

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

Sr. No.	Name of the Noticee	SEBI Registration No.
1.	M/s Comtrade Commodities Services Limited (formerly known as Edelweiss Comtrade Limited)	INZ000060936

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated June 20, 2019, submitted by the Designated Authority (hereinafter referred to as “**DA**”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021 (hereinafter referred as “**Intermediaries Regulations**”), wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, has recommended that the registration of M/s **Comtrade Commodities Services Limited** (formerly known as Edelweiss Comtrade Limited) hereinafter referred to as “**Noticee**” as a stock broker may be cancelled.
2. The aforesaid Enquiry Report was submitted pursuant to an enquiry proceeding initiated against the *Noticee* by the Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) based on the findings that **Noticee**, as a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter referred to as “**NSEL**”), has dealt/facilitated in the trading of the ‘paired contracts’ at the exchange platform of the NSEL during the period September 2009 to August 2013 (hereinafter referred to as “**relevant period**”) which were in violation of the applicable provisions of erstwhile Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) and the conditions

prescribed in the Government of India Notification dated June 05, 2007 (hereinafter referred to as “**2007 Exemption Notification**”). Further, it was observed that continuance of the Certificate of Registration of the *Noticee* as a stock broker (having Registration No. INZ000060936) is detrimental to the interest of the Securities Market and that the *Noticee* is no longer a ‘fit and proper person’ for holding the Certificate of Registration No. INZ000060936 as a stock broker in the Securities Market which is one of the conditions for grant /holding/ continuance of registration, in terms of regulation 5(e), regulations 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereafter referred to as “**Intermediaries Regulations**”).

3. In view of the aforesaid finding of facts, a DA was appointed to enquire into and to submit a report pertaining to the aforesaid acts of the *Noticee* and into the possible violations of regulation 5(e), regulations 9(b) and 9(f) read with Clause A(1), (2) and (5) of Schedule II of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations, allegedly committed by the *Noticee*.
4. The DA issued a show cause notice dated September 25, 2018 to the *Noticee* under regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) asking the *Noticee* to show cause as to why appropriate recommendation should not be made against it under regulation 27 (as applicable at that time) of the Intermediaries Regulations read with Section 12(3) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”). In response to the same, the *Noticee* vide letter dated October 15, 2018 submitted its reply.
5. On the basis of the aforesaid factual details, material available on records and after considering the replies filed by the *Noticee*, the DA has *inter alia* observed the following in the report:

“31. In view of the facts and circumstances of the case and material available on records, it is determined that the Noticee is not a fit and proper person in terms of Regulation 5(e) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, it is recommended that the certificate of registration of the Noticee, i.e. Edelweiss Comtrade Ltd., registered as Stock Broker (SEBI Registration No INZ000060936) may be cancelled in the interest of the securities market.”

6. After considering the Enquiry Report, a Show Cause Notice dated September 11, 2019 (hereinafter referred to as “**SCN**”) enclosing therewith the Enquiry Report of the DA and certain other documents as specified in the said SCN, was issued to the *Noticee* under regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why the action of cancelation of Certificate of Registration that has been granted to the *Noticee* as recommended by the DA including passing of appropriate direction, should not be taken against it in terms of regulation 28(2) of the Intermediaries Regulations, as the Competent Authority considers appropriate. The SCN further advised the *Noticee* to submit its reply, if any within 21 days of receipt of the said SCN. In response to the said SCN, the *Noticee* vide its letter dated October 01, 2019 had requested to provide copies of certain documents as specified in the said letter. Accordingly, the aforesaid details/documents were hand delivered in a CD to Ms. Richa Gandhi, the authorized person of the *Noticee* on October 22, 2019. Further, vide letter dated October 22, 2019 the *Noticee* was advised to file its reply within 7 days of receipt of the said letter and also indicate if the *Noticee* is desirous of availing an opportunity of personal hearing before the Competent Authority. Subsequently, the *Noticee* vide its letter dated October 25, 2019 *inter alia* sought time till November 15, 2019 to file its reply. Accordingly, the *Noticee* has filed its reply vide letter dated November 15, 2019.
7. While the extant proceedings in the present matter were ongoing, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in the NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**Hon’ble SAT**”). The Hon’ble SAT vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon’ble SAT *inter alia* held as under:

