

**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:

NOTICEE	SEBI REGISTRATION No.
SSJ Commodities Private Limited	INZ000013439

In the matter of National Spot Exchange Limited

I. Background

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

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

II. Brief History of Illegal Forward Contracts on NSEL:

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

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

- i. no short sale by members of the Exchange should be allowed;*
- ii. all outstanding positions of the trade at the end of the day shall result in delivery;*
- iii. the National Spot Exchange Ltd. shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;*
- iv. all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

.....”

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

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

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

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

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

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

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

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

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

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

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

<i>Commodity</i>	<i>Duration</i>	<i>Investment (lacs.)</i>	<i>Yield</i>
<i>Castor Seed</i>	<i>T+3 & 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 show cause as to why appropriate recommendation should not be made against it as prescribed under Regulation 27 of the Intermediaries Regulation read with Section 12(3) of the SEBI Act. Upon completion of the enquiry, the DA submitted its report dated October 31, 2019, recommending cancellation of the certificate of registration granted to the Noticee, since the Noticee was not a FPP.
14. Pursuant to the same, a post enquiry show cause notice (hereinafter referred to as the "**SCN-1**") dated January 08, 2020, was issued to the Noticee, under Regulation 28(1) of the Intermediaries Regulations to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the

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

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

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

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

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

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

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

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

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

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

IV. Consideration of Issues

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

Provisions of Broker Regulations:

Consideration of application for grant of registration.

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

.....

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

Conditions of registration.

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

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

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

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

A. General.

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

Provisions of Intermediaries Regulations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30. When the pendency of a criminal complaint or FIR filed by SEBI is prescribed as a negative criterion / disqualification from eligibility under Schedule II of the Intermediaries Regulations, it is imperative for me to consider the same while adjudging the eligibility of the Noticee to continue to hold the authorization granted. In my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of distinctly identifiable parameters, which would apply uniformly to all intermediaries. The FPP criteria, being an eligibility criteria which has to be complied with on a continuing basis, the question of prospective application does not arise, as contended by the Noticee. To reiterate, the fact that SEBI has filed a complaint and FIR against the Noticee and the fact that both are pending, by itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.

31. The evaluation of the facts and legal provisions as brought out above, compels me to arrive at the conclusion that the Noticee is not a 'fit and proper' person and hence is not eligible to continue its business as a stock broker using the certificate of registration no. INZ000013439 granted by SEBI.

DIRECTIONS

32. In exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, 2008, I do hereby, cancel the Certificate of Registration bearing no. INZ000013439 of the Noticee i.e. SSJ Commodities Private Limited.

33. Upon receipt of this Order, the Noticee shall immediately inform its existing clients, if any, about the direction at paragraph 32 above.

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

Date: March 31, 2023

Place: Mumbai

Sd/-

GEETHA G

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA