

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

Sr. No.	Name of the Noticee	SEBI Registration No.
1.	Balaji Commodity Futures Private Limited	INZ000078132

in the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated August 01, 2019, submitted by the Enquiry Officer in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021 (hereinafter referred as "**Intermediaries Regulations**"), wherein the Designated Authority (hereinafter referred to as "**DA**"), based on various factual findings and observations so recorded in the said Enquiry Report, has recommended that the registration of M/s Balaji Commodity Futures Private Limited (hereinafter referred to as "**BCFPL/ Noticee**") as a stock broker may be cancelled.
2. The aforesaid Enquiry Report was submitted pursuant to an enquiry proceeding initiated against the *Noticee* by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") based on the findings that BCFPL, as a member of the National Spot Exchange Limited (hereinafter referred to as "**NSEL**"), has dealt/facilitated in the trading of the '*paired contracts*' at the exchange platform of the NSEL during the period September 2009 to August 2013 (hereinafter referred to as "**relevant period**") which were in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as

“**FCRA**”) and the conditions prescribed in the Government of India Notification dated June 05, 2007 (hereinafter referred to as “**2007 Exemption Notification**”). Further, it was observed that continuance of the Certificate of Registration of the *Noticee* as a stock broker (having Registration No. INZ000078132) is detrimental to the interest of the Securities Market and that the *Noticee* is no longer a ‘*fit and proper person*’ for holding the Certificate of Registration No. INZ000078132 as a stock broker in the Securities Market which is one of the conditions for grant /holding/ continuance of registration, in terms of regulation 5(e), regulations 9(b) and 9(f) of the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereafter referred to as “**Intermediaries Regulations**”).

3. In view of the aforesaid finding of facts, a DA was appointed to enquire into and to submit a report pertaining to the aforesaid acts of the *Noticee* and into the possible violations of regulation 5(e), regulations 9(b) and 9(f) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations, allegedly committed by the *Noticee*.
4. The DA issued a show cause notice dated September 25, 2018 to the *Noticee* under regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) asking the *Noticee* to show cause as to why appropriate recommendation should not be made against it under regulation 27 (as applicable at that time) of the Intermediaries Regulations read with Section 12(3) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”). In response to the same, the *Noticee* vide letter dated October 29, 2018 submitted its reply. Further, vide addendum dated February 26, 2019 to the SCN, certain documents (as specified in the said notice) were provided to the *Noticee* and the *Noticee* was further advised to file its written representation within 21 days of the receipt of the said second SCN. In response, the *Noticee* vide letter dated March 15, 2019 filed its reply.
5. On the basis of the aforesaid factual details, material available on records and after considering the replies filed by the *Noticee*, the DA has *inter alia* observed the following in the report:

“30. In view of the foregoing, after taking into consideration all the facts and circumstances of the case, I am of the view that the Noticee is not a ‘fit and

proper person' in terms of regulation 5(e) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of provisions of regulation 27 of the Intermediaries Regulations read with section 12(3) of the SEBI Act and regulation 27(iv) of the Brokers Regulations, I hereby recommend cancellation of the certificate of registration granted to the Noticee i.e. Balaji Commodity Futures Private Limited [SEBI Regn. No. INZ000078132] as commodity derivatives broker."

6. After considering the Enquiry Report, a Post Enquiry Show Cause Notice dated September 17, 2019 (hereinafter referred to as "**SCN**") enclosing therewith the Enquiry Report of the DA was issued to the *Noticee* under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration that has been granted to the *Noticee* as recommended by the DA including passing of appropriate direction, should not be taken against it in terms of regulation 28(2) of the Intermediaries Regulations (as applicable at the relevant time), as the Competent Authority considers appropriate. The SCN further advised the *Noticee* to submit its reply, if any within 21 days of receipt of the said SCN. The *Noticee* vide its letter dated October 31, 2019 submitted its reply to the SCN.
7. While the extant proceedings in the present matter were ongoing, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**"). The Hon'ble SAT vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon'ble SAT *inter alia* held as under:

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

respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice.....”

8. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon'ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the *Noticee* before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as “**SSCN**” and collectively SCN and SSCN are referred to as “**SCNs**”) provided certain additional documents/material (as indicated in the SSCN) to the *Noticee* and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The *Noticee* was further informed that if no reply is received within 15 days of receipt of this SSCN, it shall be presumed that it has no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been sent to the *Noticee* through *Speed Post Acknowledgement Due* (for short ‘**SPAD**’) vide letter dated October 11, 2022. Further, the scanned copy of the SSCN was served upon the *Noticee* vide email dated October 13, 2022 and proof of delivery is available on record. In response, the *Noticee* vide email (received from the email id i.e., commodity@balajiequities.com dated November 01, 2022 submitted scanned copy its reply dated October 31, 2022.
9. On the scheduled date of hearing which was held through video conferencing on November 10, 2022, Mr. Sekhara Rao, Director of the *Noticee* appeared and made submissions in line with its earlier replies (being reply vide letter dated October 31, 2019 and vide letter dated October 31, 2022). I note that while responding to the SCN dated September 17, 2019, the *Noticee* has requested to read its reply in conjunction with the *Noticee*’s earlier replies dated October 29, 2018 and March 15, 2019. Further, I note that post hearing, the *Noticee* has submitted additional information vide its email dated December 02, 2022. Under the circumstances, I observe that the principles of natural justice have been adhered to adequately in the present matter. Therefore, the matter is fit to be proceeded with, on merit, based on the materials contained in the SCN and SSCN as well as the replies of the *Noticee* available on record.