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

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

8. In light of the aforesaid SAT order and certain other subsequent orders passed by the Hon’ble SAT in similar set of cases from time to time, it was felt necessary to furnish certain additional documents/material to the *Noticee* before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as “**SSCN**” and collectively SCN and SSCN referred to as “**SCNs**”) provided certain additional documents/material (as indicated in the SSCN) to the *Noticee* and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The *Noticee* was further informed that if no reply is received within 15 days of receipt of this SSCN, it shall be presumed that it has no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been duly served on the *Noticee*. The *Noticee* vide its letter dated October 31, 2022 reiterated the contents of its earlier reply dated November 15, 2019 and written submission dated January 06, 2020 filed before the then competent authority and requested to consider and treat its aforesaid earlier reply and written submission as forming part of the present reply dated October 31, 2022. Further, the *Noticee* also requested for an opportunity of personal hearing before the Competent Authority. Accordingly, an opportunity of personal hearing was granted on November 17, 2022 whereon Mr. Prashant Mody, director of the *Noticee* appeared and requested time to file specific reply to the SSCN and further requested to reschedule the hearing thereafter. Accordingly, the hearing was rescheduled to November 24, 2022. On the scheduled date, the hearing was held through video conferencing wherein Mr. Prashant Mody, director of the *Noticee* alongwith Mr. Gaurav Joshi, senior counsel, appeared on behalf of the *Noticee* and made submissions in line with its earlier replies submitted in this regard. Subsequently, the *Noticee* vide its letter dated December 07, 2022 submitted its post hearing written submissions.
9. The reply dated November 15, 2019 filed in response to the SCN, earlier written submission dated January 6, 2020, present reply dated October 31, 2022, written submissions dated December 07, 2022 and the oral submissions made during the course of the personal hearing held on November 24, 2022, are summarized hereunder:

- i. The powers conferred on SEBI under Section 29A of the FCRA are prospective in nature and in relation to offences committed under the FCRA. Therefore, the *Noticee* believes that the present issue does not fall within the regulatory ambit of SEBI.
- ii. While the NSEL was in existence since 2005, the *Noticee* obtained membership of the NSEL only on 8 August 2008. Although, '*paired contracts*' were introduced by the NSEL in September 2009, the *Noticee* first commenced trades in '*paired contracts*' only in F.Y. 2011-2012. The *Noticee* decided not to market the '*paired contracts*' to its customers, since, after an internal evaluation, the '*paired contract*' was categorized as risky.
- iii. The *Noticee* did not carry out any proprietary trades in '*paired contracts*'.
- iv. The observations in the Supreme Court Order were restricted to Financial Technologies India Ltd. and NSEL and cannot be applied to the *Noticee*.
- v. The SSCN is without jurisdiction and untenable in law as it raises new issues which were neither put to the *Noticee* in the earlier SCN nor contemplated by SEBI at the stage of holding an enquiry under regulation 25 of the Intermediaries Regulations.
- vi. In the present case, the Enquiry Report was already issued on June 20, 2019. Any order under regulation 27 of the Intermediaries Regulations must only be based on the findings of the Enquiry Report and not on any new or additional grounds as now contemplated in the SSCN.
- vii. The gravamen of the charge against the *Noticee* in the SCN was that the *Noticee* had a "close association with NSEL" on the basis that the *Noticee*, as a broker, participated and facilitated trades in '*paired contracts*' on the NSEL. However, the Hon'ble SAT vide its Order dated June 09, 2022 has held that merely because a broker facilitates trades, such facilitation does not indicate a close association and a broker cannot be disqualified under the Intermediaries Regulations. It is also not SEBI's case that the *Noticee* was affiliated to NSEL or its Promoters in any way or that the *Noticee* personally gained or benefitted from '*paired contracts*' or trades.
- viii. It is well settled that in the event of a change in law during a pending proceeding, the law to be applied must be the law that existed at the time of the initiation of the proceedings. The reliance is placed on the judgment of the Hon'ble Supreme Court

in *Ambalal Sarabhai Enterprises Limited vs Amrit Lal & Co. & Anr.* (2001) 8 SCC 397 and the judgment of the Hon'ble Bombay High Court in *Sumita Dixit vs Pushpadevi Makbaria* 2011 (3) Mh. L.J. 755.

- ix. SEBI cannot now take advantage of its own failure to act timely and seek to apply the law as amended with effect from November 17, 2021, over 3 years after the SCN was issued. To do so would not only be in violation of the principles of natural justice and fair play but also be arbitrary and ultra vires the Constitution of India. Reliance is placed on the Hon'ble Supreme Court judgment in *Union of India v. Ram Lakhan Sharma*, (2018) 7 SCC 670, the Hon'ble Calcutta High Court order in *Uday Narayan Ghosh v. State Bank of India and Ors*, 2021 SCC OnLine Cal 422 and the Hon'ble Chhattisgarh High Court order in *Bablu Misra v. State of C.G. and Ors*, 2017 SCC OnLine Chh 1695.
- x. The amended Schedule II of the Intermediaries Regulations is prospective in nature and does not apply to acts that may or may not have been committed prior to such amendment coming into effect on November 17, 2021. The amendment is not procedural in nature and deals with substantive rights of the *Noticee*. It is also well settled that delegated legislation can only operate retrospectively if parent act specifically permits it do so (which is not the present case) and that laws which affect substantive rights can only apply prospectively. In support of the contention that the amendment is applicable prospectively, the *Noticee* relies on the judgments in *Pulborough Parish School Board v Nutt* 1894 1 QB 725 and *K.S. Paripooran vs State of Kerala & Ors.* (1994) 5 SCC 593.
- xi. The criteria laid down under the amended Schedule II of the Intermediaries Regulations are to be applied by SEBI exercising its discretion as the said provision contains the word '*may*'. It is well settled that the use of the term '*may*' does not mean that the Court or Authority as the case may be, is mandated to do a particular thing or take into consideration a particular thing, but that it is at the discretion of such Court or Authority to do or take into consideration a particular thing. In this regard, the *Noticee* relies on the judgment of the Hon'ble Supreme Court in *Hameed Joharan v. Abdul Salam*, (2001) 7 SCC 573.
- xii. An FIR or a Criminal Complaint under Section 154 of the Code of Criminal Procedure 1973 (hereinafter referred to as "**CrPC**") is only the starting point of an

investigation and a skeleton and cannot be construed as the accused being guilty. In fact, Indian jurisprudence is clear that a person is innocent until proven guilty beyond reasonable doubt as held in the judgements of the Hon'ble Supreme Court in (i) *The State of Odisha v. Banabihari Mohapatra*, AIR 2021 SC 1375 (ii) *Ankita Kailash Khandelwal and Others v. State of Maharashtra and Others*, (2020) 10 SCC 670 (iii) *Subhash Kashinath Mahajan v. State of Maharashtra and Ors*, AIR 2018 SC 1498 and (iv) *Sujit Biswas v. State of Assam*, AIR 2013 SC 3817.

- xiii. Till date there has been no cognizance of any allegations nor have any criminal charges been filed by the EOW or the Mumbai Police against the *Noticee*, either by way of a chargesheet or report under Section 173 of the CrPC in respect of FIR filed by SEBI. Therefore, the *Noticee* cannot automatically be considered as not being a fit and proper person under the Intermediaries Regulations merely on filing of an FIR.
- xiv. The Enquiry Report itself bears out that merely because the *Noticee* carried out a handful of trades on the NSEL, there was nil impact on the market and that the *Noticee* as a prudent measure alerted its customers as a result of which the last trade executed was on May 9, 2013 much before than July 31, 2013. Further, all client opened positions were settled by end of June 2013 prior to 'paired contracts' being suspended.
- xv. The relevant information available in the public domain did not reasonably indicate that 'paired contracts' were in any manner illegal or prohibited by law. The 'paired contracts', therefore, would necessarily have had to be approved by NSEL in terms of the relevant Bye-Law, prior to the commencement of the trading of the 'paired contract'. In any event, there was no reason to suppose that this was not the case. In fact, NSEL had issued various circulars which proceeded on the basis that these 'paired contracts' were fully compliant with relevant laws. For instance, the NSEL circular dated September 19, 2009 with respect to the commencement of spot trading in the Castor Seed contract, clearly set out the long duration of the 'paired contracts'.
- xvi. The *Noticee* had always exercised more than reasonable care and due diligence with regard to 'paired contracts' and had provided sufficient caveats to such customers which negates the allegations of 'close association' with NSEL. The *Noticee* made

the customers aware of the high-risk nature of the product and despite being expressly cautioned against executing trades in *'paired contracts'*, the customers insisted on trading in the product. The *Noticee* executed these trades only after obtaining a written declaration, from each of such customers, that the trades were being executed on their express instructions.

- xvii. After the first media reports that there may be irregularities with NSEL in respect to the execution of *'paired contracts'*, the *Noticee* stopped executing trades in paired contracts and as a result no further transactions were executed after May 9, 2013 i.e. much prior to when NSEL issued its circular to suspend trading in these *'paired contracts'* on July 31, 2013. It is pertinent to note that each of the 18 customers' contracts were honored, no monies were lost and most importantly no investor grievances / complaints were made.
- xviii. The conduct of the NSEL at all times was to validate the *'paired contracts'* in conformity with the relevant law as the NSEL issued 3 relevant communications i.e., NSEL Circulars dated August 31, 2012 and October 03, 2012 and Press Release dated July 21, 2013 with regard to the execution of the *'paired contracts'*.
- xix. SEBI cannot now seek to rely on a mere FIR under Section 154 of the CrPC which was lodged post the issuance of the SCN and in which the only allegation is that the *Noticee* (as a broker) executed trades on behalf of its customers and on which no cognizance has been taken. In the given circumstances, it would be most unfair and arbitrary, if SEBI were to disqualify the *Noticee* merely because it has filed an FIR against the *Noticee*.
- xx. The judgement of the Hon'ble SAT in the matter of *Almondz Global Securities Ltd. vs SEBI (Appeal No. 222 of 2015)* is relevant for determination of a 'fit and proper person' which *inter alia* held that the restraint order passed against the appellant (which has also been upheld against the appellant) cannot be a ground to hold that the appellant is not a fit and proper person to seek renewal of registration as a Merchant Banker.
- xxi. The *Noticee's* case is distinguishable from that of the 5 commodity brokers against whom the SEBI has passed earlier orders and fresh orders on reconsideration in respect of trading in the *'paired contracts'* *inter alia* on the grounds that those 5 commodity brokers had carried out financial transactions in the garb of doing

commodity transactions, had failed to report suspicious transactions to FIU under the Prevention of Money Laundering Act, 2002, there is no chargesheet or police report under Section 173 of the CrPC implicating the *Noticee* or levelling specific charges against it, and that the *Noticee* did not (i) carry out any UCC trade modifications or (ii) induce its customers in trading in paired contracts or (iii) fail to take requisite precautions in the best interest of its customers etc.

- xxii. The recommendation of cancelling the certificate of registration of the *Noticee* by the DA is grossly disproportionate. Reliance is placed on the judgement of the Hon'ble Supreme Court passed in *Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh and Ors. (2004 (2) SCC 130)*.
- xxiii. It is also relevant to note that when the *Noticee* changed its name from Edelweiss Comtrade Limited to Comtrade Commodities Services Limited, SEBI issued a fresh certificate of registration dated September 21, 2022. At that time, SEBI did not raise any contention of the *Noticee* not complying with *fit and proper criteria* as laid down in the Intermediaries Regulations.
- xxiv. In the instant case, the SSCN has been issued to the *Noticee* without such additional enquiry report and SEBI merely seeks to rely upon the original Enquiry Report dated June 20, 2019. This reaffirms *Noticee's* contentions that the SSCN is without jurisdiction. SEBI's actions in the instant case are not only beyond the scope of the provisions under the Intermediaries and Brokers Regulations, but also contrary to its own steps taken against those 5 brokers.
- xxv. It is also pertinent to note that out of more than 50,000 customers serviced by the *Noticee*, only 18 customers traded in '*paired contracts*' on NSEL. Further the *Noticee's* turnover from '*paired contracts*' for the period FY 2011- FY 2014 was equal to INR 8.24 Crore, i.e. only about 0.0065% of daily volumes of NSEL during the aforesaid period. Assuming, while emphatically denying any culpability, the harm to the security market is unlikely to be immense or irreparable.

