

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

Against

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
Zaveri and Company Private Limited	INZ000071035

In the matter of trading at the National Spot Exchange Limited

BACKGROUND

1. The Securities and Exchange Board of India (“**SEBI**”) had appointed on October 21, 2020 a Designated Authority (“**DA**”) to enquire into and to submit a report on the activities of Zaveri and Company Private Limited (“**Noticee**”) as a stock broker bearing Registration No. INZ000071035 in the matter of the trades executed by them on the spot exchange platform provided by the National Spot Exchange Limited (“**NSEL**”) resulting in the possible violation by the Noticee of Regulations 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (“**Stock Brokers Regulations**”) read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (“**Intermediaries Regulations**”).
2. Upon conclusion of the enquiry in the manner envisaged under Regulation 25 of the Intermediaries Regulations, the DA submitted a report dated March 22, 2019 (“**Enquiry Report**”) in terms of Regulation 27 of the Intermediaries Regulations as it read at the relevant point of time recommending that the registration of the Noticee as a stock broker may be cancelled.

3. The relevant excerpt of the Enquiry Report is reproduced below:

“43. 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., Zaveri and Company Private Ltd. [Registration No. INZ000071035] as a commodities derivatives broker may be cancelled.”

4. A notice dated January 20, 2021 (“**SCN**”) enclosing the Enquiry Report and certain other documents referred to 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 recommendation of the DA cancelling the certificate of registration or any other action as may be considered appropriate, should not be initiated against it. Noticee was further advised to submit its reply, if any, within 21 days from the date of receipt of the said SCN. However, no response was received from the Noticee.
5. At this juncture, it would be relevant to refer to certain developments that ensued and have a bearing on the case under consideration. Against five separate orders earlier passed by SEBI in February 2019 rejecting the applications filed by five separate entities seeking registration as commodity brokers on the ground of being involved in the trades on the platform provided by NSEL, the five entities filed five separate appeals before the Securities Appellate Tribunal which, vide its common order dated June 9, 2022, remanded the matters for being reconsidered within six months from June 9, 2022 and, *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...”*

6. In light of this order and other subsequent orders passed in a similar set of cases by the Securities Appellate Tribunal, relevant additional documents/ material were provided to the Noticee vide a supplementary notice dated February 17, 2023 (“**SSCN**”) which along with the original notice, is collectively referred to as the “**SCNs**”, with an advice to submit its reply/ comments/ clarifications in addition to its earlier replies, if any, within 15 days of the receipt of the SSCN. No response was received from the Noticee.
7. It is pertinent to mention that Regulation 27 of the Intermediaries Regulations was amended with effect from January 21, 2021. Pursuant thereof, the procedure for action on receipt of the recommendation of the DA has been incorporated in the amended Regulation 27 of the Intermediaries Regulations. These proceedings are being considered under the amended provisions of Regulation 27 of the Intermediaries Regulations.
8. The Noticee was issued a notice of hearing dated April 10, 2023 to appear for a personal hearing on April 21, 2023 personally and make their submissions, if any. However, the Noticee failed to avail this opportunity. Thereafter, another opportunity was granted to it for a personal hearing on May 24, 2023. In response thereto, the Noticee vide email dated May 25, 2023 submitted that they had already replied to the notice dated September 25, 2018 issued by the DA and had nothing further to submit to the SSCN.
9. As detailed earlier, Noticee did not reply to the notices dated January 20, 2021 and February 17, 2023 and vide their email dated May 24, 2023 insisted that their reply to the SCN dated September 25, 2018 issued by the DA, may be considered as their reply to the notices issued to them.
10. In view thereof, I have perused the reply dated September 25, 2018 filed by the Noticee. Their main points while denying all the allegations is summarized hereunder:

- a. The Noticee was not registered with SEBI during the period from September 2009 to August 2013.
- b. Since the alleged default was committed during the period between September 2009 to August 2013, i.e. when the Noticee was not registered with SEBI under the Stock Brokers Regulations and Intermediaries Regulations, the Regulations 23, 24 and 25 of the Intermediaries Regulations cannot be invoked against them.
- c. Accordingly, the question of the violation of Regulation 9(2) and 9(f) of the Stock Brokers Regulations does not arise.
- d. Noticee has also not been provided with the documents as mandated under Regulations 25(3) of the Intermediaries Regulations.
- e. Trading-cum-clearing membership of NSEL was surrendered by the Noticee vide letter dated August 05, 2013.
- f. Thus, Noticee was not a member of NSEL when the registration to act as a stock broker was granted to them by SEBI on September 19, 2016.
- g. Under these circumstances, the question of determination of the Noticee as 'fit and proper person' does not arise since the alleged violation took place prior to September 19, 2016.
- h. Any action against the Noticee for the violation of the Central Government Notification No. SO 906 (E) dated June 05, 2007 ("**2007 Notification**") and granting it exemption under Section 27 of the Forward Contract (Regulation) Act, 1952 ("**FCRA**"), is beyond the power and jurisdiction of SEBI.