10. The written submissions filed by the *Noticee* vide its letters dated October 31, 2019 and October 31, 2022 and the oral submissions made during the course of the personal hearing held on November 10, 2022, are summarized hereunder:
- i. The findings of the DA are erroneous, contrary to the facts and law, arbitrary and without any basis and the SCN issued by the DA dated September 25, 2018 did not provide any details of actions/instances which constituted the alleged violations of the Broker Regulations;
 - ii. Reliance of SEBI on the FMC Order dated December 17, 2013 is misplaced as the *Noticee* was not a party to the said order;
 - iii. The enquiry report has been prepared based on the wrong presumption that the *Noticee* has been provided with all the relevant documents whereas the *Noticee* was provided with the documents which were not germane to the issues under consideration;
 - iv. The finding of the DA that the functions of the WTM and Executive Director are administrative in nature while appointing the DA and hence ED's superior can also perform such administrative functions is erroneous, flawed and bad in law;
 - v. SEBI Act and relevant regulations were not applicable to the *Noticee* at the time when the alleged '*paired contracts*' were executed by the *Noticee* and in terms of Section 29A(2)(e) of the FCRA SEBI could initiate prosecution proceedings against the *Noticee* for violation of FCRA and not for violation of SEBI Act and relevant Regulations as they were not applicable to the *Noticee*;
 - vi. The findings of the DA with regard to the applicability of SEBI Regulations is misconceived, perverse and contrary to law as the SEBI laws cannot be made applicable retrospectively;
 - vii. SEBI has no jurisdiction on the spot market. The letter dated November 20, 2015 issued by the Ministry of Finance has clarified that since FMC was not regulating spot market, SEBI is not expected to take upon itself any regulatory function with regard to such market;

- viii. The reliance on the decision of *Jermyn Capital LLC Vs SEBI*¹ is misplaced as there is no allegation that any of the directors or the KMPs of the *Noticee* are closely associated with anyone against whom CBI etc., has initiated proceedings;
- ix. The reliance on the decision of *Mukesh Babu Securities*² is also misplaced as the SCN does not alleged that the Chairman/ Whole Time Director/ Managing Director of the *Noticee* is involved in any criminal case;
- x. The reliance placed by the DA on the adverse observations made by courts/ authorities including Economic Offence Wing, the finding of the DA that the paired contracts were not contracts in commodity but in the form of financial transactions etc., are not relevant and are devoid of any force in light of the decision of the Hon'ble Bombay High Court in the matter of *63 Moons' Technologies Limited Vs. State of Maharashtra*³ dated August 22, 2019. The Hon'ble High Court in the said matter has held that what was contemplated through the platform of NSEL was purchase and sell transactions which was also accompanied with other statutory levies in respect of buy/sell transactions and this contract was deemed to constitute an agreement between the client and a member and was governed by the regulations and bye law. Further, the Hon'ble Bombay High Court also held that the paired contracts were not financial transactions but were trades in commodity as per regulations and byelaws of NSEL;
- xi. Even if a member of NSEL is found to be in violation of FCRA, Regulations and bye laws of NSEL, the member may be penalized under FCRA and it is not mandatory to declare the member as not fit and proper;
- xii. The observations of courts/ authorities on mismanagement of NSEL cannot have a bearing on the *Noticee* being fit and proper. Further, the *Noticee* was neither a party to the FMC Order dated December 17, 2013 nor the court had considered the role of the *Noticee* as a member of NSEL;
- xiii. The reliance on the EoW report by the DA is misplaced as no specific charges are made out against the *Noticee* in the said interim report. The *Noticee* had traded in/ facilitated the paired contracts as a member in

1 2007 74 SCL 246 SAT, Also available at - <https://indiankanoon.org/doc/1511076/>

2 MANU/SB/0030/2007, Also available at - <https://indiankanoon.org/doc/129504/>

3 MANU/MH/2309/2019, Also available at - <https://indiankanoon.org/doc/178307788/>

accordance with the business rules and regulations of NSEL and on the date of closure of business at NESL, the total payout obligation was of Rs. 146.26 Lacs;

- xiv. The paired contracts were introduced by NSEL with the approval of its Board and the *Noticee* had no other option but to trade in such contracts by observing the business rules and regulations of NSEL;
- xv. The DA has not dealt with/ given due consideration to the following contentions of the *Noticee*:
 - a. All clients who dealt through the *Noticee* were duly registered clients with proper KYC Member Client Agreement and other relevant documents signed and executed by clients;
 - b. Trades were carried out as per the NSEL system;
 - c. No brochure/ pamphlets/ presentations on NSEL were issued or provided to the clients;
 - d. NSEL was functioning in public knowledge and there was no reason for the *Noticee* to question the legality of products launched by NSEL.
- xvi. The *Noticee* had around 1262 registered clients in the commodity broking while the trades in paired contracts were executed only for 17 clients who approached the *Noticee* at their own instance;
- xvii. The Government of India's letter dated December 30, 2014 merely confirms the government's agreement with the view of FMC that the NSEL had violated the conditions of the 2007 Exemption Notification and the said letter was silent on the activities of the members of the NSEL;
- xviii. The order of the Hon'ble Supreme Court in the case of amalgamation of 63 Moons by the Central Government with the NSEL, although the Hon'ble Court has observed that the paired contracts were in breach of the exemptions granted but the judgment has no relevance insofar the role of members of NSEL is concerned and it is incorrect to infer that merely because the *Noticee* traded in the paired contracts, it was in close association with the NSEL;
- xix. A Broker operating on the stock exchange cannot be treated as a close associate unless there is common ownership, management or control;

- xx. Under FCRA, the power to investigate vests with the police authorities under the CrPC and SEBI is not empowered to investigate into the alleged violations of FCRA;
- xxi. In view of Section 29(A)(2)(e) of FCRA, the present proceedings are not maintainable as any violation under the FCRA is to be brought out to the notice of Police Authorities by SEBI which has already been done on September 24, 2018;
- xxii. FIR is a preliminary document and not final determination of issues and any adverse reliance on the same would cause gross injustice to the *Noticee*;
- xxiii. The fit and proper person criteria under the Intermediaries Regulations cannot be applied retrospectively.

CONSIDERATION OF ISSUE AND FINDINGS

11. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee*, the reply dated October 31, 2019 made by the *Noticee* and other materials/information as available in the public domain and also made available to the *Noticee* vide SSCN dated October 11, 2022 and *Noticee's* reply dated October 31, 2022 and December 02, 2022. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN/SSCN, the issue which arises for my consideration in the present proceedings is whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
12. Before coming to the merit of the case, it is relevant to deal with the contention of the *Noticee* that the power to appoint a Designated Authority (DA) has been vested in the Executive Director while in the instant case the DA has been appointed by the Whole Time Member of SEBI thereby raising a concern about the irregularity in the appointment of DA. In this regard, I note that the Section 3(2) of the Securities and Exchange Board of India (Delegation of Powers) Order, 2015 specifically provides that, "*The powers and functions delegated to any member or officer of the Board or authority under the Order can be exercised by any officer or authority higher in grade or rank or position to him*". Thus, in presence of a valid delegation conferred upon by the statute, I find that the *Noticee's* challenge to the appointment of DA by the Whole Time Member of SEBI, who is an authority higher

in grade, rank and position to the Executive Director of SEBI, is devoid of any merit. I therefore concur with the findings of the DA in this regard.

13. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the laws, which are alleged to have been violated by the Noticee and/or are referred to in the present proceedings. The same are reproduced below for ease of reference:

THE SEBI ACT, 1992

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

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

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

THE STOCK BROKERS REGULATIONS, 1992

Consideration of application for grant of registration.

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

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

Conditions of registration.

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

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

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

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

Liability for action under the Enquiry Proceeding Regulations.

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

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

THE INTERMEDIARIES REGULATIONS, 2008

SCHEDULE II

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

[See regulation 7]

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

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

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

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

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

Explanation –*For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary,*

shall be construed with reference to the respective regulations applicable to the applicant or intermediary.

- (3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*
- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
 - (b) the person not incurring any of the following disqualifications:*
 - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
 - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
 - (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
 - (iv) recovery proceedings have been initiated by the Board against such person and are pending;*
 - (v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
 - (vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
 - (vii) such person has been declared insolvent and not discharged;*
 - (viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*
 - (ix) such person has been categorized as a wilful defaulter;*
 - (x) such person has been declared a fugitive economic offender; or*
 - (xi) any other disqualification as may be specified by the Board from time to time.*
- (4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*
- (5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an*

application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

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

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

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

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

Recommendation of action

26. (1) *After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures, –*

- (i) disposing of the proceedings without any adverse action;*
- (ii) cancellation of the certificate of registration;*
- (iii) suspension of the certificate of registration for a specified period;*
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;*
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*

(vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;

(vii) issuance of a regulatory censure to the noticee:

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

Order.

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

14. Admittedly, prior to the merger of FMC with SEBI (w.e.f. September 28, 2015), the Noticee was not required to be registered under the FCRA or any other regulation to be a commodity derivatives broker. However, after the merger of FMC with SEBI, a commodity derivatives broker is required mandatorily to have a certification of registration from SEBI in case it is desirous to remain associated with the Securities Market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 1952 but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the Noticee was registered as a broker w.e.f. September 15, 2016 and since then it has been acting as a market intermediary registered with the SEBI.

Scope of the present proceedings vis-à-vis order passed by the Hon'ble SAT on June 09, 2022

15. As noted above, taking cognizance of the order passed by the Hon'ble SAT on June 09 2022 (hereinafter referred to as “**SAT Order**”) in the NSEL matters, a SSCN dated October 11, 2022 *inter alia* enclosing a copy of the SAT Order was issued to the *Noticee* calling upon the *Noticee* to show cause as to why the following information/material along with the Enquiry Report dated August 01, 2019 should not be considered against it for determining whether the *Noticee* satisfies ‘*fit and proper person*’ criteria as laid down under Schedule II of the Intermediaries Regulations:
- a. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing (**‘EOW’**);
 - b. First Information Report (**‘FIR’**) dated September 28, 2018; and
 - c. Amended Schedule II of the Intermediaries Regulations.
16. In this regard, I find it apposite to encapsulate and list the grounds on which the SEBI orders were set aside by the Hon'ble SAT which consequently led to issuance of the aforesaid SSCN to the *Noticee* in the present matter:
- a. The observations of the Hon'ble Bombay High Court in the matter of *63 Moons vs. Union of India*⁴ cannot be relied upon as the said judgement has been set aside in appeal by the Hon'ble Supreme Court vide judgment dated April 30, 2019⁵.
 - b. The observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short “**MPID Act**”) (*NSEL vs. State of Maharashtra*⁶) cannot be relied upon, as in a subsequent Writ Petition moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has allowed the prayer and held⁷ that the NSEL is not a financial establishment and therefore the provisions of the MPID Act are not applicable. The Division Bench also observed that the *prima facie*

4 Writ Petition No. 2743 of 2014, Also available at - <https://indiankanoon.org/doc/66704740/>

5 (2019) 18 SCC 401, Also available at - <https://indiankanoon.org/doc/169098295/>

6 Writ Petition No. 1403 of 2015, Also available at -

<https://bombayhighcourt.nic.in/generatenewauth.php?bhcp=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9qdWRnZW1lbnRzLzlwMTUvJmZuYW1IPUNSV1AxNDZMTUucGRmJnNtZmxhZz10JnJqdWRkYXRIPSZ1cGxvYWRkdD0wMS8xMC8yMDE1JnNwYXNzcGhyYXNlPTA5MDIyMzEyMzU0Ng==>

7 MANU/MH/2309/2019, Also available at - <https://indiankanoon.org/doc/178307788/>

observations made by the single bench while dismissing the NSEL petition could not be relied upon as they were preliminary observations and such observations do not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that *prima facie* observations cannot be utilized to judge the reputation, character or integrity of the NSEL.

- c. The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of **Jignesh Prakash Shah vs. The State of Maharashtra**⁸, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
- d. Reliance on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Hon'ble Bombay High Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.
- e. Effect of SFIO Report under The Code of Criminal Procedure, 1973, as to whether such report could be treated as evidence, was not considered by SEBI.
- f. Reliance placed on decisions of the Hon'ble Tribunal in the matter of **Jermyn Capital vs. SEBI**⁹ and **Mukesh Babu Securities vs. SEBI**¹⁰ is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of **Mukesh Babu Securities** was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Hon'ble Tribunal noted that there is no evidence to show

⁸ Criminal Bail Application No.1263 Of 2014, Also available at -<http://www.nationalspotexchange.com/HC-order.pdf>

⁹ 2007 74 SCL 246 SAT, Also available at - <https://indiankanoon.org/doc/1511076/>

¹⁰ MANU/SB/0030/2007, Also available at- <https://indiankanoon.org/doc/129504/>

that any proceedings have yet been initiated against the appellants in the matter under consideration.

- g. Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- h. Grant Thornton Forensic report commissioned by SEBI does not find any close connection between applicant and the NSEL. This was overlooked by SEBI.
- i. The SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.

17. It is also noted from the SAT Order that the matter was remanded back to SEBI, taking into consideration the contention made by the counsel appearing on behalf of SEBI that there was additional material available, which had come into existence after the SEBI orders, based on which the findings in the said order could be sustained. The Hon'ble Tribunal, taking into consideration the submissions made on behalf of SEBI, held that:

“It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available.”

18. Before moving forward to consider the matter on merits and test the compliance of the Noticee with the ‘fit and proper person’ criteria, on the basis of the additional material that has been brought on record post the SEBI order, as detailed at paragraph 15 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:

- i. The Noticee, M/s Balaji Commodity Futures Private Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000078132

with effect from September 15, 2016 and is currently a member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as “**MCX**”).

- ii. The NSEL was incorporated in May 2005 as a Spot Exchange *inter alia* with a purpose of developing an electronic Spot Exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia* including “no short sale by the members of the exchange shall be allowed” and “all outstanding positions of the trades at the end of the day shall result in delivery”.
- iii. In October 2008, the NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that the NSEL had introduced the concept of ‘paired contracts’ in September 2009 which allowed buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time 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 same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
- iv. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as “**FMC**”) was appointed by the Department of Consumer Affairs, Government of India as the ‘designated agency’ as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from the NSEL and to examine the same for taking appropriate measure, if needed, to protect investors’ interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including the NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as “**FMC Order**”) wherein it was *inter alia* observed that 55 contracts offered for trade on the

NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of ‘no short sale by members of the exchange shall be allowed’ was being not complied with by the NSEL and its members. FMC further observed that the ‘paired contracts’ offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violations of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.

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

a. Short Sale

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

b. Contracts with Settlement Period going beyond 11 days

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

20. Thus, I note that the NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short “**MCA**”), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one-day duration traded on NSEL subject to

certain conditions which, *inter alia*, included that 'no short sale by members of the NSEL shall be allowed' and that all 'outstanding positions of the trade at the end of the day shall result in delivery'. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

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

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

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

22. It is therefore, clear that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. I further note from

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

23. At this stage, it is also pertinent to refer to the judgment of the Hon’ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others*¹¹ (Civil Appeal No. 4476 of 2019 decided on April 30, 2019), wherein it *inter alia* held that:

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

24. It is further pertinent to refer to the judgement dated April 22, 2022 passed by the Hon’ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd.*¹² (hereinafter referred to as “**MPID matter**”), wherein the Hon’ble Supreme Court while drawing reference to the presentations made by the NSEL in respect of the ‘paired contracts’ has *inter alia* held that:

“The above representation indicates that ‘paired contracts’ were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would

¹¹ (2019)18 SCC 401. Also available at <https://indiankanoon.org/doc/169098295/>

¹² Civil Appeal No. 2748-49 of 2022. Also available at <https://indiankanoon.org/doc/184205229/>

*simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. **Therefore, NSEL represented that on receiving money and commodities, the members would receive assured returns and a service.** Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act.” (emphasis supplied)*

25. I, therefore, note that the Hon’ble Supreme Court has already commented on the nature of the ‘*paired contracts*’ offered on the NSEL platform. In the merger petition (63 Moons Technologies Ltd. vs. UOI), it was held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon’ble Supreme Court has held that such transactions come within the definition of ‘*deposits*’ under the MPID Act.
26. It is further noted that the Hon’ble Supreme Court in the MPID matter, had extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. In this regard, it can be noted that the NSEL was advertising a uniform return of 16% p.a. for the ‘*paired contracts*’ traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The ‘*paired contracts*’, it is noted, were being marketed as an alternative to fixed deposits.
27. I note that the FMC Order and both judgments of the Hon’ble Supreme Court go into abundant detail regarding the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon’ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the ‘*paired contracts*’ which were

executed were short sales – and naked short sales at that - the commodities to back such sales were not available at the designated warehouses of the NSEL.

28. Considering the deliberations and discussions recorded above, it essentially leads to the moot question as to whether the *Noticee* while facilitating such transactions for its clients was under the *bonafide* belief that the '*paired contracts*' were actually spot contracts in commodities. Or can it be said that the very fact that '*paired contracts*' were offered meant that the NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the *Noticee* should have been aware that such a product was far removed from the spot trading in commodities which was permitted on the NSEL's platform. Further, as stated above, the NSEL itself was advertising such contracts as an alternative to fixed deposits and 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.
29. In the undeniable background that there was a settlement default at the NSEL, it is clear that there were enough red flags which should have alerted the *Noticee* when these products were first offered by the NSEL. With the material on record, especially those summarized at paragraphs 24 and 26, it is further clear that any prudent person (including the *Noticee*) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had a trappings of a financial product which offered fixed and assured returns, as the Hon'ble Supreme Court has already held.
30. I note that vide Finance Act, 2015, FMC has been merged with Securities and Exchange Board of India (SEBI) on September 28, 2015. In this regard, FCRA was amended whereby Section 29(A) Repeal and Savings was inserted, which is produced hereunder for reference -

29A. Repeal and savings—(1) *The Forward Contracts (Regulation) Act, 1952 (74 of 1952) is hereby repealed.*

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

(a)....

(b).....

(c) *anything done or any action taken or purported to have been done or taken including any inspection, order, penalty, proceeding or notice made, initiated or*

issued or any confirmation or declaration made or any licence, permission, authorisation or exemption granted, modified or revoked, or any document or instrument executed, or any direction given under the Act repealed in sub-section (1), shall be continued or enforced by the Security Board, as if that Act had not been repealed;

(d) all offences committed, and existing proceedings with respect to offences which may have been committed under the Forward Contracts Act, shall continue to be governed by the provisions of that Act, as if that Act had not been repealed;

*(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).....

31. It is observed from the reply dated October 31, 2019 that the *Noticee* had executed trades in '*paired contracts*' for 17 clients out of its 1262 registered clients. Further, vide email dated December 02, 2022, the *Noticee* has submitted that it has facilitated trading in '*paired contracts*' for 16 clients and had a turnover of Rs.34,68,05,520/- by trading in '*paired contracts*'. Thus, it is clear from the material available before me that the *Noticee* has indulged into trading in '*paired contracts*' on behalf of its clients.
32. I note from the available records that the *Noticee* has facilitated its clients to trade in '*paired contracts*'. I note that participating /facilitating in the trading in '*paired contracts*' was itself illegal as per notification dated June 05, 2007. I also note that by virtue of the aforesaid insertion of Section 29A (Repeal and savings) into the FCRA, SEBI has been substituted as the enforcing authority in place of erstwhile FMC. Since the paired contracts were violative of the conditions stipulated in the Government Notification dated June 05, 2007, as recorded in the SSCN, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated / facilitated access to '*paired contracts*' traded on NSEL, including the *Noticee* within the time limit as specified in the aforementioned provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai, which is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. I note that the name of the *Noticee* is reflected in the complaint and the FIR. I also note

that the violations committed by the *Noticee* had also led to initiation of enquiry proceedings against the *Noticee* by SEBI.

33. In the background of the aforesaid discussion pertaining to '*paired contract*' as captured in the preceding paragraphs, I now move on to examine whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
34. In this context, as per reply dated October 31, 2019 of the *Noticee* and also as per the submissions made vide its email dated December 02, 2022, I note that the *Noticee* has provided details of trading done on behalf of its clients. The *Noticee* has submitted that it had started its trading in '*paired contracts*' through the NSEL on February 28, 2012 and its last trade was on July 30, 2013. I also note that vide its reply dated December 02, 2022, the *Noticee* has categorically denied to have traded in '*paired contracts*' in its proprietary account.
35. Having held that the *Noticee* has traded in '*paired contracts*' for its clients, I will now proceed to examine the allegations levelled against the *Noticee*. It is noted that the main allegation against the *Noticee*, as levelled in the SCN, is that by participating/facilitating in the trading in '*paired contracts*' on the NSEL platform during the relevant period as a Trading Member/Clearing Member, the *Noticee* has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it was alleged in the SCN that the continuance of the registration of the *Noticee* as a broker is detrimental to the interest of the Securities Market and the *Noticee* is no longer a '*fit and proper person*' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents/material (such as SEBI Complaint dated September 24, 2018 and SEBI FIR dated September 28, 2018 etc.) as provided to the *Noticee* vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents filed against the *Noticee* by SEBI as well as observations against the *Noticee* in the SCN dated September 17, 2019, the *Noticee* is no longer a '*fit and proper person*' for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

36. I note that regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a '*fit and proper person*' in terms of Schedule II of the Intermediaries Regulations. 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.
37. In this context, as noted above, I note that the *Noticee* is holding a Certificate of Registration INZ000078132 granted by SEBI since September 15, 2016. In order to continue to hold such Certificate of Registration from SEBI, the *Noticee* is also required to satisfy the conditions of eligibility, which *inter alia* include, continuance of its status as a '*fit and proper person*'. The above condition to be a fit and proper is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.
38. 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. SEBI is well within the powers to examine the '*fit and proper*' status of an entity based on various parameters. Therefore, even if the *Noticee* was found to have fulfilled the '*fit and proper person*' criteria when granted Certificate of Registration in 2016, such an intermediary can still be assessed on being *fit and proper* at a later date. Furthermore, as and when the '*fit and proper*' criteria changes, the *Noticee* will be required to comply with the revised criteria, and in this instance criteria as revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which includes:
- (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;*

39. As already recorded in SSCN and captured above, FIR registered against the *Noticee* under section 154 of the Code of Criminal Procedure, 1973('CrPC') by the MIDC Police Station, Mumbai on September 28, 2018 is pending as on date and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. It is, therefore, noted that the disqualification provided in paragraph 3(b) (i) under the amended Schedule II of the Intermediaries Regulations is triggered vis-à-vis the *Noticee*.
40. In this regard, it is noted that the *Noticee* has admittedly traded in '*paired contracts*' on behalf of its clients. I note that the *Noticee*, as a broker and as a member of the NSEL, represented the NSEL to the regular investors. The execution of the trades in '*paired contracts*' by the *Noticee* shows the participation of the *Noticee* in the said scheme perpetrated by the NSEL to provide its platform for trading in '*paired contract*' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the *Noticee* by its conduct and as a member of the NSEL has acted as an instrument of the NSEL 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 to be so as noted above). The *Noticee*, by providing access for taking exposure to '*paired contracts*' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval, thereby raises doubts on the competence of the *Noticee* to act as a registered Securities Market intermediary. The *Noticee* being a broker ought to have certainly understood the nature of the product before participating/facilitating in such contracts. Thus, I am of the view that the trading activities of the *Noticee* in '*paired contracts*' for its clients on the NSEL platform have serious ingredients amounting jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* in the Securities Market.
41. Therefore, looking holistically I find that the said conduct of the *Noticee* is detrimental to the Securities Market being not in conformity with the applicable code of conduct. It may also be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the *Noticee* but to examine as to whether or not, the *Noticee* has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the

Noticee. In my considered view, it is immaterial if the *Noticee* has no outstanding investor complaints. The fact that is undeniably clear before me is that the involvement of the *Noticee* in trading/facilitation of trading in '*paired contracts*' on the NSEL is certainly a conduct which was not permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct as has been displayed by the *Noticee* in its trading on the NSEL platform is detrimental to the interest of the Securities Market.

42. Further, as noted above, the *Noticee* has also earned disqualification under 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of the complaint dated September 24, 2018 filed by SEBI. In this regard it is pertinent to note that the FIR dated September 28, 2018 registered pursuant to the said complaint is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. In this context, as observed above, I note that being a '*fit and proper person*' is a continuing '*eligibility criteria*' which must be satisfied by the *Noticee* including the amended criteria. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II hold the field which are binding upon me, and arguments, if any, to the contrary are not maintainable.
43. At this juncture, I note that, the *Noticee* in its reply has stated that, SEBI is not empowered to investigate into the alleged violations of FCRA and the said power to investigate vests with the police authorities under CrPC. With respect to the same, I note that, SEBI had filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the FCRA *inter alia* alleged to have been committed by the *Noticee*. I also note from the records that on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai and the same is validly subsisting. Therefore, I do not see any merit in the said submission of the *Noticee*.
44. The *Noticee* has also stated that in view of Section 29(A)(2)(e) of FCRA, the present proceedings are not maintainable as any violation under the FCRA is to be brought out to the notice of Police Authorities by SEBI which has already been done on September 24, 2018. At this juncture, it is significant to reproduce the relevant excerpt of section 29A(2)(e) of the FCRA which is as under:

“(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;”

The said provision is an enabling provision which enables SEBI to initiate fresh proceedings within a period of three years from the date on which the FCRA is repealed. As stated above, SEBI has *inter alia* filed complaint against the Noticee within the period as specified by the wisdom of the legislature. Accordingly, I note that SEBI has taken appropriate steps for the alleged violation of the provisions of the FCRA.

45. I also note that the present proceedings have been initiated to adjudge whether the *Noticee* meets the criteria for fit and proper person as specified in the Broker Regulations and the Intermediaries Regulations. The *Noticee* is obliged to maintain the fit and proper person criteria on a continuous basis and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market. I therefore find no merit in the said submission of the *Noticee*.
46. I am also aware that recently SEBI has passed 5 separate orders¹³ in the related NSEL matters where the *Noticees* therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said *Noticee* by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the *Noticee* is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of

¹³ Orders dated November 29, 2022 in respect of Motilal Oswal Commodities Brokers Pvt. Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-65602.html>), Anand Rathi Commodities Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-65604.html>), Geofin Comtrade Limited (previously known as Geojit Comtrade Limited) (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited-65597.html>), India Infoline Commodities Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-65595.html>) and Phillip Commodities India Pvt. Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-65593.html>) in the matter of NSEL.

those 5 cases where the applications for grant of certificate of registration were pending at the time of passing those orders whereas in the extant matter the *Noticee* is already having registration with SEBI. At this stage, one may argue that at the time of grant of Certificate of Registration to the *Noticee* in September 2016, it was already adjudged as a '*fit and proper person*' by SEBI and therefore the said criteria are already satisfied by the *Noticee*. However, as noted above '*fit and proper person*' criteria is a continuing requirement under the Intermediaries Regulations which the *Noticee* ought to comply with at all times so long it desires to remain associated with the Securities Market as a registered intermediary. Necessity of specifying a period of time may also not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) when dealing with an entity holding a certificate of registration which is cancelled as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is 'fit and proper' as per the extant and applicable regulations. If it chooses not to, such issue becomes moot.

47. It is also foreseeable that an objection may be taken to the issuance of the SSCN dated October 11, 2022 which was issued pursuant to and on the basis of the SAT Order on account of the fact that the said SAT Order is not applicable to the *Noticee* as the *Noticee* was not a party before the Hon'ble SAT in those 5 appeals where the said SAT Order was passed. However, I find that the said objection, if taken would have been totally misplaced as the essence of the said SAT Order is that it advises SEBI to provide the documents which it intends to use/rely in the present proceedings so that the entity would have an opportunity to prepare its defence pertaining to these documents and which is also in adherence to the principles of natural justice. Due opportunity to evaluate the materials and to be heard addresses the principles of natural justice. In any case, as recorded above, the Hon'ble SAT had already granted permission to SEBI to issue SSCN which was complied with by SEBI in this regard.
48. In view of the above observations and admission of the *Noticee* having traded in these '*paired contracts*' on the NSEL, I have no hesitation in holding that the *Noticee* has participated/facilitated in the trading in '*paired contracts*' on the NSEL platform during the relevant period as a Trading Member/Clearing Member and has violated the conditions of the 2007 Exemption Notification and also the

provisions of the FCRA. Further, as noted above, the *Noticee* has also attracted disqualifications under point 3(b)(i) of Schedule II and the act of *Noticee* in offering access to '*paired contracts*', as detailed above, also seriously calls into question the integrity, honesty and lack of ethical behavior on its part. These contracts, as stated earlier, were *ex facie* offered in violation of the 2007 Exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on the NSEL. Here it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' also becomes applicable in the situation since trading in '*paired contracts*' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The '*paired contracts*' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-by to the terms of the 2007 Exemption Notification and attempting to camouflage the nature of the transactions brings into question appropriateness and suitability of the continuance of the registration of the *Noticee* as a broker. Equally, any argument on the lines that the clients demanded such access to the '*paired contracts*' and may have given business to someone else or that other persons were engaged in such conduct, does not detract the diligence required to be performed by any reasonable or prudent person including the *Noticee*, which cannot rely upon such client entreaties/threats or swayed by actions of others on the street. Clearly, the actions of the *Noticee* has been and could be detrimental to the interest of the Securities Market and accordingly the *Noticee* can no longer be called a '*fit and proper person*' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

49. In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including brokers, which are not only required to act as an intermediary simplicitor

i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

50. Further, although the *Noticee*, in its reply dated October 31, 2019, has submitted that there is no loss caused to the investors on account of its trades and there are no investor grievances against it, I am of the view that the same would not be material since the limited scope of the present proceeding is to examine the conduct of the *Noticee* in the background of its active participation in the trading platform of the NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA and also attracting disqualification under amended Schedule II of the Intermediaries Regulations so as to decide on its continuing role in the Securities Market. From the above, it is evident that the *Noticee* was part of a scheme that was contrary to the permissible activities prescribed by the Central Government. Under the garb of '*paired contracts*' the *Noticee* had indulged in facilitating impermissible financing transactions, and such illegal activities as well as participation of the *Noticee* therein are certainly detrimental to the interest of the promotion and development of the Securities Market.
51. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honored in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. 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 the NSEL from 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 above, the principle of '*ignorantia juris non excusat*' or that '*ignorance of law is no excuse*' becomes squarely applicable.

52. It further needs appreciation that the issue under consideration is not to gauge the profit/loss incurred or likely to be incurred by an individual, but the limited scope of the present proceedings is to see whether the indulgence, engagement and promotion of such activities could be held to be beneficial to the development of Securities Market or the same contain elements that are potentially dangerous and detrimental to the interest, integrity, safety and security of the Securities Market. In this respect, the undisputed fact that the scheme of '*paired contracts*' traded on the NSEL ultimately has caused loss to the market to the extent of INR 5,600 Crore itself casts serious aspersion on the conduct, integrity and reputation of, *inter alia*, the *Noticee* who participated in or facilitated such '*paired contracts*' and therefore, its continuing role in the Securities Market cannot be viewed as good and congenial for the interest of the investors or of the Securities Market.
53. Under the circumstances, I therefore note that there were enough red flags for a reasonable or prudent person to come to the conclusion that what was being offered as '*paired contracts*' on NSEL were not spot contracts in commodities. Given the above discussions and deliberations, I am constrained to conclude that the *Noticee*, presumably driven by its desire to earn brokerage and/or profit, provided access to its clients to participate in a product which raises serious questions on the ability of the *Noticee* to conduct proper and effective due diligence regarding the product itself. Further, as per findings recorded above, the *Noticee* also attracts the disqualification provided in paragraph 3(b) (i) under the amended Schedule II of the Intermediaries Regulations insofar as SEBI has filed a complaint against the *Noticee* and the FIR registered pursuant to the said complaint is validly subsisting/pending as on date. Further, it is also not the case of the *Noticee* that said FIR is either stayed or quashed by any competent court qua the *Noticee* or otherwise. In view of the above, I hold that the *Noticee* does not satisfy the '*fit and proper person*' criteria specified in Schedule II of the Intermediaries Regulations and hence, the continuance of the *Noticee* as a broker will be detrimental to the interest of the Securities Market. Therefore, such activities of the *Noticee* as a registered broker cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.
54. Having examined and dealt with all the contentions raised by the *Noticee* in the preceding paragraphs, I concur with the recommendation made by the DA.

ORDER

55. In view of the foregoing discussions, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and upon considering the gravity of the violations committed by the *Noticee* viz. Balaji Commodity Futures Private Limited, the Certificate of Registration (bearing No. INZ000078132) granted to the *Noticee* is hereby cancelled.
56. The *Noticee* shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 55 above.
57. Notwithstanding the direction at paragraph 55 above, the *Noticee* shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the *Noticee* shall transfer the funds and securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients.
58. The Order shall come into force with the immediate effect.
59. It is clarified that in view of the amendment made *w.e.f.* January 21, 2021 in the Intermediaries Regulations, 2008, powers that were exercised under regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the *Noticee* or other relevant persons.
60. A copy of this order shall be served upon the *Noticee* and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

DATE: FEBRUARY 10, 2023
PLACE: MUMBAI

PRAMOD RAO
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA