

**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:

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
SIHL COMMODITIES LTD.	INZ000080030

In the matter of National Spot Exchange Limited

I. Background:

1. SIHL Commodities Ltd. (hereinafter referred to as "**SIHL**" / "**the Noticee**") is a commodities derivative broker and a member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as "**MCX**"). SIHL 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, SIHL registered with SEBI as a trading/clearing member bearing SEBI Registration No INZ000080030.
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 *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 paragraph 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 it 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 paragraph 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 :

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

<i>Refined Mustard Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Soybean Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Sunflower Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>RBD Palmolein Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Sugar</i>	<i>T+2 & T+25</i>	<i>3.0</i>	<i>16%</i>
<i>Maize</i>	<i>T+2 & 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 to show cause as to why it should not be found to be not 'fit and proper' in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations and Schedule II of the Intermediaries Regulations and hence, liable for cancellation of its registration. Vide letter dated October 19, 2018, the Noticee submitted its reply to the said show cause notice. Upon completion of the enquiry, the DA submitted a report dated October 29, 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 8, 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. The Noticee replied to SCN-1 vide its letter dated January 29, 2020.

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. In response to the SCN-2, the Noticee, submitted its reply dated November 11, 2022.
17. 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 7, 2022, during which Mr. Tanmay Upendra Shah, Director, Ms. Preeti Shah, Legal Representative and Mr. Chirag M. Shah, Advocate, appeared and reiterated the submissions made in their earlier replies. The summary of the said replies/ submissions of the Noticee is given hereunder:
- (i) The EOW had registered the original FIR numbered as 89/2013 way back on 30 September 2013. In that context it must be stated that no new FIR for the same underlying offence is maintainable and liable to be quashed and set aside. EOW has not even begun an investigation in the matter for over four years. The fact that this FIR is pending investigation was already known to SEBI, and it was not felt necessary to annex the same to the SCN.
 - (ii) The FMC in its wisdom, contemporaneously, filed the complaint only against NSEL and its Directors, KMPs etc. A belated intervention on SEBI's part to arraign the non-defaulting members

as accused is absolutely uncalled for and amounts to nothing less than malicious prosecution.

- (iii) The Intermediaries Regulations have been amended on November 17, 2021 and by no stretch of imagination could it be said to be having any retrospective effect.
- (iv) The affairs that took place on NSEL cannot be brought under the powers and jurisdiction of SEBI.
- (v) The Noticee was granted a certificate of registration by SEBI way back in September 15, 2016, while SEBI was aware of the Noticee's participation on the NSEL exchange platform.
- (vi) The Competent Authority would be committing a grave error by purporting to decide the veracity of its own complaint with relation to the alleged violations of FCRA as set out in the complaint letter dated September 24, 2018.
- (vii) The trading in paired contracts started sometime in 2009 and the Noticee had taken membership way back in July 2008, it started participating in paired contracts only in August 2012 *i.e.* only after the FMC was notified as the Designated Agency. The Noticee had participated in trading in the said "paired contracts" under the bonafide belief that the NSEL operations were carried out under the regulatory supervision and superintendence of FMC.
- (viii) None of the Regulatory Agencies or other arms of the Government had ever raised any doubts about the contracts being traded on NSEL being in violation of any prevalent law or it being in violation of any approval or exemption granted to NSEL. There is no finding of any court of competent jurisdiction that the functioning of NSEL was contrary to any law and therefore the proceedings against us is premature and hence the question of declaring SIHL not fit and proper does not arise.
- (ix) The SCN has affected the reputation and business prospects of the Noticee, whereas Right to Reputation is a facet of Right to Life enshrined under Article 21 of the Constitution of India.

- (x) Neither the Noticee nor its clients had indulged in any "short sale". 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.
- (xi) The fact that they were members of NSEL and participated in and facilitated trading in paired contracts was known to SEBI when SIHL had applied for registration on December 15, 2015. The registration certificate was granted on September 15, 2016. There was more than sufficient time to have considered its eligibility or lack thereof before granting of the registration certificate.
- (xii) The phrase "close association" is being callously used and reflects non application of mind. The Noticee was merely a member of the exchange.

IV. Consideration of Issues

18. I have considered the SCN-1, SCN-2, the Enquiry Report submitted by the DA, Noticee's replies dated November 11, 2022, January 29, 2020 and October 19, 2018 and other material available on record. Having regard to the same, I now proceed to deal with the issues in the present matter.
19. At the outset, I note that the Noticee has stated that there has been delay in the matter which has had a bearing on the ability of the Noticee to defend itself. In this regard, I note that the NSEL scam unfolded in 2013 after which several agencies such as Enforcement Directorate and EOW 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 on the NSEL platform. 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 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 along with documents mentioned at paragraph 16 above, 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.

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. From the reply of the Noticee, it is seen that it has admitted to execution of trades in 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 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 stated that it was not aware of any illegality in the paired contracts and operated under the bonafide belief that the NSEL

operations were carried out under the regulatory supervision and superintendence of FMC. I note that the Noticee has stated that it was a commodities futures broker and took membership of NSEL in July 2008. As a broker with sufficient experience and knowledge, 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. 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.

22. I further note that 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.
23. 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;”

24. 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.
25. 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 15, 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 an intermediary 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. 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.

26. 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. 225 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.
27. The Noticee has stated that it would be a grave error for SEBI to decide the veracity of its own complaint with relation to the alleged violations of FCRA as set out in the complaint letter dated September 24, 2018. I am of the view that the submission is not tenable as SEBI's complaint/ FIR will reach its own logical conclusion as per law. The Noticee has submitted that the FIR is liable to be quashed and that investigation has not even commenced in the matter till date. However, 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 an FIR has been registered against the Noticee and the same is pending, by itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.

28. Coming to the question of the directions to be issued, 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. INZ000080030 granted by SEBI.

DIRECTIONS

29. 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. INZ000080030 of the Noticee i.e. SIHL Commodities Limited.
30. Upon receipt of this Order, the Noticee shall immediately inform its existing clients, if any, about the direction at paragraph 29 above.
31. Notwithstanding the direction at paragraph 29 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.
32. The Order shall come into force with 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: March 31, 2023

Place: Mumbai

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