CONSIDERATION OF ISSUES AND FINDINGS

- 11. I have carefully perused the contents of the Enquiry Report, the SCNs issued to the Noticee, the submission filed by the Noticee and other material/ information available on record.
- 12. It is clear that sufficient opportunities have been granted to the Noticee to respond to the SSCN and also to avail the opportunity, if they so desired to make their submissions personally before me. However, they have neither replied to the SSCN nor did they avail the opportunity of personal hearing. Thus, all the

principles of natural justice have been adhered to in the present matter and yet the Noticee has chosen not to avail the same. I shall thus proceed on merits on the basis of the material available on record.

13. The principal issue which arises for my consideration, keeping in mind the facts of the case being as they are, before I advert to the other issues raised by the Noticee is to determine whether the Noticee is required to satisfy the 'fit and proper person' criteria necessary for functioning as a registered stock broker in the securities market.
14. Before I proceed to examine this issue, it would be appropriate to refer to the relevant provisions of law, alleged to have been violated by the Noticee and/ or referred to in the present proceedings that are reproduced for ease of reference:

SEBI Act, 1992

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

12.(1).....

(2).....

(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,*

(a).....

(b).....

.....

(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.*

Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

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 —*

(i).....

(ii)....

.....

(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 (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. (1).....

(2)....

(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.

15. Prior to the merger of the Forward Market Commission (“**FMC**”) with SEBI on September 28, 2015, the commodity brokers including the Noticee were not required to be registered with either the FMC or any other regulatory authority under the FCRA. The Parliament sought to rectify this regulatory vacuum through the enactment of the Finance Act, 2015, which repealed the FCRA, brought the entities dealing with commodity derivatives under the regulatory supervision of SEBI with effect from September 28, 2015.
16. Thus, every commodity derivatives broker was mandatorily required to obtain a certification of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker.
17. Pursuant thereof, SEBI was empowered through the Finance Act, 2015, *inter alia*, to regulate commodity derivatives brokers, which included granting them registration as a commodity derivatives broker with SEBI. Section 131B of the Finance Act, 2015, provided a transitory period of 3 months to all intermediaries

associated with the commodity derivatives market under the erstwhile FCRA to continue to deal in commodity derivatives as a commodity derivatives broker, provided they applied for registration from SEBI within 3 months from September 28, 2015.

18. The ambit of SEBI on the violation of the provisions of FCRA also flows from the Finance Act, 2015, which amended the provisions of the FCRA through Section 29A of FCRA, as inserted by the Finance Act, 2015, and reads as follows:

“(1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.

(2) On and from the date of repeal of Forward Contracts Act–

(a)....

(b)....

(c)....

(d)....

(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;

(f) no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clause (d) and (e);

(g) clause (d), (e), (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal to matters not covered under these sub-sections.”

19. These aspects were highlighted by the Hon'ble Bombay High Court in its Order dated October 04, 2018 while dealing with 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* wherein the following was observed:

“.....

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”.

20. It is thus clear that SEBI has been simultaneously empowered to initiate a fresh proceeding with respect to the offences under FCRA within a period of three years from the date on which FCRA is repealed. Accordingly, pursuant to the merger of FMC with SEBI, it was well within the powers of SEBI to initiate proceedings under Chapter V of FCRA against entities for their activities undertaken by them of executing paired contracts on the NSEL platform by filing the criminal complaint dated September 24, 2018 against them before the Economic Offence Wing (“**EOW**”) and requesting the EOW to take appropriate action under Sections 20 and 21 and other provisions of FCRA against the brokers/ members of NSEL and other persons mentioned in the complaint.
21. The Noticee has submitted that it was not registered with SEBI during the period from September 2009 to August 2013 when the alleged default on the NSEL platform was committed and therefore the question of the violation of Stock Brokers Regulations and Intermediaries Regulations in the present proceedings does not arise. It is noted that the Noticee has been granted a certificate of registration from SEBI as a stock broker with effect from September 19, 2016 and even as on date, continues to function as a registered stock broker. The present proceedings have been initiated to adjudge the ‘fit and proper person’ status of the Noticee under the Stock Brokers Regulations and the Intermediaries Regulations in light of the activities undertaken by it on the NSEL platform and the consequent action taken by FMC and SEBI, i.e. filing the criminal complaint before the EOW under Section 154 of the CrPC.
22. It is a settled preposition of law that every registered intermediary in the securities market is required to fulfil the fit and proper criteria at all points of its functioning including any additional criteria statutorily provided for, from time to time. Else, there would arise an anomalous situation where an entity that has obtained a certificate of registration after fulfilling the said criteria, fails the ‘fit and proper

person' test after a period of time and yet continues to function in the securities market despite not being fulfilling the criteria.

23. This is why the requirement of being a 'fit and proper' person, is a continuing 'eligibility criteria'/ statutory requirement, which ought to be satisfied by a registered entities at all points of time. This condition is not a one-time condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which 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. Therefore, 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. Thus, there is no merit in the argument of the Noticee that since it was not registered with SEBI during the period September 2009 to August 2013, the question of it violating the provisions the Stock Brokers Regulations and Intermediaries Regulations would not arise. If the continued applicability of the fit and proper criteria to its functioning is challenged, there would exist a market where the overall interest of all the investors would stand compromised. Further, the due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field even till date and hence any arguments to the contrary are not maintainable. The Noticee is obligated to maintain the fit and proper person criteria on a continuous basis and it is well within the jurisdiction and powers of SEBI to adjudge the said 'fit and proper' status of the market intermediaries in the interest of the securities market.
24. The Noticee has also contended that it has not been provided with the relevant documents referred in the SCNs. In this regard, I note that Sub-regulation (3) and (4) of Regulation 25 of the Intermediaries Regulations specifies that the copies of the documents "relied upon by SEBI" along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any, shall be provided to the Noticee.

25. On perusal of paragraph 16 of the Enquiry Report, I note that the Noticee was provided with the following documents relied upon by SEBI in the present proceedings:
- a. copy of FMC Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (“**FMC Order**”) with Annexures;
 - b. copy of the Grant Thornton Report with various Annexures;
 - c. copy of the Notification issued by the Ministry of Consumer Affairs dated June 05, 2007;
 - d. documents explaining specifications of ‘paired contracts’ (as available in the Grant Thornton Report) (which is narrated in the FMC order);
 - e. list of trading members/ fund name and clearing member name and the amount mentioned against their name in the EOW interim report dated April 04, 2015, who have applied/ registered with SEBI (the amount indicates default amount of clients (investors) who traded through the said brokers);
 - f. copies (total 11) of fortnightly reports submitted by NSEL to the erstwhile FMC;
 - g. list of 148 members against whom NSEL has pay-out obligations as on September 19, 2013 as mentioned in the Grant Thornton Report (as per Annexure 6 of the Grant Thornton Report) dated September 21, 2013;
 - h. data containing registration documents of 299 members and Annual Return documents of 234 members; and
 - i. trade data of the Noticee.
26. I note that Noticee has not made reference to any specific document which it contends to have not received. Notably, all the relevant and relied upon documents pertaining to the instant proceedings including the trade data of the Noticee were provided as Annexures to the Enquiry Report and SCNs. Hence, there is no merit in the arguments of the Noticee. The facts and events elaborated above clearly indicate that all the necessary documents relied upon by SEBI for the purpose of framing charges against the Noticee have been provided and every principle of natural justice has been adhered to while conducting these proceedings.

27. I also note from the SCN that the Noticee was called upon to show cause as to why the information/ material as brought out in the SCN and in the Enquiry Report concerning the fit and proper person criteria should not be considered for determining its fit and proper status and that a SSCN, enclosing a copy of the order passed by the Tribunal on June 9, 2022, as mentioned at paragraph 5 above, (“**SAT Order**”), was also issued to the Noticee calling upon it to show cause why the following information/ material detailed below along with the Enquiry Report should not be considered against it for determining whether the Noticee satisfies the ‘fit and proper person’ criteria as laid down under Schedule II of the Intermediaries Regulations:
- a. SEBI complaint dated September 24, 2018 filed with EOW;
 - b. First Information Report (hereinafter referred to as the “FIR”) dated September 28, 2018; and
 - c. Amended Schedule II of the Intermediaries Regulations.
28. Before moving ahead to considering other issues on merits and to test the extent of fulfilment of the ‘fit and proper person’ criteria by the Noticee, on the basis of the material available on record including the additional material as detailed at paragraph 27 above, the background facts related to the Noticee and necessary for the present proceedings are narrated in brief, hereunder:
- a. The Noticee is a commodity derivatives broker registered with SEBI having Registration No. INZ000071035 with effect from September 19, 2016.
 - b. NSEL was incorporated in May, 2005 as a Spot Exchange, for trading in commodities. In exercise of the powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Notification granted exemption to all forward contracts of ‘one-day duration’; from the operations of the provisions of the FCRA, for the sale and purchase of commodities traded on the NSEL, subject to fulfilment of certain conditions, inter alia, that “no short sale by the members of the exchange shall be allowed” and that “all outstanding positions of the trades at the end of the day shall result in delivery”. Thus, NSEL was given permission to be setup as a Spot Exchange

for trading in commodities and was essentially meant to only offer forward contracts having on its trading platform one-day duration as per 2007 Notification

- c. In October 2008, NSEL commenced operations for providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. NSEL introduced the concept of 'paired contracts' in September 2009 which allowed buy and sell in the 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 and 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 the same time and at different prices, but involving the same counterparties. The transactions were structured in a manner that the buyer of the short duration contract always ended up making profits.
- d. On February 06, 2012, 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 Notification, and was authorized to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest.
- e. FMC accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. It was observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days. After analyzing the trade data received from the NSEL, FMC passed an Order No. 4/5/2013-MKT-1/B dated December 17, 2013 (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 not being 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 the conditions specified by the Government of India in its 2007 Notification, while

granting exemption to the one day forwards contracts for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.

29. More specifically, the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, observed that the following conditions stipulated in the 2007 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. Yet, 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 which were not allowed, were in violation of the 2007 Notification.

30. 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 these definitions in the 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 Ministry of Consumer Affairs had stipulated in the 2007 Notification that only forward contracts of 'one-day were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the

“forward contract” under FCRA held that the NSEL was allowed to only trade in forward contracts of ‘one-day duration’ and was obligated to ensure delivery and settlement within 11 days. However, what is beyond doubt is that 55 paired contracts of various commodities, having duration longer than 11 days were executed which was in contravention of the exemption granted to NSEL.

31. 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. vs. Union of India & Others* (Civil Appeal No. 4476 of 2019 decided on April 30, 2019) (“**merger petition**”), wherein it was, *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...”

32. It would also be necessary to place on record the reference to the order of the Hon'ble Bombay High Court in the matter of *63 Moons' Technologies Limited vs. State of Maharashtra* dated August 22, 2019, wherein it was held that the paired contracts were not financial transactions but were trades in commodity as per the regulations and bye laws of NSEL. Upon appeal, 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) (“**MPID matter**”), while drawing reference to the representations made by the NSEL in respect of the paired contracts, *inter alia*, held as follows:

“.....
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.

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....”

33. Thus, the Hon'ble Supreme Court has well described the nature of the 'paired contracts' offered on the NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), the Hon'ble 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 enlarged the interpretation and held that such transactions come within the definition of 'deposits' under the MPID Act. While extensively referring to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources, the Hon'ble Court also observed that the NSEL were advertising assured and uniform returns of 16% per annum for the 'paired contracts' traded on the NSEL platform where the return offered was the same across the commodities. It was further observed that the return remained the same irrespective of the duration of the contract. At paragraph 45 of the said order, the Hon'ble Supreme Court also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in Steel had the same offered rate of return as a T+5 and T+35 paired contract in Castor Oil. Thus, the judgement of the Hon'ble Supreme Court in the MPID matter held that the 'paired contracts' were being marketed as an alternative to fixed deposits and 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.
34. These facts are highlighted from the order of the Hon'ble Supreme Court only to emphasise the point that the paired contracts were not held to be contracts in the commodity segment but in the nature of financing transactions which were not envisaged under the 2007 Notification.
35. I note from the Enquiry Report that the Noticee has executed trades in such 'paired contracts' of multiple commodities. The details of the paired contracts in

which trading was done by the Noticee during the period from October 2008 to March 2013 are given below:

Contract Name	Contract Description
CASTKADI3	GUJARAT CASTOR SEED SMALL EX-KADI
CASTKADI36	GUJARAT CASTOR SEED SMALL EX-KADI
CWOILKDI2	INDIAN COTTONSEED WASH OIL EX KADI
CWOILKDI25	INDIAN COTTONSEED WASH OIL EX KADI

36. The Enquiry Report has illustrated certain paired contract trades executed by the Noticee wherein the two legs of trades were executed for the same commodity, on the same day, within few seconds / minutes. One leg of trade being a buy trade involved T+2 or T+3 settlement cycle and the other leg of the trade being sell trade involving T+25 or T+36 settlement cycle. To elaborate, the Noticee purchased 04 units of CWOILKDI2 for an amount of ₹ 1,237,800 at 17:37:34 Hrs on March 01, 2013. Almost immediately thereafter, at 17:37:38 Hrs on the same day (i.e., within 4 seconds), the Noticee sold 04 units of CWOILKDI25 for an amount of ₹ 1,263,200.

Client Member Name	Trading Member Name	Trading Date and Time	Sell/ Buy	Quantity	Trade Value (in Rs.)	Scrip Code
Zaveri and Co Pvt. Ltd.	Zaveri and Co Pvt. Ltd.	2013-03-01 17:37:34	Buy	04	1237800	CWOILKDI2
Zaveri and Co Pvt. Ltd.	Zaveri and Co Pvt. Ltd.	2013-03-01 17:37:38	Sell	04	1263200	CWOILKDI25

37. I note from the NSEL Circular Nos. NSEL/TRD/2009/173 and NSEL/TRD/2009/174 both dated December 03, 2009, that the contract symbols CWOILKDI2 and CWOILKDI25 refer to the trading in INDIAN COTTONSEED WASH OIL EX KADI (T+2) and (T+25) Contracts, respectively. I find that the Noticee was almost simultaneously executing trades in a short term buy contract (T+2, i.e. 2 days' settlement) and a long term sell contract (T+25, i.e. 25 days' settlement). Thus, the Noticee was non-compliant with the conditions that there should be no short sale and compulsory delivery of outstanding position at the end of the day, as was stipulated in the Notification dated June 05, 2007. By virtue of the same, the Noticee had executed transactions which were clearly in

the nature of 'Paired Contracts' during the period from October 2008 to March 2013.

38. Despite the above and the discussion in the context of the facts of the case, in order to give the benefit of doubt to the submissions made by the Noticee, I have further examined whether while facilitating transactions in paired contracts, the Noticee could have been under the bonafide belief that such transactions were actually spot contracts in commodities or alternatively that since 'paired contracts' were offered and that meant that NSEL was offering contracts which were not resulting in compulsory delivery, the Noticee should have been aware that such a product was not actually a spot contract in commodities. After all, such contracts being advertised as an alternative to fixed deposits returns, offered fixed returns (e.g. @16%) across all commodities, irrespective of the nature of the contract or the duration, and were structured in a manner which ensured that the buyer always made pre-determined profits. In the undeniable background that there was a settlement default at NSEL, there appears no reason for doubt that there were enough red flags which should have alerted the Noticee when these products were first offered by NSEL. Even with a knowledge of basic arithmetic, it can be seen that these contracts were with settlements ranging from T+2 to T+25. The non-defaulting intermediaries and their clients by using the T+2/T+3 'buy' contracts, purchased commodities using a 'warehouse receipt' in exchange for money on the relevant settlement date. The simultaneously executed T+25/T+36 'sell' contract would be used to effectively reverse the aforesaid transaction by selling the said warehouse receipt for a higher price [which was determined when the paired contracts were simultaneously executed] and was the receivable on the relevant settlement date for the T+25/T+36 contract (the spread between the two contracts executed on the same date with different settlement dates was the fixed profit). Thus, since this transaction was effectively marketed and used as a financial contract, the counterparty (in this case; the Noticee) never really bothered to check the existence of the goods against which the warehouse receipt was issued, even when it had possession of the warehouse receipt in the interregnum period between the T+2/T+3 settlement and the T+25/T+36 settlement. Thus, the

counterparties were more than an equal beneficiary of the paired contract as were the counterparty defaulting brokers and their clients.

39. Thus, any prudent person (including the Noticee, who is an intermediary and well versed with financial and commercial knowledge) would have or should have come to the conclusion that what was being offered were not spot contracts in commodities rather had trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in *State of Maharashtra vs. 63 Moons Technologies Ltd.* which was contrary to the FCRA and the 2007 Notification.
40. The Noticee being an intermediary was expected to do due diligence on the products which it offered for trading to its clients. The stated assumption by the Noticee as to the legality of 'paired contracts' is indicative of the fact that the Noticee not only failed to exercise adequate due diligence but even failed to take note of the 2007 Notification regarding approval of only spot contracts/ forwards of one-day duration, permitted on NSEL which was in the public domain and that FMC had never approved the 'paired contracts', especially when paired contracts were introduced in 2009 and NSEL was not regulated under the FCRA. The mere fact that NSEL may refer to any approval of FMC for the purpose of introduction of any contracts in its bye-laws is irrelevant when in fact, it was clear that the FMC was not even the relevant authority for NSEL when paired contracts were introduced and had in fact never approved the same. This is a clear indication of complete lack of due diligence by the Noticee of operating in a manner without following the rules. I note that irrespective of its lack of association with NSEL, for the clients, the face of the NSEL and the 'paired contracts' was the Noticee itself and the 'paired contracts' could not have been executed in large volumes, across the several clients without the action and facilitation of the Noticee.
41. It is thus established that the Noticee has traded in 'paired contracts' for its clients and it has failed to perform basic due diligence of the contracts offered *vis-a-vis* the conditions specified in the 2007 Notification and the FCRA. Such association or active engagement of the Noticee in the 'paired contracts' has seriously

questioned its reputation, fairness, honesty and integrity in the securities market. The association of the Noticee with NSEL also cannot be denied since Noticee was observed to be facilitating the clients to trade in the 'paired contracts'.

42. It is noted that the main allegation against the Noticee, as levelled in the SCN, is that by facilitating the trading in 'paired contracts' on the NSEL platform during the relevant period as a Trading Member/ Clearing Member, the continuance of its registration as a broker is not in the interest of the securities market as it does not fulfil the requirements of being 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 an intermediary as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time.
43. The argument being raised by the Noticee against any action by SEBI especially considering that it was granted a Certificate of Registration No. INZ000071035 by SEBI on September 19, 2016 in terms of provisions of the amended provisions of the FCRA and SEBI Circular No. CIR/MIRSD/4/2015 dated September 29, 2015 holds no ground considering that at that point of time when registration was granted, SEBI had yet to conclude the determination of any violation of law by the brokers as would be relevant under the fit and proper criteria. As mentioned in the earlier part of the order, it was only when certain documents/ material came to light that SEBI formed an opinion to proceed against the brokers and accordingly the decision was taken as was legally permissible to file the Complaint dated September 24, 2018 and FIR dated September 28, 2018 as has been provided to the Noticee vide the SSCN.
44. 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. I further note that the 'fit and proper person' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

45. As and when any of the 'fit and proper' criteria change, the Noticee would also be required to comply with the revised criteria, including as in this instance, the criteria as revised vide the amendment in November 2021. It is noted that the parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lay down a list of disqualifications which, *inter alia*, include the following:

“(1).....

(2).....

(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:*

(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;

.....”

46. As detailed in the SSCN, an FIR has been registered with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPC on September 28, 2018. This has not been challenged, quashed or stayed by any competent court *qua* the Noticee till date. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemptions from such criteria has been provided. Once the disqualification is triggered; the 'fit and proper' person criteria is open for determination by SEBI. The disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations has also been triggered *vis-à-vis* the Noticee.
47. The fact that the Noticee traded in the 'paired contracts' on behalf of its clients, as a broker and as a member of NSEL, and represented NSEL to the investors, shows the undisputed participation of the Noticee in the said scheme to provide such a platform for trading in 'paired contract' that was not permitted under the

2007 Notification since these contracts were purely financial contracts, promising assured returns under the garb of spot trading in commodities (as held by the Hon'ble Supreme Court of India referred *supra*), which caused loss to the market stated to be to the extent of ₹ 5,500 Crore. The Noticee by its conduct and as a member of NSEL acted as an instrument in promoting and/or dealing in 'paired contracts' which were in the nature of financing transaction (as held by the Hon'ble Supreme Court of India referred *supra*) and by trading and by providing access for taking exposure to 'paired contracts', the Noticee exposed its clients to the risk involved in trading in a product that did not have regulatory approval and thereby raises doubts on its competence to act as a registered securities market intermediary. Thus, I am of the view that such trading activities of the Noticee seriously jeopardized its reputation as also SEBI's belief in its competence, fairness, honesty, integrity and character, which compelled SEBI to file the criminal complaint against it as also against several other brokers.

48. I note that when provisions of law specify certain acts to be done in a particular manner, the same is required to be honoured in letter and spirit. Law does not provide any exception to any person to perform such acts that are not permissible under an extant legal framework as per their whims and fancies. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from the operations of the provisions of the FCRA subject to compliance with certain conditions, then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. As noted earlier, the principle of *'ignorantia juris non excusat'* or that *'ignorance of law is no excuse'* becomes squarely applicable.
49. Thus, while examining the consequences of the conduct of the Noticee, the fact that is undeniably clear to me is that the conduct as has been displayed by the Noticee in its trading on the NSEL platform which was detrimental to the interest of the investors in the securities market resulted in the filing of a criminal complaint by SEBI, thus, the Noticee has also incurred the disqualification under Clause 3(b)(i) of the amended provisions of Schedule II of the Intermediaries

Regulations on account of the complaint filed by SEBI and the FIR that was registered by the EOW based on the said complaint of SEBI.

50. Given the same, it can be concluded that the Noticee, presumably driven by its desire to earn brokerage and/ or profit, provided access to its clients to participate in an illegal product, which raises serious questions on its ability to conduct proper and effective due diligence regarding any product. Such activities of the Noticee as a registered broker cannot be condoned and deserves to be met with appropriate measures to prevent such wrong doings from recurring.

CONSIDERATION OF THE RECOMMENDATION OF THE DESIGNATED AUTHORITY

51. In the Enquiry Report, the DA has after determining that the Noticee is not “fit and proper”, recommended that the certificate of registration of the Noticee be cancelled.
52. As discussed in the preceding paragraphs, the facts and circumstances in the instant matter also lead to the conclusion that since the Noticee attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations, the Noticee does not fulfil the “fit and proper” criteria. Once an entity is declared to not fulfil the “fit and proper” criteria, in the interest of the securities market, such an entity should not be allowed to continue to act as an intermediary till the time it does not regain its “fit and proper” status. In this context, it is pertinent to mention that in several scenarios, a defect which is the reason for holding an intermediary as not “fit and proper” is curable at the hands of the intermediary, while in certain scenarios it is not.
53. In the present case, the Noticee has been found to be not ‘fit and proper’ for the reason that its conduct, integrity and reputation has been found wanting on account of the Noticee’s involvement in trading of “paired contracts” on the NSEL platform and also for the reason that since the FIR dated September 28, 2018 has been registered by EOW, which is yet to be finally determined by a Court of competent jurisdiction, the disqualification provided in paragraph 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked.

54. Schedule II of the Intermediaries Regulations, in clause 4 provides that “*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*”. This clause, in my view, covers scenarios of ‘cancellation’ or ‘suspension’ of the certificate of registration of the intermediary.
55. Thus, the Intermediaries regulations envisage a deeming time limit of 5 years or specification of a time limit by the deciding authority, within which the intermediary may cure the defects which led to the determination of its status, if the same is done at its end. The said specification of period also serves as a reformatory direction against the intermediary.
56. Considering the above, the question that now arises for determination is whether the certificate of registration of the Noticee should be cancelled or whether it should be suspended for a specific period. A direction of cancellation, even when the EOW charge sheet is the subject matter of *lis* before the MPID Court, would entail the complete winding up of the business of the Noticee. On the other hand, “suspension for a specific period” would serve the purpose of keeping the Noticee out of the securities market for a specified period, after which, the Noticee may resume its business, upon curing the issues that have led to such an action.
57. Given the peculiar facts and circumstances of the case, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three months or till discharge/ acquittal of the Noticee by a Court of competent jurisdiction, whichever is later, would be more appropriate and commensurate to the violations brought out in the present case.

ORDER

58. In view of the foregoing discussions, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with Regulation 27 of

the Intermediaries Regulations suspend the certificate of registration (bearing No. INZ000071035) of the Noticee i.e., Zaveri and Company Private Limited, for a period of three months from the date of this Order or till an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is later.

59. The Noticee shall, immediately after receipt of this order, inform its existing clients, if any, about the aforesaid direction in paragraph 58.
60. The Order shall come into force with the immediate effect. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

Place: Mumbai
Date: July 31, 2023

BABITHA RAYUDU
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA