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**NATIONAL COMMODITY CLEARING LIMITED**

Circular to all Members of the Clearing Corporation

Circular No. : NCCL/ENFORCEMENT-002/2023

Date : April 05, 2023

Subject : SEBI Order against members in the matter of National Spot Exchange Limited

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The Clearing Members are requested to note that the Securities and Exchange Board of India ("SEBI") has issued orders against following members in the matter of National Spot Exchange Limited as per the details given below:

<b>Sr. No.</b>	<b>Member Name</b>	<b>Order no.</b>
1	JM Financial Commtrade Ltd.	QJA/AA/MIRSD/DOP/25283/2022-23 dated March 31, 2023
2	Sunidhi Commodities Pvt. Ltd.	QJA/GG/MIRSD/DOP/25453/2022-23 dated March 31, 2023
3	SSJ Commodities Private Limited	QJA/GG/MIRSD/DOP/25490/2022-23 dated March 31, 2023
4	Purvag Commodities & Derivatives Private Limited	QJA/ARB/MIRSD/DOP/25048/2022-23 dated March 28, 2023
5	Prompt Commodities Ltd	QJA/GG/MIRSD/DOP/24316/2022-23 dated February 28, 2023

The copy of the said orders is enclosed for your reference and are available on the website of SEBI at the following link viz

<https://www.sebi.gov.in/sebiweb/home/HomeAction.do?doListing=yes&sid=2&ssid=9&smid=133>

In view of the above, Clearing Members are advised to take note of the same.

For and on behalf of  
**National Commodity Clearing Limited**

Disha Thakker  
Senior Manager

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For further information / clarifications, please contact

1. Customer Service Group on toll free number: 1800 266 6007
  2. Customer Service Group by e-mail to : [contactus@nccl.co.in](mailto:contactus@nccl.co.in)
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SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 12(3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008

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In respect of –

JM Financial Commtrade Limited  
[Registration No. INZ000045230]

In the matter of National Spot Exchange Limited

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) initiated enquiry proceedings against JM Financial Commtrade Limited (hereinafter be referred to as, the “**Noticee**”), registered with SEBI as a commodity derivatives broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter be referred to as, the “**Stock Broker Regulations**”), for the alleged violations of Regulations 5(e), 9(b) and 9(f) read with Clause A(1), A(2) and A(5) Schedule II of the Stock Broker Regulations read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as, the “**Intermediaries Regulations**”).
2. The Noticee was a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter be referred to as, the “**NSEL**”), which was incorporated in May 2005 as a spot exchange for trading in commodities. NSEL organised trading in commodities after it was granted exemption from provisions of Forward Contracts (Regulation) Act, 1952 (hereinafter be referred to as, the “**FCRA**”) by the Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, vide Gazette Notification No. SO 906(E) dated June 05, 2007, in exercise of powers conferred by the Section 27 of FCRA subject to certain conditions. which, inter alia, included “no short sale by members of the exchange

shall be allowed; that all outstanding positions of the trade at the end of the day shall result in delivery and that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency.

3. In September 2009, NSEL allegedly introduced the concept of 'paired contracts', i.e. buying and selling the same commodity through two different contracts at two different prices on its platform wherein investors could buy a short duration settlement contract and sell a long duration settlement contract and vice versa at the same time. It entailed occurrence of Buy Trades (T+2 / T+3) and Sell Trades (T+25 / T+36) on the same day at different prices on the platform of NSEL.
4. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as "FMC") was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from the NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including the NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "**FMC Order**") wherein it was inter alia observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of 'no short sale by members of the exchange shall be allowed' was being not complied with by the NSEL and its members. FMC further observed that the 'paired contracts' offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.
5. On perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had inter alia, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. **Short Sale**

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of “*no short sale by members of the NSEL shall be allowed*” was not being met by the NSEL and its trading/clearing members who traded in the paired contracts during the relevant period.

b. **Contracts with Settlement Period going beyond 11 days**

Some of the contracts offered for trade on NSEL had settlement periods exceeding 11 days and therefore, such contracts were “*non-transferable specific delivery*” contracts under the FCRA. As per the FCRA, the “*ready delivery contracts*” were required to be settled within 11 days of the trade and hence, the contracts traded on the NSEL which provided settlement schedule for a period exceeding 11 days were not allowed under the aforesaid Notification.

6. Hence, it was alleged that the NSEL organised trading in ‘*paired contracts*’ in violation of the Notification SO 906(E) dated June 05, 2007 issued under Section 27 of the FCRA. It was also alleged that the Trading Members and Clearing members of the NSEL facilitated and/or participated in trading in such paired contracts which were in alleged violation of the Notification dated June 05, 2007 issued under the FCRA. Thus, by participating in / facilitating trading in paired contracts, such entities, allegedly, had acted in a manner detrimental to the interest of the securities market.
7. As per information available with SEBI, the Noticee, being a Trading and Clearing member of the NSEL, participated in / facilitated trading in paired contracts on the platform of NSEL in alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A (1), A (2) and A (5) of the Schedule II of the Stock Broker Regulations. Based on this information, SEBI was *prima facie* satisfied that there were sufficient grounds to enquire into whether the Noticee, was ‘*fit and proper*’ to continue to hold certificate of registration as Trading and Clearing Member in terms of Regulation 5(e) of the Stock Broker Regulations read with Regulation 27(iv) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations.

## ENQUIRY BY DESIGNATED AUTHORITY

8. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated September 24, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation/s in compliance with Regulation 27 of the Intermediaries Regulations. The DA, accordingly, issued a Show Cause Notice dated September 26, 2018 (hereinafter referred to as “Enquiry SCN) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and being not a ‘fit and proper person’ for holding the certificate of registration as trading / clearing member in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.
9. The Noticee replied to the Enquiry SCN vide letter dated October 9, 2018 requesting the DA to grant an extension of 90 days from the date of the letter for submitting a reply in the matter. Vide email dated October 16, 2018, additional time up to November 9, 2018 was granted to the Noticee to submit its reply. Vide letter dated November 9, 2018, the Noticee made its submissions towards the SCN. Vide letter dated March 25, 2019, copies of all documents relied upon by the DA were forwarded to the Noticee. It is pertinent to note that, the Noticee was also advised to submit its additional reply, if any, on or before April 20, 2019. Vide letter dated April 20, 2019, the Noticee submitted its reply.
10. Upon completion of the enquiry, the DA submitted an Enquiry Report dated June 28, 2019 (“Enquiry Report”) to the Competent Authority, inter alia, observing as under:

*“61. In view of the facts and circumstances of the case and the material placed before me, I am of the view that the Noticee is not a fit and proper person in terms of Regulation 5(e) read with Regulation 27 (iv) of the Stock Broker Regulations and Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that the registration of the Noticee*

*i.e. JM Financial Commtrade Limited [INZ000045230] as a commodities derivatives broker may be cancelled.*

## **POST ENQUIRY PROCEEDINGS**

### **Show Cause Notice, Reply and Personal Hearing**

11. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated September 11, 2019 (“SCN”) was issued to the Noticee under Regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) enclosing therewith (a) copy of the Enquiry Report, (b) copy of the letter dated December 30, 2014 of the Department of Economic Affairs (DEA) Ministry of Finance and (c) a copy of the order dated August 22, 2014 passed by the Hon’ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the case of *Jignesh Prakash Shah Vs. The State of Maharashtra*. The SCN was issued to the Noticee calling upon it as to why action as recommended by the DA including any other action should not be taken against, as deemed fit, by the Competent Authority.
  
12. The Noticee replied to the said SCN vide its letter dated December 16, 2019, January 10, 2020, February 18, 2020 and made the following submissions:
  - (i) The SCN including the Enquiry Report of the DA does not fall within the scope and purview of the provisions of the Intermediaries Regulations including that of Regulations 23 and 24 of the Intermediaries Regulations, which themselves are *void ab initio* and is not in consonance with the provisions of Chapter V of the Intermediaries Regulations, and hence these proceedings against us deserve to be dropped forthwith, being bad in law.
  - (ii) The Noticee submitted that they were not a ‘Stock Broker’ or an ‘Intermediary’ as defined in the Securities Laws prior to their registration as Stock Broker on 29.04.2016 and there is no stipulation in the Brokers Regulations to apply the provisions of Brokers Regulations retrospectively; further, the trades executed on NSEL were not in the nature of ‘Securities’;
  - (iii) The Noticee submitted that NSEL was not a Stock Exchange as said by FMC/SEBI and as defined in the Securities Laws. NSEL is neither registered nor a recognised association/Exchange under FCRA, 1952. It has never been regulated by any regulator. Trades executed by them on their behalf and on behalf of their clients on NSEL do not fall within the ambit of Securities

Contracts (Regulation) Act, 1956 and hence beyond the regulatory purview of SEBI.

- (iv) The Noticee submitted that they have not been provided any “basis of findings” or the “material relied upon for those findings’ by the Ministry of Finance, Department of Economic Affairs in its letter dated 30.12.2014. The Hon’ble Supreme Court in its order dated 30.04.2019 and the Hon’ble Bombay High Court in its order dated 22.08.2014 as stated in the SCN have made certain observations against FTIL/NSEL. In view of the seriousness of the allegations in SCN, they requested to furnish the specific information/violations alleged, if any, against them by the authorities/ Hon’ble Courts referred at paragraphs 2.a, 2.b and 2.c of SCN, so as to enable them to furnish their reply. In this regard, the Noticee has placed reliance on *Canara Bank & Ors. Vs. Debasis Das & Ors. (2003) 4 SCC 557*.
- (v) The SCN does not bring out the details of ‘financing transactions’ alleged to have been carried out by them, the names of entities with whom they are alleged to have entered into ‘financing transactions’, amounts financed with dates of financing etc.
- (vi) The Noticee submitted that document enclosed by SEBI in support of the observations alleged against them at para 2 a) of SCN (i.e. on page number marked as 1 of 3) is incomplete. They have not been provided with a copy of the letter dated 19.06.2014 from the Department of Economic Affairs, Ministry of Finance which has been referred and stated to have been enclosed with the letter dated 30.12.2014.
- (vii) The Noticee submitted that that vide its letter dated 30.12.2014, the Department of Economic Affairs, Ministry of Finance has advised FMC (now SEBI) to take action against NSEL and not against them. Reliance is placed on the order passed by Hon’ble SAT on 30.09.2013 in the matter of *Vidhya Finvest Limited, Kolkata and Others V/s SEBI*.
- (viii) The Noticee submitted that as they had carried out their transactions on NSEL as per market mechanism and in accordance with the bye laws of NSEL, the proceedings initiated against them deserves to be disposed of without any action.

- (ix) The Noticee submitted that they were admitted as 'Trading cum Clearing Member' by NSEL on 05.01.2012 i.e. about 5 years after the Notification was issued by the Government of India on 5.06.2007. Thus, the aforesaid conditions which were imposed by the Government of India on NSEL and mentioned by SEBI in the SCN also existed for 5 years. Consequently, they had no role whatsoever in commencing or carrying out/facilitating any activity(ies) by NSEL in violation.
- (x) The Noticee further submitted that, nowhere in the Supreme Court order dated 30.04.2019 it is stated that they as a 'Trading cum Clearing Member' on NSEL, were aware of and/or were party to the scam perpetrated by NSEL. On the contrary, FMC (Now SEBI), vide its order dated 17.12.2013, has already confirmed that they were the victims of NSEL fraud. Further, the trades on NSEL trading platform were by way of an anonymous order matching mechanism in which, while executing trades, the counterparties did not know the identity of each other. The Noticee submitted that the FMC order does not mention their name anywhere.
- (xi) The Noticee denied the allegation of their carrying out any 'financing transactions' or 'paired trades' on NSEL.
- (xii) The Noticee stated that the promoters of NSEL were Financial Technologies (India) Limited (now known as '63 Moons') and NAFED under the Ministry of Agriculture and Farmers' Welfare, Government of India and no action has been taken against NAFED or any of the aforesaid authorities in the NSEL matter despite their association with NSEL and despite them facilitating activities of NSEL.
- (xiii) The Noticee submitted that mere undertaking the trades on the trading platform of NSEL in the ordinary course of business as a 'Trading cum Clearing Member' cannot be considered as a ground for close association with NSEL and paired contracts as alleged, being bad in law. Hence, the SCN issued to them deserves to be disposed of without any adverse action against them.
- (xiv) The Noticee submitted that their clients and their selves are yet to receive crores of Rupees from NSEL not because of having/not having their 'own legal team' or 'full knowledge how the market operates' but owing to a

scam perpetrated by NSEL as brought out by FMC in its order dated 17.12.2013.

- (xv) The Noticee submitted that against the Bombay High Court Order dated 22.08.2014, a Special Leave Petition was filed in Supreme Court on 17.11.2014 challenging the order of the High Court. The observation made by the High Court in its order dated 22.08.2014 shall not stand in the way at any point of time.
- (xvi) The Noticee were enrolled as a trading cum clearing member with NSEL on 05.01.2012 and the NSEL scam surfaced in the year 2013 i.e., after over a year, and considering the fact that the time taken by the authorities in determining the legalities of the transactions on NSEL, no fault or violation can be attributed to them based on their trading on NSEL trading platform or merely based on the observations of the Hon'ble Bombay High Court, about having a 'legal team'.
- (xvii) The provisions of Regulation 28(1) of the Intermediaries Regulations wrt procedure for action on receipt of the recommendation do not provide for the Designated Member to traverse beyond the report of the Designated Authority. Besides, in terms of the Regulation 28 (1) of the Intermediaries Regulations, the Designated Member herself/himself is required to independently consider the report of the Designated Authority and not rely on the 'observations' of authorities contained in the SCN, other than the Designated Authority. Further, the Noticee has stated that the contents of first 3 pages of SCN were beyond the scope of Intermediaries Regulations.
- (xviii) The Noticee submitted that as a SEBI Registered stock broker they have never participated in/facilitated in paired contract as alleged in SCN. Since the whole SCN including the aforesaid information/ materials in the form of observations by various Courts/Authorities that they had participated in/facilitated in paired contracts transacted on NSEL, is based on an assumption that the same was done in their capacity "as a Broker" is incorrect, the SCN issued to them deserves to be disposed of without any adverse action against them.
- (xix) The Noticee submitted that any action against them alleging and inferring their association with NSEL in the normal course of business, before

taking any action against NSEL, is bad in law. In this regard, reliance is placed on the order passed by Hon'ble SAT on 19.06.2012 in the matter of *Newtworth Stock Broking Ltd. Vs SEBI*.

(xx) The Noticee submitted that alleged serious questions on their reputation/competence/character/integrity having bearing on their fit and proper status thereby declaring them 'not fit and proper' as contemplated in SCN, without similarly questioning NSEL and without declaring NSEL as 'not fit and proper', is bad in law. The Noticee has placed reliance on the Order dated 30.09.2013 by the Hon'ble SAT in the matter of *Vidhya Finvest Limited and Others V/s SEBI*.

(xxi) The Noticee further submitted that that the SCN issued u/r 28(1) of the Intermediaries Regulations as well as the Enquiry Report do not specify as to which provision(s) of which of the Securities Law(s) has been violated by them. The SCN issued to them does not specify as to which rules, regulations and bye-laws have not been abided by them or which provisions of Code of Conduct as specified in schedule II, have not been abided by them. Non-stipulation of the specific provision(s) of the securities laws which have been alleged to have been violated by them in SCN has led to impairment of their ability to defend this matter effectively and adequately.

(xxii) The Noticee also note that para 35 of the Enquiry Report has unequivocally confirmed that there are no allegations of violation of FCRA by them. Paragraph 52 of the Enquiry Report confirms that the allegation against them 'pertain to their association with NSEL trading platform for participation in/facilitation of paired trades in violation of Notification of 05.06.2007'. In view of the confirmation at paragraph 35 of the Enquiry Report, their alleged association with NSEL, for its failure to comply with the exemption granted to it under FCRA, in their normal course of business, cannot be held against them. Consequently, the SCN deserves to be disposed of without any action against them.

(xxiii) The Noticee submitted that since their name does not appear in the documents such as FMC Order dated 17.12.2013, Grant Thornton Report etc., the Enquiry Report has erred in relying upon the said document in issuing Supplementary Show Cause Notice date 12.02.2019 to them.

- (xxiv) The Noticee submitted that the allegations in the SCN including the Enquiry Report issued to them refer to certain transactions during the years 2009 to 2013, i.e. about 5-10 years old. Despite their request to the DA, they have not been furnished the requisite details and information of trades and details of clients for whom they had 'allegedly participated and/or facilitated' in entering into such paired contracts on the platform of NSEL along with requisite documents so as to enable them to furnish the specific details and their replies thereto. In this regard, the Noticee has placed reliance on *State of Punjab v. Chaman Lal Goyal reported in (1995) 2 SCC 570*.
- (xxv) The Noticee submitted that SEBI, only after duly satisfying itself had granted the certificate of registration as Stock Broker to them and confirmed to them vide its letter dated 29.04.2016. Thus, before granting them the certificate of registration, SEBI had already satisfied itself that they were a 'fit and proper' person based on the criteria specified in Schedule II of the Intermediaries Regulations and also after taking into account all details/material available with SEBI with regard to NSEL matter.
- (xxvi) The Noticee submitted that earlier, proceedings were initiated against them vide the DA-SCN, inter alia, referring to FCRA without specifying as to which provisions/section of FCRA has been violated by them. Now, para 35 of the Enquiry Report has confirmed that there are no allegations of violation of FCRA by them. FCRA was repealed on 29.09.2015, the period of 3 years stipulated vide Finance Act, 2015 has ended on 28.09.2018 and no violation of FCRA is alleged against them. Consequently, on these grounds alone, these proceedings initiated against them are void ab initio.
- (xxvii) The Noticee submitted that SEBI had established a 'close association' of Jermyn Capital LLC by virtue of commonalities such as common directors, common shareholders, common names and control over it by entities against whom pursuant to investigation SEBI had already taken debarment etc. actions. As against this, NSEL had no such commonality with or control over them, nor the SCN makes any such allegation. There is no material/evidence to even remotely suggested they have any commonality with, or control upon them by NSEL and vice versa.

- (xxviii) The Enquiry Report has also erred in ignoring the fact that the FMC/SEBI, vide its order dated 17.12.2013, had already concluded that they being one of the market participants were the victims of the NSEL fraud and concealment by NSEL and there are no findings in the said FMC/SEBI order whereby it can be held that they had “close association” with NSEL. Further, the Enquiry Report has also erred in not taking into consideration that there was no association between them and NSEL in terms of the definition of the word ‘associate’ defined in the Intermediaries Regulations.
- (xxix) The Noticee submitted that vide the order dated 23.06.2009, the Whole Time Member of SEBI laid down the principle that the persons and entities, who had bad reputation and thereby contaminated the reputation of the applicant/intermediary, if no more remain associated with the applicant/Intermediary, the basis of the charge of not being a ‘fit and proper person’ no more survives and, therefore, the proceedings related to ‘fit and proper criteria’ become infructuous. It was further held that even after the person severs the association, there should be a moratorium period of 2 years i.e. till expiry of two years from the cessation of association between the persons/entities and the applicant/intermediary.
- (xxx) They submitted that more than 6 years have now elapsed from the date of cessation of their alleged association with NSEL. To summarize, there is no material in the SCN to support the alleged ‘close association’ with NSEL.
- (xxxi) The Noticee submitted that there were serious criminal charges and charges of gross financial irregularities against Mukesh Babu, the Chairman and Managing Director of ‘Mukesh Babu Securities Ltd., registered with SEBI as a Stock Broker in the matter of *Mukesh Babu Securities Ltd. v SEBI*, which is not present in their case.
- (xxxii) The Noticee stated that the interim report of the Economic Offence Wing was in connection with the complaint under FCRA and SFIO report was in connection with the failure of NSEL in complying with the conditions of exemption granted to it under the provision of FCRA, whereas para 35 of the Enquiry Report has already confirmed that there are no allegations of violation of FCRA by them.

- (xxxiii) The Noticee submitted that they never promised or offered assurances to their clients of fixed returns or Vyaj Badla or that the trades are ready Forward Trades, as inferred in the Enquiry Report. They further submitted that the very nature of any transaction does not support such business model and the allegation. Thus, the inference drawn is incorrect. They requested to provide the cross examination of those persons whose statements are relied against them in these allegations.
- (xxxiv) With regard to comment that 'No physical delivery of commodities was ever taken by clients of the Noticee', the Noticee submitted that it is the prerogative of clients to take physical delivery of commodities to their own warehouse. The same practice is prevailing even in Multi Commodity Exchange of India Ltd. (MCX) and National Commodity & Derivatives Exchange Limited (NCDEX) also.
- (xxxv) The Noticee additionally submitted specifically pertaining to the paired contracts as follows:
- a. NSEL had an anonymous trading system which followed an electronic matching system. Consequently, the counterparties to the contract could not be selected and were not known at the time of entering into the contract. Further, the T+2/3 trade may be matched against a particular (unknown) counterparty; and the T+23/25 trade may be matched against another (unknown) counterparty. The fact of entering into 'paired contracts' on NSEL was mentioned on NSEL's website and was also widespread as more particularly mentioned below. Knowledge that 'paired contracts were being entered into on NSEL platform was in the public domain and was known to everyone, including the Government, the FMC, etc. The 'paired trades' were in the nature of "arbitrage trades" which are very common in the securities markets. In fact, most of the turnover of NSEL was in such paired contracts only, yet no objection of any kind was raised by anyone to the same.
  - b. Huge quantities of trading in 'paired contracts' was carried out openly by hundreds of members over thousands of computerized trading terminals all over India, for lakhs of clients on a daily basis. The same was not at

all surreptitious or concealed. Yet, no authority questioned the legitimacy or validity of any such paired contracts.

- c. Private and public sector banks who were providing clearing services for settlement on NSEL, including for paired contracts, or even the Auditors of NSEL never raised any objection that paired contracts were illegal or in violation of the said 2007 Notification or the FCRA.
- d. FMC was monitoring the trading on NSEL and was calling for data and details from NSEL from time to time. NSEL was submitting regular reports of the trading, delivery and settlement data to the FMC, and the FMC, being a designated agency, was aware of paired contracts being traded on the NSEL but did not raise any objections. In fact, FMC, by its letter dated 28.1.2011, pursuant to some complaint, directed NSEL to give FMC details of trades and commodity stocks in their warehouses for castor seeds, and asked for details of trades settled without physical delivery. The same proves that FMC was fully aware even at that time that trades were being settled without physical delivery. FMC was also collecting the trade data from the NSEL. Yet, it raised no objections or allegations about the trading on NSEL being in violation of the 2007 Notification or the FCRA as now alleged in the SCN.
- e. The FMC Order expressly states that on 22.2.2012 itself the FMC had analysed trade data from NSEL and sought clarifications from NSEL. However, it did not then raise any allegation about the trading on NSEL being in violation of the 2007 Notification or the FCRA, nor did it put a stop to the paired contracts, nor did it even caution the members or public against entering into paired contracts.
- f. NSEL, like all exchanges, prescribed the contract parameters and the features of contracts. Members, including JMFCL had no role or say in this. Bye-Law 4.1 of the NSEL expressly mandated that “The Exchange shall before commencement of any contract obtain prior concurrence of the Commission” (i.e. FMC). The Bye-laws have always been on the website of the NSEL and in the public domain. Neither the FMC nor SEBI nor anyone else has alleged that NSEL violated Bye law 4.1.

- g. Several persons were already members before they commenced trading on NSEL platform in February 2012. Even thereafter, 'paired contracts' continued to be traded openly and in significant numbers on NSEL. All these were despite the fact that NSEL's circulars relating to/referring to such paired contracts were on the website of NSEL.
- h. Therefore, at the relevant time, they had no reason to believe that there was anything wrong or irregular in the trading in paired contracts on NSEL. In fact, by permitting such trading to continue openly and unquestioned for years together and in increasing numbers, despite having full knowledge of the said trading and despite having the power to put a stop to them, if they were improper or impermissible, the Central Government, FMC and all other concerned authorities held out to the world at large that such trading was in order and in due compliance of all requirements. The same also amounts to a clear estoppel and it cannot now be contended to the contrary. Alternatively, the same amounts to a waiver of any alleged contravention of the 2007 Notification terms and conditions.
- i. In the circumstances, even assuming (while denying) that 'paired contracts' were in contravention of the conditions of the 2007 Notification, the noticee stated that they were not aware of the same and did not have any reason to believe that it was so. In fact, for the reasons as aforesaid, they had bonafide belief that these contracts were legal, permissible, in full compliance with all requirements, and were being duly monitored by the FMC. Therefore, such trading, which was in accordance with the rules, bye-laws, circulars and systems of NSEL and was permitted by the FMC, was bona fide and in good faith and the same cannot render the noticee as not being a 'fit and proper' person.

**13.** While the extant proceedings in the present matter were ongoing, SEBI passed five separate orders during February, 2019, rejecting the applications filed by five other entities for registration as commodity brokers in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). The Hon'ble SAT, vide

its common order dated June 9, 2022, remanded the aforesaid orders to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon'ble SAT, inter alia, held as under:

*“42...The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice.....”*

14. Thereafter, in August 2022, the present matter was allocated to me. In the light of the aforesaid SAT Order passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee before concluding the present proceedings. Accordingly, vide letters dated October 04, 2022 and November 02, 2022 and email dated December 7, 2022, certain additional documents were provided to the Noticee and the Noticee was requested to file its reply, if any, within 15 days of receipt of the said letters. In response to the said letters, the Noticee, vide its letters dated October 25, 2022, December 02, 2022, December 05, 2022, December 28, 2022, made the following submissions:

- (i) The noticee objected to the furnishing of additional documents, i.e., copies of SFIO Complaint, FIR filed by SEBI and Schedule II to amended SEBI (Intermediaries) Regulations, 2008 stating that it was not in consonance with principles of natural justice.
- (ii) The noticee submitted that while SEBI itself has filed the FIR, SEBI proceeding against it on the basis of such FIR is absolutely in violation of the principles of Natural Justice, vitiated and unlawful.
- (iii) They submitted that the provisions referred in the amended schedule II to SEBI (Intermediaries Regulations) 2008 forwarded to them have come into effect on and from 17.11.2021 and the same cannot be made applicable retrospectively.
- (iv) They also submitted that the copies of complete documents relating to SFIO Complaint and FIR have not been provided thereby denying them opportunity

to rebut the allegations. Furthermore, the 6 months' timeline directed by Hon'ble SAT to decide this matter in this manner got over on 08.12.2022.

- (v) SCN issued under the provisions of Regulation 28(1) of SEBI (Intermediaries) Regulations, 2008 is invalid without any such law being in force on date, as on date Regulation 28(1) and 28(2) of SEBI (Intermediaries) Regulations, 2008 do not exist.
- (vi) The proceedings deserve to be disposed of forthwith without any action against the noticee, owing to the inordinate delay. That the FIR /complaint was filed by SEBI on 28.09.2018, and FIR was forwarded to them on 02.11.2022 /24.11.2022 i.e. over 7 years after the Forward Contracts (Regulation) Act, 1952 was repealed and over 4 years after the last date i.e. 28.09.2018 by which SEBI could have initiated action against the noticee and also since the Forward Contracts (Regulation) Act, 1952 has been repealed with effect from 29.09.2015, these proceedings are *void ab initio* and deserve to be disposed of forthwith without any action against the noticees. In any case, any delay on the part of concerned authorities including SEBI, ought not be held against the noticee. The noticee referred to appeal no. 102 of 2019 - *Sanjay Jethalal Soni and Others Vs SEBI* wherein the Hon'ble Securities Appellate Tribunal observed that

*“13. As a result, without going into the question of res judicata or estoppel raised by the appellants we are of the opinion that on account of the inordinate delay in initiating the proceedings, the impugned penalty order cannot be sustained”.*

- (vii) The proceedings deserve to be disposed of forthwith without any action due to the provisions of Clause 4 to Schedule II to SEBI (Intermediaries) Regulations, 2008. The amended schedule II to SEBI (Intermediaries Regulations) 2008 have come into effect on and from 17.11.2021 and there is no provision to apply them retrospectively.

Further, the noticee submitted that Clause 4 to Schedule II to SEBI (Intermediaries) Regulations, 2008 which reads as under: *“(4). Where any person has been declared as not ‘fit and proper person’ by an order of the Board, such a person shall not be eligible to apply for any registration during*

*the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.”*

Therefore, assuming but not admitting that even if there were any violations committed by them in having rendered service to investors on NSEL, they ought to have undergone actions by SEBI or any authority prior to 2015, which meant that their ineligibility to reapply for registration would have got over in 2020. The delay in initiating action has thus caused serious continued bias and prejudice against them.

- (viii) The SCN read with subsequent letters/correspondence to SCN are self-contradictory. Although the events during 2009-2013 are being considered to determine violation, the provisions of law that existed during such period are ignored. SFIO complaint dated 15/2/2019 and FIR dated 28/09/2019 are being considered; but amended Schedule II to SEBI (Intermediaries) Regulations, 2008 which came into existence on 17/11/2021 are being considered. This again shows that proceedings are vitiated and prejudiced.
- (ix) Since, there is no adverse order against the noticee, the ratio laid down by the Whole Time Member of SEBI vide his order dated 23.06.2009 in the matter of Jermyn Capital LLC is squarely applicable to the facts and circumstances of our matter. Thus, vide the aforesaid order dated 23.06.2009, the Whole Time Member of SEBI has laid down the principle that the persons and entities, who had bad reputation and thereby contaminated the reputation of the applicant/intermediary, if no more remain associated with the applicant/intermediary, the basis of the charge of not being a 'fit and proper person' no more survives and, therefore, the proceedings related to 'fit and proper criteria' become infructuous. More than 9 years have now elapsed from the date of cessation of those factors i.e trades on NSEL platform, as against 2 years' moratorium stipulated by the Whole Time Member, SEBI in his aforesaid order dated 23.06.2009.
- (x) The Noticee became an intermediary on and from 29.04.2016, and there is no provision in law to apply Brokers Regulations or Intermediaries Regulations retrospectively, hence, no allegations can be made without specifying any specific provision of law alleged to have been violated pertain to the period prior to August 2013. There is no material in the SCN which demonstrates their failure to comply with any condition under which they were granted the Certificate of

Registration as a Stock Broker by SEBI on or after 29.04.2016. Thus, these proceedings do not fulfil the pre-requisites stipulated in Regulation 23 of the SEBI (Intermediaries) Regulations, 2008.

15. Thereafter, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee before me on January 04, 2023. On the date of hearing, the Noticee was represented by Mr. Prithviraj Harshad Bhagat, Advocate and Mr. Nirav Gandhi, Director, (Authorised Representatives) who reiterated the submissions made by the Noticee vide its letters dated December 28, 2022. Further, as requested, time till January 25, 2023 was granted to the Noticee to make additional submissions, if any. Accordingly, vide letter dated January 25, 2023, the Noticee, while reiterating its previous submissions, made additional submissions in the matter which are summarized as under:

- (i) The Competent Authority clarified in the 'Record of proceedings' dated 06.01.2023, that the present proceeding is conducted under Regulation 27 of the SEBI (Intermediaries) Regulations, 2008. The noticee submitted that the SCN having been issued under the erstwhile provisions of Regulation 28(1) of SEBI (Intermediaries) Regulations, 2008 without any such law being in force on date is wholly unsustainable, vitiated, without any legal foundation and is bad in law.

He referred to *Kolhapur Canesugar Works Ltd. vs Union Of India, the Hon'ble Supreme Court of India in its order dated 1 February, 2000, also refer (2000) 2 SCC 536*, wherein it was ordered as under:

*"37. The position is well known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this rule, an exception is engrafted by the provisions Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the*

*position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the legislature is that the pending proceeding shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.”*

(Emphasis supplied)

- (ii) The allegations in the SCN and all subsequent documents refer to certain transactions during the years 2009 to 2013, i.e., about 9-13 years old. Also, FMC was merged with SEBI with effect from September 28, 2015, i.e. more than 7 years ago. The SCN was issued on 11.09.2019. Thereafter several documents were issued in several tranches.
  - a. Show Cause Notice no. SEBI/HO/EFD1/MIRSD/NSEL-ENQ/DRA2/66/19-20/21960/1/2019 dated 11.09.2019 under Regulation 28(1) of the SEBI (Intermediaries) Regulations, 2008.
  - b. Hearing held before the then Whole Time Member, SEBI on 17.12.2019.
  - c. Letter no. SEBI/HO/EFD1/EFD1\_DRA2/P/OW/2022/ 0000051122 / 3 dated October 04, 2022.
  - d. Letter no. SEBI/HO/EFD1/EFD\_1DRA2/P/OW/2022/55714/12 dated November 02, 2022 read with email dated 24.11.2022.
- (iii) In view of the inordinate delay that is involved, these proceedings deserve to be disposed of forthwith without any adverse order/ action against the noticee, as decided by Hon'ble SAT and Supreme Court.
- (iv) Hon'ble SAT vide its order dated June 09, 2022 had scheduled timeline for passing the Order and the direction of Hon'ble SAT is binding on the Competent Authority. These proceedings deserve to be disposed of without any adverse action against us owing to the fact that such timeline is over and SEBI has not issued such order.

In support of the same, they relied upon the decision of Hon'ble SAT dated 06.01.2023 in appeal no. 1044 of 2022 in *IFGL Refractories Limited Vs SEBI*

in which while, inter alia, quashing the impugned order of the Adjudicating Officer, SEBI, SAT observed as under:

*While disposing off quasi- judicial matters, the AO is bound by the decision of the appellate Tribunal. The principle of judicial discipline requires that the order of the Tribunal should be followed unreservedly by the AO.*

## **CONSIDERATION OF ISSUES AND FINDINGS**

**16.** I have carefully perused the post enquiry SCN including the Enquiry Report issued to the Noticee, the replies submitted by the Noticee along with all the other material / information available in public domain and also made available to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 7, 2022. After considering the allegations made/ charges levelled against the Noticee in the instant case, I note that the only issue that arises for consideration in the present proceedings is whether the Noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.

**17.** However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022<sup>1</sup> passed by the Hon'ble SAT also referred in the preceding paragraph no. 13. The Hon'ble SAT, while setting aside the earlier WTM Orders, had made the following observations (relevant to the present case as well) remanding the matters to SEBI:

- (a) Observations of the Bombay High Court in the matter of *63 Moons vs. Union of India*<sup>2</sup> cannot be relied upon as the said judgement has been set aside in appeal<sup>3</sup> by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
- (b) Observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act") (*NSEL vs. State of Maharashtra*)<sup>4</sup> cannot be relied upon, as in a subsequent Writ Petition<sup>5</sup> moved by 63 Moons, a Division

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<sup>1</sup> Appeal No. 214 of 2019 Geofin Comtrade Ltd Vs. SEBI, Appeal No. 217 of 2019 Philip Commodities India Pvt. Ltd Vs. SEBI, Appeal No. 218 of 2019 IIFL Commodities Ltd Vs. SEBI, Appeal No. 288 of 2019 Anand Rathi Commodities Ltd Vs. SEBI and Appeal No. 288 of 2019 Anand Rathi Commodities Ltd Vs. SEBI

<sup>2</sup> Writ Petition No. 2743 of 2014

<sup>3</sup> Civil Appeal No. 4467 of 2019

<sup>4</sup> Writ Petition No. 1403 of 2015

<sup>5</sup> Writ Petition No. 1181 of 2018

Bench of the Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore, the provisions of the MPID Act are not applicable. The Division Bench also observed that the prima facie observations made by the single bench while dismissing the NSEL petition could not be relied upon as they were preliminary observations and such observation does not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that prima facie observations cannot be the basis to judge the reputation, character or integrity of NSEL.

- (c) Observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of **Jignesh Prakash Shah vs. The State of Maharashtra**, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
- (d) Reliance placed on decisions of the Hon'ble Tribunal in the matter of **Jermyn Capital vs. SEBI**<sup>6</sup> and **Mukesh Babu Securities vs. SEBI**<sup>7</sup> is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely prima facie case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of **Mukesh Babu Securities** was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- (e) Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- (f) The SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.

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<sup>6</sup> Appeal No. 26 of 2006 decided on September 06, 2006

<sup>7</sup> Appeal No. 53 of 2007 decided on December 10, 2007

- (g) Grant Thornton Forensic report commissioned by SEBI does not find any close connection between the applicant and the NSEL. This is overlooked by SEBI.
- (h) With respect to the additional material available, the Hon'ble SAT observed that, "It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available."

18. In view of the above, the following additional documents were provided to the Noticee in the present case in hand:

- (a) Copy of the SFIO Complaint dated May 15, 2019 filed before the Court of Special Judge at Greater Mumbai, and
- (b) Copy of the FIR dated September 28, 2018 filed by SEBI against 300 trading members of NSEL.
- (c) Copy of the amended Schedule II of the Intermediaries Regulations.

19. Before considering the matter on merits and test the compliance of the Noticee with the *'fit and proper person'* criteria, on the basis of the material that have been brought on record, it would be appropriate to look at the background and understand the nature of the *'paired contracts'* that were offered on the exchange – which ultimately is the cause / genesis of the current proceedings. While undertaking this exercise, I will not be independently recording any findings on the nature of the contracts that were entered on the NSEL platform or commenting on the actions of any entity which is not a party to the present proceedings. I will, however, be relying on the observations made by other authorities including the Hon'ble Supreme Court, wherever appropriate.

**Transactions in the nature of 'paired contracts' on NSEL:**

20. NSEL was incorporated in 2005 as an electronic exchange for spot trading of commodities. On June 5, 2007, the Ministry of Consumer Affairs ("MCA"),

Government of India, issued a Notification SO 906(E) under Section 27 of the FCRA granting conditional exemption from the provisions of that Act for (i) forward contracts, (ii) for sale and purchase of commodities, of one-day duration traded on NSEL. The conditions, inter alia, placed an absolute bar on short sales and stipulated that all outstanding positions at the end of the day must result in delivery. It was also stipulated that 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 spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

21. As evident from the FMC order, NSEL introduced, on its platform, the concept of 'paired contracts', in September 2009, which involved buying and selling the same commodity through two different contracts at two different prices wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In other words, the 'paired contract' involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
22. Thereafter, FMC, vide an order No. 4/5/2013-MKT/B dated December 17, 2013 ("FMC Order") observed that: "55 contracts offered for trade on NSEL were with settlement period exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA" and "the condition of 'no short sale by members of the exchange shall be allowed' was not being met by NSEL".
23. Further, in the above mentioned Order, FMC, *inter alia*, held that the contracts traded on NSEL violated the following conditions stipulated in the MCA Notification SO906(E) dated June 5, 2007, that granted permission to NSEL to offer spot trading in commodities which, inter alia, included *"no short sale by members of the exchange shall be allowed; that all outstanding positions of the trade at the end of the day shall*

*result in delivery” and that “all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency”.*

- 24.** It is, therefore, clear that from the order of FMC that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one –day duration as per the Notification dated June 05, 2007. I note from the FMC Order that FMC had observed<sup>8</sup> that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of the provisions of FCRA. I further note from the FMC Order that under the FCRA, a “*forward contract*” is defined as a “*contract for delivery of goods and which is not a ready delivery contract*”. A ‘*ready delivery contract*’ is defined as “*a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days*”. Given the said definition contained in FCRA, FMC, I note, was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.
- 25.** Therefore, it is noted that even though MCA had stipulated in the exemption Notification in 2007 that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of “*forward contract*” under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. I note the observation in the FMC order that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL. It is pertinent to note that all the 15 contracts that were advertised by NSEL, and which are captured in the Hon’ble Supreme Court’s Judgement in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*<sup>9</sup>, were for durations exceeding 11 days.

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<sup>8</sup> Order No. 4/5/2013-MKT-1/B dated December 17, 2013

<sup>9</sup> Civil Appeal No. 2748-49 of 2022

26. I note that the Hon'ble Supreme Court in the matter of NSEL (supra) has also extensively commented on the nature of the 'paired contracts' traded on NSEL. The said observations by:

- a. the Two-Judge Bench of the Hon'ble Supreme Court in the course of determining the validity of the amalgamation order in the matter of 63 Moons (supra) vide judgment dated April 30, 2019, had observed as under:

*"55. We have seen that neither FTIL nor NSEL has denied the fact that 'paired contracts' in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such 'paired contracts'. **There is no doubt that such 'paired contracts' were, in fact, financing transactions which are distinct from the sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL and the FCRA.**" (emphasis supplied)*

- b. the Hon'ble Supreme Court in the MPID matter vide judgement dated April 22, 2022, has drawn reference to the presentations made by NSEL in respect of the 'paired contracts'. Upon analysing the presentations made, the Hon'ble Supreme Court has observed that,

*"The above representation indicates that 'paired contracts' were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. **Therefore, NSEL represented that on receiving money and commodities, the members would receive assured returns and a service.** Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act." (emphasis supplied)*

27. I, therefore, note that the Hon'ble Supreme Court has already commented on the nature of the 'paired contracts' offered on the NSEL platform. In the case of *63 Moons Technologies Ltd. vs. UOI*, the Hon'ble Supreme Court held that these contracts were

in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court has held that such transactions come within the definition of 'deposits' under the MPID Act.

28. It is further noted that the Hon'ble Supreme Court, in the MPID matter, had extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. As seen from the order of the Hon'ble Supreme Court, the NSEL was advertising a uniform return of 16% p.a. for the 'paired contracts' traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The 'paired contracts', it is noted, were being marketed as an alternative to fixed deposits.
29. I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail, the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were naked short sales i.e. the commodities to back such sales were not available at the designated warehouses of the NSEL.
30. In addition, I note that Economic Offences Wing, Mumbai, vide letter 789 dated April 04, 2015, had forwarded an interim report for the investigation conducted to identify role played by broking houses in NSEL Case (EOW C.R. No. 89/2013). EOW, in its report, had mentioned that a settlement obligation amounting to Rs. 54,03,59,38,793/- was due on the date of closure of business of NSEL. Of this, the obligation outstanding against the Noticee as per the EOW report was Rs. 83,60,56,632/-. Relevant extracts of the report are as follows:

***“IV. Objectives of this investigation into the brokers' role:***

*A scam of this magnitude would be difficult to continuously occur for 3 years without some of the large brokers' gross negligence or perhaps active participation.*

*The actual role of the brokers was:*

- To bring in investors to invest in 'pair trades' promising them assured returns and the investors got about 13-16% p.a. for investing in the commodity*
- The sellers got finance at 18-20 or more % by pledging their commodity in NSEL warehouses*

*They got brokerage from investors on the NSEL platform, and those brokers who had their NBFCs got additional revenue by financing investors for investing on NSEL.*

*Though the matter is still under investigation, brokers have also received back from exchange certain charges collected from investors such as transaction fees, delivery and warehousing charges, etc. It is suspected that these are indirect motivation incentives for brokers to generate huge volumes. It is also possible that brokers may have benefitted from or compensated by the sellers or defaulters.*

*The higher the trading turnover, the higher revenues for the exchange and the brokers. Therefore, both wanted to increase turnover at the exchange.*

*In light of the foregoing, the objective of EOW in investigating brokers was to inquire whether they had been involved in any wrongdoing connected with trading on NSEL. Specifically to determine whether they participated in:*

- a) Any activities which were detrimental to the investors, NSEL, or third parties. To determine whether they had made false and misleading representations, offered inducement, financing and deliberately made wrongful assertions purely to get brokerage and facilitate NSEL in generating higher volumes.*
- b) Whether they had any illegitimate personal enrichment, or, there has been knowing dereliction in their duties as clearing and forwarding agents towards the commodities and protect the investors.*
- c) It was also deemed necessary to ensure that their activities were within the framework of law."*

### **Preliminary objections raised by the Noticee:**

- 31.** The Noticee has submitted that the impugned transactions pertain to period 2009, for which Notice (from the DA) came to be issued, after inordinate delay of 9 years, in 2018 and now post issuance of said Notice, at this second stage post submission of Enquiry Report, documents were still being provided in bits and pieces, and in instalments. It was stated that the same vitiates the whole proceedings, and was also in gross violations of principles of natural justice and fair play. I note that FMC, the regulator of the commodity derivatives market, under powers conferred upon it vide Notification 228(E) dated February 06, 2012, had called for trade data from the NSEL with respect to the trades being executed on its platform. On analysis of data received from NSEL, FMC observed that, *“55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA”* and *“the condition of ‘no short sale by members of the exchange shall be allowed’ was not being met by NSEL”*. Subsequently, FMC, while dealing with the facts relating to mismanagement and poor governance of NSEL, in its order No.4/5/2013-MKT-1/B dated December 17, 2013, inter alia, observed that the conditions laid down in the Government Notification dated June 07, 2007 had been contravened by NSEL. Thereafter, in the Union Budget for the FY 2015-16 it was announced that FMC would be merged with SEBI. The Finance Act, 2015, provided that *any person dealing in commodity derivatives prior to the aforesaid merger of FMC with SEBI may continue to do so provided they have made an application for registration with SEBI within a period of three months from the date of such merger*. The merger of FMC and SEBI took effect only on September 28, 2015. The transactions on the platform of NSEL were examined by various authorities including FMC, Courts, EOW, SFIO, etc., which *prima facie* found them to be illegal.
- 32.** It is pertinent to mention here that the enquiry proceedings were initiated by SEBI by appointing the DA vide communique dated September 24, 2018 and the Enquiry SCN was issued to the Noticee on September 26, 2018. Vide letter dated November 9, 2018, the Noticee made its submissions towards the SCN. Vide letter dated March 25, 2019, copies of all documents relied upon by the DA were forwarded to the Noticee. Vide letter dated April 20, 2019, the Noticee submitted its reply. Thereafter, on considering the facts and circumstances of the case, the DA had submitted an

Enquiry Report dated June 28, 2019. Based on the recommendations made in the Enquiry Report, a post enquiry SCN September 11, 2019 was issued. Thereafter, hearing was granted before the Competent Authority on December 17, 2019. Vide letter dated January 10, 2020 and February 18, 2020, the Noticee submitted its reply. While the said proceedings were ongoing, as mentioned in preceding paragraphs No. 13 and 17 above, the Hon'ble SAT passed an order dated June 09, 2022 in similar set of facts. Thereafter, in August 2022, the present matter was allocated to me. Based on the observations made by the Hon'ble SAT in the order dated June 09, 2022, additional documents, as available with me were provided to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 7, 2022. In view of the above, the submission of delay in initiating action against the Noticee is not tenable.

33. The Noticee has contended that the action by SEBI should have been completed within the timeline stipulated by Hon'ble SAT in its order dated June 09, 2022. However, it may be noted that such timeline was specifically given for the entities that were in appeal before the Hon'ble SAT.
34. Here, I would like to place reliance on the observations made by the Hon'ble Supreme Court in the matter of *Adjudicating Officer, SEBI Vs. Bhavesh Pabari*<sup>10</sup> wherein the Hon'ble Supreme Court, while dealing with the issue of delay in issuance of the show cause notice by the Adjudicating Officer, has observed that,

*“... There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. **What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default / statute, prejudice caused, whether the third - party rights had been created etc.....**”*

35. Further, I would like to rely upon the judgment of Hon'ble SAT in the case of *Ravi Mohan & Ors. vs. SEBI*<sup>11</sup> wherein it was observed that : -

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<sup>10</sup> Civil Appeal No. 11311 of 2013 order dated February 28, 2019

<sup>11</sup> Appeal No. 97 of 2014 decided on December 16, 2015

*“.....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there is no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice.....”*

- 36.** Further, the Noticee has submitted that the observations by the various courts / authorities is against NSEL and the Noticee's name is not appearing anywhere in the said order citing any adverse observation against them. Here, it is pertinent to mention that the said orders and reports of the authorities have been considered in the present proceedings in order to state that the 'paired contracts' executed on the NSEL platform were in violation of the Government Notification dated June 05, 2007. Therefore, even though the Noticee's name does not form part of these orders and proceedings of other authorities, mention of such orders and reports of other authorities with respect to the establishment of paired contracts being in violation of the said notification is of importance in the present proceedings.
- 37.** The Noticee has submitted that the cases referred to in the Enquiry Report viz. SAT Order in *Jermyn Capital LLC Vs. SEBI* and *Mukesh Babu Securities Ltd Vs. SEBI* and the order of the Bombay High Court in *Jignesh Prakash Shah Vs. State of Maharashtra* being adversely treated by the Hon'ble SAT in its order dated June 09, 2022 will not be applicable. In view of the observations of the Hon'ble SAT with respect to the said orders, I do not wish to place any reliance on the said orders while dealing with the issue in the present case.
- 38.** The Noticee has contended that documents provided by SEBI in support of the observations alleged against them in the SCN is incomplete. In this regard, I note that all documents relied upon by SEBI was provided to the Noticee in the instant case.

39. I note that the Noticee has traded in 'paired contracts'. As the paired contracts were violative of the conditions stipulated in the Government Notification dated June 05, 2007, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated/facilitated access to 'paired contracts' traded on NSEL, including the Noticee within time limit as specified in the aforesaid provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, an FIR dated September 28, 2018 was registered with MIDC police station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR. I also note that the alleged violations committed by the Noticee had also led to initiation of enquiry proceedings against the Noticee by SEBI.

### **Fit and proper person criteria**

40. Now, I would be proceeding to deal with the main issue in hand in the present case which is whether the Noticee satisfies the '*fit and proper person*' criteria laid down under Schedule II of the Intermediaries Regulations. Before moving forward, it would be appropriate to take a look at the relevant provision of the SEBI Act, Broker Regulations and the Intermediaries Regulations (as they exist on date) which are reproduced as under for reference:

#### **SEBI Act**

##### ***Registration of stock brokers, sub-brokers, share transfer agents, etc.***

**12.(3)** *The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:*

*Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.*

#### **Broker Regulations**

##### ***Consideration of application for grant of registration.***

**5.** *The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,*

**(e)** *is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.*

##### ***Conditions of registration.***

**9.** *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -*

*(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him.....*

*(f) he shall at all times abide by the Code of Conduct as specified in Schedule II*

***Liability for action under the Enquiry Proceeding Regulations.***

***27. A stock broker or a sub-broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker or a sub-broker, as the case may be, if he—***

*(i) ....*

***(iv) has been found to be not a fit and proper person by the Board under these or any other regulations; ...”***

**SCHEDULE II**

**Securities and Exchange Board of India (Stock Brokers and Sub-brokers)**

**Regulations, 1992**

**CODE OF CONDUCT FOR STOCK BROKERS**

**[Regulation 9]**

**A. General.**

***(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.***

***(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.***

***(3) ....***

***(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.”***

***Intermediaries Regulations:***

**SCHEDULE II**

**SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)**

**REGULATIONS, 2008**

**[See regulation 7]**

***(1) The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:***

***(a) the competence and capability in terms of infrastructure and manpower requirements; and***

***(b) the financial soundness, which includes meeting the net worth requirements.***

(2) *The ‘fit and proper person’ criteria shall apply to the following persons:*

- (a) *the applicant or the intermediary;*
- (b) *the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) *the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly;*

*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the ‘fit and proper person’ criteria.*

**Explanation**–*For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

(3) *For the purpose of determining as to whether any person is a ‘fit and proper person’, the Board may take into account any criteria as it deems fit, including but no limited to the following:*

(a) *integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*

(b) *the person not incurring any of the following disqualifications:*

(i) *criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*

(ii) *charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*

(iii) *an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*

(iv) *recovery proceedings have been initiated by the Board against such person and are pending*

(v) *an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*

(vi) *any winding up proceedings have been initiated or an order for winding up has been passed against such person;*

(vii) *such person has been declared insolvent and not discharged;*

(viii) *such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*

(ix) *such person has been categorized as a wilful defaulter;*

(x) *such person has been declared a fugitive economic offender; or*

(xi) *any other disqualification as may be specified by the Board from time to time.*

(4) *Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*

(5) *At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.*

(6) *Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub -clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:*

*Provided further that if any person as referred in sub -clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.*

(7) *The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub -clause s (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.*

41. I note that regulation 5(e) of the Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations,

2008 was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

42. From the records, I note that SEBI has filed a complaint with EOW Mumbai dated September 24, 2018, against brokers who facilitated access to 'paired contracts' traded on NSEL, including the Noticee. On the basis of this complaint, an FIR dated September 28, 2018, was registered against the Noticee. I note that the Noticee is holding a certificate of registration No. INZ000045230 granted by SEBI on April 29, 2016. In order to continue to hold such Certificate of Registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included, continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.
43. In this regard, I note that the Noticee has admitted the fact that the clients of the Noticee had indulged in paired contract traded on the NSEL platform which in turn is an admission of facilitating paired contracts by it. I note that the act of the Noticee in offering access to 'paired contracts' by facilitating trading in such contracts, seriously calls into question the integrity, honesty and lack of ethical behaviour on the part of the Noticee. As recorded in the FMC order and the judgements of the Supreme Court, these contracts, as stated earlier, were *ex facie* offered in violation of the exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. The 'paired contracts' were nothing but financing transactions masquerading as spot contracts in commodities. The execution of the trades in 'paired contracts' were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities, as observed by FMC in its Order. Therefore, the Noticee, by its conduct and as a member of the NSEL, has dealt in 'paired contracts' which were held to be in the nature of financing transaction by the Hon'ble Supreme Court. The Noticee, by providing access for taking exposure to

'paired contracts' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' for its clients on the NSEL platform have serious ingredients amounting to jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

**44.** The Noticee has submitted that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations took effect from November 17, 2021 which is much after the Noticee was granted a certificate of registration and/or initiation of the present proceedings. I am unable to accept such contention. It is noted that paragraph 3(b) of the amended criteria lays down a list of disqualifications which includes the following:

*i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*

**45.** The Noticee has further submitted that the Noticee was registered with SEBI as a 'Stock Broker' of a recognized Stock Exchange with effect from 29.04.2016, only after SEBI had satisfied itself that the notice was a 'fit and proper person' and therefore, there is no provision in law to apply Brokers Regulations or Intermediaries Regulations retrospectively. It is the case of the Noticee that the Intermediaries Regulations would not apply to it for the period when the transactions alleged to be in the nature of paired contracts were executed by it on the NSEL platform, whereas the Noticee has been granted a certificate of registration by SEBI only on 29.04.2016. The Noticee has stated that as a SEBI registered Broker, it has not carried out any paired contracts.

**46.** I note that, as mentioned in the preceding paragraphs, before merger of FMC with SEBI, the Noticee was functioning as a member of recognized commodity derivative exchanges and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Finance Act, 2015, recognized the said fact and also that the commodity derivative brokers should be regulated by

SEBI. Considering the same, it was made mandatory for all commodity derivative brokers, who wished to continue their activities, to apply for registration with SEBI within a period of 3 months from September 28, 2015. Thus, all the commodity derivative brokers, who applied to SEBI and whose application was in process, were allowed to carry on their functions as commodity derivative brokers till the disposal of their respective application. Thus, by virtue of provisions of Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e., September 28, 2015), the Noticee was not required to be registered under the FCRA or any other regulation to be a commodity derivatives broker. However, I note that pursuant to the merger of FMC with SEBI, the Noticee had applied for a certificate of registration as a commodity broker and was granted a certificate of registration by SEBI on 29.04.2016. Therefore, the Noticee has become a SEBI registered intermediary from the said date and falls under the definitions of a 'stock broker' and an 'intermediary' under the SCRA. Being a SEBI regulated intermediary, SEBI has the jurisdiction to examine whether the activities of the Noticee in 'paired contracts' for its clients on the NSEL platform affects its ability to be considered "fit and proper person".

47. In addition to the above, I find it relevant to refer to observations of the order dated October 04, 2018 of the Hon'ble Bombay High Court in *Anand Rathi Commodities Limited v. SEBI (W.P. (L) no. 3262 of 2018)* wherein it was argued that the alleged deeds or misdeeds prior to September 29, 2015 by the petitioners who were acting as commodity brokers are beyond the jurisdiction of SEBI. The said argument was rejected by the Court and while interpreting Section 28A of the Finance Act, 2015, the Court observed as under:

*"It is not in dispute that prior to the coming into effect of the Finance Act, 2015, the intermediaries dealing with the commodity derivatives were not required to be registered under any of the provisions of law including the FCR Act. We find that the said mischief was noticed by*

*the Parliament. As such, by virtue of the Finance Act, 2015, **the said intermediaries dealing with commodity derivatives have been brought under the control of SEBI**. We find that the reason as to why by Finance Act, 2015, the said intermediaries were brought under the control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority.*

48. I note from the available records that the Noticee has facilitated its clients to trade in 'paired contracts'. The Noticee has even admitted that it had executed trades on the NSEL platform in paired contracts. As the paired contracts were violative of the conditions stipulated in the Government Notification dated June 05, 2007, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated / facilitated access to 'paired contracts' traded on NSEL, including the Noticee within the time limit as specified in the aforementioned provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR. Infact, I also note that the name of the Noticee appears in the recent chargesheet from EOW dated January 19, 2023 where he has been named as "accused". However, it may be noted that such chargesheet is not being relied upon in the instant proceedings. Instead, the instant proceedings is based on the complaint filed by SEBI with respect to which an FIR dated September 28, 2018 was registered that is detailed above.

49. It is pertinent to note that the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, the SEBI is well within the powers to examine the 'fit and proper' status of such entity based on various parameters. Therefore, even if the Noticee was found to have

fulfilled the 'fit and proper person' criteria when SEBI granted Certificate of Registration in May 25, 2016, such an intermediary can still be assessed on being fit and proper at a later date. Furthermore, as and when the 'fit and proper' criteria changes, the Noticee will be required to comply with the revised criteria, and in this instance, criteria as revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which includes a criminal complaint or information under section 154 of Code of Criminal Procedure filed against such an entity by the Board and which is pending. It is, therefore, noted that the Noticee attracts the disqualification provided in paragraph 3(b) (i) of the Schedule II of the Intermediaries Regulations.

**50.** Therefore, looking holistically I find that the said conduct of the Noticee is detrimental to the Securities Market being not in conformity with the applicable code of conduct. I, therefore, note that there were enough red flags for a reasonable person to come to conclude that what was being offered as 'paired contracts' on NSEL were not spot contracts in commodities. Given the above, I am constrained to conclude that the Noticee provided a platform for its clients to access a product which raised serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the product itself.

**51.** Furthermore, as mentioned above, the Noticee has also earned disqualification under 3(b) (i) of the amended Schedule II of the Intermediaries Regulations on account of an FIR filed by SEBI. In this regard it is pertinent to note that the said FIR was filed by SEBI on September 28, 2018 and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the Noticee. In this context, as observed above, I note that being a 'fit and proper person' is a continuing 'eligibility criteria' which must be satisfied by the Noticee including the amended criteria. I am of the considered view that the due presumption on the constitutional and legal validity of the said amendment Schedule II hold the field which are binding upon me, and arguments, to the contrary are not maintainable.

**52.** Here it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' also becomes

applicable in the situation since trading in 'paired contracts' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The 'paired contracts' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-bye to the terms of the 2007 Exemption Notification and providing a facility to execute paired contracts brings into question appropriateness and suitability of the continuance of the registration of the Noticee as a broker. Clearly, the actions of the Noticee has been detrimental to the interest of the Securities Market and accordingly the Noticee can no longer be called a 'fit and proper person' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

**53.** In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including brokers, which are not only required to act as an intermediary simplicitor i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

**54.** I am also aware that recently SEBI has passed 5 separate orders<sup>12</sup> in the related NSEL matters where the Noticees therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said Noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the Noticee is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of those 5 cases where the applications for grant of certificate of registration were pending at the time of passing those orders whereas in the extant matter the Noticee is already having registration with SEBI. As noted above 'fit and proper person' criteria is a continuing requirement under the Intermediaries Regulations which the Noticee ought to comply with at all times so long it desires to remain associated with the Securities Market as a registered intermediary. Necessity of specifying a period of time may also not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) when dealing with an entity holding a certificate of registration which is cancelled as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable regulations.

**55.** The limited scope of the present proceedings is to see whether the indulgence, engagement and facilitation of paired contracts could be held to be beneficial to the development of Securities Market or the same contain elements that are potentially dangerous and detrimental to the interest, integrity, safety and security of the Securities Market. In this respect, the undisputed fact recorded in FMC order

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<sup>12</sup> Orders dated November 29, 2022 in respect of Motilal Oswal Commodities Brokers Pvt. Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-\\_65602.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-_65602.html)), Anand Rathi Commodities Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-\\_65604.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-_65604.html)), Geofin Comtrade Limited (previously known as Geojit Comtrade Limited)(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited-\\_65597.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited-_65597.html)), India Infoline Commodities Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-\\_65595.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-_65595.html)) and Phillip Commodities India Pvt. Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-\\_65593.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-_65593.html)) in the matter of NSEL.

and Hon'ble SC order that the scheme of 'paired contracts' traded on the NSEL ultimately has caused loss to the market to the extent of INR 5,500 Crore itself casts serious aspersion on the conduct, integrity and reputation of, inter alia, the Noticee who participated in or facilitated such 'paired contracts' and therefore, its continuing role in the Securities Market cannot be viewed as good and congenial for the interest of the investors or of the Securities Market.

**56.** Given the above discussions and deliberations, I am constrained to conclude that the Noticee provided access to its clients to participate in a product which raises serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the said product itself. Further, as per findings recorded above, the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations insofar as SEBI has filed an FIR against the Noticee under section 154 of Cr. P C with EOW, Mumbai and the same is validly subsisting/pending as on date. Further, it is also not the case of the Noticee that said FIR filed by SEBI is either stayed or quashed by any competent court qua the Noticee or otherwise. In view of the above, I hold that the Noticee does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations and hence, the continuance of the Noticee as a broker will be detrimental to the interest of the Securities Market. Therefore, such activities on the part of the Noticee who is a registered broker now, cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.

## **ORDER**

**57.** I, therefore, in exercise of powers conferred under Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee viz. JM Financial Commtrade Ltd., Certificate of Registration (bearing no. INZ000045230) of the Noticee i.e. JM Financial Commtrade Ltd., is hereby cancelled.

**58.** The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 57 above.

**59.** Notwithstanding the direction at paragraph 57 above,

- a. the Noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients.
- b. The Noticee shall square off open positions, if any, within 30 days from the date of this order.

**60.** This Order shall come into force with immediate effect.

**61.** It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, powers that were exercised under Regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under Regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.

**62.** A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

**Date: March 31, 2023**

**Place: Mumbai**

**Dr. ANITHA ANOOP**  
**CHIEF GENERAL MANAGER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**SECURITIES AND EXCHANGE BOARD OF INDIA  
FINAL ORDER**

**UNDER SECTION 12(3) OF SEBI ACT, 1992 READ WITH REGULATION 27 OF THE  
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)  
REGULATIONS, 2008.**

**In respect of:**

NAME OF THE NOTICEE	CIN	SEBI REGISTRATION NO.
SUNIDHI COMMODITIES PVT. LTD.	U51909MH2003PTC143393	INZ000042837

**In the matter of National Spot Exchange Limited**

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**I. Background:**

1. Sunidhi Commodities Pvt. Ltd. (hereinafter referred to as "**SCPL**"/ "**Noticee**") is a commodities derivative broker and a member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as "**MCX**"). SCPL was earlier a Member of the National Spot Exchange Limited (hereinafter referred to as "**NSEL**"). Subsequent to the merger of the Forward Market Commission (hereinafter referred to as "**FMC**") with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") on September 28, 2015, SCPL registered with SEBI as a trading/clearing member bearing SEBI Registration No. INZ000042837.
2. As a member of the NSEL, the Noticee had participated in / facilitated trading in 'paired contracts' on the NSEL platform, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations,

2008 (hereinafter referred to as the “**Intermediaries Regulations**”) and appointed a Designated Authority (hereinafter referred to as the “**DA**”) vide order dated September 21, 2018, to enquire into whether the Noticee was a ‘fit and proper person’ (hereinafter referred to as “**FPP**”) to continue to hold the certificate of registration as Trading and Clearing Member in terms of Regulation 5 (e) read with Regulation 27 (iv) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the “**Broker Regulations**”).

## **II. Brief History of Illegal Forward Contracts on NSEL:**

3. Before considering the compliance of the Noticee with the FPP criteria, it would be appropriate to have a preliminary discussion on the background of NSEL which forms the basis of the current proceedings.
  
4. NSEL was incorporated in 2005 as an exchange for spot trading of commodities. I note from the FMC Order No.4/5/2013-MKT-1/B dated December 17, 2013 (“**FMC Order**”), that on June 05, 2007, the Department of Consumer Affairs (“**DCA**”), Ministry of Consumer Affairs, Food and Public Distribution, Government of India, issued a Notification S.O.906(E) under Section 27 of Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) granting certain exemptions from the provisions of FCRA to NSEL subject to specified conditions. The relevant extract of the said notification is reproduced hereunder for ease of reference:

*“...the Central Government exempts all forward contracts of one day duration for the sale and purchase of commodities traded on the National Spot Exchange Limited, from operation of the provisions of the said Act subject to the following conditions, namely:-*

- i. no short sale by members of the Exchange should be allowed;*
- ii. all outstanding positions of the trade at the end of the day shall result in delivery;*
- iii. the 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;*

*iv. all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

.....”

5. The aforesaid notification was amended on February 6, 2012 by DCA vide Gazette Notification S.O. 228(E) specifying “Forward Markets Commission, Mumbai” as the designated agency of the Central Government.
6. NSEL commenced operations in October 2008. It is seen from the FMC Order and the Judgement dated April 22, 2022 of the Hon’ble Supreme Court, in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, that NSEL, in September 2009, introduced the concept of ‘paired contracts’, which involved buying and selling the same commodity through two different contracts at two different prices, wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In short, the ‘paired contract’ involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. “T” indicates the trade date, that is, the date on which the trade took place; and +2 or +3 or +25 or +36, indicates the number of business days after the trading day when the delivery of the commodity and the payment of price ought to have been made. The transactions were structured in a manner that the buyer of the short duration contract always ended up making profits.
7. Further, from Para 8 of the FMC Order, I note that the DCA on April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the notification dated June 05, 2007. In response to the same, NSEL submitted a reply vide their letter dated May 29,

2012. DCA, vide its letter dated May 31, 2012, sought comments of the FMC on the NSEL reply. The FMC, vide its letter dated August 02, 2012 to the DCA provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:

(i) Short Sale by members of the Exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order. FMC was of the view that all those sale transactions which are not backed by the ownership of goods were in violation of the condition of *"no short sale by the members of the Exchange shall be allowed"*.

(ii) Contracts in which settlement period goes beyond 11 days: In view of the definition of forward contract under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are Non-Transferable Specific Delivery contracts. Thus, even if the gazette notification does not specify the delivery period, NSEL had to settle the delivery for all open position within a period of 11 days as NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days.

8. I also note from Para 8 of the FMC Order that DCA, vide its letter dated July 12, 2013, directed NSEL to give an undertaking that:

(i) *No further/ fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and*

(ii) *All the existing contracts will be settled on the due dates.*

9. To sum up, as per the original notification dated June 05, 2007, NSEL was granted conditional exemption from the provisions of FCRA for all forward contracts of one-day duration for the purchase and sale of commodities. The two main conditions were that (i) there should be no short sale and (ii) all outstanding positions at the end of the day should result in delivery. Thereafter, FMC had observed that 55 contracts offered for trade on NSEL were with

settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA. Under the FCRA, a “forward contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A “ready delivery contract” is defined as “a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”. In view of the said definition contained in FCRA, FMC was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.

10. NSEL, thus, had permitted contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL vide the Government Notification dated June 05, 2007. Further, I note that the Hon’ble Supreme Court, in its Judgement dated April 22, 2022 in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, while drawing reference to the presentations made by NSEL in respect of ‘paired contracts’ had *inter alia* held that:

*“44.... NSEL in the course of its brochures has held out representations about the trading and investment opportunities available for:*

- a) corporate clients*
- b) high net worth individuals; and*
- c) retail investors*

*45. Under the head of “contract specifications”, the following representation has been held out :*

<i>Commodity</i>	<i>Duration</i>	<i>Investment (lacs.)</i>	<i>Yield</i>
<i>Castor Seed</i>	<i>T+3 &amp; T+36</i>	<i>7.5 -9 Lacs</i>	<i>16%</i>
<i>Castor Oil</i>	<i>T+5 &amp; T+30</i>	<i>7-9</i>	<i>16%</i>
<i>Cotton Wash Oil</i>	<i>T+2 &amp; T+25</i>	<i>10</i>	<i>16%</i>
<i>Paddy</i>	<i>T+2 &amp; T+25</i>	<i>3.5-4.5</i>	<i>16%</i>
<i>Steel</i>	<i>T+2 &amp; T+25</i>	<i>4.5-5</i>	<i>16%</i>

Raw Wool	T+2 & T+25	3.5-4	16%
Wool Top	T+2 & T+25	1.8-2	16%
Crude Soybean Oil	T+2 & T+25	3.3.-3.5	16%
Soya DOC	T+2 & T+25	1.7-2.0	16%
Refined Mustard Oil	T+2 & T+25	6.5	16%
Refined Soybean Oil	T+2 & T+25	6.5	16%
Refined Sunflower Oil	T+2 & T+25	6.5	16%
RBD Palmolein Oil	T+2 & T+25	6.5	16%
Sugar	T+2 & T+25	3.0	16%
Maize	T+2 & T+25	3.0	16%

The above representation specifies:

- (i) Commodities;
- (ii) Duration of trades;
- (iii) Investment; and
- (iv) Yield.

For example, in the case of castor seeds, NSEL held out a buy contract (T+3) and sale contract (T+36), in which the yield is stated to be 16%. Moreover, NSEL represented that:

**“Opportunities**

- Traders can trade and lock their return
- Trader has to buy in near settlement contract and sell in far settlement contract simultaneously
- Price for both settlement available
- Exchange provides counterparty guarantee risk
- No basis risk, No link with future contracts

While describing the features of trading opportunity, NSEL represented that:

**“Features of Trading Opportunity:**

- *T+2 and T+25 contract offers unique trading opportunity to traders*
- *Trader purchases T+2 contract and simultaneously sells T+25 contract*
- *Pay-in obligation is on T+2 while Pay-out of the funds will be on T+25. Entire settlement cycle is of 35-37 days*
- *Price differential between the two settlement dates i.e premium if annualized offers interest rate of about 16%*
- *Income arising out of such trades are treated as Business Income”*

*While comparing the investment opportunities of bank fixed deposits with trading opportunities at NSEL, NSEL represented that:*

**“Comparison**

- *Bank FD 9.25% for 390 days; NSEL Trading Opportunity 16%;*
- *Bank FD minimum duration 390 days; NSEL Trade duration 35-55 days, depending on the contract*
- *Traders have an option of rolling over their position as per their convenience*

.....

*The above representation indicates that paired contracts were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. Therefore, NSEL represented that on receiving money and commodities, the members would receive ‘assured returns’ and a ‘service’. Though NSEL has been*

*receiving 'deposits', it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act."*

11. As such, both the FMC Order and the aforesaid order of Hon'ble Supreme Court have explicitly brought out the details as to how NSEL permitted short sales - i.e. by permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse.
12. It is also pertinent to note that the Hon'ble Supreme Court in another Judgement dated April 30, 2019, titled 63 Moons Technologies Ltd Vs. Union of India, Civil Appeal No. 4476 of 2019 observed that these contracts were in the nature of "financing transactions". The relevant extract of the said order is as under: -

*"55.3. We have seen that neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such paired contracts. **There is no doubt that such paired contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA.**"*

### **III. Show Cause Notice, Reply and Hearing**

13. In light of the background and history narrated above, the DA issued show cause notice dated September 25, 2018 (hereinafter referred to as the "SCN") to the Noticee, calling upon it show cause as to why it should be found to be not "fit and proper person" in terms of Regulation 5(e) read with Regulation 27 of the Broker Regulations and Schedule II of the Intermediaries Regulations and hence, liable for cancellation of its registration. Vide letter dated October

25, 2018, the Noticee sought extension of time to file its reply. Vide letter dated November 02, 2018, the Noticee submitted its reply to the said SCN. Subsequently, the Noticee vide letter dated November 13, 2019 submitted details of paired contracts executed by it during the period September 2009 to August 2013. Upon completion of the enquiry, the DA submitted its report dated November 20, 2019, recommending cancellation of the certificate of registration granted to the Noticee since it was not a FPP.

14. Pursuant to the same, a post enquiry show cause notice (hereinafter referred to as the “**SCN-1**”) dated January 15, 2020, was issued to the Noticee, under Regulation 28(1) of the Intermediaries Regulations to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Competent Authority, should not be taken against the Noticee. A copy of the DA’s Report was also forwarded to the Noticee along with an advice to file a reply, if any, within 21 days from the date of receipt of the notice. Along with the DA’s Report, the letter dated December 30, 2014 of the Ministry of Finance (“**MoF**”), Department of Economic Affairs (“**DEA**”) addressed to the Chairman, FMC was provided to the Noticee, wherein it was stated that the DEA was in agreement that NSEL had violated the conditions of exemptions granted to it under the FCRA. Further, Order dated August 22, 2014 of Hon’ble Bombay High Court, in the matter of *Jignesh Prakash Shah Vs. The State of Maharashtra*, Criminal Bail Application No. 1263 of 2014, wherein it was held that the brokers through whom the paired contracts were entered into had knowledge of the illegality of such contracts, was also furnished to the Noticee. The SCN-1 also *inter alia* highlighted the observations made by the Hon’ble Supreme Court in the matter of *63 Moons Technologies Ltd. Vs. Union of India* (order dated April 30, 2019), wherein it was held that paired contracts were in fact financing transactions in breach of exemptions granted to NSEL under the FCRA. The Noticee was also called upon to show cause as to why information/materials as brought out therein along with the DA’s Report should not be considered. The Noticee submitted its reply to the

SCN-1 vide letter dated June 01, 2021 which contained submissions on lines of its reply dated November 02, 2018.

15. In the meantime, while the proceedings in the present matter were ongoing, Whole Time Member, SEBI (“**WTM**”) passed certain orders rejecting the applications of five other entities for registration as commodity brokers. The Hon'ble Securities Appellate Tribunal (“**the Hon'ble SAT**”) vide its order dated June 9, 2022 remitted the matters to the WTM to decide the matter afresh after giving an opportunity of hearing to the brokers. Further, Hon'ble SAT had observed that “...*It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by SEBI should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice*”.
16. In light of the order of Hon'ble SAT dated June 9, 2022, a supplementary show-cause notice dated October 07, 2022 (hereinafter referred to as “**SCN-2**”) was issued to the Noticee. Vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to Economic Offence Wing (“**EOW**”), First Information Report (“**FIR**”) dated September 28, 2018 and the amended Schedule II of the Intermediaries Regulations were furnished to the Noticee calling upon it to show cause as to why information/material provided therein along with the Enquiry Report should not be considered against the Noticee.
17. In response to the SCN-2, the Noticee vide letter dated October 21, 2022 acknowledged receipt of the SCN-2 and submitted that it has no comments to offer whether the Competent Authority should consider the information/material brought on record vide the SCN-2.
18. In order to proceed with the matter, a hearing was granted to the Noticee in terms of Regulation 27(4) of the Intermediaries Regulations, 2008 as the DA

had recommended cancellation of the certificate of registration of the Noticee. The hearing was held on December 06, 2022, during which Anil Shah, Advocate, along with Mahesh Desai, Compliance Officer of the Noticee, appeared for the Noticee and reiterated the submissions made in replies dated November 02, 2018, November 13, 2019 and June 01, 2021.

19. The summary of the Noticee`s replies dated November 02, 2018, June 01, 2021 and additional submissions dated December 16, 2022 is given hereunder:
- (i) The SCN is vague and ambiguous and is based on the observations set out in the enquiry report dated November 20, 2019. The allegations therein are not specific and definite. Reliance is placed on observations of the Hon`ble Supreme Court of India in the matter of Commissioner of Central Excise Vs. Brindavan Beverages (P) Ltd, (2007) 5 SCC 388 and Canara Bank & Ors Vs. Debasis Das & Ors, [(2003) 4 SCC 557].
  - (ii) The documents relied on by SEBI while arriving at findings against it have neither been provided to it nor is there any mention of these documents in the SCN. Reliance is placed on the Hon`ble Supreme Court Judgment in the matter of Securities and exchange Board of India Vs. Price Waterhouse (Civil Appeal No. 6003-6004/12).
  - (iii) It denied that it had participated and/ or facilitated its clients in trading on the NSEL in such paired contracts during the period September 2009 to August 2013.
  - (iv) As per FMC order No. 4/5/2013- MKT-I/B dated December 17, 2013, it was NSEL who was responsible for conducting its business not in accordance with the conditions stipulated in the notification dated 05.06.2007 granting it exemption from the operation of FCRA, 1952, with regard to the one-day forward contracts to be traded on its exchange platform and violating the condition of 'no short-sell' and 'compulsory

delivery of outstanding position at the end of the day' stipulated in the notification.

- (v) During the period September, 2009 to August, 2013, it entered into only three paired contracts, one each on behalf of its clients viz., Watermark Financial Consultants Limited, Watermark Systems (India) Private Limited and another on behalf of its group company Sunidhi Capital Pvt. Ltd, in accordance with their instructions.
- (vi) On 06.01.2010, it entered into paired contract on behalf of its group company Sunidhi Capital Pvt Ltd. which stood duly settled on 08.02.2010. It entered the said contracts in normal course of business to check the functioning of the Spot Exchange by entering only into single contract. It has not done any trade on proprietary accounts. On 20.07.2011, it entered a paired contract under the instructions and on behalf of its clients viz., Watermark Financial Consultants Limited and Watermark Systems (India) Private Limited which stood duly settled on 13.09.2011.
- (vii) Till passing of order dated December 17, 2013, it had no reason to suspect that the above paired contracts were in contravention of provisions of the FCRA and the Central Government Notification dated June 05, 2007 as concluded therein. Till passing of the said order dated December 17, 2013 neither had FMC nor any other Regulatory Authority raised any objection/ warning/ caution that the alleged paired contracts were in contravention to the provisions of FCRA and government notification dated 05.06.2007 and consequently in violation of Regulation 9(b), 9(f) read with Clause A (1), A(2) and A(5) of the Schedule II and 5 (e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations.
- (viii) NSEL had assured the contracting parties on the NSEL platform that the trades shall be settled and in case of a default from either of the contracting parties the responsibility shall lie with NSEL to clear and settle all traded

contracts on NSEL as per NSELs Rules, Bye laws and Regulations and the Settlement Guarantee Fund.

- (ix) As a commodity broker, it has exercised proper due diligence at the time of registration of the client by knowing the client. It has taken all care, which is required to be taken about the creditability and financial soundness of its clients and subsequently ensuring that contracts are not fictitious and that contracts were duly settled as per NSEL norms.
- (x) It has maintained high standards of integrity, promptitude and fairness in the conduct of its broking business and has duly abided by all the provisions of the Act, the Rules, Regulations and Bye laws and guidelines issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to it and Code of Conduct as specified in Schedule II of the Brokers Regulations. It has acted only as an intermediary/ facilitator to earn brokerage. It has executed trades on behalf of and under the instructions of its clients as it ought to have as a commodity broker.
- (xi) As a broker, it was impossible for the Noticee to identify that contracts of its clients were ultimately in the nature of financial transactions and therefore, in contravention to the provisions of FCRA and Government notification dated 05.06.2007 and consequently in violation of Regulation 9(b), 9(f) read with Clause A (1), A (2) and A(5) of the Schedule II and 5 (e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations. Reliance is placed on the order dated June 20, 2006, passed by the SAT in Kasat Securities Private Ltd. Vs. Securities and Exchange Board of India and the judgment of the Hon`ble High Court of Bombay in the matter of Tri Sure India Ltd. Vs. A.F. Ferguson and Co. & Others.
- (xii) Its principal officers and the key management persons and company are indeed persons of high integrity, reputation and character. No conviction

or restraint orders have been passed against its principal officers and the key management persons. It has never been categorized as a willful defaulter. Its principal officers and the key management persons and company are competent in all aspect of commodity trading including financial solvency and net worth and thus duly fulfill the requirements of criteria for determining a 'fit and proper person' as specified vide Schedule II of the Intermediaries Regulations, 2008.

- (xiii) It has not resorted to any mis-selling of contracts as the contracts were in accordance with the conditions and stipulations offered on the NSEL trading platform and it had no role to play in the same since the NSEL had been recognized under the FCRA and MCA had jurisdiction to regulate contracts and their validity and implementation. It had adhered to all the Rules, Bye Laws and Regulations of NSEL and that it was never issued any SCN by the NSEL. There were no complaints against it from any client.
- (xiv) SEBI Regulations were not applicable to it at the relevant time when the paired contracts were executed. At the relevant time, trades were governed by the Bye laws and Business Rules of NSEL and circulars issued by NSEL. SEBI Regulations were not applicable to the members of NSEL.
- (xv) Upon repeal of FCRA on September 28, 2015 by the Finance Act, 2015, undertaking of FMC was transferred to and vested with SEBI and SEBI was made regulator for the commodities market and the members of commodities exchange. With a view to govern the members of commodities exchanges like that of recognized stock exchanges, the Broker Regulations were amended and made applicable to the commodities brokers to be registered with SEBI with effect from September 29, 2015. The commodities brokers came under the umbrella of SEBI Regulations only after September 28, 2015 and hence they cannot

be made liable for violation of SEBI Regulations for their acts or omissions prior to September 28, 2015. SEBI Regulations cannot be made applicable retrospectively.

- (xvi) Bye law 4.1 of NSEL Bye laws authorized the Board of the Managing Director or the committee so appointed to finalize contract specification and modifications and it had no role to play in the same. Thus, it was not required to assess legality of the product introduced by the NSEL. Bye law No. 4.2 of NSEL mandated it to execute and clear transactions in only such contracts as specified by the Board. Further, Bye law No. 4.5 mandated that all transactions in commodities permitted on the Exchange shall be made only in the manner approved by the Exchange. Thus, it could not have traded in the paired contracts which were otherwise not violative of Bye law No. 4.2 and 4.5 of NSEL.
- (xvii) NSEL had always projected the alleged paired contracts as legal and permissible contracts within the ambit of the gazette notification dated June 5, 2007 granting it exemption from the compliance with the provisions of FCRA.
- (xviii) Cancellation of registration certificate is proposed to be made in respect of all members of NSEL irrespective of the number or value of trades entered into by them in the alleged paired contracts. Levying proposed punishment uniformly defies the doctrine of proportionality.
- (xix) Reliance on FMC order is misconceived and misplaced as it was not party to the said order.
- (xx) Hon`ble Bombay High Court in its judgment dated August 22, 2019 in the matter of 63 Moons Technologies Ltd. Vs. State of Maharashtra held that paired contracts were not financial transactions but were trades in

commodity as per regulations and bye laws of NSEL and rejected following contentions of the State Government: -

- a. In paired contracts, money was received by NSEL from investors and it was passed on to the borrowers of NSEL.
- b. Entire transaction was a financial transaction with assured fixed returns to the investors.
- c. NSEL is covered within the fold of the definition of financial establishment attracting provisions of MPID Act.

(xxi) The said judgment dated August 22, 2019 has rendered following contentions of SEBI as irrelevant: -

- a. The paired contracts were not contracts in commodity but in the form of financial transactions;
- b. Adverse observations made by various courts/competent authorities against NSEL and paired contracts have seriously impacted the reputation of NSEL and paired contracts;
- c. The Noticee facilitated the trading in paired contracts and hence was closely associated with NSEL and paired contracts;and
- d. Adverse observations made by courts/authorities including EOW can be taken into account for determining the fit and proper criteria.

(xxii) Pursuant to SEBI complaint dated September 24, 2018, FIR No. SPL LAC No. 110/18 dated September 28, 2018 was registered by Economic Offences Wing ("EOW") at MIDC Police Station. Its name is at Sr. No. 237 in the said FIR. SIT-EOW has filed final charge sheet before the Hon`ble Sessions Court, Mumbai, Court No. 52, CF No. 23615/2003, wherein, it has been made a witness at Sr. No. 192 of the witness list. It supposes

that charge-sheet in the matter has been filed on December 02, 2022 or December 05, 2022.

20. Further, the Noticee vide reply dated November 13, 2019 provided details of paired contracts executed by it which is as follows: -

**Table-1**

<b>Trade Date</b>	<b>Settlement date</b>	<b>Client Name</b>	<b>Commodity Name</b>	<b>Buy qty</b>	<b>Sell qty</b>	<b>Trade Value</b>
06-01-10	09-01-10	Sunidhi Capital Pvt. Ltd	Cottonseed Wash Oil	12	-	2,520,660
06-01-10	08-02-10	Sunidhi Capital Pvt. Ltd	Cottonseed Wash Oil	-	12	2,548,740
20-07-11	25-07-11	Watermark Financial Consultants Limited	Castor Seed	900	-	3,090,385
20-07-11	13-09-11	Watermark Financial Consultants Limited	Castor Seed	-	900	3,156,772
20-07-11	25-07-11	Watermark Systems (India) Private Limited	Castor Seed	1800	-	6,180,570
20-07-11	13-09-11	Watermark Systems (India) Private Limited	Castor Seed	-	1800	6,313,545

21. Subsequently, the Noticee vide letter dated February 22, 2023 submitted an affidavit, executed by its compliance officer-Mahesh Desai, affirming the said contention regarding filing of FIR No. SPL LAC No.110/18 dated September 28, 2018 at MIDC Police Station and filing of final charge sheet by EOW-Mumbai(NSEL-SIT) before the Hon`ble Sessions Court, Mumbai, Court No.52, bearing CF no. 23615/2022. It is stated that neither the Noticee nor any of its employee has been charge sheeted as an accused in the said case.

#### IV. Consideration of Issues

22. I have considered the SCN, SCN-1, SCN-2, the Enquiry Report submitted by the DA, replies and submissions of the Noticee and other material available on record. Having regard to the same, I now proceed to deal with the issues in the present matter.

23. It is alleged that the Noticee, being member of NSEL participated and/or facilitated its clients in executing paired contracts, has violated Regulation 5(e), 9(b) and 9(f) read with Clause A(1), A(2) and A(5) of the Schedule II of the Broker Regulations read with Schedule II of the Intermediaries Regulations. The relevant provisions are reproduced hereunder: -

#### **Provisions of Broker Regulations:**

##### **Consideration of application for grant of registration.**

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant,-

.....

(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

##### **Conditions of registration.**

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

.....

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him...

.....

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II

#### SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

#### **CODE OF CONDUCT FOR STOCK BROKERS**

[Regulation 9]

##### **A. General.**

(1) *Integrity:* A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) *Exercise of due skill and care :* A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3).....

(5) *Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

**Provisions of Intermediaries Regulations:**

**“SCHEDULE II  
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)  
REGULATIONS, 2008  
[See regulation 7]**

(1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*

- (a) the competence and capability in terms of infrastructure and manpower requirements; and*
- (b) the financial soundness, which includes meeting the net worth requirements.*

(2) *The ‘fit and proper person’ criteria shall apply to the following persons:*

- (a) the applicant or the intermediary;*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly: Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the ‘fit and proper person’ criteria.*

**Explanation–** *For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

(3) *For the purpose of determining as to whether any person is a ‘fit and proper person’, the Board may take into account any criteria as it deems fit, including but not limited to the following:*

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
- (b) the person not incurring any of the following disqualifications:*
  - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
  - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*

(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;

(iv) recovery proceedings have been initiated by the Board against such person and are pending;

(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;

(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;

(vii) such person has been declared insolvent and not discharged;

(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

(ix) such person has been categorized as a wilful defaulter;

(x) such person has been declared a fugitive economic offender;

or

(xi) any other disqualification as may be specified by the Board from time to time.

(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.

(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary: Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification

*failing which the 'fit and proper person' criteria may be invoked against such intermediary.*

*(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."*

24. From the reply of the Noticee, it is seen that the Noticee has admitted to the fact of execution of the illegal contracts, referred to as "paired contracts" by FMC and the Hon'ble Supreme Court, on behalf of its clients on NSEL. Further, the Noticee has stated that it entered into paired contract under instructions and on behalf of its clients. Further, the Noticee has submitted that NSEL was responsible for conducting its business not in accordance with conditions stipulated in the notification dated June 05, 2007. The Noticee has attempted to shift the entire burden for the illegality underlying the trades onto NSEL and the other regulators who were supposed to supervise. In short, it is contended that there was no reason for the Noticee to suspect the paired contracts or the functioning of NSEL. I have also taken note of the fact that the Noticee has relied on NSE Bye Laws to contend that it was mandated to execute and clear transactions in paired contracts. I find that the Noticee was well aware that the duration of the contracts exceeded one day which was stipulated as one of the conditions of exemption notification. I note from the reply of the Noticee that the Noticee executed 3 paired contracts during September 2009 to August 2013. On perusal of reply of the Noticee, I find that the Noticee had sufficient experience in dealing with other commodity exchanges such as National Commodity & Derivatives Exchange Ltd. ("**NCDEX**"), MCX, etc. As a broker with sufficient experience and knowledge and having presence in various other exchanges and in different markets, the Noticee ought to have refrained from participating on the subject contracts or from allowing its clients to participate on such platform, going by the very structure of the back-to-back contracts. It appears to be the case of the Noticee that since everything was in public domain and it was all being done with the knowledge of regulators, it presumed that the activities were legally valid and that there was nothing that raised his suspicion. In this context, I note that NSEL itself was advertising such contracts

as an alternative to fixed deposits. The return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer of short term contract always made pre-determined profits. I am, therefore, of the view that while executing trades for clients in such contracts, the Noticee failed to examine the basic nature of the product and also failed in understanding the source of powers relied upon by NSEL for selling such products which other exchanges were not offering. Thus, the Noticee failed to conduct proper and effective due diligence on these aspects of paired contracts which were not essentially spot contracts.

25. I note that the SCN -1 mentioned observations made by the Hon`ble Supreme Court in its order dated April 30, 2019, in the matter of *63 Moons Technologies Limited (Formerly known as 'Financial Technologies India Limited) & Ors. Vs. Union of India & Ors, Civil Appeal No. 4476 of 2019*. Further, the SCN-1 enclosed Enquiry Report dated November 20, 2019, copies of DEA letter dated December 30, 2014 and Order dated August 22, 2014 passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra* and the Noticee was called upon to show cause as to why information/material brought therein should not be considered along with Enquiry Report. I note that the Hon'ble SAT, in its order dated June 09, 2022, in respect of the applications of five other entities for registration as commodity brokers, has held that the observations in the bail rejection order of the Hon'ble Bombay High Court cannot be relied upon as the observations therein are limited to the fact as to whether the bail should be granted or not. Accordingly, I find that Order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*, is not relevant for consideration in the present matter. Further, I note that the Bombay High Court Judgment dated August 22, 2019 was set aside by the Hon`ble Supreme Court vide its judgment dated April 22, 2022, in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal No.*

2748 of 2022. In view thereof, I find that reliance placed by the Noticee on the Judgment dated August 22, 2019 is misplaced.

26. I note that the Noticee has stated that the SCN-1 is vague, ambiguous and based on the observations set out in the Enquiry Report dated November 20, 2019. Further, it is stated that the allegations therein are not specific and definite. I note that the SCN alleged that paired contracts executed on NSEL were in contravention of provisions of FCRA and the Central Government Notification dated June 05, 2007. Further, it alleged that the Noticee, a member of NSEL and a SEBI registered trading and/or clearing member under the Brokers Regulations, had participated and/or facilitated its clients in trading on the NSEL in such paired contracts during the period of September 2009 to August 2013 and thereby, the Noticee violated Regulation 9(b), 9(f) read with Clause A(1), A(2) and A(5) of the Schedule II and 5(e) of the Brokers Regulations read with Schedule II of the Intermediaries Regulations. The SCN -1 enclosed Enquiry Report dated November 20, 2019, DEA letter dated December 30, 2014 and Hon`ble Bombay High Court order dated August 22, 2014 and the Noticee was called upon to show cause information/material brought out in the SCN-1 along with the Enquiry Report should not be considered and why action recommended by the DA or any other action should not be taken against the Noticee. In view of the above, I find that the SCN detailed acts and omissions of the Noticee and provisions of law alleged to be violated by the Noticee. I do not agree with the contention of the Noticee that the SCN is vague or ambiguous or did not contain specific allegations. I, therefore, find that reliance placed by the Noticee on observations made by the Hon`ble Supreme Court in the matter of Commissioner of Central Excise Vs. Brindavan Beverages (P) Ltd, (2007) 5 SCC 388, and Canara Bank & Ors. Vs. Debasis Das & Ors, (2003) 4 SCC 557 is inappropriate and irrelevant.
27. I note that the Noticee has stated that documents relied upon by SEBI or the DA for arriving at findings against it have not been provided to it. I note that the Noticee in response to the SCN-1 filed reply dated June 01, 2021 which

repeated submissions made vide its reply dated November 02, 2018. I find that the Noticee`s reply dated June 01, 2021 did not contain any reason as to why the information/material brought in the SCN-1 should not be considered. I find that documents relied upon have been provided to the Noticee vide SCN-1 and SCN-2.

28. I note that the Noticee has placed reliance on following observations made by the Hon`ble Supreme Court in its order dated January 10, 2017 in the matter of Securities and Exchange Board of India Vs. Price Waterhouse, Civil Appeal No. 6003-6004/12: -

*“We direct, that all statements recorded during the course of investigation shall be provided to the respondents. We further direct, that all documents collected during investigation shall be permitted to be inspected by the respondents. The authors of such statements (recorded during investigation), which are to be relied upon (against the respondents), shall be offered for cross-examination to the respondents. Only thereupon, it will be permissible to rely upon the same.*

29. I note that Hon`ble Supreme Court in the said order dated January 10, 2017 also noted that *“Having heard learned counsel for the rival parties, we find no justification to examine the matter in detail. We wish to dispose of this case with some simple clarifications”*. In view of the said observations, Hon`ble Supreme Court made observations relied upon by the Noticee. I note that the principle enunciated in the said order dated January 10, 2017 is that statements recorded during the course of investigation can be relied upon only when the other party has been provided with copy of the statements and opportunity to cross examine the maker of the statements. In the present case, no such statements are being relied upon. I find that the said order dated January 10, 2017 is not applicable to the present case.

30. I note that the Noticee has also contended that it was bound by Clauses 4.1 and 4.2 of NSEL Bye laws according to which the contract specifications and

modifications were finalized and executed. As such, NSEL activities itself were being investigated and the concerned authorities including the Hon`ble Supreme Court have given adverse findings about the activities of NSEL. It is, therefore, not open to the Noticee to rely on the same.

31. I note that the Noticee has also contended that cancellation of registration certificate is proposed to be made in respect of all members of NSEL irrespective of the number or value of trades entered into by them in the alleged paired contracts and therefore is not in accordance with the doctrine of proportionality. As the matter pertains to ascertaining of the FPP criteria of the brokers, I do not find it appropriate to apply the test of severability or proportionality to the tainted contracts.
32. I note that Schedule II of the Intermediaries Regulations was amended vide SEBI(Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021 and the following disqualifications have been included amongst others:  
*“(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;”*
33. I note that vide the SCN-2, additional documents viz. SEBI’s complaint dated September 24, 2018 to EOW, FIR dated September 28, 2018 and the amended Schedule II of the Intermediaries Regulations was provided to the Noticee. Further, the Noticee was called upon to show cause as to why the information/material brought out in the SCN-2 along with the Enquiry Report dated November 20, 2019 should not be considered against it. In response thereto, the Noticee vide letter dated October 21, 2022 submitted that it has no comments to offer whether the Competent Authority should consider the information/material brought on record vide the said SCN.
34. I also note that as per the amendment, the disqualification of an associate or group entity of the applicant or intermediary of the nature as referred to in sub-clause (b) of clause (3) of Schedule II to the Intermediaries Regulations, shall

not have any bearing on the FPP criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter.

35. It is pertinent to note that in terms of Regulation 5(e) of Broker Regulations, the eligibility criteria for an entity to get registered as a stock broker includes that it should be a 'fit and proper person' based on the criteria specified in Schedule II of Intermediaries Regulations. I note that the Noticee has contended that SEBI Regulations cannot be made applicable to it as alleged acts pertain to period prior to September 28, 2015. I note that Section 28A of FCRA provided that a person buying or selling or otherwise dealing in commodity derivatives as a commodity derivatives broker or such other intermediary who may be associated with the commodity derivatives market, immediately before transfer and vesting of rights and assets to SEBI for which no registration certificate was necessary prior to such transfer may continue to do so for a period of 3 months from such transfer or, if he has made an application for such registration within the said period of three months, till the disposal of such application. Accordingly, the Noticee applied for registration as a broker and was granted the same. Since then, it has been acting as market intermediary registered with SEBI. It has been specified in Clause 7 of Schedule II of Intermediaries Regulations that FPP criteria is required to be satisfied by the intermediary at the time of registration as well as during the continuity of registration with SEBI. Therefore, even assuming that Intermediaries Regulations and the Brokers Regulations were not applicable to the Noticee at the time of execution of pair contract but after September 28, 2015, the Noticee is obligated to comply with FPP criteria on continuous basis.
36. The Noticee has placed reliance on the order dated June 20, 2006, passed by the SAT in the matter of Kasat Securities Private Ltd. Vs. SEBI, wherein, it has been observed "*... that merely because the appellant acted as a broker cannot lead us to the conclusion that it must have known about the nature of the transaction. There has to be some other material on the record to prove this*

*fact.*” I note that allegations in the said case were that i) the Appellant therein had aided and abetted its clients in executing the manipulative and fraudulent transactions and thereby failed to exercise due skill and care; and (ii) it failed to collect margins from its clients when it traded on their behalf. Hon`ble SAT in the said order dated June 20, 2006 also observed that *“There is no material on record to show that the appellant as a broker knew that the trades were fictitious or that the buyer and the seller were the same persons..... Therefore, it was not possible for the broker to know who the parties were. Merely because the appellant acted as a broker cannot lead us to the conclusion that it must have known about the nature of the transaction”*. However, in the present case NSEL itself was advertising such contracts as an alternative to fixed deposits. The return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits. Therefore, in the present case, there were enough red flags for the Noticee to know that the said paired contracts were impermissible and illegal. Accordingly, I find that the said order dated June 20, 2006 is distinguishable on facts and is not applicable to the present case.

37. The Noticee has also placed reliance on the judgment of the Hon`ble High Court, Bombay in the matter of Tri-Sure India Ltd. Vs. A.F. Ferguson and Co. & Others, wherein, it has been observed that *“It is well-established law that it is sufficient if one exercises the ordinary skill of an ordinary competent man exercising that particular art. It hardly requires to be stated that the burden to prove any action of negligence rest primarily on the plaintiff who, to maintain the action, must show that he was injured by the negligent act or omission for which the defendant in law, is responsible.”* I find that the said judgment is distinguishable on facts as well as law and is not applicable to facts of the present case.

38. It is a matter of record that SEBI has filed a complaint dated September 24, 2018 with EOW seeking appropriate action under Sections 20 and 21 and other

applicable provisions of FCRA against the brokers/members of NSEL, mentioned in the list attached thereto. I note that the Noticee is listed at serial no. 237 in the said list. Pursuant to the SEBI complaint, FIR No. Spl LAC No. 110/18 dated September 28, 2018 under section 154 of the Code of Criminal Procedure, 1973 has been registered at the MIDC Police Station, Mumbai against the same trading members, which were listed in the SEBI complaint to EOW. I note that the said FIR is currently pending. In view thereof, I note that disqualifications contained in paragraph 3(b)(i) of Schedule II of Intermediaries Regulations are attracted against the Noticee.

39. When the pendency of a criminal complaint or FIR filed by SEBI is prescribed as a negative criterion / disqualification from eligibility under Schedule II of the Intermediaries Regulations, it is imperative for me to consider the same while adjudging the eligibility of the Noticee to continue to hold the authorization granted. In my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of distinctly identifiable parameters, which would apply uniformly to all intermediaries. To reiterate, the fact that SEBI has filed a complaint and FIR has been registered against the Noticee and the same is pending, in itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.
40. I note that the Noticee has contended that SIT-EOW has filed final charge sheet before the Hon`ble Sessions Court, Mumbai, Court No.52, CF No.23615/2022, where it has been made a witness at Sr. No.192 of the witness list. Further, it is contended by the Noticee that neither the Noticee nor its employee have been arrayed as accused in the said charge sheet. In support of the said contention, the Noticee has filed affidavit dated February 22, 2023. The affidavit also states that the certified copy of the above final charge sheet has been obtained from the Hon`ble Sessions Court, Mumbai by SEBI. The Noticee has not annexed copy of charge sheet stated to have been filed by EOW. I note that EOW has filed charge sheets in FIR No. 89/2013 registered on the

complaint of one Pankaj Saraf. However, FIR lodged by EOW on the complaint of SEBI is Spl LAC No. 110/18 dated September 28, 2018 which is still pending.

41. The evaluation of the facts and legal provisions as brought out above, compels me to arrive at the conclusion that the Noticee is not a 'fit and proper' person and hence is not eligible to continue its business as a stock broker using the certificate of registration no. INZ000042837 granted by SEBI.

### **DIRECTIONS**

42. In exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, 2008, I, hereby, cancel the Certificate of Registration bearing no. INZ000042837 of the Noticee i.e. Sunidhi Commodities Private Limited.
43. Upon receipt of this order, the Noticee shall immediately inform its existing clients, if any, about the direction at paragraph 42 above.
44. Notwithstanding the direction at paragraph 42 above,
  - (i) The Noticee shall allow its existing clients, if any, to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients; and
  - (ii) The Noticee shall square off open positions, if any, within 30 days from the date of this order.
45. This order shall come into force with immediate effect.

46. A copy of this order shall be served upon the Noticee and the recognized Stock Exchanges, Depositories and Clearing Corporations for necessary compliance.

**Date: March 31, 2023**

**Place: Mumbai**

**Sd/-**

**GEETHA G**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**SECURITIES AND EXCHANGE BOARD OF INDIA  
ORDER**

**UNDER SECTION 12 (3) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.**

**In respect of:**

<b>NOTICEE</b>	<b>SEBI REGISTRATION No.</b>
<b>SSJ Commodities Private Limited</b>	<b>INZ000013439</b>

**In the matter of National Spot Exchange Limited**

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**I. Background**

1. SSJ Commodities Private Limited ("**SSJ**" / "**Noticee**") is registered with Securities and Exchange Board of India ("**SEBI**") as a Stock Broker bearing SEBI Registration No INZ000013439. The Noticee is a commodities derivative broker and member of Multi Commodity Exchange of India Ltd ("**MCX**") and National Commodity & Derivatives Exchange Ltd. ("**NCDEX**"). SSJ was Member of the National Spot Exchange Limited ("**NSEL**")
2. As the Noticee was a member of the NSEL and had participated in/facilitated trading in 'paired contracts' on the NSEL platform, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the "**Intermediaries Regulations**") and appointed a Designated Authority (hereinafter referred to as the "**DA**") vide order dated September 24, 2018, to enquire into whether the Noticee was a 'fit and proper person' (hereinafter referred to as "**FPP**") to continue to hold the certificate of registration as Stock Broker in terms of

Regulation 5 (e) read with Regulation 27 (iv) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the “**Broker Regulations**”).

## II. Brief History of Illegal Forward Contracts on NSEL:

3. Before considering the compliance of the Noticee with the FPP criteria, it would be appropriate to have a preliminary discussion on the background of NSEL which forms the basis of the current proceedings.
4. NSEL was incorporated in 2005 as an exchange for spot trading of commodities. I note from the FMC Order No.4/5/2013-MKT-1/B dated December 17, 2013 (“**FMC Order**”), that on June 05, 2007, the Department of Consumer Affairs (“**DCA**”), Ministry of Consumer Affairs, Food and Public Distribution, Government of India, issued a Notification S.O.906(E) under Section 27 of Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) granting certain exemptions from the provisions of FCRA to NSEL subject to specified conditions. The relevant extract of the said notification is reproduced hereunder for ease of reference:

*“...the Central Government exempts all forward contracts of one day duration for the sale and purchase of commodities traded on the National Spot Exchange Limited, from operation of the provisions of the said Act subject to the following conditions, namely:*

- i. no short sale by members of the Exchange should be allowed;*
- ii. all outstanding positions of the trade at the end of the day shall result in delivery;*
- iii. the 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;*
- iv. all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

*.....”*

5. The aforesaid notification was amended on February 6, 2012 by DCA vide Gazette Notification S.O. 228(E) specifying “Forwards Market Commission, Mumbai” as the designated agency of the Central Government.
  
6. NSEL commenced operations in October 2008. It is seen from the FMC Order and the Judgement dated April 22, 2022 of the Hon’ble Supreme Court, in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, that NSEL, in September 2009, introduced the concept of ‘paired contracts’, which involved buying and selling the same commodity through two different contracts at two different prices, wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In short, the ‘paired contract’ involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. “T” indicates the trade date, that is, the date on which the trade took place; and +2 or +3 or +25 or+36, indicates the number of business days after the trading day when the delivery of the commodity and the payment of price ought to have been made. The transactions were structured in a manner that the buyer of the short duration contract always ended up making profits.
  
7. Further, from Para 8 of the FMC Order, I note that the DCA on April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the notification dated June 05, 2007. In response to the same, NSEL submitted a reply vide their letter dated May 29, 2012. DCA, vide its letter dated May 31, 2012, sought comments of the FMC on the NSEL reply. The FMC, vide its letter dated August 02, 2012 to the DCA provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:
  - a. Short Sale by members of the Exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order. FMC was of the view that all those sale transactions which are not

backed by the ownership of goods were in violation of the condition of *“no short sale by the members of the Exchange shall be allowed”*.

b. Contracts in which settlement period goes beyond 11 days: In view of the definition of forward contract under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are Non-Transferable Specific Delivery contracts. Thus even if the gazette notification does not specify the delivery period, NSEL had to settle the delivery for all open position within a period of 11 days as NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days.

8. I also note from Para 8 of the FMC Order that DCA, vide its letter dated July 12, 2013, directed NSEL to give an undertaking that:

- a. *No further/ fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and*
- b. *All the existing contracts will be settled on the due dates.*

9. To sum up, as per the original notification dated June 05, 2007, NSEL was granted conditional exemption from the provisions of FCRA for all forward contracts of one-day duration for the purchase and sale of commodities. The two main conditions were that (i) there should be no short sale and (ii) all outstanding positions at the end of the day should result in delivery. Thereafter, FMC had observed with order dated December 17, 2013 that 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA. Under the FCRA, a *“forward contract”* is defined as a *“contract for delivery of goods and which is not a ready delivery contract”*. A *“ready delivery contract”* is defined as *“a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”*. In view of the said definition contained in FCRA, FMC was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable

Specific Delivery contracts. NSEL, thus, had permitted contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL vide the Government Notification dated June 05, 2007.

10. Further, I note that the Hon’ble Supreme Court, in its Judgement dated April 22, 2022 in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, while drawing reference to the presentations made by NSEL in respect of ‘paired contracts’ had *inter alia* held that:

*“44.... NSEL in the course of its brochures has held out representations about the trading and investment opportunities available for:*

- a) corporate clients*
- b) high net worth individuals; and*
- c) retail investors*

*45. Under the head of “contract specifications”, the following representation has been held out:*

<i>Commodity</i>	<i>Duration</i>	<i>Investment (lacs.)</i>	<i>Yield</i>
<i>Castor Seed</i>	<i>T+3 &amp; T+36</i>	<i>7.5 -9 Lacs</i>	<i>16%</i>
<i>Castor Oil</i>	<i>T+5 &amp; T+30</i>	<i>7-9</i>	<i>16%</i>
<i>Cotton Wash Oil</i>	<i>T+2 &amp; T+25</i>	<i>10</i>	<i>16%</i>
<i>Paddy</i>	<i>T+2 &amp; T+25</i>	<i>3.5-4.5</i>	<i>16%</i>
<i>Steel</i>	<i>T+2 &amp; T+25</i>	<i>4.5-5</i>	<i>16%</i>
<i>Raw Wool</i>	<i>T+2 &amp; T+25</i>	<i>3.5-4</i>	<i>16%</i>
<i>Wool Top</i>	<i>T+2 &amp; T+25</i>	<i>1.8-2</i>	<i>16%</i>
<i>Crude Soybean Oil</i>	<i>T+2 &amp; T+25</i>	<i>3.3.-3.5</i>	<i>16%</i>
<i>Soya DOC</i>	<i>T+2 &amp; T+25</i>	<i>1.7-2.0</i>	<i>16%</i>
<i>Refined Mustard Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Soybean Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>

<i>Refined Sunflower Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>RBD Palmolein Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Sugar</i>	<i>T+2 &amp; T+25</i>	<i>3.0</i>	<i>16%</i>
<i>Maize</i>	<i>T+2 &amp; T+25</i>	<i>3.0</i>	<i>16%</i>

*The above representation specifies:*

- (i) Commodities;*
- (ii) Duration of trades;*
- (iii) Investment; and*
- (iv) Yield.*

*For example, in the case of castor seeds, NSEL held out a buy contract (T+3) and sale contract (T+36), in which the yield is stated to be 16%. Moreover, NSEL represented that:*

***“Opportunities***

- Traders can trade and lock their return*
- Trader has to buy in near settlement contract and sell in far settlement contract simultaneously*
- Price for both settlement available*
- Exchange provides counterparty guarantee risk*
- No basis risk, No link with future contracts*

*While describing the features of trading opportunity, NSEL represented that:*

***“Features of Trading Opportunity:***

- T+2 and T+25 contract offers unique trading opportunity to traders*
- Trader purchases T+2 contract and simultaneously sells T+25 contract*
- Pay-in obligation is on T+2 while Pay-out of the funds will be on T+25. Entire settlement cycle is of 35-37 days*

- *Price differential between the two settlement dates i.e premium if annualized offers interest rate of about 16%*
- *Income arising out of such trades are treated as Business Income”*

*While comparing the investment opportunities of bank fixed deposits with trading opportunities at NSEL, NSEL represented that:*

**“Comparison**

- *Bank FD 9.25% for 390 days; NSEL Trading Opportunity 16%;*
- *Bank FD minimum duration 390 days; NSEL Trade duration 35-55 days, depending on the contract*
- *Traders have an option of rolling over their position as per their convenience*

.....

*The above representation indicates that paired contracts were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. Therefore, NSEL represented that on receiving money and commodities, the members would receive ‘assured returns’ and a ‘service’. Though NSEL has been receiving ‘deposits’, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act.”*

11. As such, both the FMC Order and the aforesaid order of Hon’ble Supreme Court have explicitly brought out the details as to how NSEL permitted short sales - i.e. by permitting sellers to offer contract for sale of commodities on its

platform without ensuring that requisite amount of commodity is available in the warehouse.

12. It is also pertinent to note that the Hon'ble Supreme Court in another Judgement dated April 30, 2019, titled 63 Moons Technologies Ltd Vs. Union of India, Civil Appeal No. 4476 of 2019 observed that these contracts were in the nature of "financing transactions". The relevant extract of the said order is as under: -

*"55.3. We have seen that neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such paired contracts. There is no doubt that such paired contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA."*

### **III. Show Cause Notice, Reply and Hearing**

13. In light of the background and history narrated above, the DA issued show cause notice dated September 25, 2018 to the Noticee, calling upon it show cause as to why appropriate recommendation should not be made against it as prescribed under Regulation 27 of the Intermediaries Regulation read with Section 12(3) of the SEBI Act. Upon completion of the enquiry, the DA submitted its report dated October 31, 2019, recommending cancellation of the certificate of registration granted to the Noticee, since the Noticee was not a FPP.
14. Pursuant to the same, a post enquiry show cause notice (hereinafter referred to as the "**SCN-1**") dated January 08, 2020, was issued to the Noticee, under Regulation 28(1) of the Intermediaries Regulations to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the

Noticee. A copy of the DA's Report was also forwarded to the Noticee along with an advice to file a reply, if any, within 21 days from the date of receipt of the notice. Along with the DA's Report, a letter dated December 30, 2014 of the Ministry of Finance ("**MoF**"), Department of Economic Affairs ("**DEA**") addressed to the Chairman, FMC, was provided to the Noticee, wherein it was stated that the DEA was in agreement that NSEL had violated the conditions of exemptions granted to it under the FCRA. Further, the Order dated August 22, 2014 of Hon'ble Bombay High Court, in the matter of *Jignesh Prakash Shah Vs. The State of Maharashtra*, Criminal Bail Application No. 1263 of 2014, wherein it was held that the brokers through whom the paired contracts were entered into had knowledge of the illegality of such contracts, was also furnished to the Noticee. The SCN-1 also *inter alia* highlighted the observations made by the Hon'ble Supreme Court in the matter of *63 Moons Technologies Ltd. Vs. Union of India* (order dated April 30, 2019), wherein it was held that paired contracts were in fact financing transactions in breach of exemptions granted to NSEL under the FCRA. The Noticee submitted its reply to the SCN-1 vide letter dated February 26, 2020.

15. In the meantime, while the proceedings in the present matter were ongoing, Whole Time Member, SEBI ("**WTM**") passed certain orders rejecting the applications of five other entities for registration as commodity brokers. The Hon'ble Securities Appellate Tribunal ("**Hon'ble SAT**") vide its order dated June 9, 2022 remitted the matters to the WTM to decide the matter afresh after giving an opportunity of hearing to the brokers. Further, Hon'ble SAT had observed that

*"...It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by SEBI should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice".*

16. In light of the order of Hon'ble SAT dated June 9, 2022, supplementary show cause notice dated October 07, 2022 (hereinafter referred to as "**SCN-2**") was issued to the Noticee. Vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to Economic Offence Wing ("**EOW**"), First Information Report ("**FIR**") dated September 28, 2018 filed by SEBI and the amended Schedule II of the Intermediaries Regulations were furnished to the Noticee calling upon it to show cause as to why information/material provided therein along with the Enquiry Report should not be considered against the Noticee.
17. In response to the SCN-2, the Noticee vide letter dated January 05, 2023 has submitted its reply in line with the earlier submissions made by it.
18. In order to proceed with the matter, a hearing was granted to the Noticee in terms of Regulation 27(4) of the Intermediaries Regulations as the DA had recommended cancellation of the certificate of registration of the Noticee. On request of the Noticee the hearing scheduled on December 6, 2022 was adjourned and finally the hearing was held on January 17, 2023 which was duly availed by the Noticee through its counsel Mr. Vinay Chauhan along with Directors viz. Mr. Suresh Chand Jain and Mr. Saurabh Jain and reiterated the submissions made in replies dated February 26, 2020 and January 05, 2023. Subsequent thereto, the Noticee vide letter dated January 23, 2023 filed additional submissions. The summary of the said replies of the Noticee is given hereunder:
- a. The transactions pertain to period September 2012, for which show cause notice was issued by DA, after inordinate delay of around 6 years, in 2018.
  - b. The allegations in the Show Cause Notice do not survive in light of the findings/observations of the Hon'ble SAT in its Order dated 9.6.22 in the matter of Geofin Comtrade Ltd. vs. SEBI- SAT Appeal No 214 of 2019. It is clear from the observations that, merely because the Noticee executed trades on the platform of the exchange, same cannot

automatically mean, that the Noticee as broker is closely connected to the exchange. Further, association cannot be alleged or inferred; same has to be established, both legally and factually. There is no material to demonstrate direct or indirect connection or association of Noticee with NSEL with regard to trading in alleged paired contracts. Their relationship was limited to exchange-broker relationship.

- c. The Noticee executed trades on NSEL during the period June 15, 2012 to July 19, 2013 on behalf of 40 unique clients out of a total of 65,000 clients registered with it. Regarding the allegation of failure to carry out due diligence, it is submitted that the legality of the products to be traded on its platform is to be ensured by the Exchange and not by the Trading Members. There was no occasion for the Noticee to suspect wrongdoing by NSEL in respect of paired contracts. Since at the relevant time, the Central Government who had granted the exemption to NSEL did not alert the public at large that NSEL was not complying with the conditions stated in the Notification. Paired contracts were being traded on the platform of NSEL for a period of around 4 years with their details already available in public domain and on the website of NSEL. Thus, when the Noticee had commenced trading on NSEL in June 2012: (i) the trading in the alleged paired contracts had already been going on since September 2009; (ii) No Government Agency had raised any issues with regard to alleged trading in paired contracts; (iii) FMC, which was appointed as Designated Agency in 2011 had also not raised any issues with regard to alleged paired contracts.
- d. As per the order of Hon'ble Supreme Court dated 22.4.22 (State of Maharashtra vs 63 Moons Technologies Ltd- (2022) 9 SCC 457), it is NSEL and certain handful of members who have acted in collusion and duped other trading members. The Noticee itself is a victim of the fraud perpetrated by NSEL and has suffered huge monetary losses. Unlike such handful of large brokers, the Noticee

- i. had not brought in any investors to invest in pair trades or induced clients to trade or promised them assured returns etc.
  - ii. had not financed clients through NBFC arms, for the purpose of trading on NSEL.
  - iii. had not received back from NSEL any charges (collected from investors) like transaction fees, delivery and warehousing charges, etc.
  - iv. had not received any "motivation incentives" for generating huge volumes.
  - v. had not made any effort to increase turnover at the exchange.
- e. Merely because FIR has been filed by SEBI against the Noticee, SEBI cannot proceed mechanically and ignore the contents and quality of the Complaint which lack any credible foundational basis. Merely because the Complaint/FIR is pending, same cannot result in automatic disqualification. If the name of the Noticee is not figuring as 'accused' in EOW charge sheet, then the whole basis for branding as not 'fit and proper person' collapses.
- f. The amendments in Schedule II of the Intermediaries Regulations (which came into effect from November 17, 2021) are prospective in nature and the same cannot be applied retrospectively in order to decide the Noticee as a FPP for holding the certificate of registration. The alleged transactions pertain to September 2012, the show cause notices were issued in 2018, 2020 and 2022, the Complaint/FIR was filed by SEBI in September 2018 and the amendments being relied on pertain to November 2021. The said amended provisions cannot be relied on for deciding fit and proper person criterion qua the Noticee, based on the alleged transactions which took place in September 2012 and for which Complaint/FIR was filed way back in 2018.

- g. The Noticee submitted that, while recommending cancellation, the DA has totally ignored and failed to consider the 'principles of proportionality' and relied on certain judgments to support the contention.
- h. The Noticee is a commodity broker since 2003 and a member of MCX and NCDEX. Its track record of the Noticee for the last 20 years has been unblemished and impeccable. The present proceedings under Intermediaries Regulations does not fall within the purview of Section 29A(2)(e) of the FCRA and that the commodities brokers came under the regulatory ambit of SEBI Regulations only after September 28, 2015 and therefore, the Noticee cannot be held liable for the alleged violations of SEBI Regulations for the period prior to September 28, 2015. SEBI has granted registration to the Noticee as a broker on February 24, 2016 despite being aware of the alleged transactions. Post the grant of said registration, SEBI along with Exchanges have conducted joint inspections of its operations. No violations, pertaining to fraudulent or unfair trade practices etc. have been found qua the Noticee. There are no investors' complaints etc.
- i. The Noticee submitted that they had carried out the trades on behalf of the clients in the ordinary course of business. They had not funded any clients for trades on NSEL.
- j. The Noticee started trading on NSEL since June 15, 2012, more than 4 years since NSEL had been in operation as an exchange. Its insignificant trading volume and paltry amount of brokerage earned itself dispel the notion of any wrongdoing, including having any knowledge or awareness about the illegality of alleged paired contracts.
- k. On various occasions, FMC had maintained that NSEL was not being regulated by it. SEBI has no power, authority or jurisdiction to consider, deal and decide the matter with regard to trading done by the Noticee on

NSEL in various contracts. There is inherent lack of jurisdiction on part of SEBI.

- I. None of the observations of EOW, which have been made broadly and sweepingly (against large brokers), are applicable to the Noticee. The EOW report itself does not accuse the Noticee of any such role. Further, the Show Cause Notice dated September 25 2018 as also the DA's Report have neither alleged nor brought out any of the said activities as pertaining to the Noticee. Therefore, based on the same no adverse inferences can be drawn against the Noticee.

#### **IV. Consideration of Issues**

19. I have considered the SCN-1, SCN-2, the Enquiry Report submitted by the DA, Noticee's replies dated February 26, 2020 and January 05, 2023 and January 23, 2023 and other material available on record. Having regard to the same, I now proceed to deal with the issues in the present matter.
20. It is alleged that the Noticee has violated Regulation 9(b) and (f) read with Clause A(1), A(2) and A(5) of the Schedule II of the Broker Regulations and Regulation 5(e) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. The relevant provisions are reproduced hereunder: -

#### **Provisions of Broker Regulations:**

##### **Consideration of application for grant of registration.**

*5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant, -*

.....

*(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.*

##### **Conditions of registration.**

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,-

.....  
(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him...

.....  
(f) he shall at all times abide by the Code of Conduct as specified in Schedule II

SCHEDULE II  
Securities and Exchange Board of India (Stock Brokers) Regulations, 1992  
**CODE OF CONDUCT FOR STOCK BROKERS**  
[Regulation 9]

**A. General.**

- (1) *Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*
- (2) *Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*
- (3).....
- (5) *Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

**Provisions of Intermediaries Regulations:**

**“SCHEDULE II**  
**SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)**  
**REGULATIONS, 2008**  
**[See regulation 7]**

- (1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*
  - (a) *the competence and capability in terms of infrastructure and manpower requirements; and*
  - (b) *the financial soundness, which includes meeting the net worth requirements.*
  
- (2) *The ‘fit and proper person’ criteria shall apply to the following persons:*
  - (a) *the applicant or the intermediary;*
  - (b) *the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*

*(c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*

*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria.*

**Explanation–** *For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

*(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*

*(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*

*(b) the person not incurring any of the following disqualifications:*

*(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*

*(ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*

*(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*

*(iv) recovery proceedings have been initiated by the Board against such person and are pending;*

*(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*

*(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*

*(vii) such person has been declared insolvent and not discharged;*

*(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*

*(ix) such person has been categorized as a wilful defaulter;*

*(x) such person has been declared a fugitive economic offender;  
or*

*(xi) any other disqualification as may be specified by the Board from time to time.*

*(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*

*(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.*

*(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary: Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.*

*(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."*

21. I note that the Noticee has contended that there is an inordinate delay of around 6 years in initiation of proceedings. In this regard, I note that the NSEL scam unfolded in 2013 after which several agencies such as EoW, Serious Fraud Investigation Office ("SFIO"), Directorate of Enforcement ("ED"), etc. conducted investigations into the activities of NSEL. Charge sheets are still

being filed in the matter by these agencies. A large number of brokers had participated in the illegal forwards contracts at NSEL platform. After the merger of FMC with SEBI on September 28, 2015, some of these brokers applied for registration with SEBI. Subsequently, the FMC and the Hon'ble Supreme Court had made very critical observations about the trades on NSEL being short sale of commodities without ensuring availability of commodity in the warehouse and that they were 'paired contracts' which were in fact 'financing transactions' etc. as brought out in paragraph 7 to 12 above. It is true that the trades and actions were of the year 2012-2013. However, the jurisdiction was conferred on SEBI only on September 28, 2015. Thereafter assessing all the factual circumstances available before SEBI and considering the importance of fulfilling FPP criteria by commodity brokers, action was duly initiated against the set of brokers who executed the alleged trades. Further, as noted at paragraph 15 above, while the instant matter was under consideration, the Hon'ble SAT vide its order dated June 9, 2022 remitted certain orders pertaining to some other brokers who had also participated in paired contracts on NSEL to SEBI to decide the matter afresh. The Hon'ble SAT left it open to SEBI to rely on other material like EOW charge sheet, complaint letters etc., after providing the same to the appellants therein. Keeping in line with the aforesaid order of the Hon'ble SAT, the SCN-2 was issued to the Noticee on October 7, 2022. I note that the documents have been provided to them and the Noticees have filed detailed replies in the matter. Unlike other cases where delay may be a vitiating factor, depending on the facts and circumstances in which certain transactions were allegedly executed, the core issue in the instant case pertains to the adjudication of FPP criteria of the Noticee and the same being a continuing criteria, I am of the view that delay cannot be attributed to the initiation of the proceedings.

22. From the reply of the Noticee, it is seen that the Noticee has admitted to the fact of execution of certain trades on the NSEL platform, referred to as "paired contracts" by FMC and the Hon'ble Supreme Court, on behalf of its client on NSEL. The Noticee contended trades on NSEL for more than one year on behalf of 40 clients. On perusal of the reply of the Noticee, I find that as a broker

with sufficient experience and knowledge, the Noticee ought to have refrained from participating in the subject contracts on such a platform, going by the very structure of the back-to-back contracts. The Noticee contended that the paired contracts were being traded on the platform of NSEL for a period of around 4 years with their details already available in public domain and on the website of NSEL. Further Central Government who had granted the exemption to NSEL did not alert the public at large that NSEL was not complying with the conditions stated in the Notification. In this context, I note that NSEL itself was advertising such contracts as an alternative to fixed deposits. The return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits. I am, therefore, of the view that while participating in such contracts, the Noticee failed to examine the basic nature of the product and also failed in understanding the source of powers relied upon by NSEL for selling such products which other exchanges were not offering. Thus, the Noticee failed to conduct proper and effective due diligence on these aspects of “paired contracts” which were not essentially spot contracts.

23. The Noticee has also contended that SEBI has no power, authority or jurisdiction to consider, deal and decide the matter with regard to trading done by the Noticee on NSEL in various contracts. I note that the Finance Act, 2015 conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, including registration as commodity derivatives broker with SEBI. It is noted from the submission of the Noticee that the registration as intermediary was granted on February 24, 2016. I also note that as the commodity derivatives are now under the purview of SEBI, following the amendments to the FCRA, the contention of the Noticee in this regard are not tenable.

24. I note that the Noticee has also raised the issue regarding consideration of various factors while applying the doctrine of proportionality. As the matter

pertains to ascertaining of the FPP criteria of the brokers, I do not find it appropriate to apply the test of severability or proportionality to the tainted contracts.

25. I further note that the SCN-1 dated January 08, 2020 provided the Noticee along with the DA's Report, the letter dated December 30, 2014 of the DEA, MoF addressed to FMC and copy of Order dated August 22, 2014 passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*. and the Noticee was called upon to show cause as to why information/material brought therein should not be considered along with Enquiry Report. I note that the Hon'ble SAT, in its order dated June 09, 2022, in respect of the applications of five other entities for registration as commodity brokers, has held that the observations in the bail rejection order of the Hon'ble Bombay High Court cannot be relied upon as the observations therein are limited to the fact as to whether the bail should be granted or not. Further, I note that the Bombay High Court Judgment dated August 22, 2019 was set aside by the Hon'ble Supreme Court vide its judgment dated April 22, 2022, in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*, Civil Appeal No. 2748 of 2022. Accordingly, I find that the said documents are not relevant for consideration in the present matter.

26. I also note that vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to EOW, FIR dated September 28, 2018 filed by SEBI and the amended Schedule II of the Intermediaries Regulations was provided to the Noticee. I note that Schedule II of the Intermediaries Regulations was amended vide SEBI(Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021 and the following disqualifications have been included amongst others:

*“(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;”*

27. I also note that as per the amendment, the disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3) of Schedule II to the Intermediaries Regulations, shall not have any bearing on the FPP criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter.
28. It is pertinent to note that in terms of Regulation 5(e) of Broker Regulations, the eligibility criteria for an entity to get registered as a stock broker includes that it should be a 'fit and proper person' based on the criteria specified in Schedule II of Intermediaries Regulations. It has been specified in Clause 7 of Schedule II of Intermediaries Regulations that the said criteria are required to be satisfied by the intermediary at the time of registration as well as during the continuity of registration with SEBI. Therefore, even if the Noticee fulfilled the eligibility requirements at the time of grant of certificate of registration, it is required to continually comply with the criteria including those conditions which are incorporated subsequently. It is also settled position that the authority which has the power to grant registration also has the power to cancel or suspend the same, if there are valid reasons for such action. Thus, the only question at this point of time is whether the Noticee can be said to be a FPP as a broker today.
29. It is a matter of record that SEBI has filed a complaint dated September 24, 2018 with Economic Offence Wing (EOW), seeking appropriate action under Sections 20 and 21 and other applicable provisions of FCRA against the brokers/members of NSEL, mentioned in the list attached thereto. I note that the Noticee is listed at serial no. 233 in the said list. Pursuant to the SEBI complaint, FIR No. Spl LAC No. 110/18 dated September 28, 2018 under section 154 of the Code of Criminal Procedure, 1973 at the MIDC Police Station, Mumbai requesting it to take lawful action against the same trading members, which were listed in the SEBI complaint to EOW. I note that the said FIR is currently pending. In view thereof, I note that disqualifications contained

in paragraph 3(b)(i) of Schedule II of Intermediaries Regulations are attracted against the Noticee.

30. When the pendency of a criminal complaint or FIR filed by SEBI is prescribed as a negative criterion / disqualification from eligibility under Schedule II of the Intermediaries Regulations, it is imperative for me to consider the same while adjudging the eligibility of the Noticee to continue to hold the authorization granted. In my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of distinctly identifiable parameters, which would apply uniformly to all intermediaries. The FPP criteria, being an eligibility criteria which has to be complied with on a continuing basis, the question of prospective application does not arise, as contended by the Noticee. To reiterate, the fact that SEBI has filed a complaint and FIR against the Noticee and the fact that both are pending, by itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.
31. The evaluation of the facts and legal provisions as brought out above, compels me to arrive at the conclusion that the Noticee is not a 'fit and proper' person and hence is not eligible to continue its business as a stock broker using the certificate of registration no. INZ000013439 granted by SEBI.

### **DIRECTIONS**

32. In exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, 2008, I do hereby, cancel the Certificate of Registration bearing no. INZ000013439 of the Noticee i.e. SSJ Commodities Private Limited.
33. Upon receipt of this Order, the Noticee shall immediately inform its existing clients, if any, about the direction at paragraph 32 above.

34. Notwithstanding the direction at paragraph 32 above,
- a. the Noticee shall allow its existing clients, if any, to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any client to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients; and
  - b. the Noticee shall square off open positions, if any, within 30 days from the date of this order.
35. The Order shall come into force with immediate effect.
36. A copy of this order shall be served upon the Noticee and the recognized Stock Exchanges, Depositories and Clearing Corporations for necessary compliance.

**Date: March 31, 2023**

**Place: Mumbai**

**Sd/-**  
**GEETHA G**  
**CHIEF GENERAL MANAGER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

## SECURITIES AND EXCHANGE BOARD OF INDIA

## ORDER

Under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of -

Sr. No.	Name of the Noticee	SEBI Registration No.	PAN
1.	Purvag Commodities & Derivatives Pvt. Ltd.	INZ000031236	AAACS5626H

in the matter of National Spot Exchange Limited

**BACKGROUND**

1. The present proceedings originate from the Enquiry Report dated November 26, 2019, submitted by the Designated Authority (hereinafter referred to as “**DA**”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereafter referred to as “**Intermediaries Regulations**”) as applicable at the relevant point in time. The DA, based on the facts noted in the said enquiry report, has recommended that the registration of M/s. Purvag Commodities and Derivatives Pvt. Ltd. (hereinafter referred to as “**PCDPL/ Noticee**”) as a stock broker bearing registration No. INZ000031236 may be cancelled.
2. In this regard, a DA was appointed to enquire into and to submit a report pertaining to the acts of the noticee and into the possible violations of regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of the Intermediaries Regulations, alleged to have been committed by the noticee.
3. After conducting the enquiry as envisaged under Regulation 25 of the Intermediaries Regulations, on the basis of materials available on record and after considering the replies filed by the noticee, the DA submitted an enquiry report dated November 26, 2019 (hereinafter referred to as ‘the Enquiry Report’) in respect of the noticee and found that the noticee, as a stock broker of the National Spot Exchange Limited (hereinafter referred to as “**NSEL**”), had dealt/facilitated in the trading of the ‘paired contracts’ on the exchange

platform of NSEL during the period from September 2009 to August 2013, the period during which NSEL have alleged to have offered trading in 'paired contracts' (hereinafter referred to as "**relevant period**") which was in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "**FCRA**") and the conditions prescribed in the Government of India Notification dated June 05, 2007 (hereinafter referred to as "**2007 Exemption Notification**"). It was also observed in the Enquiry Report that the continuance of the Certificate of Registration of the noticee as a stock broker (having Registration No. INZ000031236) is detrimental to the interest of the securities market and that the noticee is not a 'fit and proper person' to hold the Certificate of Registration No. INZ000031236 as a stock broker in the Securities Markets which is one of the conditions for grant/holding/ continuance of registration, in terms of regulation 5(e), 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. The DA in view of the aforesaid finding has recommended that the Certificate of Registration of the noticee as a commodity derivatives broker may be cancelled.

4. The relevant excerpts of the Enquiry Report is reproduced below:

*"39. In view of the facts and circumstances of the case and material placed before me, I am of the view that the Noticee is not a 'fit and proper person' in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that the registration of the Noticee i.e. Purvag Commodities & Derivatives Pvt. Ltd. [Registration No: INZ000031236] as a commodity derivatives broker may be cancelled."*

5. Pursuant to the same, a Show Cause Notice dated January 15, 2020 (hereinafter referred to as "**SCN**") enclosing therewith the enquiry report of the DA and certain other documents as specified in the said SCN, was issued to the noticee under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration, as recommended by the DA or any other action as may be considered appropriate by the Competent Authority, should not be taken against it, in terms of regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time). The SCN further advised the noticee to submit its reply, if any within 21 days of receipt of the said SCN. I note from the material available on record that the noticee filed its reply vide letter dated February 10, 2020.
6. Meanwhile, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). The Hon'ble SAT vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters

afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon'ble SAT *inter alia* held as under:

*“42...The matters are remitted to the WTM to decide the matter afresh in the light of the observations made aforesaid in accordance with law after giving an opportunity of hearing to the brokers. All issues raised by the brokers for which a finality has not been reached remains open for them to be raised before the WTM. It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice.....”*

7. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the noticee before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as “**SSCN**”, collectively SCN and SSCN being referred to as “**SCNs**”) provided certain additional documents/material (as indicated in the SSCN) to the noticee and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The noticee was further informed that if no reply is received within 15 days of receipt of the SSCN, it would be presumed that it had no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been sent to the noticee through *Speed Post Acknowledgement Due* (for short ‘**SPAD**’) vide letter dated October 11, 2022. In response, the noticee vide letter dated November 10, 2022 submitted its reply.
8. On the scheduled date of hearing which was held through video conferencing on November 29, 2022, Mr. Shailesh Shah, Director of the noticee, Mr. Ashish Jhaveri, authorized representative of the noticee and Mr. Chirag Shah, advocate of the noticee appeared and made submissions in line with its earlier replies. While responding to the SSCN dated October 11, 2022, the noticee in its reply dated November 10, 2022 has requested to read its reply in conjunction with its earlier replies dated October 17, 2018 and February 10, 2020. Further, the noticee was granted a period of 10 days for making post hearing submissions, if any. However, the noticee did not make any additional submissions. Thus the principles of natural justice have been adhered to in the present matter. The matter is fit to be proceeded with, on merit, based on the materials contained in the SCN and SSCN as well as the replies of the noticee available on record.

9. The replies filed by the noticee vide its letters dated February 10, 2020 and November 10, 2022, the oral submissions made during the course of the personal hearing held on November 29, 2022, are summarized hereunder:
- i. The noticee is a part of the Dolat Group, one of the largest proprietary traders in the securities as well as commodity derivative markets. The Noticee had been participating on another FTIL Group Exchange, namely MCX and also member of NCDEX since 2007. The membership was granted to the noticee subject to NSEL byelaws.
  - ii. NSEL had adopted all the necessary requirements in its byelaws for it being said to be an exchange dealing in commodities. This aspect inspired confidence in the noticee apart from the Gazette Notification granting exemption to NSEL.
  - iii. The notification dated 5 June 2007, which was Gazetted, did not cast any independent responsibility upon the members of NSEL, but on the contrary, it saddled NSEL with the responsibility of ensuring that no transaction of short sale took place and that all outstanding positions of trade at the end of the day would result into delivery.
  - iv. Though trading in paired contracts on NSEL started sometime in 2009, the noticee started participating in paired contracts only in December 2010. The noticee participated in the "cash and carry" contracts offered by NSEL under a bonafide belief that the exemption conditions were being adhered to and that the Department of Consumer Affairs (hereinafter referred to as "DCA") and Forward Markets Commission (hereinafter referred to as "FMC") as a regulator were supervising the activities of NSEL.
  - v. NSEL organised trading in paired contracts in violation of the Notification SO 906(E) dated June 05, 2007 issued under Section 27 of the FCRA. However, it is an erroneous conclusion that the noticee traded in such paired contracts which were in alleged violation of the Notification dated June 05, 2007. The noticee was merely a member of NSEL and followed all the byelaws, rules and regulations. It is incumbent upon the regulatory agency to ensure that the regulated entity is not violating any permissions granted to it.
  - vi. Had the FMC taken steps as per condition (vi) of the exemption notification and had withdrawn the exemption when it noticed the violations by NSEL, the question of participating in these contracts by the noticee would not have arisen.

- vii. The noticee had not indulged in any "short sale". The contracts with settlement period beyond 11 days were traded since its launch in 2009. NSEL had repeatedly conveyed to the market participants that the settlement period is well within the stipulated 11 days, since all trades were settled on the same day. It was only the delivery of the long duration contract that was deferred. These contracts were being traded in a "market overt" for a considerable period. DCA and the FMC were fully aware of the contract design, its essential features and allowed the trading to continue unabated for nearly 15 months before the noticee started participating in these contracts.
- viii. The fact that the noticee was member of NSEL and participated in and facilitated trading in paired contracts was known to SEBI when the noticee applied for registration on 27 November 2015. Registration certificate to the noticee was granted on 17 March 2016. There was more than sufficient time to have considered the eligibility of the noticee or lack thereof before granting of the registration certificate. If there were sufficient grounds to inquire whether the noticee is fit and proper to continue to hold certificate of registration, the same should have been considered before granting certificate of registration to the noticee.
- ix. The transactions involving trading of 'paired contracts' have been examined by FMC, Courts, EOW etc. wherein the violations are solely attributable to NSEL and not the noticee. There are no allegations of criminal conspiracy against the noticee nor the noticee has been charge sheeted in the case.
- x. The noticee has never denied that they have participated in the "paired contracts" trading. The noticee is a proprietary trading company and have lost its own funds and by no stretch of imagination can it be stated that the noticee conspired against itself. The constituent clients registered under the noticee were group companies of the noticee and part of the Dolat Group. The noticee was not a broker to third party clients.
- xi. Since the regulations have been amended on 17 November 2021, it cannot be said to be having any retrospective effect. The noticee agreed that being fit and proper is a continuing requirement. However, it defies all logic and rationale that SEBI being fully cognizant of the products being traded on NSEL and all that transpired on NSEL since it suspended the trading in July 2013 and thereafter, it decides to file a complaint with the EOW in September 2018. There has been no investigation pursuant to the said complaint basis which a FIR was registered. Even after four years since the FIR was registered, no charges are being framed. The EOW has

filed a chargesheet after the SEBI complaint was filed or the FIR was registered against some of the broker members of NSEL who are similarly situated as the noticee. The said charge sheet was filed on 25 December 2018, and it does not refer to any offences under the FCRA, which ought to have been included, considering the seriousness of the charges as alleged.

- xii. SEBI intends to apply the amended Regulations retrospectively to the noticee, more particularly entry 3 (b)(i), which seeks to condemn the noticee without due process. Any retrospective reliance on such an amendment which is punitive in nature would be a gross violation of the law and principles of natural justice and liable to be declared unlawful.
- xiii. The amended Regulations, more particularly entry 3(b)(ii) also states that if there is a charge sheet against any intermediary, filed by any enforcement agency, that would be ground for disqualification, whereas, at the same time, it considers an FIR registered pursuant to its own complaint to be a disqualification.
- xiv. The noticee has denied that they have committed any of the alleged violations or there has been any lapse on their part. The noticee had maintained the highest standards as required, both under the Intermediaries Regulations as well as the Broker Regulations and have always complied with the applicable statutory requirements. The noticee disagrees with the conclusions drawn based on pure conjectures, Surmises and innuendo.

#### **CONSIDERATION OF ISSUE AND FINDINGS**

- 10. I have carefully perused the SCNs issued to the noticee and the enquiry report, the replies dated February 10, 2020 and November 10, 2022 filed by the noticee, the oral submissions made on behalf of the noticee during the personal hearing and other material/information available on record. After considering the allegations made/charges levelled against the noticee in the instant matter as spelt out in the SCNs, the issue which arises for my consideration in the present proceedings is whether the noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations and whether the Certificate of Registration granted to the noticee should be cancelled, as recommended by the DA or any other action should be taken against the noticee.
- 11. Before I proceed to examine the issue, as stated above, vis-à-vis the material available on record before me, it would be appropriate at this stage, to refer to the relevant provisions of the law applicable, which are alleged to have been violated by the noticee and/or are referred to in the present proceedings. The same are reproduced below for reference:

## **THE SEBI ACT, 1992**

### ***Registration of stock brokers, sub-brokers, share transfer agents, etc.***

12 (3) *The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:*

*Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.*

## **THE STOCK BROKERS REGULATIONS, 1992**

### ***Consideration of application for grant of registration.***

5. *The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant, (e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008*

### ***Conditions of registration.***

9. *Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -*

*(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;*

*(f) he shall at all times abide by the Code of Conduct as specified in Schedule II*

## ***SCHEDULE II***

### ***Securities and Exchange Board of India (Stock Brokers and Sub-brokers) Regulations, 1992***

#### ***CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]***

##### ***A. General.***

*(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.*

*(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.*

*(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.*

##### ***Liability for action under the Enquiry Proceeding Regulations.***

*27. A stock broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker, if he —*

*(iv) has been found to be not a fit and proper person by the Board under these or any other regulations;*

## **THE INTERMEDIARIES REGULATIONS, 2008**

## ***SCHEDULE II***

SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)  
REGULATIONS, 2008

[See regulation 7]

- (1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*
- (a) *the competence and capability in terms of infrastructure and manpower requirements; and*
  - (b) *the financial soundness, which includes meeting the net worth requirements.*

- (2) *The 'fit and proper person' criteria shall apply to the following persons:*

- (a) *the applicant or the intermediary;*
- (b) *the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) *the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*

*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfil the 'fit and proper person' criteria.*

**Explanation** –*For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

- (3) *For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*
- (a) *integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
  - (b) *the person not incurring any of the following disqualifications:*
    - (i) *criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
    - (ii) *charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
    - (iii) *an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
    - (iv) *recovery proceedings have been initiated by the Board against such person and are pending;*
    - (v) *an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
    - (vi) *any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
    - (vii) *such person has been declared insolvent and not discharged;*
    - (viii) *such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*
    - (ix) *such person has been categorized as a wilful defaulter;*
    - (x) *such person has been declared a fugitive economic offender; or*

- (xi) any other disqualification as may be specified by the Board from time to time.
- (4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.
- (5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.
- (6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:
- Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:*
- Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.*
- (7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clause s (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.”

**Recommendation of action**

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures, –
- (i) disposing of the proceedings without any adverse action;
  - (ii) cancellation of the certificate of registration;
  - (iii) suspension of the certificate of registration for a specified period;
  - (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;
  - (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;
  - (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;
  - (vii) issuance of a regulatory censure to the noticee:

*Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.*

**Order.**

*27. (5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.*

12. In this regard, I note that prior to merger of FMC with SEBI on September 28, 2015, the noticee was required to be a member of recognized commodity derivative exchanges and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Parliament, noticing that the intermediaries dealing with commodities derivatives market were not required to be registered under FCRA and thus were not under control of any competent authority, rectified the same through the Finance Act, 2015 by bringing them under the regulatory supervision of SEBI. The Hon'ble Bombay High Court while dealing with the Writ Petition Nos. 3262, 3266, 3294 and 3295 of 2018 in the matter of *Anand Rathi Commodities Limited, Motilal Oswal Commodities Broker Private Limited, Geofin Comtrade Limited and IIFL Commodities Limited* vs. SEBI vide its Order dated October 04, 2018, observed as under:

*“It is not in dispute that prior to the coming into effect of the Finance Act, 2015, the intermediaries dealing with the commodity derivatives were not required to be registered under any of the provisions of law including the FCR Act. We find that the said mischief was noticed by the Parliament. As such, by virtue of the Finance Act, 2015, the said intermediaries dealing with commodity derivatives have been brought under the control of SEBI. We find that the reason as to why by Finance Act, 2015, the said intermediaries were brought under the control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority”.*

13. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e. September 28, 2015), the noticee was not required to be registered under the FCRA or any other regulation to act as a commodity derivatives broker. However, after the merger of FMC with SEBI, a commodity derivatives broker was mandatorily needed to have a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide

Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 1952 but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to SEBI within 3 months from September 28, 2015. Accordingly, the noticee applied for a certificate of registration and was registered as a broker *w.e.f.* December 24, 2015 and since then it has been acting as a market intermediary registered with SEBI.

14. In the light of the order passed by the Hon'ble SAT on June 09 2022, as mentioned at Para 6 above (hereinafter referred to as "**SAT Order**") in the NSEL matters, a SSCN dated October 11, 2022 enclosing a copy of the SAT Order was issued to the noticee calling upon the noticee to show cause as to why the following information/material along with the enquiry report dated November 26, 2019 should not be considered against it for determining whether the noticee satisfies '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations:
  - a. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing (**EOW**);
  - b. First Information Report (**FIR**) dated September 28, 2018; and
  - c. Amended Schedule II of the Intermediaries Regulations.
15. Before moving forward to consider the matter on merits and test the fulfilment of the '*fit and proper person*' criteria by the noticee, on the basis of available material including the additional material as detailed at paragraph 14 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:
  - i. The noticee, M/s Purvag Commodities and Derivatives Private Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000031236 with effect from December 24, 2015 and is currently a member of the National Commodity & Derivatives Exchange Ltd. (**NCDEX**), National Commodity & Derivatives Exchange Clearing Corporation, Multi Commodity Exchange of India Ltd. (hereinafter referred to as "**MCX**"), Multi Commodity Exchange of India Clearing Corporation (**MCXCCL**), National Stock Exchange of India Ltd. (NSE) and NSE Clearing Ltd.
  - ii. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia*, including "*no short sale by the members of the exchange shall be allowed*" and "*all outstanding positions of the trades at the end of the day shall result in delivery*".

- iii. NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short “MCA”), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one-day duration, traded on NSEL subject to certain conditions which, *inter alia*, included that ‘*no short sale by members of the NSEL shall be allowed*’ and that all ‘*outstanding positions of the trade at the end of the day shall result in delivery*’. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency.
- iv. In October 2008, the NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that the NSEL had introduced the concept of ‘*paired contracts*’ in September 2009 which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on the NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
- v. On February 06, 2012, the erstwhile FMC was appointed by the Department of Consumer Affairs, Government of India as the ‘designated agency’ as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors’ interest. FMC had accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as “FMC Order”) wherein it was *inter alia* observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of ‘no short sale by members of the exchange shall be allowed’ was being not complied with by the NSEL and its members. FMC further observed that the ‘paired contracts’ offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violation of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.

16. From the perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

**a. Short Sale**

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of "no short sale by members of the NSEL shall be allowed" was not being met by the NSEL and its trading/clearing members who traded in the 'paired contracts' during the relevant period.

**b. Contracts with Settlement Period going beyond 11 days**

Some of the contracts offered for trade on the NSEL had settlement periods exceeding 11 days and therefore, such contracts were "non-transferable specific delivery" contracts under the FCRA. As per the FCRA, the "ready delivery contracts" were required to be settled within 11 days of the trade and hence, the contracts traded on the NSEL, which provided settlement schedule for a period exceeding 11 days were not allowed and were in violation of 2007 Exemption Notification.

17. In this regard, the relevant observations of the FMC as recorded in its Order dated December 17, 2013 and also captured in the Enquiry Report are reproduced as under:

*"...a large number of NSEL exchange trades were carried out with paired back-to-back contracts. Investors simultaneously entered into a "short term buy contract" (e.g. T+2 — i.e. 2 day settlement) and a "long term sell contract" (e.g. T + 25 i.e. 25 day settlement). The contracts were taken by the same parties at a pre-determined price and always registering a profit on the long-term positions. Thus, there existed a financing business where a fixed rate of return was guaranteed on investing in certain products on the NSEL....."*

*NSEL conducted its business not in accordance with the conditions stipulated in the notification dated 05.06.2007 granting it exemption from the operation of FCRA, 1952, with regard to the one-day forward contracts to be traded on its exchange platform. As noted in the SCN, the condition of 'no short-sell' and 'compulsory delivery of outstanding position at the end of the day' stipulated in the notification were violated by NSEL. NSEL Board allowed launching of paired back-to-back contracts on its exchange platform comprising a short-term buy contract (T+2 settlement) and a long-term sell contract (T+25 settlement) with predetermined price and profit for the buyer and seller, which violated the very concept of spot market of commodities and the transactions ultimately were in the nature of financial transactions" (emphasis supplied)*

18. It is therefore, clear that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-

day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. As per the FMC Order under the FCRA, a “forward contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A ‘ready delivery contract’ is defined as “a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”. Given the said definition contained in FCRA, FMC was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as *Non-Transferable Specific Delivery contracts*. It is therefore seen that, even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, FMC, in its Order, relying on the definition of “forward contract” under FCRA held that NSEL was allowed to trade only in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, it is beyond doubt that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to the NSEL.

19. At this stage, it is also pertinent to refer to the judgment of the Hon’ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others (Civil Appeal No. 4476 of 2019 decided on April 30, 2019)*, wherein it *inter alia* held that:

*“There is no doubt that such Paired Contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA”.*

20. It is also necessary to refer to the judgement dated April 22, 2022 passed by the Hon’ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd. (Civil Appeal No. 2748-49 of 2022)* (hereinafter referred to as “**MPID matter**”), wherein the Hon’ble Supreme Court while drawing reference to the presentations made by the NSEL in respect of the ‘paired contracts’ has *inter alia* held that:

*“The above representation indicates that ‘paired contracts’ were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. **Therefore, NSEL represented that on receiving money and commodities, the***

**members would receive assured returns and a service.** *Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act.” (emphasis supplied)*

21. Thus, the Hon’ble Supreme Court has already described the nature of the ‘paired contracts’ offered on the NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was held by the Hon’ble Supreme Court that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon’ble Supreme Court has held that such transactions come within the definition of ‘deposits’ under the MPID Act.
22. The Hon’ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon’ble Supreme Court has also observed that NSEL was advertising a uniform return of 16% p.a. for the ‘paired contracts’ traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the contract. At Para 45 of the said order, the Hon’ble Supreme Court has also depicted certain examples of ‘paired contracts’, which offered assured returns. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 5 & T + 35 paired contract in castor oil. The ‘paired contracts’ were being marketed as an alternative to fixed deposits.
23. It was also noted in the judgement of the Hon’ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the ‘paired contracts’ which were executed were short sales i.e., commodities to back such sales were not available at the designated warehouses of the NSEL.
24. The aforesaid discussion shows how ‘paired contracts’ were not in the nature of spot trading, which was permitted to trade on NSEL’s platform. Further, as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and the return offered was 16% p.a. across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits.
25. When MCA vide its letter dated July 12, 2013, on the recommendation of FMC, asked NSEL to settle contracts on the due dates and to give an undertaking that no fresh contract shall be launched, NSEL failed to do so and defaulted. Investors lost money as all the underlying warehouse receipts were bogus and there were no underlying securities. As noted in the

judgement of the Hon'ble Supreme Court in the MPID matter, the exchange publicized that it provided counter party guarantee risk but, in reality, failed to do so.

26. On perusal of the replies submitted by the noticee, I note that it is an admitted fact that the noticee had participated/facilitated the execution of paired trades for its clients. In this regard, I deem it fit to refer to the submission made by the noticee in its reply dated February 10, 2020 wherein it is *inter alia* admitted at Point 13 of the reply that, “....it is a matter of record that we were members of NSEL and that we participated in and facilitated trading of paired contracts.”. Further, at Point 32, it is admitted that, “....we have never denied that we have participated in the “paired contracts” trading.”. Thus, it is undisputed fact that the noticee has indulged into trading in ‘paired contracts’ on behalf of its clients who were its group companies.
27. In the background of the discussion on ‘paired contract’ in the preceding paragraphs, I now proceed to examine whether the noticee satisfies the ‘fit and proper person’ criteria as laid down under Schedule II of the Intermediaries Regulations.
28. As recorded in the SSCN, SEBI has filed a complaint dated September 24, 2018, against brokers who traded / facilitated access to ‘paired contracts’ traded on the NSEL, including the noticee, with the EOW, Mumbai. On the basis of this complaint, an FIR dated September 28, 2018 has also been registered with the MIDC Police Station, Mumbai against the noticee.
29. Having found that the noticee has traded in ‘paired contracts’ for its clients i.e. its group entities, I note that the main allegation against the noticee, as levelled in the SCN, is that by participating/facilitating in the trading in ‘paired contracts’ on the NSEL platform during the relevant period as a Trading Member/Clearing Member, the noticee has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA also. Therefore, in the SCN, the noticee was asked to state as to why its certificate of registration as a commodity derivatives broker, may not be cancelled as the noticee is not a ‘fit and proper person’ for holding the certificate of registration. Subsequently, SEBI, on the basis of certain documents/material such as SEBI’s Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the noticee vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents as well as observations against the noticee in the enquiry report dated November 26, 2019, the noticee is not a ‘fit and proper person’ for holding the certificate of registration. The noticee’s submissions have been summarized in paragraph 9 above.
30. The noticee’s main contentions are that the noticee was merely a member of NSEL and followed all the byelaws, rules and regulations of NSEL, no responsibility was placed on members of NSEL by the exemption notification dated June 5, 2007, the DCA and FMC were supervising the activities of NSEL and were aware of the contract design , the noticee

has not been chargesheeted in the case, the noticee has traded only for the clients who were its group entities and that it has not committed any of the alleged violations or there has been any lapse on its part and the regulations that have been amended on November 17, 2021, should not have retrospective effect.

31. In this regard, as discussed above, the noticee has admittedly traded in 'paired contracts' on behalf of its clients i.e. its group entities. The noticee, as a commodity derivatives broker, represented the face of NSEL for investors. The execution of the trades in 'paired contracts' by the noticee shows the participation of the noticee in the said scheme perpetrated by NSEL to provide its platform for trading in 'paired contracts' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns and were advertised as such by NSEL, as observed by the Hon'ble Apex Court, under the garb of spot trading in commodities. Therefore, the noticee by its conduct and as a member of NSEL had promoted and/or dealt in 'paired contracts' which were in the nature of financing transaction as held by the Hon'ble Supreme Court of India as noted supra. The noticee, by providing a platform for taking exposure to 'paired contracts' exposed its clients, though its group entities, to the risk involved in trading in a product that did not have regulatory approval thereby raising doubts on the competence of the noticee to act as a registered securities market intermediary. As already recorded in SSCN as discussed above, SEBI's complaint dated September 24, 2018 and the FIR registered with the MIDC Police Station, Mumbai on September 28, 2018 under section 154 of Cr.PC are validly subsisting and has not been challenged, quashed or stayed by any competent court qua the noticee as on date. Therefore, the noticee attracts the disqualification provided in paragraph 3(b)(i) of Schedule II of the Intermediaries Regulations.
32. The noticee has contended that it was undertaking proprietary trading on NSEL on behalf of its group companies and it has not provided the trading platform to third party clients. The details of the group companies or the exact nature of association/ relation with the so called group companies has not been provided by the noticee. Be that as it may, it may be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the noticee but to examine as to whether or not, the noticee has acted in a manner expected of a market intermediary and the answer to the same is clearly against the noticee. For the same reason, the fact whether the name of the noticee was mentioned or not in the FMC order or EOW interim report or in the letter dated December 30, 2014 of the Government of India is not relevant. As regards its submission that it was not closely associated with NSEL and the 'paired contracts' were introduced by NSEL, it cannot be denied that the involvement of the noticee in trading/facilitation of trading in 'paired contracts' on the NSEL is certainly a conduct which was neither permitted by the 2007

Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, a conduct similar to that displayed by the noticee in its trading on the NSEL platform would be detrimental to the interest of the Securities Market. Further, it is evident from the records that the name of the Noticee is mentioned as one of the top ten participants in the fortnightly report submitted by NSEL to erstwhile FMC for the fortnight ending December 31, 2012.

33. It is pertinent to state that regulation 5(e) of the Stock Brokers Regulations provides that, for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. It is further stated that the '*fit and proper person*' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, were amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021. The condition of a fit and proper is not a one-time condition applicable only at the time of seeking registration. Rather, as per clause 7 of Schedule II of the Intermediaries Regulations, it is a condition which each and every registered intermediary is required to fulfil on a continuous basis, right from the time of filing such application to the time the entity wishes to remain associated with the Securities Market, as a registered intermediary, after obtaining such registration.
34. It has been argued by the noticee that at the time of grant of Certificate of Registration to the noticee in December, 2015, it was already adjudged as a 'fit and proper person' by SEBI and, therefore, the said criteria are already satisfied by the noticee. However, as noted above at para 33, 'fit and proper person' criteria is a continuing requirement under the Intermediaries Regulations which the noticee ought to comply with at all times as long as it desires to remain associated with the securities market as a registered intermediary. Therefore, I do not find any merit in the argument of the noticee. Further, necessity of specifying a period of time, after which the applicant may become eligible to seek registration does not arise in this order (unlike in the case of entities desiring to be registered as market intermediaries) while dealing with an entity holding a certificate of registration which is recommended to be cancelled as this forum cannot presume whether such entity would wish to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable provisions.
35. The fact that the noticee had traded / facilitated trading in the 'paired contracts' on the NSEL, in violation of the conditions of the 2007 Exemption Notification and also the provisions of the FCRA, seriously calls into question the integrity, honesty and lack of ethical behaviour on its part. These contracts were financing transactions which were portrayed as spot contracts in commodities. The argument that the transactions were entered into were only for its group companies for trading in 'paired contracts' and no third party clients were involved, does not

absolve a broker of the responsibility to conduct the diligence required to be performed by any reasonable or prudent person. Further, the argument that the DCA and FMC were supervising the activities of NSEL cannot be a reasonable ground for the noticee not to act diligently and ethically.

36. The role of a registered intermediary including a broker demands from it honesty, transparency, fairness and integrity as has been laid down in Clause 3(a) of Schedule II of the Intermediaries Regulations. SEBI under its mandate to protect interest of investors apart from regulations and development of the securities market is empowered to grant registration to various classes of entities including brokers, who have a very important role in ensuring a fair, transparent and efficient market to the investors. Thus, a broker is bound to act in an honest and ethical manner and comply with all applicable regulatory requirements which would be in the best interests of investors. Whether there are allegations of criminal conspiracy, or not, against the noticee do not take away from its responsibility to adhere to the aforesaid standards of conduct.
37. In view of the above, I hold that the noticee does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations and therefore, the continuance of the noticee as a broker will be detrimental to the interest of the securities market. Hence, action as proposed in the SCNs needs to be taken in the interest of the securities market.
38. Having examined and dealt with all the contentions raised by the noticee in the preceding paragraphs, I concur with the recommendation made by the DA.

### **ORDER**

39. In view of the foregoing discussions and deliberations, I, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008, cancel the Certificate of Registration (bearing No. INZ000031236) of the noticee i.e. Purvag Commodities and Derivatives Pvt. Ltd.
40. The noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 39 above.
41. Notwithstanding the direction at paragraph 39 above, the noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the noticee shall transfer the funds and securities of such clients to another broker registered with SEBI within a period of next 15 days thereon, under advice to the said clients.

42. This Order shall come into force with immediate effect.
43. The above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter involving the noticee.
44. It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, 2008, the procedure for action on receipt of recommendation of a DA prescribed under regulation 28 of the Intermediaries Regulations, 2008 has now been incorporated in the amended regulation 27 of the Intermediaries Regulations, 2008. Accordingly, this order is passed under the amended regulation 27 of the Intermediaries Regulations, 2008.
45. A copy of this order shall be served upon the noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

**DATE: MARCH 28, 2023**  
**PLACE: MUMBAI**

**ANAND R. BAIWAR**  
**EXECUTIVE DIRECTOR**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**SECURITIES AND EXCHANGE BOARD OF INDIA  
FINAL ORDER**

**UNDER SECTION 12(3) OF SEBI ACT, 1992 READ WITH REGULATION 27 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES) REGULATIONS, 2008.**

**In respect of:**

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
PROMPT COMMODITIES LTD.	INZ000050936

**In the matter of National Spot Exchange Limited**

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**I. Background:**

1. Prompt Commodities Ltd. (hereinafter referred to as "**Prompt**" / "**the Noticee**") is a commodities derivative broker and a member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as "**MCX**"). Prompt was earlier a Member of the National Spot Exchange Limited (hereinafter referred to as "**NSEL**"). Subsequent to the merger of the Forward Market Commission (hereinafter referred to as "**FMC**") with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") on September 28, 2015, Prompt registered with SEBI as a trading/clearing member bearing SEBI Registration No INZ000050936.
2. As the Noticee was a member of the NSEL and had participated in / facilitated trading in 'paired contracts' on the NSEL platform, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the "**Intermediaries Regulations**") and appointed a Designated Authority (hereinafter referred to as the "**DA**") vide order dated September 21, 2018, to enquire *inter alia* into

whether the Noticee was a 'fit and proper person' (hereinafter referred to as "FPP") to continue to hold the certificate of registration as Trading and Clearing Member in terms of Regulation 5 (e) read with Regulation 27 (iv) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the "Broker Regulations").

## II. Brief History of Illegal Forward Contracts on NSEL:

3. Before considering the compliance of the Noticee with the FPP criteria, it would be appropriate to have a preliminary discussion on the background of NSEL which forms the basis of the current proceedings.
4. NSEL was incorporated in 2005 as an exchange for spot trading of commodities. I note from the FMC Order No.4/5/2013-MKT-1/B dated December 17, 2013 ("FMC Order"), that on June 05, 2007, the Department of Consumer Affairs ("DCA"), Ministry of Consumer Affairs, Food and Public Distribution, Government of India, issued a Notification S.O.906(E) under Section 27 of Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "FCRA") granting certain exemptions from the provisions of FCRA to NSEL subject to specified conditions. The relevant extract of the said notification is reproduced hereunder for ease of reference:

*"...the Central Government exempts all forward contracts of one day duration for the sale and purchase of commodities traded on the National Spot Exchange Limited, from operation of the provisions of the said Act subject to the following conditions, namely:-*

- i. no short sale by members of the Exchange should be allowed;*
- ii. all outstanding positions of the trade at the end of the day shall result in delivery;*
- iii. the 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;*

*iv. all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

.....”

5. The aforesaid notification was amended on February 6, 2012 by DCA vide Gazette Notification S.O. 228(E) specifying “Forwards Market Commission, Mumbai” as the designated agency of the Central Government.
6. NSEL commenced operations in October 2008. It is seen from the FMC Order and the Judgement dated April 22, 2022 of the Hon’ble Supreme Court, in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*, Civil Appeal Nos. 2748-49 of 2022, that NSEL, in September 2009, introduced the concept of ‘paired contracts’, which involved buying and selling the same commodity through two different contracts at two different prices, wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In short, the ‘paired contract’ involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. “T” indicates the trade date, that is, the date on which the trade took place; and +2 or +3 or +25 or +36, indicates the number of business days after the trading day when the delivery of the commodity and the payment of price ought to have been made. The transactions were structured in a manner that the buyer of the short duration contract always ended up making profits.
7. Further, from Para 8 of the FMC Order, I note that the DCA on April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the notification dated June 05, 2007. In response to the same, NSEL submitted a reply vide their letter dated May 29, 2012. DCA, vide its letter dated May 31, 2012, sought comments of the FMC on the NSEL reply. The FMC, vide its letter dated August 02, 2012 to the DCA

provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:

(i) Short Sale by members of the Exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order. FMC was of the view that all those sale transactions which are not backed by the ownership of goods were in violation of the condition of “no short sale by the members of the Exchange shall be allowed”.

(ii) Contracts in which settlement period goes beyond 11 days: In view of the definition of forward contract under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are Non-Transferable Specific Delivery contracts. Thus even if the gazette notification does not specify the delivery period, NSEL had to settle the delivery for all open position within a period of 11 days as NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days.

8. I also note from Para 8 of the FMC Order that DCA, vide its letter dated July 12, 2013, directed NSEL to give an undertaking that:

(i) *No further/ fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and*

(ii) *All the existing contracts will be settled on the due dates.*

9. To sum up, as per the original notification dated June 05, 2007, NSEL was granted conditional exemption from the provisions of FCRA for all forward contracts of one-day duration for the purchase and sale of commodities. The two main conditions were that (i) there should be no short sale and (ii) all outstanding positions at the end of the day should result in delivery. Thereafter, FMC had observed that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA. Under the FCRA, a “forward contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A “ready delivery contract” is defined as “a contract which provides

for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”. In view of the said definition contained in FCRA, FMC was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.

10. NSEL, thus, had permitted contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL vide the Government Notification dated June 05, 2007. Further, I note that the Hon’ble Supreme Court, in its Judgement dated April 22, 2022 in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, while drawing reference to the representations made by NSEL in respect of ‘paired contracts’ had *inter alia* held that:

“44.... NSEL in the course of its brochures has held out representations about the trading and investment opportunities available for:

- a) corporate clients
- b) high net worth individuals; and
- c) retail investors

45. Under the head of “contract specifications”, the following representation has been held out :

Commodity	Duration	Investment (lacs.)	Yield
Castor Seed	T+3 & T+36	7.5 -9 Lacs	16%
Castor Oil	T+5 & T+30	7-9	16%
Cotton Wash Oil	T+2 & T+25	10	16%
Paddy	T+2 & T+25	3.5-4.5	16%
Steel	T+2 & T+25	4.5-5	16%
Raw Wool	T+2 & T+25	3.5-4	16%
Wool Top	T+2 & T+25	1.8-2	16%
Crude Soybean Oil	T+2 & T+25	3.3.-3.5	16%
Soya DOC	T+2 & T+25	1.7-2.0	16%

<i>Refined Mustard Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Soybean Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Sunflower Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>RBD Palmolein Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Sugar</i>	<i>T+2 &amp; T+25</i>	<i>3.0</i>	<i>16%</i>
<i>Maize</i>	<i>T+2 &amp; T+25</i>	<i>3.0</i>	<i>16%</i>

*The above representation specifies:*

- (i) Commodities;*
- (ii) Duration of trades;*
- (iii) Investment; and*
- (iv) Yield.*

*For example, in the case of castor seeds, NSEL held out a buy contract (T+3) and sale contract (T+36), in which the yield is stated to be 16%. Moreover, NSEL represented that:*

***“Opportunities***

- Traders can trade and lock their return*
- Trader has to buy in near settlement contract and sell in far settlement contract simultaneously*
- Price for both settlement available*
- Exchange provides counterparty guarantee risk*
- No basis risk, No link with future contracts*

*While describing the features of trading opportunity, NSEL represented that:*

***“Features of Trading Opportunity:***

- T+2 and T+25 contract offers unique trading opportunity to traders*
- Trader purchases T+2 contract and simultaneously sells T+25 contract*

- *Pay-in obligation is on T+2 while Pay-out of the funds will be on T+25. Entire settlement cycle is of 35-37 days*
- *Price differential between the two settlement dates i.e premium if annualized offers interest rate of about 16%*
- *Income arising out of such trades are treated as Business Income”*

*While comparing the investment opportunities of bank fixed deposits with trading opportunities at NSEL, NSEL represented that:*

**“Comparison**

- *Bank FD 9.25% for 390 days; NSEL Trading Opportunity 16%;*
- *Bank FD minimum duration 390 days; NSEL Trade duration 35-55 days, depending on the contract*
- *Traders have an option of rolling over their position as per their convenience*

.....

*The above representation indicates that paired contracts were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. Therefore, NSEL represented that on receiving money and commodities, the members would receive ‘assured returns’ and a ‘service’. Though NSEL has been receiving ‘deposits’, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act.”*

11. As such, both the FMC Order and the aforesaid order of Hon'ble Supreme Court have explicitly brought out the details as to how NSEL permitted short sales - i.e. by permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse.
12. It is also pertinent to note that the Hon'ble Supreme Court in another Judgement dated April 30, 2019, titled 63 Moons Technologies Ltd Vs. Union of India, Civil Appeal No. 4476 of 2019 observed that these contracts were in the nature of "financing transactions". The relevant extract of the said order is as under: -

*"55.3. We have seen that neither FTIL nor NSEL has denied the fact that paired contracts in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such paired contracts. **There is no doubt that such paired contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA.**"*

### **III. Show Cause Notice, Reply and Hearing**

13. In light of the background and history narrated above, the DA issued show cause notice dated September 24, 2018 to the Noticee, calling upon it to show cause as to why it should not be found to be a 'fit and proper person' and hence, liable for cancellation of its registration. The DA also issued a supplementary show cause notice dated February 4, 2020, enclosing therewith trade logs received from the Economic Offences Wing ("**EOW**"). Vide letter dated October 11, 2018, the Noticee submitted its reply to the said show cause notice. Upon completion of the enquiry, the DA submitted its report dated February 18, 2020, recommending cancellation of the certificate of registration granted to the Noticee since the Noticee was not a FPP in terms of Regulation

5(e) read with Regulation 27(iv) of the Broker Regulations and Schedule II of the Intermediaries Regulations.

14. Pursuant to the same, a post enquiry show cause notice (hereinafter referred to as the “**SCN-1**”) dated March 18, 2020, was issued to the Noticee, under Regulation 28(1) of the Intermediaries Regulations to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the Noticee. A copy of the DA’s Report was also forwarded to the Noticee along with an advice to file a reply, if any, within 21 days from the date of receipt of the notice. Along with the DA’s Report, letter dated December 30, 2014 of the Ministry of Finance (“**MoF**”), Department of Economic Affairs (“**DEA**”) addressed to the Chairman, FMC was provided to the Noticee, wherein it was stated that the DEA was in agreement that NSEL had violated the conditions of exemptions granted to it under the FCRA. Further, Order dated August 22, 2014 of Hon’ble Bombay High Court, in the matter of *Jignesh Prakash Shah Vs. The State of Maharashtra*, Criminal Bail Application No. 1263 of 2014, wherein it was held that the brokers through whom the paired contracts were entered into had knowledge of the illegality of such contracts, was also furnished to the Noticee. The SCN-1 also *inter alia* highlighted the observations made by the Hon’ble Supreme Court in the matter of *63 Moons Technologies Ltd. Vs. Union of India* (order dated April 30, 2019), wherein it was held that paired contracts were in fact financing transactions in breach of exemptions granted to NSEL under the FCRA.
15. In the meantime, Whole Time Member, SEBI (“**WTM**”) passed certain orders rejecting the applications of five other entities for registration as commodity brokers, which were challenged before the Hon’ble Securities Appellate Tribunal (“**the Hon’ble SAT**”). The Hon’ble SAT vide its order dated June 9, 2022 remitted the matters to the WTM to decide the matter afresh after giving an opportunity of hearing to the brokers, with the following directions:

*“...It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by SEBI should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice”.*

16. In light of the order of Hon'ble SAT dated June 9, 2022, a supplementary show-cause notice dated October 07, 2022 (hereinafter referred to as “**SCN-2**”) was issued to the Noticee. Vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to Economic Offence Wing (“EOW”), First Information Report (“FIR”) dated September 28, 2018 filed by SEBI and the amended Schedule II of the Intermediaries Regulations were furnished to the Noticee calling upon it to show cause as to why information/material provided therein along with the Enquiry Report should not be considered against the Noticee.
17. In response to the SCN-2, the Noticee, submitted its reply dated November 11, 2022. The Noticee *inter alia* stated therein that they had not received the SCN-1 and Annexures to SCN-2. In view of the same, the said documents were resent to the Noticee vide email dated November 30, 2022.
18. In order to proceed with the matter, a hearing was granted to the Noticee in terms of Regulation 27(4) of the Intermediaries Regulations, 2008 as the DA had recommended cancellation of the certificate of registration of the Noticee. The hearing was held on December 6, 2022, during which Rajesh Khandelwal, Advocate, the Authorised Representative (“**AR**”) of the Noticee, appeared and reiterated the submissions made in replies dated November 11, 2022 and November 20, 2018 (as filed before the DA). The Noticee also filed additional submissions dated December 8, 2022. The summary of the said replies/submissions of the Noticee is given hereunder:

- (i) The Noticee's compliance track record has been impeccable;
- (ii) They have closed down their business since 2016 and wanted to surrender their registration;
- (iii) There has been an inordinate delay in issue of show cause notices, which has caused prejudice to the Noticee as they are not able to collate the exact circumstances of the transactions;
- (iv) They only had proprietary trades, so did not earn any brokerage and no loss was caused to any client;
- (v) They are also victims of the fraud as there are no pay out obligations from their end and the deposits of the Noticee are stuck with NSEL;
- (vi) They had no reason to suspect that the contracts permitted on NSEL were not in consonance with the exemptions granted to it;
- (vii) The Central Government/ FMC had not raised any issue with the contracts being traded even though the trading of such contracts was in public domain, thus there were no red flags which would prompt them to stop trade;
- (viii) The proceedings are contrary to the provisions of Regulation 29A of the FCRA;
- (ix) The Noticees came under the regulatory remit of SEBI only in 2015, and the Broker Regulations cannot be applied to them retrospectively;
- (x) The SCN is vague and makes bald and sweeping allegations;
- (xi) As on date funds to the tune of Rs. 11,58,916 belonging to the Noticee is lying with NSEL;
- (xii) SEBI has suddenly assumed jurisdiction regarding matters pertaining to NSEL, which it does not in law possess;
- (xiii) There is nothing in the SCN to show that the Noticees were aware of the illegality in paired contracts
- (xiv) The Noticee traded in paired contracts between February 03, 2012 to April 04, 2013 on 87 days.

#### **IV. Consideration of Issues**

19. I have considered the SCN-1, SCN-2, the Enquiry Report submitted by the DA, Noticee's replies dated December 8, 2022, November 11, 2022 and November 20, 2018 and other material available on record. Having regard to the same, I now proceed to deal with the issues in the present matter.
  
20. At the outset, I note that the Noticee has stated that there has been an inordinate delay in the matter which has caused grave prejudice as the Noticee is not able to collate the circumstances behind the said transactions. I also note that the Noticee has cited a number of judgments of the Hon'ble Supreme Court and Hon'ble SAT in support of its submission. In this regard, I note that the NSEL scam unfolded in 2013 after which several agencies conducted investigations into what had transpired therein. Charge sheets are still being filed in the matter by these agencies. A large number of brokers had participated in the illegal forwards contracts. After the merger of FMC with SEBI on September 28, 2015, some of these brokers applied for registration with SEBI. Subsequently, it was felt appropriate to initiate enquiry proceedings in the matter as noted in paragraphs 1 and 2 above. Further, as noted at paragraph 16 above, while the instant matter was under consideration, the Hon'ble SAT vide its order dated June 9, 2022 remitted certain orders pertaining to some other brokers who had also participated in paired contracts on NSEL to SEBI to decide the matter afresh. The Hon'ble SAT left it open to SEBI to rely on other material like EOW charge sheet, complaint letters etc., after providing the same to the appellants therein. Keeping in line with the aforesaid order of the Hon'ble SAT, the SCN-2 was issued to the Noticee on October 7, 2022. I also note that all documents sought by the Noticee have been provided to them. The Noticees have also filed detailed replies in the matter. Moreover, unlike other cases where delay may be a vitiating factor, as the core issue in the instant case pertains to adjudication of FPP criteria of the Noticee and the same being a continuing criteria, I am of the view that delay cannot be attributed to the initiation of the proceedings.

21. It is alleged that the Noticee has violated Regulation 9(b) and (f) read with Clause A(1), A(2) and A(5) of the Schedule II of the Broker Regulations and Regulation 5(e) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. The relevant provisions are reproduced hereunder: -

**Provisions of Broker Regulations:**

**Consideration of application for grant of registration.**

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant, -

.....

(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

**Conditions of registration.**

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely, -

.....

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him...

.....

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

**CODE OF CONDUCT FOR STOCK BROKERS**

[Regulation 9]

**A. General.**

(1) *Integrity:* A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) *Exercise of due skill and care :* A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3).....

(5) *Compliance with statutory requirements:* A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

**Provisions of Intermediaries Regulations:**

**“SCHEDULE II  
SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)  
REGULATIONS, 2008  
[See regulation 7]**

(1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*

- (a) the competence and capability in terms of infrastructure and manpower requirements; and*
- (b) the financial soundness, which includes meeting the net worth requirements.*

(2) *The ‘fit and proper person’ criteria shall apply to the following persons:*

- (a) the applicant or the intermediary;*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*

*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the ‘fit and proper person’ criteria.*

**Explanation–** *For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

(3) *For the purpose of determining as to whether any person is a ‘fit and proper person’, the Board may take into account any criteria as it deems fit, including but not limited to the following:*

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
- (b) the person not incurring any of the following disqualifications:
  - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;**

- (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
- (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
- (iv) recovery proceedings have been initiated by the Board against such person and are pending;*
- (v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
- (vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
- (vii) such person has been declared insolvent and not discharged;*
- (viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*
- (ix) such person has been categorized as a wilful defaulter;*
- (x) such person has been declared a fugitive economic offender;*  
*or*
- (xi) any other disqualification as may be specified by the Board from time to time.*

*(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*

*(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.*

*(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:*

*Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:*

*Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.*

*(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."*

22. From the reply of the Noticee, it is seen that it has admitted to execution of proprietary trades in the illegal contracts, referred to as "paired contracts" by FMC and the Hon'ble Supreme Court, on NSEL. Further, the Noticee has stated that the fact that such contracts were being executed was in the public domain and known to all regulatory authorities. The Noticee has attempted to shift the entire burden for the illegality underlying the trades onto NSEL and the other regulators who were supposed to supervise. In short, it is contended that there was no reason for the Noticee to suspect the functioning of NSEL. The Noticee has contended that there is nothing to show that he had knowledge of the illegality, even though all details were available in the public domain. I note from its reply that the Noticee had traded on 87 days between February 3, 2012 and April 16, 2013. On perusal of reply of the Noticee, I find that the Noticee had sufficient experience in dealing with other commodity exchanges such as NCDEX and MCX. As a broker with sufficient experience and knowledge and having presence in various other exchanges that were dealing in commodities, the Noticee ought to have refrained from participating in the subject contracts on such platform, going by the very structure of the back-to-back contracts. It appears to be the case of the Noticee that since everything was in public domain and it was all being done with the knowledge of regulators, it presumed that the activities were legally valid and that there was nothing that raised his suspicion. In this context, I note that NSEL itself

was advertising such contracts as an alternative to fixed deposits. The return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits. The Noticee has stated that since it executed only proprietary trades, no harm was caused to any of its clients. However, I note that the fact that the Noticee entered into these illegal contracts, albeit in his proprietary account shows that it had not exercised due care and diligence before using the NSEL platform. I am, therefore, of the view that while executing trades in such contracts, the Noticee failed to examine the basic nature of the product and also failed in understanding the source of powers relied upon by NSEL for selling such products which other exchanges were not offering. Thus, the Noticee failed to conduct proper and effective due diligence on these aspects of paired contracts which were not essentially spot contracts.

23. I further note that the SCN-1 dated January 8, 2020 provided the Noticee with the DA's Report, the letter dated December 30, 2014 of the DEA, MoF addressed to FMC and copy of Order dated August 22, 2014 passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*. I do not find that the said documents are relevant for consideration in the instant matter.

24. I also note that vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to EOW, FIR dated September 28, 2018 filed by SEBI and the amended Schedule II of the Intermediaries Regulations was provided to the Noticee. I note that Schedule II of the Intermediaries Regulations was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021 and the following disqualifications have been included amongst others:

*“(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;”*

25. I also note that as per the amendment, the disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3) of Schedule II to the Intermediaries Regulations, shall not have any bearing on the FPP criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter.
26. It is pertinent to note that in terms of Regulation 5(e) of Broker Regulations, the eligibility criteria for an entity to get registered as a stock broker includes that it should be a 'fit and proper person' based on the criteria specified in Schedule II of Intermediaries Regulations. I note that the Noticee has contended that the provisions of the Broker Regulations cannot be applied to it retrospectively. The Noticee has also submitted that SEBI does not have jurisdiction in the matter. The effect of insertion of Section 28A in the FCRA is to grant powers to SEBI to deal with matters relating to commodities derivatives and to regulate persons buying, selling or otherwise dealing in commodity derivatives as a commodity derivatives broker, or any other intermediary who may be associated with the commodity derivatives market, immediately before the transfer and vesting of rights and assets to the SEBI for which no registration certificate was necessary prior to such transfer. Accordingly, the Noticee applied for registration as a broker and was granted the same w.e.f. December 26, 2015. Since then, it has been acting as a market intermediary registered with SEBI. I note that it has been specified in Clause 7 of Schedule II of Intermediaries Regulations that the FPP criteria are required to be satisfied by the intermediary at the time of registration as well as during the continuity of registration with SEBI. Therefore, even assuming that the Noticee fulfilled the eligibility requirements at the time of grant of certificate of registration, it is required to comply with the criteria continuously including those conditions which are incorporated subsequently. Hence, the submission of the Noticee that SEBI does not have jurisdiction in the matter is not tenable.
27. It is a matter of record that SEBI has filed a complaint dated September 24, 2018 with Economic Offence Wing (EOW), seeking appropriate action against

the brokers/members of NSEL, including the Noticee as mentioned at serial no. 184, and certain other persons in the NSEL matter under Sections 20 and 21 and other appropriate provisions of FCRA. Additionally, SEBI has filed a FIR No. Spl LAC No. 110/18 dated September 28, 2018 under section 154 of the Code of Criminal Procedure, 1973 at the MIDC Police Station, Mumbai requesting it to take lawful action against trading members of NSEL and other members of NSEL who were involved in trading of illegal forward contracts in violation of FCRA. The same list of members provided by SEBI in its complaint made to EOW was annexed to the said FIR. I note that both the criminal complaint and FIR are currently pending with the respective authorities. In view thereof, I note that disqualifications contained in paragraph 3(b)(i) of Schedule II of Intermediaries Regulations are attracted against the Noticee.

28. When the pendency of a criminal complaint or FIR filed by SEBI is prescribed as a negative criterion / disqualification from eligibility under Schedule II of the Intermediaries Regulations, it is imperative for me to consider the same while adjudging the eligibility of the Noticee to continue to hold the authorization granted. In my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of specific parameters, which would apply uniformly to all intermediaries. To reiterate, the fact that SEBI has filed a complaint and FIR against the Noticee and the fact that both are pending, by itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.
29. I note that the Noticee has raised objections to the effect that i) the Code of Conduct under the Broker Regulations cannot be applied to it retrospectively and ii) Section 29A of the FCRA only empowers SEBI to initiate action for violation of provisions of FCRA. In view of the above evaluation of the facts and the legal provisions, I find these to be hyper technical and warrant no consideration.
30. Coming to the question of the directions to be issued, I note that the Noticee has, in its submissions has expressed its desire to surrender its registration.

The evaluation of the facts and legal provisions as brought out above, compels me to arrive at the conclusion that the Noticee is not a 'fit and proper' person and hence is not eligible to continue its business as a stock broker using the certificate of registration no. INZ000050936 granted by SEBI.

### **DIRECTIONS**

31. In exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, 2008, I, hereby, cancel the Certificate of Registration bearing no. INZ000050936 of the Noticee i.e. Prompt Commodities Limited.
32. The Order shall come into force with the immediate effect.
33. A copy of this order shall be served upon the Noticee and the recognized Stock Exchanges, Depositories and Clearing Corporations for necessary compliance.

**Date: February 28, 2023**

**Place: Mumbai**

**Sd/-**

**GEETHA G**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**