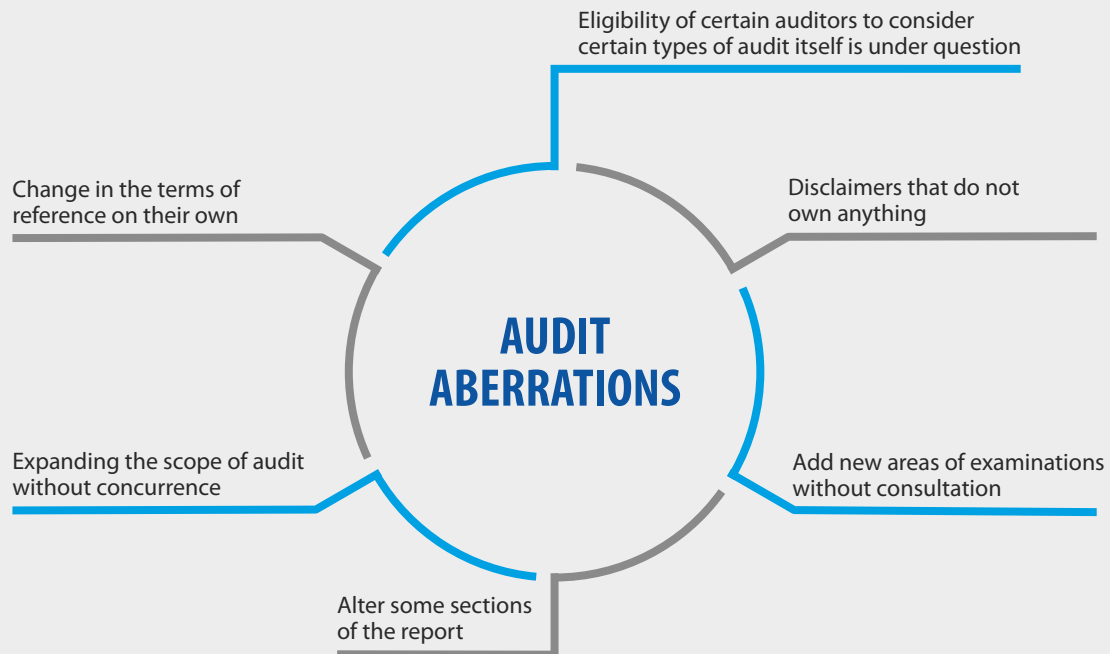


However, strangely, in the course of submission of the reports, at FMC's instruction some auditors began to change the terms of reference on their own, alter some sections of the report, add new aspects which are not related to the audit exercise without explaining the purpose or the background for the same. While this has been the trend in general, NSEL | FTIL was restricted from giving their point of view or cross-examining the auditors. The audit exercises was conducted after a long gap of the transactions taking place and the concerned officials dealing with various functions would be in a better position to explain the context, background, process and procedure for any particular activity and transaction commented on by the auditor.

Whereas the audit firms were mandated to examine the transactional aspects of various activities, they over-extended their brief to prepare additional commentaries without prior discussion and consent on aspects such as governance, internal functioning, monitoring, Board committees, which are completely outside the purview of audit. It is not to say that these aspects are not of importance urely they are of great importance to any corporate entity, but an auditor taking the liberty of commenting on this without a proper study, mandate and consultation is purely trying to side-step the real issue and drive the discussion into some vague aspect that lacks clarity.

AND THE ABERRATIONS

Similarly, the importance of disclaimers made by the auditors was not taken seriously by the authorities when reviewing the reports and taking actions based on these reports.



Grant Thornton

The limitations that Grant Thornton mentioned in its report include:

- Our findings are based upon the information made available to us and we have not independently verified or validated the information.
- Our work did not constitute an audit under any accounting standards and the scope of our work was significantly different from that of a statutory audit. Hence it cannot be relied upon to provide the same level of assurance as a statutory audit.
- Work done by us was as considered necessary at that point of time to reflect the scope of work and rigour required. Restrictions include "comments in our reports are not intended, nor should they be interpreted to be legal advice or opinion".

NSEL has given a detailed response to the audit report of Grant Thornton, which was never considered, and the Exchange was not given an opportunity by the FMC to cross-examine Grant Thornton.

PWC Report

Disclaimers (Extracts)

The Final Report is prepared solely for the information and use of the Forward Market Commission ("FMC") as a Regulator and MCX and may not be relied upon by any Third Party. Neither the deliverable nor its contents may be distributed to, discussed with, or otherwise disclosed to any Third Party without the prior written consent of PwC. PwC will accept no responsibility or liability to any party to whom our Final Report may be shown or in whose hands it may come. Our Final Report should not be published or reproduced in part or in whole without consent from us, except by The Forward Market Commission in its capacity as the Regulator.

The procedures performed under this Special Audit do not constitute an audit or examination or review in accordance with generally accepted auditing standard or attestation standards. Accordingly, PwC will not provide an attestation report or opinion or other form of assurance pursuant to generally accepted auditing standards or attestation standards of the Institute of Chartered Accountants of India.

PwC has relied on the data provided by MCX and has not verified its authenticity.

Certain information in this Report may be hearsay and may not be accurate or reliable when identified as being alleged or of unknown reliability.

Chokshi & Chokshi

For instance the disclaimers made by Chokshi & Chokshi include statements such as:

- This audit didn't constitute an audit under any standards on audit issued by ICAI.
- Key personnel (especially ex-employees) have either resigned or been relieved from NSEL and IBMA or under the custody of investigating agencies or are not available for discussions. Hence the relevant information could not be gathered from them.
- Our scope of work excludes cross examination by NSEL or any of its companies, affiliates, lawyers etc. It further excludes representation before any courts and that we will not be a party to any such legal proceedings.
- Subsequent to the completion of the engagement we will not be under any obligation to update our report for subsequent events or transactions, unless FMC separately engages us to do so in writing

The restrictions include "Our audit report is submitted to the FMC pursuant to our appointment letter dated November 19, 2013. Our report being confidential cannot be circulated or published or quoted or referred to in whole or in part without our prior written consent. We shall not be liable for any cause, damages, losses, liabilities and expenses incurred by any party as a result of distribution | circulation | reproduction of a report in all part."

WHAT IS GOOD REGULATION?

How Australian Securities and Investment Commission describes its role and what is seen in India in the recent period.

Maintain, facilitate and improve the performance of the financial system and entities in it	Commodities markets in India were functioning for ten years. While exchanges have taken India to global scale in trading, hardly any efforts are evident to facilitate the market to increase its scope and significance. All through the Indian commodities derivatives markets remained a single product market (Futures), whereas the world has witnessed enormous growth and diversity in the product range
Promote confident and informed participation by investors and consumers in the financial system	A mature regulation involves proactive efforts of extensive interface and interaction with investors and consumers for every product traded in the market by giving periodic information, assessment and analysis, which is totally absent in commodity derivatives markets in India
Administer the law effectively and with minimal procedural requirements	Adopt a pro-active approach in regulatory mandates entrusted to it from the Government from time to time and not being selective or

	evasive about what responsibility to be taken and what to avoid that could lead to a regulatory bias
Enforce and give effect to the law	Enforcing law effectively involves orderly and well-defined processes that address the problem without damaging the ecosystem and making a comprehensive plan to deal with all the concerned in a balanced and unbiased manner rather than solely targeting one institution unfairly and excessively
Receive, process and store, efficiently and quickly, information that is given to us	There is hardly any scientific study and analysis of various trends and developments in the markets in regard to products, investors, emerging needs and requirements and institutions, etc.
Make information about companies and other bodies available to the public as soon as possible	All action directed against one institution, leaving out others that have greater contribution to the crisis. Information released to the public on a pick and choose approach rather than a comprehensive manner

DESIGNATED AGENCY

Public perception is made to believe that there is no specific regulatory authority for the spot exchanges and these exchanges functioned under regulatory vacuum. However, there was a clear effort to entrust the FMC to look after certain critical aspects of functioning of Spot Exchanges that are clearly in the realm of regulation.

The letter from the Ministry of Consumer Affairs, Food and Public Distribution, dated August 5, 2011 addressed to the Chairman, Forward Markets Commission, has the subject as "Regulation of National Spot Exchanges" in which it was directed that "the competent authority has decided to nominate the Forward Markets Commission as a designated agency for providing "oversight over the spot exchanges", which are granted exemption under section 27 of the Forward Market Contract Regulation Act 1952."

The letter from the Forward Markets Commission dated August 10, 2011 addressed to the Managing Director of the National Spot Exchange under the subject "Regulation of National Spot Exchanges" says, "I am directed to enclose herewith a copy of the letter from the Department of Consumer Affairs nominating the Forward Markets Commission as the "Designated Agency" for "providing oversight over all the spot exchanges", which have been granted exemptions under section 27 of the FCRA. The spot exchanges may please note the contents of the said letter for further necessary action at their end. It may also be mentioned that the exchanges would be required to "forward a return on a fortnightly basis to the Commission".

Important words that run through both these communications are **"Regulation of National Spot Exchanges", "Oversight over the spot exchanges" "safeguard the interest of investors" and a return to be submitted on a fortnightly basis"**. What more does the Designated Agency require to assume regulation that it was entrusted to when all the letters in this regard end with a common statement that "FMC will be competent to take action as deemed necessary and fit".

POINTS OF CONTACT AND COMMUNICATION

The Board of NSEL consisted of professionals as Non-Executive Directors with eminent expertise and experience in the area of agriculture and related services, which laid the broad policy framework for the functioning of the exchange in accordance with the conditions of the exemptions granted by the Government. The Bye laws, Rules and Regulations have entrusted the functions and operations of the exchange to the management. The management of the Exchange consisted of a professional team headed by the MD & CEO who steered the management of the Exchange since inception. It was the management that was in contact with the government | regulatory authorities | other development agencies of state and Central Government in all aspects pertaining to various operations of the Exchange. Similarly, all agencies in the realm of policy, regulation and monitoring were in direct contact with the MD & CEO in all aspects of functioning and management of the Exchange. At no point of time since inception, any of the agencies as described above have either written to or met or advised or instructed or questioned the Board of NSEL or the promoter of NSEL on any aspect of the functioning of the Exchange.

REPORTING TO THE FORWARD MARKETS COMMISSION

FMC was monitoring the operations of NSEL and raised many queries from November 2011. All the queries and show cause notices were replied by the then MD & CEO, NSEL. The FMC had even raised specific questions about the availability of commodities in the warehouses, which were responded to satisfactorily by the MD & CEO. Therefore, there was no reason for the Board of NSEL to doubt that the operations were not being carried on properly.

PUBLIC STATEMENTS

All through July and August 2013, the MD & CEO through public statements had assured that stocks available in the warehouses equaled to settlement dues and could be sold and used for paying off the receiving brokers and their trading clients. However, since MD & CEO was not taking action to liquidate the commodities and make the payouts, the Board ordered an independent stock verification which resulted in finding out the shortfall in the stocks. How did the stocks go missing is a matter under investigation by the EOW.

THE SHOW CAUSE TO NSEL

The dispute began on February 22, 2012 with the FMC writing a letter to NSEL seeking clarifications on fulfillment of conditions stipulated under the notification dated June 5, 2007 governing the exemption given to NSEL **(ANX-43)**.

On April 27, 2012 the Department of Consumer Affairs, issued show cause notice to NSEL seeking information in 15 days on two specific issues

- NSEL was not preventing short selling
- NSEL was enabling trading in contracts beyond 11 days

NSEL promptly replied to both these communications – on February 29, 2012 to the FMC **(ANX-44)** and May 23, 2012 to the Department of Consumer Affairs - justifying the legal position of NSEL on both these matters. Further on August 11, 2012, NSEL provided a further follow up reply to the show cause notice, explaining the justification of legal position of NSEL.

On October 3, 2012 NSEL issued communication to all members with a copy of the same posted on the company website giving details of the communication received from the FMC and the DCA and the

replies given to both these agencies with an advice that there was no further communication either from the FMC or DCA on this subject. Thus, all the market participants, ie., the brokers, their trading clients and the defaulters were well aware of all the issues raised by the FMC and the DCA vis-a-vis NSEL's business model as early as October 2012, ie., nine months prior to the payment defaults occurring in July 2013.

THE NSEL REPLY

NSEL has replied to the FMC and DCA providing the following clarifications to the issues raised. Both these replies are consistent with the legal stand of the exchange on these aspects.

ON SHORT SELLING	ON CONTRACTS MORE THAN 11 DAYS
<p>Short sale implies a trade to create a sale position in a contract and to hold such position (without giving delivery or squaring up) by carrying it forward or rolling it over, with the intention of making profit out of a price fall in the near future.</p> <p>A member who deposits the goods in the warehouse post-execution of sale order and is able to tender his delivery within the stipulated time can't be said to have done short sale.</p> <p>Short sale is only such outstanding sale position, which is not settled by offering delivery as per the delivery schedule declared by the Exchange.</p> <p>The purpose of the exemption order by the DCA was to allow intra-day trading on NSEL. Going by the logic that ownership and possession of goods by a Member should be ascertained before he executes sale transactions, then none of the intra-day trading involving netting or squaring-off will be possible. So the condition of 'short sale' will contradict and defeat the very intention why the Gazette Notification was issued.</p>	<p>All forward contracts of one-day duration for sale and purchase of commodities traded on NSEL was exempted from operations of the provisions of the FCRA, 1952.</p> <p>All forward-contracts offered by NSEL were of one day trading duration with netting/ squaring-off facility.</p> <p>The Gazette notification has exemption of all one-day duration forward contracts from the provisions of the FCRA, provided all outstanding positions at end of day must result in delivery.</p> <p>In case of NSEL, all outstanding position at end of day result into delivery only. Now the question is whether the delivery should happen on the same day, within 11 days or it can happen beyond 11 days too. As the Gazette notification has not specified any period within which delivery must be given taken and so, even if delivery happens beyond 11 days period, it is in full compliance. Further, the contract was a forward contract by virtue of its settlement by transfer of title and netting of intra-day trading, in which case there was no limitation of period.</p> <p>Even NSPOT, the other national spot exchange, had launched several long duration contracts, beyond 11 days as it was a general exemption (ANX-45).</p>

After the replies in which clarification was provided in May and August 2012, till July 12, 2013 there was no further comment on the subjects raised by the FMC or DCA. Suddenly on July 12, 2013, the DCA asked NSEL to stop issuing fresh contracts.

Subsequent reply of the FMC to the Ministry of Consumer Affairs, Food & Public Distribution dated July 19, 2013 says exemption of NSEL under section 27 was general and not specific to any section and therefore, it appears that all reasons given by NSEL in its May 23, 2012 letter were correct and the NSEL business was stopped illegally. Stopping of NSEL business abruptly without any valid grounds and without giving sufficient time to follow a particular instruction, such as gradual phasing out of the contracts which are contested, is not consistent with the legal norms in this regard.

TAKING A PARTISAN VIEW

The dispute began on February 22, 2012 with the FMC writing a letter to NSEL seeking clarifications on fulfillment of conditions stipulated under the notification dated June 5

It is rather puzzling to note that the Forward Markets Commission is adopting a partisan approach of taking actions on the view obtained from the trading clients overlooking the enormous efforts and energies deployed by NSEL and FTIL in carrying out recovery of dues. FTIL was not given the opportunity despite repeated requests to cross examine the auditors whose reports have made the FMC to take this extreme action of declaring FTIL not a fit and proper.

The FMC, in its letter dated September 4, 2014, addressed to NSEL, has chosen to rely upon the inputs | suggestions of members | trading clients represented on the MAC (who were nominated by the FMC), to attribute negligible progress in recovery of dues by NSEL from the defaulting members on 'depletion of human resources, lack of financial resources and weak organizational structure at NSEL'. These brokers are also being interrogated by the Agencies and the fact was overlooked by the FMC while nominating them on the MAC through its letter dated November 29, 2013 **(ANX-46)**. They have even stated that the above alleged weaknesses at NSEL is posing major impediment in the recovery process, while in their same letter they have themselves acknowledged that assets of the defaulting members have been attached by the agencies and the same will be liquidated 'by competent authorities as per the procedure under the respective governing law'. It is worth mentioning that many of the assets attached by various agencies were actually identified by NSEL recovery team with the assistance of professional agencies and also by internal effort. The FMC has also acknowledged that High Court appointed a high powered Committee to ascertain 'the dues payable by each of the defaulters and for the recovery of such dues'.

The Defaulters have already admitted, before the Bombay High Court and | or MPID Court, to a liability worth more than Rs 2000 crore. Moreover, assets worth Rs 5000 crore belonging to the defaulters have already been attached by the EOW. Further, NSEL has recovered and paid more than Rs 540 crore to the trading clients.

Thus, NSEL has been doing practically everything possible to accelerate the recovery process, take suitable legal measures in various courts and also coordinating with various investigative agencies and providing them with voluminous data and information besides meeting various requirements of the FMC as indicated by them, their nominated MAC, and the various forensic auditors appointed by them. Despite all the efforts, FMC has blamed NSEL for delay in recovery without giving credence to the nature of the Indian legal and regulatory framework, which takes time in such complex recovery proceedings.

REGULATORY ACTION ONLY ON FTIL

The mandate given by the Ministry of Consumer Affairs, Food and Public Distribution (Gazette notification) to the Forward Markets Commission vide letter dated August 6, 2013 makes it amply clear that the regulatory agency should take all the measures against all the parties.

Para 2 (ii) of the said notification states:

"Settlement of all outstanding one-day forward contracts at National Spot Exchange Limited shall be done under the supervision of the Forward Market Commission and any order or direction issued by

the Forward Market Commission in this regard shall be binding upon National Spot Exchange Limited and any person, intermediary or warehouse connected with National Spot Exchange Limited, and for this purpose, the Forward Market Commission is authorized to take such measures, as it deems fit."

While, undoubtedly, the FMC has a mandate to supervise the settlement of all outstanding one-day forward contracts at NSEL, a plain reading of the above para also suggests that the FMC is supposed to take such measures as it deems fit for settlement of all outstanding one-day forward contracts at NSEL. Doesn't it also make clear that the authority of the FMC in this regard extends much beyond NSEL and also covers all such persons, intermediaries or warehouses connected with NSEL in the context of recovery and the FMC's orders will be binding on such entities? Despite such empowerment, the FMC has not visited any warehouse or interrogated any broker or defaulter to assist NSEL in recovery of settlement money.

Not enough instances exist of any measures taken by the FMC against the intermediaries (brokers) who sold NSEL contracts and whose role is now being probed by the investigative agencies. Whereas the FMC could have queried the relevant brokers (who are also acting as intermediaries of other exchanges regulated by the FMC and hence may not be "fit and proper") on their role in the NSEL matter just as it has sent several queries to NSEL since the crisis began.

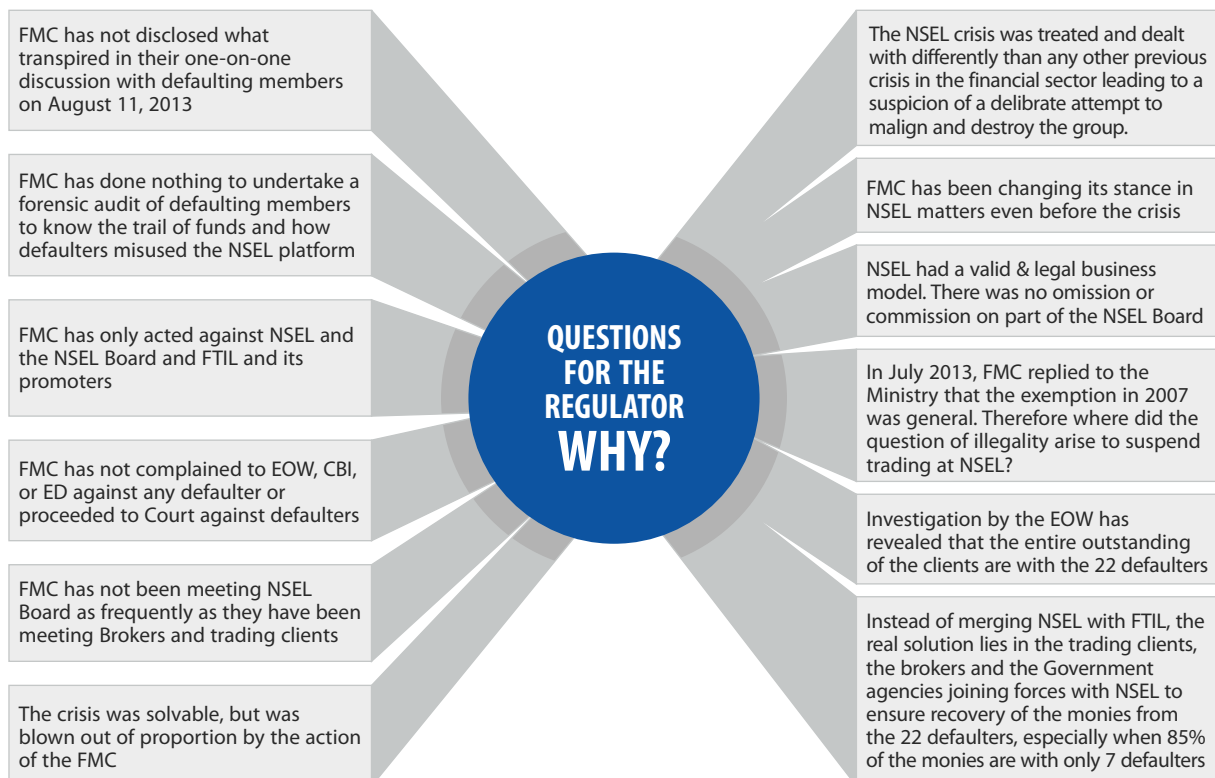
It is also not clear of any measures taken by the FMC against the defaulting members (especially the top 7 defaulting members who owe 85 percent of the total outstanding) who controlled the warehouses where the commodities were supposed to be maintained. The FMC could have summoned the defaulting members to its office or ordered forensic audits of these defaulters. The Government of India in its notification of August 6, 2013 to the FMC had proposed actions to secure the warehouses, but the FMC did not act on that, instead it acted only on NSEL and FTIL.

7

Why Pursue only FTIL

FMC showed Bias in Pursuing only FTIL leaving Other Players Untouched

There is good scope for exploring options and alternatives for crisis resolution involving active cooperation and coordination of various agencies instead of implicating only FTIL in every issue and taking adverse actions against it.



A MATURE WAY OF SOLVING THE CRISIS

KEY ISSUES AND THE SCOPE OF A SOLUTION

- NSEL had a valid and legal business model
- There was no omission or commission on part of the NSEL Board
- The crisis was solvable, but was blown out of proportion by the action of the FMC, which focused on disciplinary action first, even prior to an investigation, and left out recovery and action against defaulters completely
- FMC has been changing its stance in NSEL matter even before the crisis erupted. When on July 19, 2013 it replied to the Government that the 2007 exemption was a general exemption, then where did the question of illegality arise for suspending the trading of NSEL?
- Due to a conspiracy, the NSEL crisis was treated differently than any other previous crisis in the financial sector including the manner in which the FMC treated other spot exchanges and NSEL
- When NSEL suspended its trading, there were 46,000 trading clients with outstanding, out of which 33,000 trading clients in e-Series got their full payment and out of the remaining 13,000 trading clients more than 50% of them, around 7,000 trading clients, were paid more than 50% of their outstanding from the loan provided by FTIL
- Comprehensive investigation by the EOW has revealed that the entire outstanding dues of the trading clients are with the 22 defaulters

8

Approach of Other Regulators

Comparison of FMC | DCA Actions
with those of Other Regulators
in Other Crises

In addressing to problems in other market segments, respective regulatory authorities have shown greater balance and maturity when compared to DCA | FMC as is evident from the following.

PARTICULARS	NSDL IPO IRREGULARITIES	NSEL STOCK IRREGULARITIES
Background of the crisis	In 2005, SEBI unearthed and investigated certain irregularities in 21 Initial Public Offerings (IPO) which launched in the market from 2003 to 2005	In July 2013, NSEL had to stop operations due to abrupt Government order without giving any justified reason or time to close the Exchange
Who were the offenders?	It was found that some 103 key operators and financiers had opened some 57900 DP (and bank) accounts in fictitious / benami names and cornered shares by using favourable allotment chances for retail investors	In August 2013, the Exchange announced a revised settlement plan in discussion with FMC and the market players. However, after the first installment one by one 22 Members defaulted in making their funds pay-in and it was found through a SGS audit that the commodity stocks which they were supposed to be maintained in their 44 warehouses were largely missing
Who were the sufferers?	As a result of this some 13.58 lakh retail investors, who had unsuccessfully applied through their brokers, were deprived of their rightful gains	As a result money of some 12,735 trading clients (clients of brokers), who traded through 148 brokers on the Exchange were short in their funds pay-out. If commodity stocks were maintained in the warehouses, the Exchange could have sold the stocks to pay the 148 brokers & their clients.

What actions did the Regulators take	In 2007, SEBI formed a committee under the Chairmanship of a former Judge of the Supreme Court of India, to advise on the procedure of quantifying the amount of unjust enrichment that has taken place, identification of persons who might have been deprived and the manner in which reallocation of shares to such persons should take place.	Through a Sharp & Tannan audit it was confirmed that 86% of outstanding amount is due from top 7 defaulting members
	The Wadhwa Committee in its Report observed that the reallocation amount to the deprived applicants must be paid out of money that must first be recovered from those who unjustly benefited, such as the key operators and financiers	The Govt. of India in its Gazette Notification dated August 6, 2013, stated that "Settlement of all outstanding one-day forward contracts at National Spot Exchange Limited shall be done under the supervision of Forward Markets Commission and any direction issued by the Forward Markets Commission in this regard shall be binding upon the National Spot Exchange Limited and any person, intermediary or warehouse connected with the National Spot Exchange Limited, and for this purpose, the Forward Markets Commission is authorized to take such measures, as it deems fit".
	SEBI initiated proceedings against these 103 key operators and financiers to disgorge illegal gains and take appropriate action including penalties. No action taken against NSDL's Board or Management No action taken against NSE's Board as promoter of NSDL	Through such blanket powers bestowed on the FMC, it should have by now taken stern action against the defaulting members on NSEL and their warehouses from where the stocks went missing. However, the FMC chose to keep its focus limited on the NSEL only. Instead of taking active part in settlement of all outstanding the FMC chose to act passively by appointing MAC, comprising the Investors Forum and brokers (who have conflict of interests) to oversee the recovery and settlement process.
	SEBI appointed Mr. Vijay Ranjan, Retd. Chief Commissioner (Income Tax), as the Administrator to undertake the task of disbursement of the recovered amounts to the identified persons.	The FMC could have, by now, independently ascertained the liability of the top 7 defaulting member and directed them to clear their dues. This could have cleared the majority of the outstanding.
	On April 12, 2010 as a first step SEBI disbursed 24.4% of original unjust gains recovered from the 103 key operators and financiers to around 12.75 lakh deprived retail investors.	NSEL has achieved financial closure of e-Series contract by making payment to 33,000 e-Series clients. Further, 7000 trading clients with exposure of less than 10 lakh have received 50% of their outstanding.

DERIVATIVES SCAM OF 2007-08

In a similar instance, in the 2007-08 derivatives scam, certain 19 banks were accused of mis-selling currency derivatives to exporters, mainly SMEs, who had little idea about the potential dangers of such instruments. The collective loss was estimated at over Rs 30,000 crore. It was alleged that some private sector banks devised special currency derivative products which were then sold to their clients as hedging instruments, whereas actually these transactions were speculative in nature and against the RBI guidelines and policy.

According to experts, the Reserve Bank of India does not allow naked hedge transactions as it does not have the necessary underlying requirement for the hedge. Put pithily, any hedge instrument, not based on any valid import or export transaction, is not allowed under the extant RBI guidelines as it is merely speculative. Later on, businesses realised that these derivatives, instead of hedging the gyrations in the forex markets, actually enhanced their risks and increased their losses substantially. In the process, this faith of Indian business on the Indian banking industry was tremendously shaken. Trust, so very vital to the banking system and mechanism and assiduously built over decades by bankers, seemed to have evaporated within months because of the reckless actions of a few bankers.

Thus banks have been acting as (sole) advisor to these transactions with their clients. Naturally, this raises serious questions over the role of banks, corporate governance, and ethical and conflict issues. How could banks advise clients and yet be counterparty to such transactions? Crucially, how could they expect their clients to bear the losses on such transactions without any demur, especially if the banks are the beneficiaries of such losses?

In 2011, the RBI imposed penalties ranging from Rs 5 lakh to Rs 15 lakh on 19 banks for mis-selling currency derivative products. Penalty was perceived to be paltry, but it spelt the end of derivative business for banks.

OTHER PAST CASES AND ACTION

ISSUE	REGULATOR	ACTION
Ketan Parikh Scam	SEBI	<ul style="list-style-type: none">• Ketan Parikh suspended by SEBI• Madhyapura Mercantile Cooperative Bank's licence was cancelled by RBI in 2012.• No action against NSE or BSE
Flash crash at NSE and Nifty crashed by 900 points	SEBI	<ul style="list-style-type: none">• SEBI continues to look into the problem• SEBI reprimands NSE after 2 years to take corrective action• No compensation to members or investors who lost money due to flash crash and consequent triggering of stop loss orders or other orders
NSE was reprimanded for not preventing tax evasion on turnover of Rs 1.5 lakh crore	SEBI	<ul style="list-style-type: none">• No action taken against NSE Board or Management

NSDL IPO Scam	SEBI	<ul style="list-style-type: none"> • No action taken against NSDL Board or Management • No action taken against NSE Board as promoter of NSDL • SEBI committee told Board of NSDL to take action against responsible person • SEBI recovered Rs 23.3 crore from fraudulent investors and paid to investors. The recovery is 24.4% of total scam amount
NSEL crisis	FMC	<ul style="list-style-type: none"> • No action against any defaulter • No action against any broker for client code modifications • Not 'fit and proper' order passed against three Directors of NSEL and against FTIL as the promoter of NSEL • FMC proposed merger of NSEL with FTIL. FMC has done the above selectively despite no Court having adjudicated NSEL dispute as yet and the whole matter is under investigation

WHAT ABOUT SEVERAL OTHERS

There are several other corporate irregularities on which hardly any action appears to take place, whereas excessive zeal and persuasion was shown in punishing FTIL.

Recently a group of investors in a Mauritius -based reality fund of a venture capital firm that is a part of the leading financial conglomerate in India is seeking damages of US\$103 million for losses suffered by them. A leading pharmaceutical firm was imposed US\$500 million in penalties by the Federal Drug Administration, after pleading guilty to felony charges relating to manufacture and distribution of certain adulterated drugs. In view of such practices by some companies, US Chamber of Commerce ranked India at the bottom of 25 countries in terms of protection and enforcement of intellectual property rights. Companies with false promises during IPOs, pledging securities already pledged, fudging accounts and indulging corruption are many. Micro finance companies charging usurious interest rates that forced farmers to commit suicides are not uncommon in India. Vanishing companies is a trend that happened in front of the very eyes of the government authorities and regulators. Government and regulatory authorities in all these case have been following up gradually in accordance with the current legal framework and conventions. Nowhere forensic audits by multiple auditors were conducted and irreversible regulatory action taken when the issue is under investigation and sub judice for which outcome has yet to come. No instances of any promoter or CEO of corporate group put under custodial interrogation for a mistake that has happened in one of its subsidiaries.

Is it not important that India too should have a system that respects fair treatment of all? More so when dealing with a group such as the Financial Technologies that has the distinction of making stellar contribution to the growth of financial markets in India.

Crisis Management

FTIL Extended All Support to NSEL to Resolve the Crisis

NSEL has taken every measure, as warranted, to extend cooperation and complete support to the regulatory and investigative authorities, has taken legal recourse to effect quick recovery of dues, extended immediate compensation to small trading clients and is sincerely working towards an early resolution of the crisis.

A FEW OTHER MEASURES TAKEN BY NSEL

ACTIONS	DETAILS
Amount paid by NSEL, utilizing a without prejudice loan taken from FTIL, for paying 50% dues of 6445 small trading clients with exposure from Rs 2 lakh to Rs 10 lakh and full dues of 608 trading clients with exposure upto Rs 2 lakh	Rs 179 cr
NSEL started contacting defaulters to settle their liability. No. of settlement agreements signed, which now they are not complying	3
No. of assets of the defaulters traced and identified by NSEL and given to police	380
Balance sheet analysis of all defaulters and their related companies has been undertaken to do asset tracing for recovery	235
No. of meetings at NSEL with MAC, constituted by the FMC, to review recovery proceeding	23
No. of Arbitration petitions filed in Bombay High Court against defaulters	5
No. of applications in MPID court in relation to defaulters	42
No. of complaints with the Magistrate court for bouncing of cheques of defaulters	47
No. of complaints filed in EOW, Mumbai Police, which has not yet been registered as FIR, therefore also filed 10 Section 156(3) applications with the Magistrate for FIR against the defaulters	20

FACT SHEET



NSEL swung into immediate action, to take a series of measures, once it came into a crisis. In addition to extending complete support and cooperation to the Government, regulatory institutions and other investigating agencies, NSEL has been making efforts to speed up recovery of outstanding from the defaulters. A few of the measures taken by NSEL, with full support from FTIL in terms of financial personnel and other resources, following the crisis include:

CRISIS MANAGEMENT

- NSEL has recovered Rs 541 cr from defaulters and the same has been distributed among the buyers
- No trail of the trading client's money has been traced either to NSEL or its promoters or FTIL management
- EOW has attached assets worth Rs 5000 crore of the defaulting members. Substantial recovery is expected from this
- NSEL has taken legal action against the defaulters
- Full recovery done from 2 defaulters

- NSEL has provided personnel and IT support to both EOW and the Competent Authority constituted under MPID Act to speed up the recovery process
- Voluminous data has been shared with all agencies involved (EOW, CBI, ED, FMC, etc.)

- NSEL closed liability of 33,000 clients by successfully closing almost the entire e-Series settlement
- NSEL has so far distributed Rs 541 crore to the trading clients including Rs. 179 cr. to pay 50% dues of Trading clients having exposure of upto Rs.10 lacs.

IMMEDIATE RELIEF TO SMALL TRADING CLIENTS

RECONSTITUTIONS OF THE BOARD AND CHANGES IN MANAGEMENT

COMPLETE COOPERATION EXTENDED TO INVESTIGATION AGENCIES

PERIODIC BRIEFING TO GOVERNMENT AND REGULATORY AUTHORITIES

RECOVERY EFFORTS & PURSUING DEFAULTERS

- The senior management of NSEL met with MAC, appointed by the FMC, on a fortnightly basis
- NSEL compiles and sends a detailed weekly report to the FMC

- The NSEL Board has been reconstituted along with a new senior management team
- NSEL has adequate staff strength and expert human resources to assist in recovery
- To date recovery is on going
- After the crisis broke out, FTIL has provided concessional rates for certain services to NSEL

Contrary to the wrong impression created in the public mind that NSEL and FTIL have walked away from the crisis leaving the trading clients in the lurch, every effort is being made to recover the money of the trading clients from the defaulters and NSEL is proactively pursuing every judicial and non-judicial agency, which is working towards the recovery of money from the defaulters. A few instances that could be cited:

The affidavit of EOW in the MPID case No.1 of 2014 (March 7, 2014) at para 2 has recorded the assistance given by NSEL to EOW Mumbai and therefore it is incorrect to say that NSEL is not doing anything for recovery (ANX-47).

The minutes of the meeting of the NSEL Board with the FMC on July 22, 2014 has indicated the efforts put in by NSEL towards recovery and FMC has not raised any concern with regard to their dissatisfaction on the effort of NSEL in recovery **(ANX-48)**. Subsequently, the FMC has recommended merger, which is inappropriate.

When the NSEL Board gave advertisements against defaulters in all national and regional newspapers, the FMC appreciated the effort of the Board. NSEL spent nearly Rs 1 crore on these advertisements.

APPLICATION OF BYE-LAWS ENFORCED BY NSEL

HANDLING OF DEFAULT AS PER BYE-LAWS	WHAT NSEL HAS DONE
Declaration of defaulter by the Exchange	NSEL has declared 22 members as defaulters
Recovery of dues from defaulters	NSEL has lodged police complaint against all defaulters Recovery proceedings have started against all defaulters in High Court and now a high powered Committee has been established Recovery proceeds and selling of attached assets is happening under MPID court, which has passed 4 orders for selling commodities or assets

IMMEDIATE RELIEF TO TRADING CLIENTS

- NSEL has so far distributed Rs. 541 crore to the trading clients. This includes an amount of Rs 179.25 crore received from FTIL as a without prejudice loan, which was utilized towards repayment to 7,053 small trading clients **(ANX-49)**. Substantial recovery is expected as the assets of defaulting members worth approximately Rs 5,000 crore have been attached by the EOW
- NSEL has taken strong and effective steps to contest the opposition to redeem e-Series metals (precious as well as base) contracts traded on NSEL platform by approximately 33,000 traders. After obtaining Court orders supporting redemption of such e-Series contracts, NSEL has taken steps towards re-materialization and financial closure of all the e-Series contracts. The financial proceeds were directly remitted to the traders' accounts in a transparent and systematic manner
- On June 26, 2014, the Exchange completed financial closure of e-Gold when total payment of Rs 154.77 crore was made to the unit holders **(ANX-50)**.
- On August 27, 2014, NSEL declared closure of e-Silver with final payouts to eligible unit holders **(ANX-51)**.



RECONSTITUTION OF BOARD AND CHANGES IN MANAGEMENT OF NSEL

- The NSEL Board has been reconstituted and this Board along with new senior management team has been effectively guiding and executing the entire recovery process against the defaulters. The Board of NSEL now comprises two former Chief General Managers of RBI and a past President of the Institute of Chartered Accountants of India. In a span of 10 months, NSEL has conducted 15 Board meetings with a total of 154 agenda items. The Board members had several meetings with FMC officials along with MAC members. The new Board members have also met the senior police officials of EOW, Mumbai, CBI, ED, and Minister of Agriculture, Government of India - with a view to provide all support in resolving the current payment and settlement crisis at NSEL by ensuring speedy recovery from the 22 defaulting members.
- NSEL has adequate staff strength and expert human resources to assist in the recovery.

OTHER EFFORTS TOWARDS RECOVERY

- To date, recovery is ongoing.
- Since the breakout of NSEL settlement crisis in July 2013, FTIL has constantly provided financial support to NSEL for administrative expenses, including cost for recovery measures such as advertisements, legal cases, technology support to all investigative agencies and has also provided human resources to NSEL. At present, NSEL has 57 employees, including those employed on contractual basis, as consultants and on deputation. Considering the fact that the trading operations of NSEL are suspended and NSEL is not carrying out any business | operational activities, and that the entire focus of NSEL is on legal efforts for recovery against the 22 defaulters, the staff strength of NSEL is adequate. All these facts would have been readily made available to the FMC, had it discussed the issue with the Board | senior management of NSEL before arriving at pre-determined conclusions.
- Since July 2013, NSEL has already spent substantial amount towards legal expenses for speedy recovery from its 22 defaulting members.
- In addition to the formation of Honorable High Court committee for recovery of the dues from the defaulters, the interests of the trading clients are protected as their dues have been secured by the Courts and authorities in the following manner:
- Assets of the 22 defaulters worth approximately Rs 5000 crore have reportedly been secured by the EOW for attachment and liquidation under the MPID Act, 1999.
- Two members, M/s. Topworth Steels and Power Private Limited and M/s. Shankya Investments have settled their dues.
- NSEL is opposing every bail | anticipatory bail application of the defaulters. Bail application of Mr. Surendra Gupta, P.D. Agroprocessors Pvt. Ltd. was rejected by MPID Court wherein NSEL had intervened. The NSEL also intervened in the bail application of the charge-sheeted employees.
- Arbitration petition under Section 9 of Arbitration Conciliation Act for interim relief were filed for a few defaulters in September and October 2013. However, after the EOW attachment of assets, interim relief is not required anymore
- 47 complaints have been filed for dishonour of cheque u/s 138 N.I. Act in various Courts. Warrants have been issued in two matters.
- After declaration of the members as defaulters, NSEL started contacting defaulters to settle their liability even with a reasonable discount and accordingly the first agreement with the defaulter was signed on October 30, 2013 with Mohan India Pvt. Ltd. Also, agreements have been signed with NCS and Swastik Overseas
- Mohan India's original outstanding was Rs 933.09 crore, out of which Rs 52 crore is received and the present outstanding is Rs 881.09 crore. A settlement agreement was signed for Rs 771 crore. However, as the member is now again defaulting, the case has been referred to the MPID court for selling the land and imposing other penalties as per the agreement. Misc. Application 33 of 2014 filed seeking relief for Sale of its assets. Order has been passed for sale of assets of Mohan India as collaterals under the settlement agreement. The EOW has attached properties worth Rs 494.6 crore. The ED has attached their property worth Rs 150 crore
- 25 MPID matters are also going on for issues related to selling of stocks, upholding of settlement agreements and sale of assets

- In class action suit of Modern India with the leave of the Bombay High Court, NSEL has issued third party notices to 15 defaulters as the amount has to be recovered from the defaulters and not from the Exchange
- Recovery suit against P.D Agro has been filed in the Bombay High Court. Recovery suits against other defaulters are also in the process of being filed

FINANCIAL SUPPORT FROM FTIL TO NSEL

Since inception net funds outflow from FTIL to NSEL is Rs 350.35 crore.

	PARTICULARS	RS CR
1	Equity	45.00
2	Loan (Rs 179.4+31.43+9.5)	220.33
3	Amount payable to FTIL towards various services including interest on loan	34.87
4	Retained Earnings of NSEL till March 2013 (As per audited)*	140.84
		441.04
5	Less: paid to FTIL by way of charges for HW/SW, interest and other services	90.69
	Net fund outflow from FTIL to NSEL since inception	350.35

**This amount may change as the amended financials of March 2013*

Post the NSEL settlement crisis, FTIL has cancelled certain services to the NSEL so as to support NSEL in terms of cost savings. Moreover, certain essential services were continued at substantially reduced rates to benefit NSEL.

FTIL cancelled the following services to NSEL to support the latter		Cancelled w.e.f.
1	Dome & CNS software license and maintenance	01.07.2013
2	Exchange client services	01.08.2013
3	Business support services and shared services	01.10.2013
4	Web, graphics & IT system services & corporate & market communication services	01.10.2013
5	Managed services agreement	01.10.2013

FTIL continued the following services to NSEL to support the latter	
1	Office rent of 4th floor FT Tower was reduced from Rs 21.18 lakh p.m. to Rs 7.40 lakh p.m. w.e.f. 01.10.2013 and further reduced to Rs 2.00 lakh p.m. w.e.f. 01.04.2014
2	Sharing of hardware and software cost

FTIL has received no dividend or bonus from NSEL. For all the services rendered to NSEL by FTIL, money has always been pumped in by FTIL. Neither FTIL nor its promoters or directors have benefitted to even a single paisa from NSEL. Dividends declared by FTIL are on its own standing.

COMPLETE COOPERATION TO INVESTIGATING AGENCIES

- NSEL has provided personnel and IT support to both the EOW and the Competent Authority constituted under the MPID Act in order to speed up the recovery process and assist in the ongoing investigation. Voluminous data has been shared with both agencies | entities and four draft proposals have been submitted to the Competent Authority in consultation with the MAC for submission to Court for the sale of commodities and properties of four defaulter members.
- The Exchange has deputed staff at the EOW to assist recovery meetings with defaulters.
- The MAC constituted by the FMC met every week/fortnight at the exchange with active participation from NSEL to review recovery proceeding. However, the same has been recently wound up by the FMC in light of the high powered Committee constituted by the Bombay High Court.
- Interaction with client groups and member groups for information, clarifications or recovery are held periodically.
- Coordination with RBI, CIBIL, banks and various government agencies to get more information and data on defaulters to make recovery case stronger is an ongoing process.

PERIODIC BRIEFINGS TO GOVERNMENT AND REGULATORY AUTHORITIES

The senior management of NSEL has been meeting with the MAC appointed by the FMC on a weekly/fortnightly basis. These are very structured meetings with minutes and action taken reports. In all, 25 committee meetings took place, between October 9, 2013, and August 8, 2014, wherein 246 agenda items were dealt with. In some of these meetings, the FMC representative also participated. All meetings were hosted at NSEL's office and were provided with detailed agenda notes | and electronic display of further details.

Additionally, NSEL compiled and sent a detailed weekly report to the FMC, which summarized all recovery, settlement pay-outs, legal and court cases, e-Series updates and any important developments of the week.

Thus, despite being fully aware of the various continuous efforts made by NSEL for recovery of the dues from the 22 defaulters, the FMC's allegation of 'no progress in recovery' is surprising.

RECOVERY EFFORTS AND PURSUING DEFAULTERS

- As on November 15, 2014, NSEL had recovered Rs 541 crore from the defaulting members and the same was being distributed amongst the eligible members on a proportionate basis.
- Further, NSEL team is making relentless efforts for recovery of the outstanding dues from the defaulting members, including, filing civil suits for recovery of dues from them, initiating proceedings

under Section 138 of the Negotiable Instruments Act, 1881 for dishonor of the post-dated cheques given by them to NSEL.

- NSEL has refuted the observations made by the FMC regarding the slow pace of recovery process from the defaulters. NSEL has taken considerable recovery initiatives and has taken legal actions against the defaulters. NSEL has filed 5 Arbitration petitions in Bombay High Court, 42 applications in MPID court and 47 complaints with the Magistrate Court with regards to bouncing of cheques. The bourse has also filed 20 complaints in the EOW, Mumbai Police, which have not yet been registered as FIR; therefore the Exchange has also filed 10 Section 156(3) applications with the Magistrate Court for FIR. NSEL has also issued third party notices to 15 defaulters further to the Representative Suit filed by Modern India.
- These coordinated efforts have resulted in a historic order passed by the Bombay High Court where a Committee comprising three distinguished persons was formed to overlook the process of asset sale and recovery from Defaulters. The Committee – consisting of Justice V.C. Daga (Retired Judge of the Bombay High Court), Mr. J Solomon (practicing solicitor) and Mr. Yogesh Thar (practicing Chartered Accountant from Bansil Mehta & Company) – would determine the amount payable by defaulters | third parties, while it is also empowered to ascertain their assets. The move has come as a big relief for clients as the process of recovery will now get fast-tracked.
- Comprehensive investigation by the EOW has revealed that the entire outstanding dues of the trading clients are with the 22 defaulters. No trail of the trading clients' money (whether direct or indirect) has been traced either to NSEL or to FTIL or to FTIL's management. The same has also been observed by the Hon'ble High Court of Bombay in its Order dated August 22, 2014. In view thereof, the focus of the FMC to extinguish NSEL by the device of merger instead of proceeding against the 22 defaulters for recovery, appears to be misconceived.
- NSEL had filed an application in the MPID Court to obtain details of assets attached by the EOW. The MPID Court has passed a favourable order wherein the Court has stated that EOW provide the data to NSEL.
- NSEL recovery team took assistance of an external asset tracing agency for tracing of assets of defaulters and their group companies and most assets attached are obtained from this source of information, besides the additional effort done by the recovery team with the assistance of a CA firm that analysed balance sheets of defaulters and identified their group companies and associates.
- Further, it is understood that the EOW has identified more than 200 properties of the defaulters for attachment under the MPID Act, 1999.
- The Enforcement Directorate is also said to have attached multiple assets of the defaulters having book value of more than Rs 200 crore under the Prevention of Money Laundering Act, 2002 ("PMLA"). Press reports state that the Government of India is actively considering the proposal of the trading clients to amend the PMLA so that the proceeds of the assets attached under the PMLA can be paid to the trading clients instead of the same going to the Government.
- NSEL obtained decree from Bombay High Court against defaulters- Swastik, Yathuri, Aastha, Juggernaut.
- NSEL recovery and legal team are extending full co-operation to the High Court Committee.

NSEL Clarifies

Clarifications on the comments of the Chairman, FMC, on NSEL

Chairman, FMC, in an interview to Economic Times on November 3, 2014 made certain comments which NSEL found not consistent with facts. NSEL, now responds to specific comments by the Chairman, FMC.

The Chairman, Forward Markets Commission, in an interview to The Economic Times on 3rd November, made certain comments, which were published with the title "Unified probe needed under a Chief Secretary in NSEL scam".

NSEL takes strong exception to certain comments made in this regard. To correct certain accusations that were found in the interview and also present the current and actual picture in regard to various developments at NSEL, it is considered important for NSEL to give a detailed clarification.

Given below is the NSEL stand on various comments made by the Chairman, Forward Markets Commission, which NSEL believes are not based on facts and made in a frivolous manner without considering or validating facts, which may adversely affect the pace of recovery taking place and speedy resolution of the crisis.

NSEL RESPONSES TO SPECIFIC COMMENTS OF THE CHAIRMAN, FMC

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
NSEL has little capital to pursue recovery of funds from defaulters	<p>a) NSEL has used its entire equity capital of Rs 45 crore and reserves of Rs 145 crore by July 31, 2013</p> <p>b) Though NSEL has used all its reserves for pay-out to affected member brokers, FTIL is supporting NSEL in its recovery efforts and is providing all other support in terms of finance, manpower and infrastructure. Hence, the argument of "NSEL has little capital" does not hold good</p> <p>c) NSEL has already paid Rs 179 crore to make payment of 50 percent of dues to 7053 small trading clients with receivables of less than Rs 10 lakh after taking a without prejudice loan from FTIL</p> <p>d) NSEL has to receive Rs 103 crore from NAFED since one year. NAFED is willing to pay about Rs 68 crore or so as settlement, whereas NSEL is in discussion to realize more</p> <p>e) All NSEL employees have been receiving their salary, increments, and bonus on time</p> <p>f) Currently, 781 clients (6 percent collectively) have to receive 69 percent of the total outstanding dues. Moreover, seven defaulters account for 85 percent of total outstanding dues. Similarly, out of 148 brokers, 30 brokers account for over 68 percent of total dues</p> <p>g) The appropriate course of action should be to concentrate on recovery from 22 defaulters collectively by NSEL, investigative agencies and the government machinery</p>

CONCLUSION: NSEL is fully supported by FTIL and has spent Rs 14.54 crore in handling litigation since July 2013 to contest 47 cheque bouncing cases, 42 MPID cases, 5 arbitration cases and many recovery suits in High Court. It is wrong to say NSEL doesn't have money. The proposal of amalgamation will divert the focus from what NSEL is currently pursuing through investigative agencies and the Court of Law.

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
NSEL has few staff	<p>a) NSEL had over 115 employees in Mumbai while it was functioning in full-fledged manner encompassing operations, clearing and settlement, client membership, warehousing, etc.</p> <p>b) Currently, NSEL has 57 staff including 17 senior management officials, which are entirely dedicated either directly or indirectly in recovery and legal matters</p> <p>c) NSEL has external consultants / advisors over and above the regular staff in the payroll to look into legal and recovery work</p>

CONCLUSION: NSEL has adequate staff for legal and recovery issues.

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
NSEL has no capacity to recover	<p>a) NSEL has recovered more than Rs 360 crore, provided asset details of around 300 companies of defaulters for attachment, which is valued at around Rs. 5,000 crore. However, sale of attached assets and disbursement to affected members shall happen through a legal mechanism only</p> <p>b) NSEL has filed 47 cheque-bouncing cases in various Metropolitan Magistrate Courts, filed or intervened in 42 MPID cases for recovery or sale of assets and filed 5 arbitration petitions and several recovery suits</p> <p>c) Bombay High Court has constituted a committee under the chairmanship of a retired judge of Bombay High Court to fix liabilities and recover the dues</p> <p>d) e-Series, another product on the Exchange which was stalled, has been eventually redeemed up to 99 percent through a transparent mechanism to around 33,000 trading clients during the last few months. This involved auctioning of metals within the given parameters by NSEL and over 1 lakh bank remittances to individual trading clients. The way NSEL executed the whole process, starting from re-materialization, subsequent auction of the remaining metals and payment to trading clients has invited appreciation from all, including FMC. Hence, the FMC is well aware of NSEL's capacity for execution</p> <p>e) Members who paid money were neither creditors of NSEL nor the members who received money are debtors of NSEL</p>
CONCLUSION: NSEL has capacity to recover money and is doing everything possible in this regard.	

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
NSEL has no money to pay legal expenses	<p>a) NSEL, supported by FTIL, has so far spent Rs 14.54 crore for legal cases since July 2013</p> <p>b) During a meeting, the FMC and MAC complained that NSEL legal spending was high, which is contrary to FMC's views here</p>
CONCLUSION: NSEL is well-supported by FTIL for contesting the legal cases.	

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
Holding company should step in, in order to pursue recovery	<p>a) Holding company has already been assisting NSEL with money, infrastructure and staff for recovery and amalgamation may lead to loss of focus on recovery</p> <p>b) NSEL's sole objective now is to pursue effectively the recovery process and court cases. Whereas FTIL is a company with a primary objective of creating and servicing IT products</p> <p>c) NSEL has power of bye-laws and regulatory relationships with members, defaulters and trading clients which FTIL doesn't have. So merger may make recovery complex and legally untenable</p> <p>d) As the FMC is empowered to settle outstanding dues, it can act against defaulters, order for forensic audit of defaulters or initiate other action against them</p> <p>e) In IPO scam, regulator like SEBI never proposed merger of NSDL</p>
CONCLUSION: Amalgamation of NSEL with its Holding Company is not a solution. It seems the FMC is more focused on amalgamation of NSEL with its Holding Company than supporting NSEL to expedite recovery process that may provide the required relief to the trading clients.	

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
NSEL has been asking FTIL for funds, we were told in meetings, but they were not getting help	<p>a) FTIL is rendering all support for recovery, legal, technology, and administration and has also given a without prejudice loan of Rs 179 crore for payment to small trading clients</p> <p>b) NSEL is receiving required money from FTIL to meet Court-approved expenses such as administrative, salaries of employees and legal expenses, etc.</p>
CONCLUSION: NSEL has been getting prompt help to meet all the Court approved expenses including legal expenses. Hence, the FMC's statement is out of context and thereby given a meaning that is exactly the opposite of what was intended	

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
Co-ordination mechanism for investigative agency under Chief Secretary	<p>a) The FMC was given omnibus power on August 5, 2011 to oversee spot exchanges by the Department of Consumer Affairs for: "investors protection"; "ensuring that the conditions stipulated for exemption u/s 27 of the FMC Act, 1952 are duly complied with"; and "to take action in case there is any breach of the stipulated conditions for exemption"</p> <p>b) Further, the FMC was given additional powers through gazette notification dated August 6, 2013. The para 2 (ii) of the said notification states: "Settlement of all outstanding one day forward contracts at NSEL shall be done under the supervision of FMC and any order or direction issued by the FMC in this regard shall be binding upon NSEL and any person, intermediary or warehouse connected with NSEL, and for this purpose, the FMC is authorized to take such measures, as it deems fit"</p>
<p>CONCLUSION: Hence, the FMC enjoys adequate power to deal with NSEL and the crisis. A pragmatic approach to coordinate with all investigative agencies proactively and targeting the defaulters instead of NSEL and its promoters will complement NSEL's recovery efforts. The FMC has written to SEBI, RBI, MCA, EOW, and also to FTIL, which could have been done for brokers and defaulters as well.</p>	

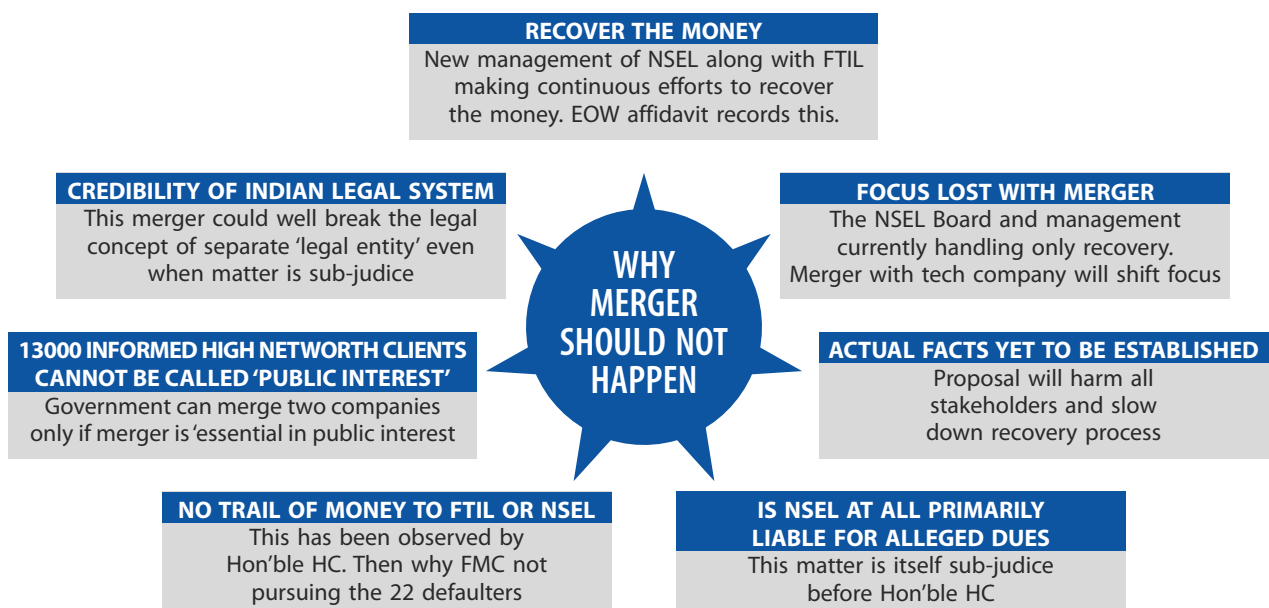
COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
It did not have power to regulate NSEL	<p>a) DCA wrote a letter to FMC on August 5, 2011 giving power to oversee NSEL for investor protection and also to seek information as designated agency and do needful</p> <p>b) FMC inspected NSEL on August 18, 2011 after the latter applied for registration under section 14A of FCRA (1952) on November 9, 2010, and didn't report anything adverse (ANX-52)</p> <p>c) FMC met trading clients along with NSEL staff in investor meets, giving full impression of regulating spot exchanges as it did similar meeting with commodity futures exchanges and most members of futures exchange and spot exchange were common</p> <p>d) Firstly: the FMC designed the information format for seeking information from spot exchanges every fortnight and also called spot exchanges for meetings. Secondly: NSEL has given about 30 fortnightly reports with stock details of members and trading clients (including the defaulting members) to the FMC</p> <p>e) The new Board of NSEL desired to meet FMC but appointments were given after follow-up with several letters and the appointment was always given along with MAC constituted by FMC. NSEL had shared with FMC in writing vide its letter dated January 2, 2014, that MAC will have a conflict of interest with NSEL due to court cases and the Board would like to discuss these issues (ANX-53). The exclusive appointment for the Board never came through however, FMC disbanded MAC after almost 10 months</p>

COMMENT OF THE CHAIRMAN FMC	NSEL RESPONSE
<p>All efforts are needed to recover money from the defaulters which includes civil and criminal actions which must be pursued with greater vigour.</p>	<p>It has been projected that NSEL is not effective in recovery process whereas the facts are contrary. These facts have to be seen in the light that all matters are being handled through the Courts, i.e., MPID, High Court and other Court for 138 matters where the progress can't be determined by anyone except the Court and all that can be done is to put the best counsels with comprehensive data which NSEL has already done.</p> <p>On NSEL's proposal, supported by FTIL, a high-powered Committee – comprising of Justice Daga (Retd.) and two other Honourable Members – has been appointed by the Bombay High Court to fix liabilities and recover the dues from the defaulters. The Committee has commenced their meetings wherein NSEL is providing all the required data information. It has begun hearings and has issued notices to all the Defaulters.</p> <p>a) Assets of 22 Defaulters of NSEL worth approximately Rs 5,000 crore have already been secured by the Economic Offences Wing of Mumbai police (EOW) for attachment and liquidation under MPID Act, 1999. NSEL officials assisted the EOW over the last one year for attachment of assets.</p> <p>b) The Enforcement Directorate (ED) is also said to have attached multiple assets of Defaulters having book value of more than Rs 200 crore under the Prevention of Money Laundering Act, 2002 (PMLA). NSEL understands from press reports that the Government of India is actively considering the proposal of the Trading Clients to amend the PMLA so that the proceeds of the assets attached under the PMLA can be paid to the Trading Clients instead of the same going to the Government.</p>
<p>CONCLUSION: Conclusion: NSEL doesn't function under the Sarfaesi law that allows banks and financial institutions to auction properties (residential/commercial) when borrowers fail to repay their loans. Despite this, NSEL is making all efforts under the judicial framework to file cases with vigour. There is no prohibition on the FMC from joining NSEL in these cases and strengthening NSEL's hands to achieve better results if they consider doing that. The FMC could give us direction and suggestion to take the recovery process forward.</p>	

Contestable Proposals

Merger of NSEL with FTIL
Proposed by FMC Not Consistent
with Corporate Laws

The merger of NSEL with FTIL proposed by the Ministry of Corporate Affairs is in contravention and conflict with established conventions and principles of corporate law. In no previous instance, where the amount in dispute is available in the form of real assets and the company is extending full cooperation and has been making progress in recovery, has a company been subject to such extreme and harsh punishment.



Forward Markets Commission has forwarded to the Central Government a proposal to merge NSEL with FTIL to ensure speedy settlement of the trading clients claims. From the concept of good regulation, it is important that the Forward Markets Commission should work towards realizing the recovery from the assets frozen for the particular purpose of protection of the rights of trading clients rather than taking a measure that deprives the rights of investors in the parent company. From a regulatory point, the recommendation is most regressive in the sense that whatever assets that are available at the disposal of regulatory authorities are not used to settle claims and instead investors of the other company are made to pay for the same with the result being adverse to both the parties.

MOREOVER THE FMC PROPOSAL FACES SEVERAL OTHER LIMITATIONS, INCLUDING:

- The FMC does not have the power under the FCRA to recommend a merger and still they have decided to propose it.
- The FMC has various powers under the FCRA to act against defaulters but they have chosen not to do anything with regard to defaulters for recovery.
- NSEL is an exchange and the money has gone from paying brokers to receiving brokers. NSEL has done all that it could do under the bye-laws and the law of the land and now the matter is additionally subject to various judicial and investigative forums and NSEL is still vigorously pursuing its claim against the defaulters under every forum, however, NSEL cannot determine the process under these forums. Further, assets of the defaulters to the tune of over Rs 5,000 crore are already impounded by the EOW for recovery of dues from defaulters and the matter is sub-judice.
- The Board of NSEL has been meeting the FMC periodically and the FMC has never raised this issue of merger with the Board or sought any clarification or indicated on any specific issue that they are not satisfied with NSEL effort and so they would consider merger of NSEL with FTIL. NSEL have periodically kept FMC informed about all efforts of NSEL through its weekly report, monthly report and MAC (Monitoring & Auction Committee) meetings.

WHY MERGER SHOULD NOT BE ALLOWED TO HAPPEN

- The Board of NSEL comprising majority of independent directors and the new management of NSEL, with the support of FTIL, is making all efforts to recover the money from the defaulting members.
- It is incorrect for the FMC to cast an impression as if entire case is only under the jurisdiction of NSEL and it is lack of NSEL's effort which is delaying recovery, whereas the real fact is that there is a maze of legal and investigative activity happening simultaneously.
- The affidavit of EOW (March 7, 2014) in the MPID case No.1 of 2014 has recorded the assistance given by NSEL to EOW, Mumbai, and therefore it is incorrect to say that NSEL is not doing anything for recovery.
- The fact is that now as the recovery is centred in the Court, Competent Authority and the Hon'ble High Court appointed Committee, it is time-consuming exercise.
- Under the Companies Act, the Government can merge two companies only if such merger is "essential in the public interest". The interest of the 13,000 clients of the brokers who traded on NSEL platform for higher returns cannot be termed as "public interest" when 69 percent of the entire current

outstanding amount is being claimed by just six percent of the trading clients (i.e., by just 781 clients). This power was used in only one instance of merging two PSUs. If the provisions of this section is stretched to break the legal concept of separate "legal entity" even when the matter is sub-judice, it would be a huge set-back to the credibility of Indian judicial system, besides it may become unconstitutional as the very matter whether corporate veil is to be lifted at NSEL is sub-judice before the Bombay High Court.

- Further, the Hon'ble High Court of Bombay, in its order dated August 22, 2014, has questioned whether these trading clients are "genuine investors".
- The trading clients are neither creditors or depositors or shareholders of NSEL. Then how can they be called as investors. Their account books will more than adequately reveal this fact.
- The question whether NSEL is at all primarily liable for the alleged dues of Rs 5690 crore (or any part thereof) of the trading clients, is currently sub-judice in four civil suits filed before the Hon'ble High Court of Bombay.
- In fact, in Suit No. 173 of 2014, the Hon'ble High Court of Bombay, by its Order dated September 2, 2014 (**ANX-54**), has already constituted a high powered Committee under the Chairmanship of a former Judge of the Bombay High Court to ascertain the liability of each of the 22 defaulting members of the Exchange, who traded on NSEL's trading platform and failed to honour their pay-in obligations towards the brokers of trading clients and to recover all the money of the trading clients from such defaulters.
- No trail of the trading clients' money (whether direct or indirect) has been traced either to NSEL or to FTIL or to FTIL's management. The same has also been observed by the Hon'ble High Court of Bombay in its Order dated August 22, 2014. In view thereof, the focus of the FMC to extinguish NSEL by the device of merger instead of proceeding against the 22 defaulters for recovery, appears to be misconceived.
- In these circumstances, while investigations and various legal proceedings are pending where the actual facts are yet to be established, any action based on the FMC's recommendations towards merging NSEL with FTIL, will irreparably prejudice and harm all stakeholders and slow down the ongoing recovery process.

SUPERSESSION OF MANAGEMENT: DEPRIVING DUE CREDIT

The FMC's proposal of supersession at FTIL's management by the Government is against the tenets of the established norms of corporate conduct and in this instance, contradicts the order of the Hon'ble High Court on several aspects, which it considered regarding the case and the promoters.

ORDER OF THE HON'BLE HIGH COURT DATED AUGUST 22, 2014 ON MR. JIGNESH SHAH, PROMOTER, FTIL

NO MATERIAL TO ESTABLISH APPLICANT'S ALLEGED CONSPIRACY

An allegation that this has been done by the borrowers in conspiracy with NSEL – and consequently with the applicant – has been made. However, there is no material to show the same. There is no allegation that the applicant has acquired from the borrowers any part of the ill-gotten money earned by them, as

a consideration for making it possible for them to commit such frauds, or that, any part of the money earned by the borrowers in such a dishonest manner, has been received from them by the applicant. It is almost conceded that there has been no material to show any direct connection or link between the defaulting borrowers and the applicant. (Ref: Page #18; Para # 20)

NO DIRECT ALLEGATIONS; ARREST WITHOUT MATERIAL TO SUBSTANTIATE

Though there are direct allegations against the applicant in the FIR itself, the applicant was not put under any arrest. Five other accused were arrested and charge-sheeted. Three of them are the officials of NSEL and two, are the 'borrowers' who have made huge defaults. Thereafter, without any new material, the applicant came to be arrested. (Ref: Page #21-22; Para # 23)

BROKERS AND CLIENTS HAD THE KNOWLEDGE OF THE COMPLEXITIES OF TRADING

The fact remains that the persons who are raising the grievance about such fictitious trading's were themselves not genuine trading clients, and had entered into the transactions purely as financial investments. There is every reason to believe that a sizable number of so-called 'investors' whose transactions were being entered into through brokers, actually did not bother about the fictitious trades, and knowingly participated in such illegal activities, without raising any issue of illegality thereof. (Ref: Page #14; Observation # 15)

MOST TRADING CLIENTS WERE NOT "GENUINE TRADERS"; BROKERS HAD COGNIZANCE ABOUT THE FUNCTIONING OF THE COMMERCIAL MARKET

The persons, whose money is lost, including the First Informant, are apparently, not the genuine traders for whom NSEL was supposed to provide a platform. The very fact that these persons are, as also the Investigating Agency is, freely using the terms as the 'investors', 'borrowers', indicates that the transactions in question were not genuine transactions of sale or purchase was well known to the so-called buyers also, who now choose to describe themselves as 'investors'. It is clear that from their point of view, it was only an investment yielding high returns for their money. These investors are not middle class or lower class people, but are themselves businessmen. The transactions in question were being entered through brokers who had knowledge of the commercial market. Going by the broad probabilities of the case, it cannot be accepted that the persons who are now crying foul, were not aware of the fact that their transactions were not genuine. They were looking at these transactions clearly as an investment of their money yielding safe returns. (Ref: Page #:12-13; Observation # 15)

BROKERS WELL AWARE OF MARKET OPERATIONS AND LEGALITIES OF TRANSACTIONS

There is great substance in the contentions advanced by the learned counsel for the applicant that the brokers, through whom the so-called trade transactions were entered into, do have their own legal team and a full knowledge of how the market operates. The legalities of the transactions were quite expected to be known to the brokers and the trading clients who do not hesitate to term themselves as 'investors', and they were expected to assess the legalities of the transactions. The brokers being quite experienced, and the investors being informed persons, it is apparent that the issue of illegality of the transactions raised by them is not out of their concern to adhere to legalities, but in order to project the applicant as the main offender, rather than the defaulting parties. (Ref: Page #:14; Observation # 16)

LOOKING BACK

How the problem could have been better resolved.

- First of all, what happened at NSEL is not a crisis. If it were a crisis, it would have affected the financial markets in general and commodity markets in particular. That it caused no systemic risk was highlighted by various committees of the Government | Reserve Bank of India that studied the subject in detail.
- It was the sudden and abrupt actions of the FMC | DCA that made the NSEL accident into a major problem. What could have been an easily manageable issue if FMC | DCA were to have taken the exchange and members into confidence and worked out a plan for implementation in a concerted manner, instead turned into rash actions taken without proper study or assessment on the impact and implications and based on some quick and random reports of audit. The outcome has been most damaging and destructive. While the Financial Technologies Group has been subjected to utmost pressure and pain, no proper strategy or plan is put in place by the FMC | DCA for an early resolution of the crisis thereby prolonging the problem.
- The problem is quite manageable as is also evident from the fact that about seven defaulters account for 85 percent of the claims. If FMC | DCA would have acted quickly to recover major part of the claim from a very small number of defaulters soon after the problem came into light, much of the problem could have been resolved within a short time. Instead, FMC has completely left out taking any action against either the brokers or the defaulters and instead taken a wide range of punitive actions against the NSEL | Financial Technologies Group including its promoters and management which ultimately proved unproductive.
- The players on the NSEL platform are all highly educated, well informed, with wide experience of trading on exchange platforms, rich and of high network. The Exchange never misled them. The traders and clients knew each other, were backed by strong legal and compliance departments to check on credentials, undertook warehouse inspections several times and did not raise any concerns any time on any aspect of operations either to the NSEL, or its Board, or to Financial Technologies. It is not true to say that the traders and clients were misled by the exchange, for NSEL did nothing of that sort.
- It is not true to say that NSEL was created by FTIL with an objective to make undue gains. NSEL is an outcome of the aspirations of the Government to create a national market for agricultural commodities in which market mechanisms and efficient price discovery process were key elements. It was MCX that first applied for a license to operate a spot market. Only after certain regulatory concerns that MCX being a futures markets cannot set up a spot market, Financial Technologies came into the picture to develop spot markets as a part of the national initiative. NSEL came into being after several initiatives of the Government to develop spot markets.
- It is also disproved that NSEL was not regulated. In 2011 FMC wrote to DCA to request RBI to consider exempting NSEL regulated by the FMC from the purview of PSS act 2007, for its clearing and settlement function. Also DCA entrusted FMC with the responsibilities of oversight, protection of investor interests, collection of periodic information all of which form the core of regulatory functions. Thus it is not correct to say that NSEL was not regulated.

- Financial Technologies which promoted NSEL was deprived of fairness while imposing several regulatory sanctions including declaring the promoter and some of the top management as not fit and proper. While investigations are still going on in regard to various aspects of the problem and several issues are under judicial process, FTIL is subjected to harsh measures including forced exit from the exchanges that it has created in India and abroad.
- Most of the claims in the form of collaterals frozen of the Defaulters are now available with the authorities. The task ahead is for all the agencies to work together on realizing the recovery to resolve the crisis soon. Sooner this task is put in place, that much quicker the resolution of the problem.

ANNEXURE I

CONTRACTS IN DISPUTE: SETTLEMENT DEFAULTS AT NSEL: WHAT REALLY HAPPENED?

- NSEL was an electronic platform for trading of commodities between willing buyers and sellers. There were selling brokers on one side and buying brokers on the other side. NSEL was acting as a 'electronic platform' between these two sets of brokers.
- NSEL launched "independent" 1 day forward contracts for 2nd day and 25th day. It never launched "paired contracts" as alleged.
- Brokers saw the arbitrage opportunity in combining short term and long term contracts similar to cash futures in the stock market or what an Adhatiya does in the APMC market by buying on the same day from the farmer and selling after 15 days or 30 days to a whole seller benefitting from the difference between buying and selling price. It is never a fixed return product as various commodities attract different buying and selling rates and hence the price difference. This was done by the brokers despite repeated circulars issued by NSEL since February 2012 prohibiting them from advertising or suggesting that the contracts at NSEL promise or offer any fixed or assured return.
- In April 2012, the Department of Consumer Affairs, Government of India issued show cause notice to NSEL which was replied in detail by NSEL. Thereafter, there was no action leading NSEL to believe that the DCA was satisfied with NSEL's response. However, on July 12, 2013, the DCA suddenly and abruptly pulled the plug directing NSEL to submit an undertaking to the effect that: (i) no further | fresh contracts would be launched until further instructions from the concerned authority and (ii) all existing contracts will be settled on the due dates.
- By its letter dated July 22, 2013, NSEL submitted the required undertakings. However, despite doing so, the market participation on NSEL went down drastically due to lack of clarity whether the Government would allow NSEL to function or not subsequent to the directions dated July 12, 2013. This ultimately forced NSEL to suspend trading and close its operations on July 31, 2013.
- However, when the 24 large sellers trading on NSEL platform ("defaulters") were called upon by NSEL to settle their outstanding contractual obligations towards approximately 13,000 clients of the brokers who traded on NSEL's platform ("trading clients"), they failed to honour their obligation to buy the commodities from the sellers on T+25th day. Further, when their respective buyers claimed delivery of commodities, the sellers failed to deliver the commodities. Thus arose the settlement defaults of around Rs. 5,500 crore by the 24 Defaulters.

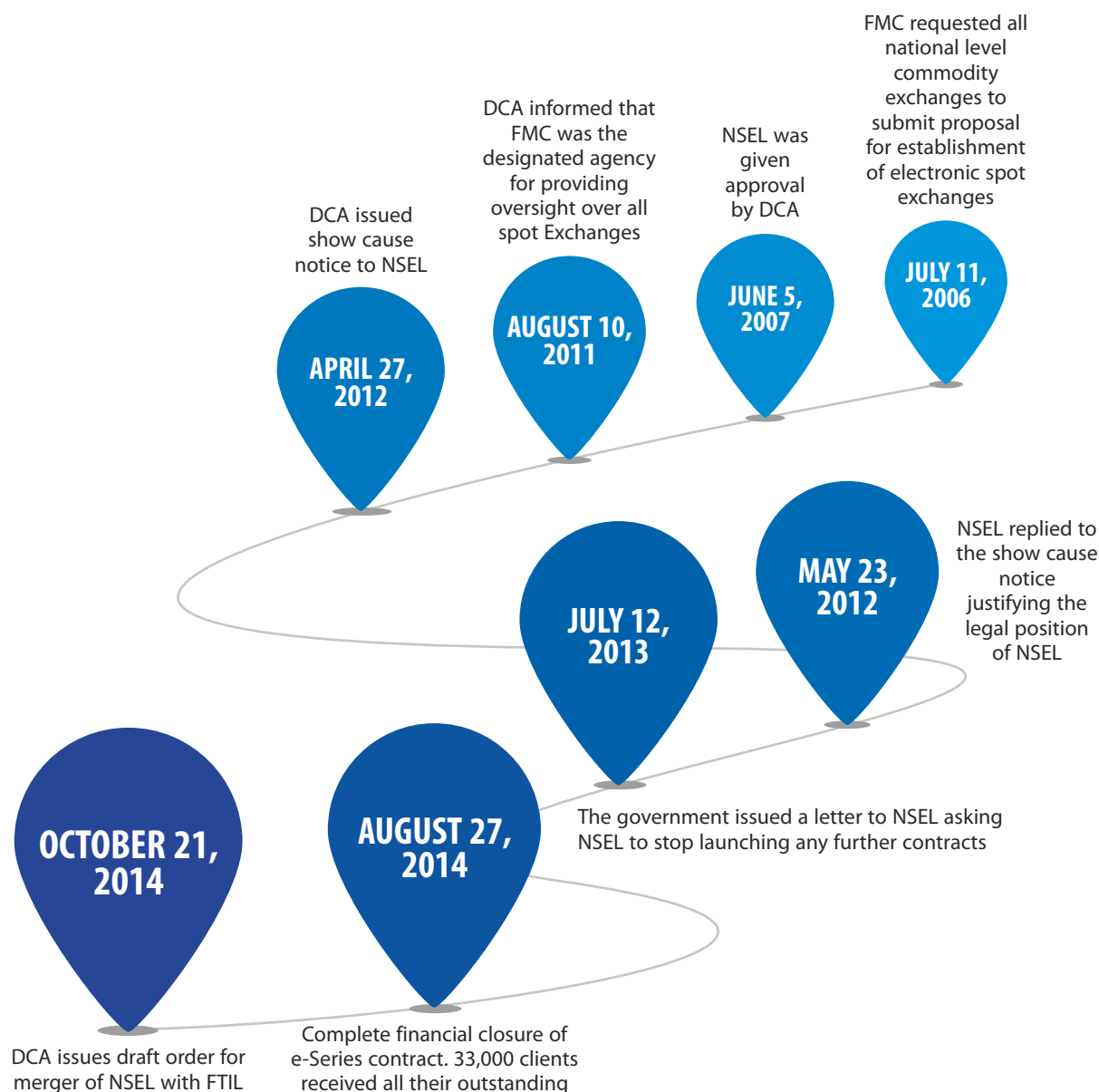
ANNEXURE II

DELIVERY PROCESS

- NSEL circulars have defined the delivery process in a very clear manner. All the members were providing offer letters to the Exchange specifying the quantity and quality of commodity offered in the designated warehouse. The members were also providing VAT invoices for the sale of commodities on every occasion
- All the defaulting members followed the below delivery procedure for selling commodities on the Exchange:
 - Issued offer letter to the Exchange stating the commodity offered
 - Raised Invoice to claim VAT payment
 - Received money in their settlement account with NSEL
 - Warehousing team in Mumbai head office used to receive periodic stock verification reports from local staff.
- In addition, there was warehouse stock verification by the brokers and large trading clients
 - 56 such visits were made to different warehouses of 12 defaulters between May 2012 – July 2013 by 30 brokers and large trading clients.
 - There were no complaints of any missing commodities from any of these brokers and large trading clients till the Exchange closed operations.
- CAG approved auditors visited warehouses on behalf of MMTC and inspected stocks of commodities
- Some defaulting members paid full and took back their commodities post-crisis, like Top Worth Steel and Sankhya Investment
- For some defaulting members such as N K Proteins, the Exchange auctioned their available stocks post crisis
- Some defaulting members such as PD Agro Processors, still have commodity but as pledged to Bank
- Some defaulting members like that of Metkore, Aastha, Shree Radhey and ARK Imports, still have commodity which has been attached by the agencies
- Some defaulting members, like Namdhari Group and Yathuri Associates, still have commodity which they have offered to the Court to liquidate and reconcile with the outstanding on NSEL
- Some defaulting members, like LOIL Group, MSR Food, have claimed that the commodities were available but were taken away post-crisis by other entities
- SGS audit in August–September 2013 found goods in some warehouse. GT audit in September 2013 also found commodities in some warehouses and in some it was inadequate

ANNEXURE III

CHRONOLOGY



July 11, 2006	FMC requested all national level commodity exchanges to submit proposal for establishment of electronic spot exchanges
December 18, 2006	NSEL submits business model for launching spot exchange
May 21, 2007	FMC suggested the conditions for the exemption leaving two points proposed by NSEL, i.e. supervision by FMC and contracts delivery period not to exceed 11 days

June 5, 2007	NSEL was given approval by Department of Consumer Affairs (DCA) wide notification S.O. No. 906(E)
October 15, 2008	NSEL commences live trading in spot contracts upto 5 days duration in Castor Seed
June 17, 2009	MCX writes to DCA for unified regulator for spot, futures and warehousing (ANX-55)
March 2011	MD & CEO, NSEL commenced sending quarterly compliance reports to FTIL Board
August 10, 2011	The FMC informed NSEL that it has been declared as the designated agency for providing oversight over all spot Exchanges, vide a letter issued by the DCA on August 5, 2011. There were four conditions in the letter of the DCA and FMC of which one condition was for Investor protection. Subsequently, the FMC started seeking fortnightly report from NSEL which used to run into almost 100 pages.
February 22, 2012	FMC sent letter to NSEL seeking clarifications on certain fulfillment of conditions stipulated under the notification dated June 5, 2007, governing exemptions given to NSEL
February 29, 2012	NSEL replied to FMC
April 27, 2012	DCA issued show cause notice to NSEL seeking information in 15 days on 2 issues <ul style="list-style-type: none"> • NSEL was not preventing short selling • NSEL was enabling trading in contracts beyond 11 days
May 23, 2012	The MD & CEO of NSEL replied to the show cause notice to DCA justifying the legal position of NSEL
August 11, 2012	NSEL provided follow-up reply explaining the jurisdiction of legal position of NSEL
October 3, 2012	NSEL issued communication to all members with copy of same posted on company website giving details of communication received from the FMC and the DCA and replies given by NSEL to both
October 29, 2012 till November 29, 2012	The FMC seeks clarification on settlement of contracts by delivery and why no actual delivery was taking place. The MD & CEO, NSEL replied to these queries and various other issues were discussed
May 2012 - July 2013	56 visits by brokers to different warehouses of 12 defaulted trading clients
May 13, 2013	FMC wrote to DCA specifying the penalties that can be imposed under FCRA for violation of provision of FCRA. However, no penalty was ever levied on NSEL.
July 12, 2013	The DCA issued a letter to NSEL in response to their show cause notice dated April 27, 2012 and NSEL reply dated May 23, 2012 asking NSEL to stop launching any further contracts

July 15 to 31, 2013	<p>NSEL reduced the tenure of the contract of T+25 to T+11 and these contracts traded until July 31, 2013.</p> <ul style="list-style-type: none"> • However, as various issues were being debated in the market, the participation of clients reduced and the members started defaulting in their payments. • The shortfall in settlement was being met through settlement guarantee fund which continued to support settlement of liability of all trades done upto July 29, 2013 for which pay-out was given on July 31, 2013 as per the schedule. • Thereafter, the Exchange declared closure of market under emergency provisions of the bye-laws and annulled all trades of July 30 and 31, 2013
July 19, 2013	The FMC replied to Government that the exemption given to NSEL in 2007 was general
August 4, 2013	The FMC had one-to-one meeting with defaulting members. What transpired was not disclosed
August 6, 2013	The DCA letter to the FMC stating that FMC is authorized to take such measures as it deems fit in settlement of all outstanding one day forward contracts at NSEL and that makes it binding on the Exchange, intermediary, warehouse connected with NSEL to abide by it
August 1-14, 2013	<p>The FMC had meeting with the defaulting members, investing members and Exchange officials to ascertain the magnitude of the problem and to finalize a settlement schedule.</p> <p>The Exchange received letter of confirmation from majority of the defaulting members stating that they would pay 5% of their total dues every week and complete their payments within 30 weeks. This schedule was announced to the market after the approval of FMC</p>
August 12, 2013	FMC wrote to DCA stating there is an urgent need to secure the warehouse stocks and verify their quantity and quality. However, no required actions were taken in this regard by FMC later on
August 12, 2013	The NSEL Board appointed SGS to inspect all warehouses of defaulting members to see the commodity balance in the warehouses. SGS reports indicated that they could inspect only 16 out of over 40 warehouses and the stock level in these warehouses was very less
August 20, 2013	NSEL discharged its MD & CEO and other senior staff from their responsibilities, and subsequently they were terminated from services (ANX-56)
August 26, 2013	Exchange filed criminal complaints against defaulters and senior staff of the Exchange for the large-scale default and for possible connivance between the senior management and the defaulting members
August 27, 2013	7,000 trading clients, with exposure below Rs 10 lakh, received 50 percent of their outstanding

September 30, 2013	The EOW registered its FIR based on the complaint of Mr. Pankaj Saraf and others
October 9, 2013 - August 8, 2014	25 Committee meetings with MAC
October 22, 2013	The Board declared remaining three members as defaulters taking total tally to 22 defaulters (ANX-57)
December 17, 2013	The FMC declares FTIL as unfit to run any exchanges and ordered FTIL to reduce its stake in MCX from 26 percent to 2 percent
December 20, 2013	FTIL moves High Court against the FMC order
March 7, 2014	The EOW affidavit in MPID Case No 1, 2014 recorded the assistance given by NSEL to EOW
July 22, 2014	NSEL released advertisements against defaulters in national and regional newspapers spending nearly Rs 1 crore (ANX-58)
August 11, 2014	The EOW, Mumbai, arrested seven more defaulters
August 18, 2014	Regulator FMC recommended the Government to consider merger of the spot commodity exchange with its promoter FTIL
August 22, 2014	Hon'ble Justice Abhay M Thipsay J gave order on the criminal bail application No 1263 of 2014
August 27, 2014	Complete financial closure of e-Series contracts. 33,000 clients received all their outstanding
September 2, 2014	Three member high powered Committee set up by Hon'ble High Court
September 19, 2014	GOI issued notification withdrawing exemptions given under Section 27 of FCRA to NSEL and other spot exchanges. The notification said that the exemption of June 5, 2007 was from the operation of the provisions of the said Act, thereby confirming NSEL stand that it is a general exemption from the Act.
October 21, 2014	The Centre announced that NSEL would have to merge with its holding company, FTIL. The Ministry of Corporate Affairs issued a draft order invoking Section 396 of the Companies Act for the merger
December, 2014	Honorable Bombay High Court passes injunction order against Mohan India Group and issues decree against NSEL defaulters- Yathuri Associates & Swastik Overseas Corporation (ANX-59)

ANNEXURE IV

GUIDELINES FOR MEMBERS FOR CONDUCT OF BUSINESS

NSEL, through circulars has advised members certain responsibilities they need to observe while marketing various products to clients. Excerpts from a circular is given below:



National Spot Exchange Limited

Circular

Ref. No.: NSEL/MEM/2012/024

February 7, 2012

GUIDELINES FOR ISSUANCE OF ADVERTISEMENTS AND USAGE OF NSEL LOGO BY THE MEMBERS

- A statement, promise or forecast which is untrue and misleading.
- In the form of promise on the basis of the past performance stating that the past performance will be repeated in future.
- Any Temptative statement so as to exploit the lack of experience of general investors.
- Any Information, accuracy of which is depended on the assumptions.
- A recommendation for purchase or sale of any particular commodity without support of any research and without appropriate and clear disclaimer as well as risk associated with.
- Any promise or guarantee of assured return to the general investors.
- Any information which harms the interest of the investors, create panic, doubt in the general investors.
- Any information which harms interest of any other member of the Exchange or make any adverse reference to the Exchange itself.

NSEL, through circulars has advised members certain responsibilities they need to observe while marketing various products to clients. Excerpts from a circular is given below:



National Spot Exchange Limited

Circular

Ref. No.: NSEL/MEM/2012/154

August 6, 2012

ISSUANCE OF ADVERTISEMENTS AND DO'S & DON'TS BY THE MEMBERS

- Do not deal with any unregistered intermediaries.
- Do not undertake off-market transactions as such transactions fall outside the jurisdiction of the Exchange.
- Do not enter into assured returns arrangement with any Member.
- Do not get carried away by luring advertisements, rumors, hot tips, explicit / implicit promise of returns, etc.
- Do not make payments in cash / take any cash towards margins and settlement to / from the Member.
- Do not start trading before reading and understanding the Risk Disclosure Agreement.
- Do not neglect to set out in writing, orders for higher value given over phone.
- Do not accept unsigned / duplicate contract note / confirmation memo.
- Do not accept contract note / confirmation memo signed by any unauthorized person.
- Don't share your internet trading account's password with anyone
- Do not delay payment / deliveries of commodities to Member.
- Do not forget to take note of risks involved in the investments.
- Do not sign blank Delivery Instruction Slips (DIS) while furnishing commodities, deposits and/or keep them Participants (DP) or member to save time.
- Do not pay brokerage in excess of that rates prescribed by the Exchange
- Don't issue cheques in the name of Authorized Person.

ANNEXURE V

RECOVERY EFFORTS BY NSEL

ASSET TRACING:

- Recovery Team has traced around 380 assets belonging to the defaulters | their related companies | persons. Recovery Team has rendered the services of a professional asset tracing agency for asset tracing. Also, extensive in-house research on the defaulters has been done by Recovery Team which has enabled identification of defaulters assets
- List of around 380 assets has been provided by Recovery Team to the EOW out of which around 210 assets has been attached by the EOW. The status of attachment of balance assets is not known
- Recovery Team is continuing to identify additional assets that would enable recovery from the defaulters

DESCRIPTION	NO. OF ASSETS	NO. OF ASSETS ATTACHED BY EOW
Additional asset list given by Recovery Team to EOW on 30.01.14	218	~210
Additional asset list given by Recovery Team to EOW on 18.08.14	119	Status not known
Additional asset list given by Recovery Team to EOW on 01.10.14	43	Status not known
Total assets identified by Recovery Team	380	~210

ASSET VALUATION:

- Recovery Team has done valuation of defaulters assets by rendering the services of reputed asset valuation agencies

DEFAULTER	ASSET VALUATION AGENCY	PROPERTY DESCRIPTION
Mohan India / Tavishi Enterprises	Knight Frank	Land & bungalow at Civil Lines, Delhi
Mohan India	Knight Frank	Land at Bikaner, Rajasthan
White Water	Knight Frank	Land at Shimla, Himachal Pradesh
Shree Radhey Trading Co.	Knight Frank	Land at Saharanpur, Uttar Pradesh
Shree Radhey Trading Co.	Knight Frank	Land & bungalow at Saharanpur, Uttar Pradesh
Aastha Minmet / Juggernaut Projects	Shailesh Wani & Co.	Land at Titwala, Maharashtra

COURT ORDERS FOR ASSET | STOCK SALE:

- Recovery Team has strived and has been able to get favourable Court orders for asset | stock sale
- The value of the sale proceeds would be more than Rs 1,000 crore
- Recovery Team member is stationed at the Competent authorities office and is providing all required support to the Competent authority for the asset | stock sale
- Also, Recovery Team is looking out for buyers for the asset | stock

DEFAULTER	COURT NAME	PROPERTY DESCRIPTION	APPROX. VALUE RS CRORE
Mohan India / Tavishi Enterprises	MPID Court	Competent authority to sell land and bungalow at Civil Lines, Delhi	450
Mohan India / Tavishi Enterprises	MPID Court	Competent authority to sell land at Bikaner, Rajasthan	50
Ark Imports	MPID Court	Competent authority to sell land at Ludhiana, Punjab	600
Ark Imports	MPID Court	Competent authority to sell Wool at Ludhiana, Punjab	3
Shree Radhey Trading Co	MPID Court	Competent authority to sell Black Pepper & Red Chilly at Saharanpur, UP	20
Namdhari Food / Namdhari Rice	MPID Court	Competent authority to sell Paddy at Sirsa, Haryana	3
Metkore Alloys & Industries	MPID Court	Competent authority to sell Ferrochrome at Srikakulam Dist, AP	90
Aastha Minmet India Pvt Ltd / Juggernaut Projects	MPID Court	Competent authority to sell TMT bars at Kurnool, AP	3
TOTAL			> 1000 cr

SETTLEMENT AGREEMENTS:

- Recovery Team after multiple meetings with the defaulters and after tireless efforts has been able to enter into settlement agreements with four defaulters wherein the defaulters had agreed to repay the settlement amount as per the agreement

DEFAULTER	SETTLEMENT AGREEMENT VALUE RS CRORE
Mohan India / Tavishi Enterprises	771
NCS Sugars	50
Swastik Corporation	78.75

- Also there were multiple meetings with other defaulters as well for the settlement agreement. Though Recovery Team had put enough efforts, due to various reasons the meetings did not conclude in settlement agreements

DEFAULTER		
Shree Radhey Trading Co.	Spin Cot Textiles	P D Agroprocessors
Aastha Minmet / Juggernaut Projects	Ark Imports	

SETTLEMENT BY 2 MEMBERS WITH OUTSTANDING JULY 31, 2013:

DEFAULTER	AMOUNT PAID RS CRORE
Topworth Steel	175.24
Sankhya Investments	7.23
TOTAL	182.48

ANNEXURE VI

BRIEF SUMMARY OF NSEL'S LEGAL EFFORTS

In the representative suit namely Suit no. 173 of 2014, the Hon'ble Bombay High Court vide its order dated 2nd September, 2014 has constituted a Committee of the following persons:

- a) Mr. Justice V.C. Daga (Retd.) [Chairman]
- b) Mr. J.S. Solomon, Solicitor
- c) Mr. Yogesh Thar, Partner of M/s. Bansi S. Mehta & Co. Chartered Accountants

The said order dated 2nd September, 2014 interalia states as follows:

"it is obvious that the Committee to be appointed by these Minutes of Orders has a dual function to perform. In the first place, it is supposed to conduct itself as a commissioner for investigation and examination of accounts and render assistance to the Court in facilitating mutual settlements between the parties. Once these settlements have been arrived at and assets are collected in pursuance of these settlements, the Committee in effect acts as receiver appointed by the Court in the matter of preservation, custody and management of the assets so collected"

Pursuant to the aforesaid constitution of the Committee, several hearings have taken place before the Hon'ble Committee appointed by the Hon'ble Court. The Hon'ble Committee has also passed several directions to the defaulters for rendition of accounts, disclosures of their assets, including the personal assets of its key managerial personnel. The Hon'ble Committee has also passed directions to the Competent Authority under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 as well as the Economic Offences Wing to appear before the Hon'ble Committee. The Hon'ble Committee has made several recommendations such as:

- a) For appointment of court receiver with respect of assets;
- b) Cancellation of bail of key managerial personnel of certain defaulters;
- c) For sale of assets.

Certain defaulters have challenged the above order dated 2nd September, 2014 before the Hon'ble Bombay High Court and the said appeals are pending adjudication.

In addition to the above, NSEL has obtained decrees against certain defaulters, particulars of which are as follows:

SR. NO.	DEFAULTER	AMOUNT OF DECREE (IN CRORES)
1	Aastha Minmet India Pvt. Ltd. and Ors.	Rs. 12.50 with interest
2	Juggernaut Projects Limited and Ors.	Rs. 145 with interest
3	Swastik Overseas Corporation	Rs. 91.19 with interest
4	Yathuri Associates	Rs. 264.96 with interest

NSEL has also obtained order injuncting the following defaulters, interalia, from disposing or dealing with certain assets set out in the respective Third Party Notices (TPN) proceedings / other proceedings initiated by NSEL in the Hon'ble Bombay High Court.

SR. NO.	THIRD PARTY NOTICEE NAME / DEFAULTER
1	Mohan India Pvt. Ltd.
2	Tavishi Enterprises Pvt. Ltd.
3	ARK Imports Pvt. Ltd.
4	Yathuri Associates
5	Swastik Overseas Corporation Ltd.
6	Vimladevi Agrotech Ltd.
7	Shree Radhey Trading Company
8	Namdhari Food International Pvt. Ltd.
9	Namdhari Rice and General Mills
10	PD Agro Processors Pvt. Ltd.
11	NCS Sugars Ltd.

NSEL is also in the process of initiating suits and other proceedings against the defaulters other than the ones mentioned above.

Apart from the above, NSEL has filed several proceedings under Section 138 of the Negotiable Instruments Act, 1881 against the defaulters before different courts in India. Similarly, proceedings are also pending before the specially constituted court under the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

ANNEXURE VII

AN UNHEALTHY MISINFORMATION AND MISUNDERSTANDING: HOW NSEL CRISIS WAS MISINTERPRETED AND MISUNDERSTOOD

✕	NSEL ONLY PROMOTED THE TRADER'S CONTRACTS
	 <p>NSEL's wide range of contracts included Farmer's contract, Traders' contract, Auction Contract, Forward Auction, e-Series Contract, Reverse Auction. NSEL had an extensive product range to meet the requirements of various constituents of the agricultural commodity system.</p>
✕	NSEL HAS DEFRAUDED THE TRADING CLIENTS
	 <p>Technically whatever trade happened was between members, some of whom were selling the contracts and some of which were buying the contracts. All the trading clients traded in the commodities through brokers. The major dispute in payment problem is among the members, some who sold the product and some who bought the product.</p>
✕	FTIL WAS FULLY AWARE OF THE CRISIS BLOWING IN NSEL
	 <p>FTIL had nine exchanges operating in six geographies including a new stock exchange in India. The entire efforts of the Financial Technologies Group thus was on developing the new stock exchange to match with the best in the world. Also after the success of the DGCX and Singapore Mercantile Exchange, the Financial Technologies Group was busy promoting exchanges in Mauritius, Bahrain and Botswana.</p>
✕	NSEL BUSINESS WAS ILLEGAL
	 <p>NSEL at no point of time was raising any money funds. It was a platform where funds were exchanged. Contracts of different settlement period, paired together by brokers, were traded between the trading clients with both segments benefiting from the trade till the payment problem erupted.</p>
✕	THE PAYMENT PROBLEM IS THE RESULT OF THE DEFAULT
	 <p>The precursor to the payment problem was the sudden stoppage of issuance of new contracts as instructed by the Government. As the contracts were suddenly stopped, it caused fear among the trading clients to exit soon to protect their interests that ultimately led to the payment problem</p>
✕	NSEL DEFAULTED THE PAYMENT
	 <p>NSEL has neither borrowed or lent money to any trading client or broker. In the aftermath of sudden stoppage of the contracts, some of the trading clients were caught up in the liquidity trap that ultimately led to the payment problem</p>
✕	FMC WAS NOT IN THE KNOW OF THE NSEL BUSINESS
	 <p>Since 2011, the FMC was designated the agency to which the spot exchanges were to submit periodic information on all business carried out. Also, the FMC was entrusted with the most important aspect of Investor Protection, which is pivotal in any exchange industry. NSEL management has been submitting periodic reports to the Government and the FMC on every aspect of the business being carried out. Clarifications were given and amendments made whenever and wherever warranted by the authorities</p>

✕	NSEL DID NOT TAKE ENOUGH MEASURES SOON AFTER THE CRISIS
	 <p>Under the aegis of the FMC, NSEL has organized a big meeting of all the stakeholders for the claims. After due consultation, a payment schedule was prepared, which was approved by the FMC</p>
✕	NSEL DID NOT BOTHER TO IMPLEMENT THE SETTLEMENT SCHEDULE
	 <p>Every effort was made by NSEL to implement the payment schedule that was drawn. However soon after the crisis, as the trading clients were caught in a liquidity trap due to sudden stopping of the contracts based on the instruction of the Government, members tried to cover their exposure by migrating stocks and other collaterals that had adversely affected the payment schedule</p>
✕	NSEL Board did not monitor the business
	 <p>The FMC, since it began to seek information on the spot exchanges was directly contacting the MD & CEO of NSEL on aspects of information, clarifications, receiving responses, etc. At no time till July 2013, the FMC has given any indication of sudden stopping of the contracts. At no time, FMC or the Government has written to the Board of NSEL or NSEL promoters about any deficiencies that it might have perceived in the functioning of NSEL.</p>
✕	FTIL AS A PROMOTER HAS NOT BOTHERED TO ATTEND TO THE CRISIS
	 <p>The entire exchange administration was left to the management headed by MD & CEO. However, soon after the crisis, the promoter, spoke to the media, assured his commitment to solve the problem, met a larger number of trading clients, provided information to the investigating agencies and extended full cooperation wherever required. Also, to protect the interests of small clients, FTIL has provided a without prejudice loan to NSEL to pay them on priority.</p>
✕	FTIL HAS BENEFITED FROM NSEL
	 <p>For FTIL, NSEL is just a subsidiary exploring the opportunities in the spot market segment. Investigative agencies have done a thorough search of the trail of the money, which was all traced to the defaulters and not even one rupee to the promoter. The impression that FTIL has benefited from NSEL is totally misplaced and unfounded.</p>
✕	CASTING ASPERSIONS ON THE INTEGRITY OF THE PROMOTER
	 <p>The promoter was all eager and interested to strive and ensure that the payment is effected soon but the efforts were thwarted by a series of steps taken by various authorities in an hurried manner by confiscating assets, declaring him not fit and proper to run exchanges, continuous interrogation, which all have eroded the possibility of his intense involvement and direction to ensure recovery and repayment</p>
✕	THE MERGER OF NSEL WITH FTIL WILL ENSURE EARLY REPAYMENT TO CLIENTS
	 <p>The proposals of the merger and the supersession of FTIL management are not consistent with the corporate legal structure of India, thus giving scope for strong contestability and extended litigation. Moreover, such measures which are not warranted in the current case where collaterals worth Rs 5,000 crore are already available with the investigating agencies, which could be used to settle outstanding of the clients. Already a high-powered Committee has been set up by the Hon'ble High Court to look into the matter.</p>

