

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of –

Way2Wealth Commodities Pvt. Ltd
[Registration No. INZ000049130]

In the matter of National Spot Exchange Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) initiated enquiry proceedings against Way2Wealth Commodities Pvt. Ltd. (hereinafter be referred to as, the “**Noticee**”), registered with SEBI as a commodity derivatives broker under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter be referred to as, the “**Stock Broker Regulations**”), for the alleged violations of Regulations 5(e), 9(b) and 9(f) read with Clause A(1), A(2) and A(5) of Schedule II of the Stock Broker Regulations read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as, the “**Intermediaries Regulations**”).
2. The Noticee was a member of the National Spot Exchange Limited (hereinafter be referred to as, the “**NSEL**”), which was incorporated in May 2005 as a spot exchange for trading in commodities. NSEL organised trading in commodities after it was granted exemption from provisions of Forward Contracts (Regulation) Act, 1952 (hereinafter be referred to as, the “**FCRA**”) by the Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, vide Gazette Notification No. SO 906(E) dated June 05, 2007, in exercise of powers conferred by the Section 27 of FCRA subject to certain conditions.

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

a. **Short Sale**

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

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

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

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

ENQUIRY BY DESIGNATED AUTHORITY

8. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated September 21, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation/s in compliance with Regulation 27 of the Intermediaries Regulations. The DA, accordingly, issued a Show Cause Notice dated September 25, 2018 (hereinafter referred to as “Enquiry SCN”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and being not a ‘*fit and proper person*’ for holding the certificate of registration as trading / clearing member in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.
9. The Noticee replied to the Enquiry SCN vide letter dated October 12, 2018 and requested for copies of documents and information relied upon by the DA in arriving at the allegations made in the Enquiry SCN. Thereafter, vide letters dated June 26, 2019 and July 11, 2019 additional material in relation to the Enquiry SCN was forwarded to the Noticee. Vide letter dated July 30, 2019, the Noticee had submitted its detailed reply to the Enquiry SCN. Pursuant to the transfer to the appointed DA, another DA was appointed vide communique dated October 28, 2020 (revised on November 17, 2020).
10. Upon completion of the enquiry, the DA submitted an Enquiry Report dated November 27, 2020 (“Enquiry Report”) to the Competent Authority, inter alia, observing as under:

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

i.e. Way2Wealth Commodities Pvt. Ltd [Registration No. INZ000049130] as a commodity derivatives broker may be cancelled.”

POST ENQUIRY PROCEEDINGS

Show Cause Notice, Reply and Personal Hearing

11. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated January 15, 2021 (“SCN”) was issued to the Noticee under Regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) enclosing therewith (a) copy of the Enquiry Report, (b) copy of the letter dated December 30, 2014 of the Department of Economic Affairs (DEA) Ministry of Finance and (c) a copy of the order dated August 22, 2014 passed by the Hon’ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the case of *Jignesh Prakash Shah Vs. The State of Maharashtra*. The SCN was issued to the Noticee calling upon it as to why action as recommended by the DA including any other action should not be taken against, as deemed fit, by the Competent Authority. However, no reply was received from the Noticee to the said SCN.
12. 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 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.....”

13. Thereafter, in August 2022, the present matter was allocated to me. In the light of the aforesaid SAT Order passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee before concluding the present proceedings. Accordingly, vide letters dated October 06, 2022 and November 02, 2022, certain additional documents were provided to the Noticee and the Noticee was requested to file its reply, if any, within 15 days of receipt of the said letters. The said letters were sent on the last known address of the Noticee viz. “No. 14, Frontier Grandeur, Walton Road, Bangalore – 560001”. Vide email dated October 19, 2022, it was informed that the said letters dated October 06, 2022 and November 02, 2022 were returned undelivered with the comment “left”. In view of the same, attempt was made to deliver the said letters at the address of the Advocates namely, S&R Associates and Advocates, who had replied on behalf of the Noticee during the enquiry proceedings before the DA. Thereafter, vide emails dated November 28 & 29, 2022, the current correspondence address was shared by the Noticee along with a request to forward the copy of the SCN dated January 15, 2021 and the letters dated October 06, 2022 and November 02, 2022 to the Noticee. The scanned copies of the said documents were forwarded to the Noticee vide emails dated November 28 & 30, 2022.
14. While acknowledging receipt of the SCN and the two letters dated October 06, 2022 and November 02, 2022, the Noticee, vide email dated November 30, 2022, sought time to submit its reply and a request was made to thereafter grant an opportunity of personal hearing in the matter. The request made by the Noticee was partly acceded to and time till December 26, 2022 was granted to it to file its reply to the SCN. Further, in compliance with the principles of natural justice, an opportunity of personal hearing was granted on January 04, 2023. The Noticee requested for copies of certain documents vide its email dated December 09, 2022. Thereafter, vide email dated January 03, 2023, as requested, additional documents were also provided to the Noticee. Schedule II of the Intermediaries Regulations, containing *inter alia* ‘fit

and proper' person criteria as amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 was also provided to the Noticee with an advise to file its reply, if any, on the same. Another opportunity of personal hearing was granted to the Noticee on January 18, 2023 vide email dated January 11, 2023. A request to reschedule the timing of the hearing scheduled on January 18, 2023 or to schedule the hearing on any other date was made by the Noticee as the Counsel appearing on behalf of the Noticee had unavoidable commitments before the Hon'ble SAT on the scheduled date and time of hearing. An opportunity of personal hearing was granted to the Noticee on February 02, 2023. In the meantime, vide letter dated January 18, 2023, the Noticee submitted its reply to the SCN dated January 15, 2021.

15. Vide reply dated January 18, 2021, the Noticee had made certain submissions which are summarized as under:

- (i)** All the allegations made against the Noticee are denied in toto and it is submitted that the Noticee has always conducted its business in a fair manner in due compliance with the applicable laws and norms.
- (ii)** The Noticee was incorporated on July 05, 2006 and is primarily engaged in the business of providing commodity broking services to persons dealing in commodities and acting as a trading / clearing member for contracts traded primarily on MCX and NCDEX. The Noticee is a part of the Way2Wealth group and has various group entities that have been part of the securities market since early 2001. The group has multiple registrations among its entities.
- (iii)** The Noticee had entered into an agreement dated April 05, 2011 with Techno Shares and Stocks Limited (Techno) for acquisition of shares in four tranches over a period of three years. Subsequently, in December 2012 the spot exchange trading business i.e. on NSEL of Techno was transferred to the Noticee. The Noticee did not have any presence in commodity trading in NSEL prior to acquisition of Techno and it merely inherited the existing business of Techno which it continued in bona fide belief that it was in compliance with the extant regulatory framework. The Noticee was thus merely trading for a period of six months before NSEL suspended trading in all commodity contracts in July 2013.

- (iv) The trading in paired contracts started in the year 2009, much prior to the Noticee having obtained registration with NSEL and that the Noticee had started trading only after the erstwhile FMC was notified as the Designated Authority in February 2012 and NSEL started filing returns relating to trading in various contracts to FMC. Thus, paired contracts came under the regulatory scrutiny in February 2012, with both FMC & MCA requesting information and clarification from NSEL.
- (v) The SAT Order dated June 09, 2022 is premised largely on similar factual matrix. Given the close parallels to the facts of the present case, the SAT order is squarely applicable, and any action taken on the present set of allegations must be guided by the approach and the principle as set forth by the Hon'ble SAT.
- (vi) The case laws relied upon in the Enquiry report have been adversely treated by the Hon'ble SAT in its order dated June 09, 2022. The SAT distinguished *Jermyn Capital* on the basis of a demonstration of clear urgency, and held that the legal underpinnings of an ad interim order, that is, balance of convenience, cannot be extrapolated to a case where there is no such urgency made out. Similarly, the SAT Order also clearly distinguishes the facts of *Mukesh Babu* on the strength of a criminal charge sheet having been filed in that matter, and noted that there were no similar proceedings instituted in the facts of the matter. Accordingly, the orders and judgments quoted in the Report would also be rendered bereft of any substantive value and the case made out in the Reports would fall alone on this ground.
- (vii) The entire case of SEBI has been vitiated by the said SAT order and accordingly has no legal standing.
- (viii) With respect to the fit and proper criteria, it is submitted that the amended provisions of the Intermediaries Regulations (amended on November 17, 2021) cannot be applied retrospectively.
- (ix) The facts of the case clearly demonstrate that the Noticee was a victim of the fraud orchestrated by NSEL. To subsequently adjudge the Noticee as not a fit and proper person would defeat the ends of justice. Further, such an interpretation would impose upon the Noticee to seek resource against each

and every criminal case which may be instituted against it, even in those cases where the investigating authorities have not escalated the proceedings to the threshold of a charge-sheet.

- (x) The Noticee distinguishes its case from other trading members that have been actioned by SEBI by stating that all its customers were self-directed and the Noticee only facilitated their trades on the exchange while charging within the permissible bounds of brokerage and did not incentivise or promote such trading in any way whatsoever.
- (xi) The Noticee has never financed any of its clients or promised any kind of improper monetary infusion into its clients with respect to trading on NSEL.
- (xii) EOW Report and the Grant Thornton forensic report show that the quantum of deliverables owed to the Noticee's clients from NSEL are in the ballpark of INR 8 crores. This is merely around 0.15% of the overall default of NSEL, and bears out that the Noticee's clients had minimal exposure to trading on the exchange.
- (xiii) In comparison to the business of the Noticee on MCX and NCDEX, NSEL business did not even account for 0.1% of the business of the Noticee in commodities. Moreover, the turnover of the Noticee in so called 'paired contracts' is a miniscule percent of the turnover of NSEL in paired contracts of Rs. 134000 crores as stated in the EOW Report. Given the scale and volume in which the other brokers participated in trading on NSEL, it is plainly evident that the Noticee neither promoted trading in NSEL nor financed the clients trading on NSEL.
- (xiv) The product of paired contracts was introduced with the explicit endorsement of NSEL. It had represented them to be an avenue for an investor to *"lock their returns"*, and as an *"unique investment opportunity"*. Due to this aggressive promotion of trading in paired contracts, trading in paired contracts represented over 97% of the turnover of NSEL by the end of the financial year of 2013.
- (xv) SFIO, under the Ministry of Corporate Affairs, has filed a criminal complaint dated May 15, 2019 against NSEL, certain key managerial personnel and certain defaulting entities of the exchange. Thus, it is clearly evident that NSEL, in collusion with certain entities, had been guilty of grave non-compliance of the

extant regulatory framework and had committed fraud against the trading members including the Noticee.

(xvi) EOW Report also does not show any indiscriminating material against the Noticee. The Noticee has always demonstrated its bona fide conduct and cooperation with the regulators to present the true and correct picture and modus operandi through which it was wrongly implicated in the fraud perpetrated by NSEL.

(xvii) The Noticee is not in close association with NSEL. Mere facilitation of trades on NSEL cannot amount to close association with NSEL. The observations made by the Hon'ble SAT in its order dated June 09, 2022 would squarely apply in Noticee's case. There exists no material on record to bear out close association between the Noticee and NSEL.

16. The Authorized Representative (ARs) appeared on the scheduled date of hearing and reiterated the submissions made by the Noticee in its reply dated January 18, 2023. As requested by the ARs during the hearing, time till February 14, 2023 was granted to the Noticee to file additional submissions in the matter. Accordingly, vide letter dated February 14, 2023, additional submissions were made by the Noticee which are summarized as under:

- (i)** The recommendation that the registration of the Noticee should stand cancelled by virtue that the Noticee is not a fit and proper person is entirely baseless and merits no consideration.
- (ii)** The SCN and the Enquiry report has completely ignored that it was only in December 2012 when the Noticee was duly registered with NSEL.
- (iii)** Noticee was merely trading for a period of six months and had minimal participation on NSEL platform when it came to dealing in paired contracts.
- (iv)** The Noticee is not amongst the top ten brokers who have been alleged to have facilitated trading in paired contracts. As a result it would be incorrect to implicate the Noticee in the fraud which is perpetrated by NSEL.
- (v)** The Noticee has initiated steps to quash the FIR filed and the same is also recorded in the Board Meeting held by the Noticee on February 10, 2023.

- (vi) The amendment to the fit and proper criteria cannot be adopted by the Competent Authority retrospectively.

CONSIDERATION OF ISSUES AND FINDINGS

17. I have carefully perused the post enquiry SCN including the Enquiry Report issued to the Noticee, the replies submitted by the Noticee along with all the other material / information available in public domain and also made available to the Noticee vide letters dated October 06, 2022 and November 02, 2022 and email dated December 14, 2022. After considering the allegations made/ charges levelled against the Noticee in the instant case, I note that the only issue that arises for consideration in the present proceedings is whether the Noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
18. However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022¹ passed by the Hon'ble SAT also referred in the preceding paragraph no. 12. The Hon'ble SAT, while setting aside the earlier WTM Orders, had made the following observations (relevant to the present case as well) remanding the matters to SEBI:
- (a) Observations of the Bombay High Court in the matter of *63 Moons vs. Union of India*² cannot be relied upon as the said judgement has been set aside in appeal³ by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
 - (b) Observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act") (*NSEL vs. State of Maharashtra*⁴) cannot be relied upon, as in a subsequent Writ Petition⁵ moved by 63 Moons, a Division Bench of the Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore, the provisions of the MPID Act are not applicable. The Division Bench also observed that the

¹ Appeal No. 214 of 2019 Geofin Comtrade Ltd Vs. SEBI, Appeal No. 217 of 2019 Philip Commodities India Pvt. Ltd Vs. SEBI, Appeal No. 218 of 2019 IIFL Commodities Ltd Vs. SEBI, Appeal No. 288 of 2019 Anand Rathi Commodities Ltd Vs. SEBI and Appeal No. 289 of 2019 Motilal Oswal Commodities P. Ltd Vs. SEBI

² Writ Petition No. 2743 of 2014

³ Civil Appeal No. 4467 of 2019

⁴ Writ Petition No. 1403 of 2015

⁵ Writ Petition No. 1181 of 2018

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

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

⁶ Appeal No. 26 of 2006 decided on September 06, 2006

⁷ Appeal No. 53 of 2007 decided on December 10, 2007

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

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

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

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

Transactions in the nature of ‘paired contracts’ on NSEL:

21. NSEL was incorporated in 2005 as an electronic exchange for spot trading of commodities. On June 5, 2007, the Ministry of Consumer Affairs (“MCA”), Government of India, issued a Notification SO 906(E) under Section 27 of the FCRA granting conditional exemption from the provisions of that Act for (i) forward contracts, (ii) for sale and purchase of commodities, of one-day duration traded on NSEL. The conditions, inter alia, placed an absolute bar on short sales and stipulated that all outstanding positions at the end of the day must result in delivery. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.
22. As evident from the FMC order, NSEL introduced, on its platform, the concept of ‘paired contracts’, in September 2009, which involved buying and selling the same commodity through two different contracts at two different prices wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In other words, the ‘paired contract’ involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
23. Thereafter, FMC, vide an order No. 4/5/2013-MKT/B dated December 17, 2013 (“FMC Order”) observed that: “55 contracts offered for trade on NSEL were with settlement period exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA” and “the condition of ‘no short sale by members of the exchange shall be allowed’ was not being met by NSEL”.
24. Further, in the above mentioned Order, FMC, *inter alia*, held that the contracts traded on NSEL violated the following conditions stipulated in the MCA Notification

SO906(E) dated June 5, 2007, that granted permission to NSEL to offer spot trading in commodities which, inter alia, included *“no short sale by members of the exchange shall be allowed; that all outstanding positions of the trade at the end of the day shall result in delivery”* and that *“all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency”*.

25. It is, therefore, clear from the order of FMC that, NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one –day duration as per the Notification dated June 05, 2007. I note from the FMC Order, that FMC had observed⁸ that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of the provisions of FCRA. I further note from the FMC Order that under the FCRA, a *“forward contract”* is defined as a *“contract for delivery of goods and which is not a ready delivery contract”*. A *‘ready delivery contract’* is defined as *“a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”*. Given the said definition contained in FCRA, FMC, I note, was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.

26. Therefore, it is noted that even though MCA had stipulated in the exemption Notification in 2007 that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of *“forward contract”* under FCRA held that NSEL was allowed to only trade in one day forward contracts and was obliged to ensure delivery and settlement within 11 days. I note the observation in the FMC order that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL. It is pertinent to note that all the 15 contracts that were advertised by NSEL, and which are captured in the Hon’ble

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

Supreme Court's Judgement in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*⁹, were for durations exceeding 11 days.

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

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

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

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

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

⁹ Civil Appeal No. 2748-49 of 2022

Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act." (emphasis supplied)

28. I, therefore, note that the Hon'ble Supreme Court has already commented on the nature of the 'paired contracts' offered on the NSEL platform. In the case of *63 Moons Technologies Ltd. vs. UOI*, the Hon'ble Supreme Court held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court has held that such transactions come within the definition of 'deposits' under the MPID Act.
29. It is further noted that the Hon'ble Supreme Court, in the MPID matter, had extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. As seen from the order of the Supreme Court, the NSEL was advertising a uniform return of 16% p.a. for the 'paired contracts' traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The 'paired contracts', it is noted, were being marketed as an alternative to fixed deposits.
30. I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail, the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were naked short sales i.e. the commodities to back such sales were not available at the designated warehouses of the NSEL.
31. In addition, I note that Economic Offences Wing, Mumbai, vide letter 789 dated April 04, 2015, had forwarded an interim report for the investigation conducted to identify role played by broking houses in NSEL Case (EOW C.R. No. 89/2013). Relevant extracts of the report are as follows:

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

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

The actual role of the brokers was:

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

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

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

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

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

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

- 32.** In the said EOW report, the name of the Noticee is appearing amongst the list of brokers who had client or money exposure at the time of default which is Rs. 8,72,25,717/-. Further, the NSEL, vide its circular dated August 27, 2013 bearing ref no. NSEL/C&S/2013/073 had announced special payout to settle dues to those trading clients with outstanding upto Rs. 2 lakhs and a payment of 50 percent of the outstanding for those investors with exposure between Rs. 2 lakhs and Rs. 10 lakhs. The DA in the ER has noted that Noticee had aggregate outstanding of

Rs. 13,94,455/- for clients with exposure upto Rs. 2 lakhs and aggregate outstanding of Rs. 71,29,928/- for clients with exposure between Rs. 2 lakhs to Rs. 10 lakhs. Subsequently, NSEL had issued circular dated December 16, 2016 bearing Ref No. NSEL/C&S/2014/045 requiring member brokers to furnish information / particulars as a proof of disbursement to the clients to such brokers to whom special payout was made. NSEL, vide its subsequent circular dated March 10, 2015 while seeking information of payouts to clients also annexed the details of special payout made in August 2013 to the brokers. As per the said list of the brokers, the name of the Noticee is appearing which shows special payout made to the Noticee of Rs. 85,24,383/-.

Preliminary objection raised by the Noticee:

33. The Noticee has submitted that the cases referred to in the Enquiry Report viz. SAT Order in *Jermyn Capital LLC Vs. SEBI and Mukesh Babu Securities Ltd Vs. SEBI* and the order of the Bombay High Court in *Jignesh Prakash Shah Vs. State of Maharashtra* being adversely treated by the Hon'ble SAT in its order dated June 09, 2022 would not be of any substantive value and therefore, the case made out in the Enquiry Report falls on this ground alone. In view of the observations of the Hon'ble SAT with respect to the said orders, I do not wish to place any reliance on the said orders while dealing with the issue in the present case in hand.

Fit and proper person criteria

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

SEBI Act

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

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

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

Broker Regulations

Consideration of application for grant of registration.

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

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

Conditions of registration.

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

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

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

Liability for action under the Enquiry Proceeding Regulations.

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

(i)

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

A. General.

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

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

(3)

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

Intermediaries Regulations:

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

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

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

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

(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but 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.

35. I note that regulation 5(e) of the Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations, 2008 was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.
36. From the records, I note that SEBI has filed a complaint with EOW Mumbai dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on NSEL, including the Noticee. On the basis of this complaint, an FIR dated September 28, 2018, was registered against the Noticee. I note that the Noticee is holding a certificate of registration No. INZ000049130 granted by SEBI. In order to continue to hold such Certificate of Registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included, continuance of its status as a 'fit and proper person'. The above condition to be 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.
37. The Noticee has, however, contended that the revised criteria introduced in 2021 should not be made applicable retrospectively as the present proceedings essentially pertain to the transactions carried out by the Noticee on the NSEL platform from 2012 onwards for six months. I note that the Noticee has admitted the fact that the clients of the Noticee had indulged in paired contract trades on the NSEL platform which in turn is an admission of facilitating paired contracts by it. I note that the act of the Noticee in offering access to 'paired contracts' by facilitating trading in such contracts, seriously calls into question the integrity,

honesty and lack of ethical behaviour on the part of the Noticee. As recorded in the FMC order and the judgements of the Supreme Court, these contracts, as stated earlier, were *ex facie* offered in violation of the exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. The 'paired contracts' were nothing but financing transactions masquerading as spot contracts in commodities. The execution of the trades in 'paired contracts' were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities, as observed by FMC in its Order. Therefore, the Noticee, by its conduct and as a member of the NSEL, has promoted and/or dealt in 'paired contracts' which were held to be in the nature of financing transaction by the Hon'ble Supreme Court. The Noticee, by providing access for taking exposure to 'paired contracts' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' for its clients on the NSEL platform have serious ingredients amounting to jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.

38. I find no merit in the submissions of the Noticee that the amended Schedule II of the Intermediaries Regulations would not be applicable in the present case. It is noted that paragraph 3(b) of the amended criteria lays down a list of disqualifications which includes the following:

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

39. The Noticee has submitted that the clients who had executed the paired contracts on NSEL platform were self-directed and that the Noticee did not incentivise or promote such trading. Further, the Noticee has claimed that the contribution of such trades executed was not even 0.1% of the business of the Noticee in commodities and the said trades were executed only for a period of six months. I

find no merit in the said submissions of the Noticee. I note from the available records that the Noticee has facilitated its clients to trade in 'paired contracts'. As mentioned in the preceding paragraph, the Noticee has even admitted facilitation of paired contracts. As the paired contracts were violative of the conditions stipulated in the Government Notification dated June 05, 2007, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated / facilitated access to 'paired contracts' traded on NSEL, including the Noticee within the time limit as specified in the aforementioned provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR.

- 40.** It is pertinent to note that the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, the SEBI is well within the powers to examine the 'fit and proper' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the 'fit and proper person' criteria when SEBI granted it the Certificate of Registration in 2017, 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 the instant case, criteria as revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which includes a criminal complaint or information under section 154 of Code of Criminal Procedure filed against such an entity by the Board and which is pending. It is, therefore, noted that the Noticee attracts the disqualification provided in paragraph 3(b) (i) of the Schedule II of the Intermediaries Regulations. The Noticee has submitted that it has initiated steps to quash the FIR filed. However, I

note that nothing has been brought on record to show that the FIR against the Noticee has been quashed. Mere submission of initiating steps to get the FIR quashed would not suffice in the instant case.

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. I, therefore, note that there were enough red flags for a reasonable person to come to conclude that what was being offered as 'paired contracts' on NSEL were not spot contracts in commodities. Given the above, I am constrained to conclude that the Noticee provided a platform for its clients to access a product which raised serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the product itself. In failing to dissociate itself from, and continuing to facilitate participation in the said paired contracts, the Noticee failed to act with due diligence.
42. Furthermore, as mentioned in paragraphs 39 and 40, the Noticee has also earned disqualification under 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of an FIR filed by SEBI. In this regard it is pertinent to note that the said FIR was filed by SEBI on September 28, 2018 and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the Noticee. In this context, as observed above, I note that being a 'fit and proper person' is a continuing 'eligibility criteria' which must be satisfied by the Noticee including the amended criteria.
43. Here, it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' also becomes applicable in the situation since trading in 'paired contracts' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The 'paired contracts' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-bye to the terms of the 2007 Exemption Notification and 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. Clearly, the actions of the Noticee has been detrimental to the interest of the Securities Market and accordingly the Noticee can no longer be called a 'fit and proper person' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

44. 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. 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.

45. I am also aware that recently SEBI has passed 5 separate orders¹⁰ in the related NSEL matters where the Noticees therein have been debarred from making a

¹⁰ 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.

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. One may assume that at the time of grant of Certificate of Registration to the Noticee, 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.

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

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

ORDER

48. I, therefore, in exercise of powers conferred under Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee viz. Way2Wealth Commodities Pvt. Ltd, the Certificate of Registration (bearing no. INZ000049130) of the Noticee i.e. Way2Wealth Commodities Pvt. Ltd, is hereby cancelled.

49. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 48 above.

50. Notwithstanding the direction at paragraph 48 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 advice to the said clients.

- 51.** This Order shall come into force with immediate effect.
- 52.** It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, powers that were exercised under Regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under Regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.
- 53.** A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Date: February 27, 2023

Place: Mumbai

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