

**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:**

<b>NAME OF THE NOTICEE</b>	<b>PAN</b>
<b>RVI COMMODITY SERVICES PVT. LTD.</b>	<b>AAACG8684M</b>

**In the matter of National Spot Exchange Limited**

**BACKGROUND**

1. The present proceedings originate from the Enquiry Report dated December 30, 2019 (hereinafter referred to as the **“Enquiry Report”**), submitted by the Designated Authority (hereinafter referred to as the **“DA”**) in terms of Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred as the **“Intermediaries Regulations”**) as it stood at the relevant point of time prior to its amendment vide Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021, wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, recommended that RVI Commodity Services Pvt. Ltd. (hereinafter referred to as the **“Noticee”**) may not be granted a certificate of registration as a commodity derivatives broker. Pursuant to the same, a Post Enquiry Show Cause Notice dated January 28, 2020 (hereinafter referred to as the **“SCN”**), along with the copy of the aforesaid Enquiry Report and other relevant documents was issued to the Noticee.
2. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as the **“SEBI”**) had also passed five separate orders (during February 2019) rejecting the applications filed by five other entities

for registration as commodity brokers who were involved in the National Spot Exchange Limited (“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**”). 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 order. While remanding the aforesaid SEBI orders, 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.....”*

3. Thereafter, the competent authority of SEBI has allocated the present matter to me for further proceedings. In light of the aforesaid SAT order, it was felt necessary to furnish certain additional documents/ material to the Noticee and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated February 13, 2023 (hereinafter referred to as the “**SSCN**” collectively SCN and SSCN being referred to as “**SCNs**”) provided certain additional documents/ material 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 SSCN. The Noticee was further informed that if no reply is received within 15 days of receipt of the SSCN, it would 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.
4. Pursuant to service of SSCN, the Noticee provided its reply vide emails dated April 26, 2023 and May 3, 2023. The Noticee was granted an opportunity of personal hearing on May 25, 2023. On the scheduled date of hearing, Virendra Jariwala, Director of the Noticee appeared on behalf of the Noticee through video

conference and made submissions on the lines of the replies already provided and also informed that it had no further submissions in the said matter.

5. The written submissions made on behalf of the Noticee vide email dated April 26, 2023 and May 3, 2023 are summarized below:
  - a. *All trading activity on NSEL occurred between October 2011 and December 2011.*
  - b. *During this period, the trading activity was mainly concentrated on contracts for gold mini with 300 grams delivery, along with intraday squaring trades for silver mini and gold mini.*
  - c. *There were no trades for Agri commodities, with all trades being limited to gold mini or silver mini contracts.*
  - d. *The Noticee also ensured that gold mini and silver mini trading activities were conducted with the minimum quantity, and followed all the rules and regulations stipulated by NSEL.*
  - e. *The Noticee has not received any email from NSEL regarding any violation of any rules and regulations.*
  - f. *Noticee has never defaulted on daily pay-in obligations and have fulfilled NSEL all debit amounts on time.*
  - g. *The ledger copy of account from NSEL, in which a credit of ₹ 2,50,000 is reflected.*
  - h. *The Noticee has already closed the commodity broking business since 2017/2018.*

## **CONSIDERATION OF ISSUE AND FINDINGS**

6. I have carefully perused the SCNs issued to the Noticee, the Enquiry Report, the replies filed by the Noticee and other material/ information available on record. After considering the allegations made / charges levelled against the Noticee in the instant matter as spelt out in the SCNs, the limited 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 and whether the registration to the Noticee for acting as commodity derivatives broker may not be granted, as recommended by the DA or any other action should be taken against the Noticee.
7. Before I proceed to examine the issue *vis-à-vis* the material available on record before me, it would be appropriate to refer to the relevant provisions of law applicable, 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:

**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.*

**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;*

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

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

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

**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.*

8. 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 NSEL matters, a supplementary show cause notice dated February 13, 2023 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 December 30, 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;
  - b. First Information Report dated September 28, 2018; and
  - c. Amended Schedule II of the Intermediaries Regulations.
9. Before moving forward to consider the matter on merits and test the fulfilment of the 'fit and proper person' criteria by the Noticee, on the basis of available material including the additional material as detailed at paragraph 8 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:
  - a. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic 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*".
  - b. In October 2008, 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 NSEL 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.

- c. On February 06, 2012, FMC was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest. FMC had accordingly called for the trade data from different spot exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as the "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.
10. I note that prior to merger of FMC with SEBI on September 28, 2015, the Noticee was required to be a member of an association recognised by the Central Government under Section 6 of the FCRA, and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Parliament, noticing that the intermediaries dealing with commodities derivatives



market were not required to be registered under FCRA and were not under control of any competent authority, rectified the same through the Finance Act, 2015, as notified on May 14, 2015, by bringing them under the regulatory supervision of SEBI. With regards to the aforesaid, the Hon'ble Bombay High Court while dealing with the Writ Petition Nos. 3262, 3266, 3294 and 3295 of 2018 in the matter of *Anand Rathi Commodities Limited, Motilal Oswal Commodities Broker Private Limited, Geofin Comtrade Limited and IIFL Commodities Limited vs. SEBI* vide its Order dated October 04, 2018, observed the following:

*"It is not in dispute that prior to the coming into effect of the Finance Act, 2015, the intermediaries dealing with the commodity derivatives were not required to be registered under any of the provisions of law including the FCR Act. We find that the said mischief was noticed by the Parliament. As such, by virtue of the Finance Act, 2015, the said intermediaries dealing with commodity derivatives have been brought under the control of SEBI. We find that the reason as to why by Finance Act, 2015, the said intermediaries were brought under the control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority".*

11. I note that pursuant to the merger of FMC with SEBI, a commodity derivatives broker was mandatorily required to obtain a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. The Finance Act, 2015, *inter alia*, conferred the powers to SEBI to regulate commodity derivatives brokers, 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 the commodity derivatives market under the erstwhile FCRA 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 applied for a certificate of registration which is since pending for grant of registration.

12. The power of SEBI to investigate/ inquire into the alleged violation of FCRA flows from the Finance Act, 2015, which amended the provisions of FCRA. I note that Section 29A of FCRA, as inserted by the Finance Act, 2015, *inter alia*, provides:
- “(1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.*
- (2) On and from the date of repeal of Forward Contracts Act–*
- (a)....*
- (b)....*
- (c)....*
- (d)....*
- (e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;*
- (f) no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clause (d) and (e);*
- (g) clause (d), (e), (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal to matters not covered under these sub-sections.”*
13. I note that the aforesaid provision empowers SEBI to initiate a fresh proceeding with respect to the offences within a period of three years from the date on which FCRA is repealed. Thus, pursuant to the merger of FMC with SEBI, SEBI stepped into the shoes of FMC and was well within its powers to initiate proceedings under Chapter V of FCRA i.e., filing of the criminal complaint to the EOW. I note from the complaint dated September 24, 2018 filed by SEBI that EOW was requested to take appropriate action under Sections 20 and 21 and other provisions of FCRA against the brokers/ members of NSEL and other persons mentioned in the complaint. However, the aforesaid proceedings are different from the proceedings before me.
14. The present proceedings pertain to adjudging the ‘fit and proper person’ status specified in the Broker Regulations and the Intermediaries Regulations in light of the activities undertaken by the Noticee on the NSEL platform and consequent action taken by FMC and SEBI, i.e., filing of the criminal complaint to the EOW under Section 154 of the CrPC. I note that in terms of Regulation 5(e) of the Stock Brokers Regulations, every applicant/ stock broker at the time of seeking registration, has to satisfy the “fit and proper person” criteria specified in

Schedule II of the Intermediaries Regulations. I note that the Enquiry Report proceeds on the basis that *the past conduct of the Noticee in facilitating access to the “paired contracts” traded on NSEL calls into question the compliance of the Noticee with ‘fit and proper person’ criteria*. Further, SEBI while examining the compliance of an applicant with the “fit and proper person’ criteria can take into consideration not just contravention of the provisions of securities laws, but also the general conduct of the Noticee which may have a bearing on its functioning once it is granted registration as an intermediary. The ‘fit and proper’ criteria including the amended criteria must be satisfied by the Noticee, at the time of making application of registration under the Stock Brokers Regulations. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field which is binding upon SEBI and arguments to the contrary are not maintainable. To consider the application of the Noticee for the registration as a stock broker, the Noticee is required to satisfy the fit and proper person criteria, and thus, it is well within the jurisdiction and powers of SEBI to adjudge the said ‘fit and proper’ status of the market intermediaries in the interest of securities market.

15. 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 materials that have been brought on record, it would be appropriate to look at the background of NSEL and understand the nature of the ‘paired contracts’ that were offered on the exchange which ultimately is the cause/ genesis of the current proceedings.
16. From the perusal of the FMC Order No. 4/5/2013-MKT-1/B dated December 17, 2013 (hereinafter referred to as 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 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.

17. I note that NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (hereinafter referred to as the “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.
18. It is observed that the NSEL was given permission to set up 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. In its order, 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 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 the FCRA, FMC was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts. It is, therefore, seen that even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the “forward contract” under FCRA held that the NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, 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 in contravention of the exemption granted to NSEL.

19. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. vs. Union of India & Others* (Civil Appeal No. 4476 of 2019 decided on April 30, 2019) (hereinafter referred to as the “**merger petition**”), wherein it was, *inter alia*, held that:  

*“There is no doubt that such Paired Contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA”.*
20. In light of 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.*** (Civil Appeal No. 2748-49 of 2022) (hereinafter referred to as the “**MPID matter**”), wherein the Hon'ble Supreme Court while drawing reference to the representations made by the NSEL in respect of the paired contracts, *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 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.”*

21. Thus, I note that the Hon’ble Supreme Court has already described 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 held that such transactions come within the definition of ‘deposits’ under the MPID Act. The Hon’ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon’ble Supreme Court has also observed that NSEL was advertising assured and uniform return of 16% p.a. for the ‘paired contracts’ traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the contract. At Para 45 of the said order, the Hon’ble Supreme Court has also depicted certain examples of ‘paired contracts’, which offered assured returns. For example, a T+2 and T+25 paired contract in steel had the same offered return as a T+5 and T+35 paired contract in castor oil. The ‘paired contracts’ were being marketed as an alternative to fixed deposits. It was also noted in 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 i.e., commodities to back such sales were not available at the designated warehouses of the NSEL.

22. I now proceed to examine the allegations levelled against the Noticee in the SCNs. The main allegation against the Noticee, as levelled in the SCNs, is that by facilitating the trading in 'paired contracts' on NSEL platform during the relevant period, the granting of registration to the Noticee as a broker is detrimental to the interest of the Securities Market and the Noticee is not a 'fit and proper person' for grant of certificate of registration as a broker in the Securities Market, which is one of the conditions 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 basis of certain documents/material such as SEBI's Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the Noticee vide SSCN, further alleged that in light of the aforesaid documents as well as observations against the Noticee in the Enquiry Report, the Noticee is not a 'fit and proper person' for grant of certificate of registration being in violation of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. 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.
23. Noticee has vide its reply dated April 26, 2023 submitted that (i) All trading activity on NSEL occurred between October 2011 and December 2011; (ii) During this period, the trading activity was mainly concentrated for gold mini with 300 grams delivery alongwith intraday squaring trades for silver mini and gold mini; (iii) There were no trades for Agri commodities, with all trades being limited to gold mini silver mini contracts; (iv) Noticee ensured that gold mini and silver mini trading activities were conducted with the minimum quantity, and followed all the rules and regulations stipulated by NSEL; (v) No email was received from NSEL regarding violation of rules and regulations; (iv) Never defaulted daily pay-in obligations and fulfilled NSEL all debit amounts on time. (v) A copy of the ledger

account from NSEL is provided which shows a credit of ₹2,50,000; (vi) Noticee has closed commodity broking business since 2017/2018.

24. The DA in his report has noted that pursuant to suspending the trading of all products and contracts by NSEL, FMC had requested for forensic services to be carried out for which Grant Thornton India LLP was appointed. The report dated September 21, 2013 contained a list of 148 members of NSEL against whom NSEL had pay-out obligations as on September 19, 2013. It was observed that the name of the Noticee did not appear in this said list. The interim report of EOW identified a list of broking houses/brokers with client exposure and money exposure who were alleged to have indulged in 'paired contracts'. The name of the Noticee did not appear in the list either. Further, EOW had forwarded the trade details of the Noticee on NSEL during the referred period. On perusal of the same, it is noted that the Noticee has carried out trades in the contracts pertaining to E-Gold and E-silver. The Noticee in its reply of April 26, 2023 has submitted that it has traded in metals i.e. in gold and silver. It was also noted that the Noticee is a member of MCX whereby he has applied for surrender of membership on July 2, 2018 and was deactivated on July 5, 2018.
25. In this regard, I find it pertinent to refer to the observations of Hon'ble Supreme Court in its judgment in respect of the *merger petition* (supra) that "*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.*" Thus, it is clear that on NSEL E-series contracts were also being traded other than paired contracts. As already noted, only 'paired contracts' were found to be in violation of the 2007 Exemption Notification and other applicable laws. No such finding was there regarding the E-series contracts.
26. In view of the observations made above and trade data available on record, I am of the view that there is no evidence on record to consider that the Noticee had facilitated / entered into paired contracts in its proprietary account or on behalf of



its clients. It is noted that the Noticee has executed trades in only E-series contracts.

27. Without prejudice to the above, it is a matter of record that SEBI has filed a complaint dated September 24, 2018 with EOW, Mumbai, against brokers who facilitated access to 'paired contracts' traded on NSEL, including the Noticee, On the basis of this complaint, subsequently, an FIR dated September 28, 2018 came to be registered with the MIDC Police Station, Mumbai, against the Noticee, which is subsisting and has not been quashed or stayed by any competent court *qua* the Noticee. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. 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. The Noticee has thus incurred disqualification under Clause 3(b)(i) of the amended provisions of Schedule II of the Intermediaries Regulations on account of the complaint filed by SEBI and the FIR that was registered by the EOW based on the said complaint of SEBI.
28. 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 cannot be permitted to function as a registered entity in the securities market.

### **Consideration of DA's recommendation**

29. The DA in the Enquiry Report, after determining that the Noticee is not "fit and proper", has recommended that registration to the Noticee for acting as a commodity derivative broker may not be granted.
30. As discussed in the preceding paragraphs, since the FIR dated September 28, 2018 has been registered by EOW against the Noticee, which is still pending for final determination by a Court of competent jurisdiction, the disqualification

specified in clause 3(b)(i) under the amended Schedule II of the Intermediaries Regulations is invoked.

31. It is clarified that in view of the amendment made with effect from January 21, 2021 in the Intermediaries Regulations, the procedure for action on receipt of recommendation of a DA specified under Regulation 28 of the Intermediaries Regulations has now been incorporated in the amended Regulation 27 of the Intermediaries Regulations. Accordingly, this order is passed under the amended Regulation 27 of the Intermediaries Regulations, 2008.

### **ORDER**

32. In view of the foregoing discussions, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with Regulation 27 of the Intermediaries Regulations reject the application of the Noticee i.e., RVI Commodity Services Private Limited (PAN : AAACG8684M) and also debar the Noticee from making a fresh application seeking registration, before SEBI for a period of three months from the date of this Order or till an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is earlier.
33. The Noticee shall, immediately after receipt of this order, inform its existing clients, if any, about the aforesaid direction in paragraph 32.
34. The Order shall come into force with the immediate effect. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

**Place: Mumbai**

**Date: September 26, 2023**

**Sd/-**  
**G P GARG**  
**EXECUTIVE DIRECTOR**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**