CONSIDERATION OF ISSUE AND FINDINGS

10. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee*, the SSCN dated October 11, 2022, the replies/written submissions dated November 15, 2019, January 06, 2020, October 31, 2022 and December 07, 2022 made by the *Noticee* and other

materials/information as available in the public domain and also made available to the *Noticee* vide SSCN dated October 11, 2022. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN/SSCN, the issue which arises for my consideration in the present proceedings is whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.

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

THE SEBI ACT, 1992

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

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

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

THE STOCK BROKERS REGULATIONS, 1992

Consideration of application for grant of registration.

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

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

Conditions of registration.

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

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

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

SCHEDULE II

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

CODE OF CONDUCT FOR STOCK BROKERS [Regulation 9]

A. General.

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

Liability for action under the Enquiry Proceeding Regulations.

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

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

THE INTERMEDIARIES REGULATIONS, 2008

SCHEDULE II

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

[See regulation 7]

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

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

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

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

period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

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

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

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

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

Recommendation of action

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

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

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

Order.

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

12. Before moving on to examine the issue framed above, I find it appropriate to deal with the preliminary objection raised by the *Noticee* that the powers conferred on SEBI under Section 29A of the FCRA are prospective in nature and in relation to offences committed under the FCRA and therefore, the *Noticee* believes that the present issue does not fall within the regulatory ambit of SEBI.
13. Admittedly, prior to the merger of FMC with SEBI (w.e.f. September 28, 2015), the *Noticee* was not required to be registered under the FCRA or any other regulation to be a commodity derivatives broker, however, after the merger of FMC with SEBI, a commodity derivatives broker is required mandatorily to have a certification of registration from SEBI in case it is desirous to remain associated with the Securities Market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 1952 but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the *Noticee* was registered as a broker w.e.f. July 08, 2016 after it filed application for registration with SEBI and since then it has been acting as a registered market intermediary and holding the certificate of registration.
14. In terms of Regulation 5(e) of the Stock Brokers Regulations, every stock broker at the time of seeking registration, and thereafter, throughout the time it holds a valid certificate

of registration, has to satisfy the “*fit and proper person*” criteria specified in Schedule II of the Intermediaries Regulations. I note that the DA 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, which SEBI is bound to consider/examine based on the prevailing criteria at the time of such examination whenever the need arises in this regard.

15. In any case, I note that SEBI had filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the FCRA *inter alia* alleged to have been committed by the *Noticee*. I also note from the records that on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai and the same is validly subsisting. In the background of these facts, it becomes necessary to see the scope and scheme of Section 29A(2)(e) of the FCRA which is reproduced as under for ease of reference:

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

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

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

The bare perusal of the aforesaid provision would reveal that it is an enabling provision which enables SEBI to initiate fresh proceedings within a period of three years from the date on which the FCRA is repealed. As stated above, SEBI has *inter alia* filed complaint against the *Noticee* within the stipulated period as specified in the FCRA. Accordingly, I note that SEBI has taken appropriate steps for the alleged violation of the provisions of the FCRA. Therefore, I am of the considered view that the preliminary issue has no force and merit and thus accordingly rejected.

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

16. As noted above, taking cognizance of the order passed by the Hon’ble SAT on June 09 2022 (hereinafter referred to as “**SAT Order**”) in the NSEL matters, a SSCN dated October 11, 2022 *inter alia* enclosing a copy of the SAT Order was issued to the *Noticee*

calling upon the *Noticee* to show cause as to why the following information/material along with the Enquiry Report dated June 20, 2019 should not be considered against it for determining whether the *Noticee* satisfies ‘*fit and proper person*’ criteria as laid down under Schedule II of the Intermediaries Regulations:

- a. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing (**‘EOW’**);
- b. First Information Report (**‘FIR’**) dated September 28, 2018; and
- c. Amended Schedule II of the Intermediaries Regulations.

17. In this regard, I find it apposite to encapsulate and list the grounds on which the SEBI orders were set aside by the Hon’ble SAT which consequently led to issuance of the aforesaid SSCN to the *Noticee* in the present matter:

- a. The observations of the Hon’ble Bombay High Court in the matter of *63 Moons vs. Union of India*¹ cannot be relied upon as the said judgement has been set aside in appeal² by the Hon’ble Supreme Court vide judgment dated April 30, 2019.
- b. The observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short “**MPID Act**”) (***NSEL vs. State of Maharashtra***)³ cannot be relied upon, as in a subsequent Writ Petition⁴ moved by 63 Moons, a Division Bench of the Hon’ble Bombay High Court has allowed the prayer and held that the NSEL is not a financial establishment and therefore the provisions of the MPID Act are not applicable. The Division Bench also observed that the *prima facie* observations made by the single bench while dismissing the NSEL petition could not be relied upon as they were preliminary observations and such observations do not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon’ble Tribunal, I note, was of the opinion that *prima facie* observations cannot be utilized to judge the reputation, character or integrity of the NSEL.
- c. The observations in the bail rejection order dated August 22, 2014, passed by the Hon’ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The*

¹ Writ Petition No. 2743 of 2014

² Civil Appeal No. 2276 of 2019

³ Writ Petition No. 1403 of 2015

⁴ Writ Petition No. 1181 of 2018

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 on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the Hon'ble Bombay High Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.
- e. Effect of SFIO Report under The Code of Criminal Procedure, 1973, as to whether such report could be treated as evidence, was not considered by SEBI.
- f. Reliance placed on decisions of the Hon'ble Tribunal in the matter of ***Jermyn Capital vs. SEBI***⁵ and ***Mukesh Babu Securities vs. SEBI***⁶ is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Hon'ble Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- g. Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- h. Grant Thornton Forensic report commissioned by SEBI does not find any close connection between applicant and the NSEL. This was overlooked by SEBI.
- i. The SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.

⁵ Appeal No. 26 of 2006, decided on September 06, 2006

⁶ Appeal No. 53 of 2007, decided on December 10, 2007

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

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

19. Before moving forward to consider the matter on merits and test the compliance of the Noticee with the ‘fit and proper person’ criteria, on the basis of the additional material that has been brought on record post the SEBI order (as detailed at paragraph 16 above), the background facts necessary for the present proceedings are narrated in brief, hereunder:
- i. The Noticee, M/s Edelweiss Comtrade Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000060936 with effect from July 08, 2016. Further, as submitted by the Noticee, its name is now changed to Comtrade Commodities Services Limited with effect from September 21, 2022.
 - ii. The NSEL was incorporated in May 2005 as a Spot Exchange *inter alia* with a purpose of developing an electronic Spot Exchange for trading in commodities. In exercise of powers conferred under Section 27 of the FCRA, the Central Government vide its 2007 Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to certain conditions, *inter alia* including “no short sale by the members of the exchange shall be allowed” and “all outstanding positions of the trades at the end of the day shall result in delivery”.
 - iii. In October 2008, the NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that the NSEL had introduced the concept of ‘paired contracts’ in September 2009 which allowed buy and sell in same

commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time and at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on the NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.

- iv. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as “**FMC**”) was appointed by the Department of Consumer Affairs, Government of India as the ‘designated agency’ as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from the NSEL and to examine the same for taking appropriate measure, if needed, to protect investors’ interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including the NSEL in the prescribed reporting formats. After analyzing the trade data received from the NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as “**FMC Order**”) wherein it was *inter alia* observed that 55 contracts offered for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of ‘no short sale by members of the exchange shall be allowed’ was being not complied with by the NSEL and its members. FMC further observed that the ‘paired contracts’ offered for trading in the NSEL platform were in violation of the provisions of the FCRA and also in violations of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on the NSEL, from the purview of the FCRA.
20. From the perusal of the FMC Order in respect of the ‘paired contracts’, which were traded on the NSEL platform during the relevant period, I note that the FMC had *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

- a. **Short Sale**

The NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of “no short sale by members of the NSEL

shall be allowed’ was not being met by the NSEL and its trading/clearing members who traded in the *‘paired contracts’* during the relevant period.

b. Contracts with Settlement Period going beyond 11 days

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

21. Thus, I note that the NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short “**MCA**”), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one-day duration traded on NSEL subject to certain conditions which, *inter alia*, included that *‘no short sale by members of the NSEL shall be allowed’* and that all *‘outstanding positions of the trade at the end of the day shall result in delivery’*. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.
22. In this regard, the relevant observations of the FMC as recorded in its Order dated December 17, 2013 and also captured in the SCN are reproduced as under:

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

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

23. It is therefore, clear that the NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. I further note from the FMC Order that under the FCRA, a "forward contract" is defined as a "contract for delivery of goods and which is not a ready delivery contract". A 'ready delivery contract' is defined as "a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days". Given the said definition contained in FCRA, FMC, I note, was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as *Non-Transferable Specific Delivery contracts*. It is therefore, noted that even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on the NSEL, FMC, in its Order, relying on the definition of "forward contract" under FCRA held that the NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. Therefore, even going by the interpretation adopted by FMC, what is beyond doubt is that the NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to the NSEL.
24. Thus, I do not find any merit in the contention of the *Noticee* that the relevant information available in the public domain did not reasonably indicate that 'paired contracts' were in any manner illegal or prohibited by law as the said contracts would necessarily have had to be approved by NSEL in terms of the relevant Bye-Law, prior to the commencement of the

trading of the *'paired contract'*. It is pertinent to note here that the *Noticee* has emphatically argued that it made the customers aware of the high-risk nature of the product and despite being expressly cautioned against executing trades in *'paired contracts'*, the customers insisted on trading in the product and therefore, the *Noticee* executed these trades only after obtaining a written declaration, from each of such customers, that the trades were being executed on their express instructions. In my considered view, these submissions are fraught with inherent contradictions in as much as that on one hand the *Noticee* submits that there was nothing in public domain to indicate that *'paired contracts'* were illegal or prohibited and on another hand the *Noticee* contends that after internal evaluation it had concluded that it was a high-risk nature of the product and expressly cautioned customers against executing trades and then facilitated the same by obtaining a written declaration of their express instruction to do so.

25. At this stage, the decisive point to consider is if the *Noticee* did not having any doubt regarding the illegality of or inherent risks or high risks involved in the *'paired contracts'* then why it concluded otherwise in its internal evaluation, expressly cautioned its customers and then obtained a written declaration from its customers in this regard especially considering the fact that the *Noticee* only started trading in the *'paired contracts'* as late as F.Y. 2011-2012 when the *'paired contracts'* were introduced by the NSEL in September 2009. This fact goes on to show that even in the express understanding of the *Noticee* the said product was considered to be highly risky. Moreover, it is the case of the *Noticee* that it decided not to market the *'paired contracts'* to its customers, since, after an internal evaluation, the *'paired contract'* was categorized as risky and therefore, it could possibly be inferred that prior to undertaking the internal evaluation by the *Noticee*, the products may have been marketed to its customers by the *Noticee*. In any case without furnishing any details as to the nature of high risk involved in the *'paired contracts'* that the *Noticee* appears to have concluded, such submission of the *Noticee* at best be viewed as a bald assertion since it has failed to furnish any evidence of such internal evaluation despite being expressly asked to do so during the course of the hearing.
26. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial*

*Technologies India Ltd.) & Ors. v. Union of India & Others*⁷ (Civil Appeal No. 4476 of 2019 decided on April 30, 2019), wherein it *inter alia* held that:

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

27. It is further pertinent to refer to the judgement dated April 22, 2022 passed by the Hon’ble Supreme Court in the matter of *The State of Maharashtra vs. 63 Moons Technologies Ltd.*⁸ (hereinafter referred to as “**MPID matter**”), wherein the Hon’ble Supreme Court while drawing reference to the presentations made by the NSEL in respect of the ‘paired contracts’ has *inter alia* held that:

“The above representation indicates that ‘paired contracts’ were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. **Therefore, NSEL represented that on receiving money and commodities, the members would receive assured returns and a service.** Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act.” (emphasis supplied)

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 merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon’ble Supreme Court has held that such transactions come within the definition of ‘deposits’ under the MPID Act.

⁷ (2019)18 SCC 401. Also available at <https://indiankanoon.org/doc/169098295/>

⁸ Civil Appeal No. 2748-49 of 2022. Also available at <https://indiankanoon.org/doc/184205229/>

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. In this regard, it can be noted that the NSEL was advertising a uniform return of 16% p.a. for the '*paired contracts*' traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The '*paired contracts*', it is noted, were being marketed as an alternative to fixed deposits.
30. I note that the FMC Order and both judgments of the Hon'ble Supreme Court go into abundant detail regarding the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the '*paired contracts*' which were executed were short sales – and naked short sales at that - the commodities to back such sales were not available at the designated warehouses of the NSEL.
31. Considering the deliberations and discussions recorded above, it essentially leads to the moot question as to whether the *Noticee* while facilitating such transactions for its customers was under the *bonafide* belief that the '*paired contracts*' were actually spot contracts in commodities. Or can it be said that the very fact that '*paired contracts*' were offered meant that the NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the *Noticee* should have been aware that such a product was far removed from the spot trading in commodities which was permitted on the NSEL's platform. Further, as stated above, the NSEL itself was advertising such contracts as an alternative to fixed deposits and the return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits.
32. In the undeniable background that there was a settlement default at the NSEL, it is clear that there were enough red flags which should have alerted the *Noticee* when these products were first offered by the NSEL. With the material on record, especially those summarized at paragraphs 27 and 29, it is further clear that any prudent person (including the *Noticee*) would have come to the conclusion that what was being offered were not spot

contracts in commodities and rather had a trappings of a financial product which offered fixed and assured returns, as the Hon'ble Supreme Court has already held.

33. As recorded in the SSCN, it is not in dispute that SEBI has filed a complaint dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on the NSEL, including the *Noticee*, with EOW, Mumbai. On the basis of this complaint, subsequently, an FIR dated September 28, 2018 came to be filed by SEBI against the *Noticee* with EOW, Mumbai, which is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*.
34. As regards issuance of the SSCN, I note that the *Noticee* has vehemently argued that the SSCN is without jurisdiction and untenable in law as it raises new issues which were neither put to the *Noticee* in the earlier SCN nor contemplated by SEBI at the stage of holding an enquiry under regulation 25 of the Intermediaries Regulations. In this context, I note that since the disqualification criteria of existing FIR dated September 28, 2018 was made effective from November 17, 2021 to determine whether any person is a '*fit and proper person*', the same could not have been invoked/contemplated when the SCN was issued on September 11, 2019 when this disqualification criterion was not in existence. In any case as noted above, considering the fact that the said FIR was filed on September 28, 2018 based on the complaint dated September 24, 2018 and that the '*fit and proper person*' criteria is a continuous requirement to be complied with at all times, the said fact of FIR cannot be treated as new issue as contended by the *Noticee*. Accordingly, the arguments advanced by the *Noticee* alongwith the case laws cited in the support of the said arguments, are rejected in this regard.
35. Further, the *Noticee* has contended that SEBI cannot now take advantage of its own failure to act timely and seek to apply the law as amended with effect from November 17, 2021, over 3 years after the SCN was issued to it which is not only in violation of the principles of natural justice and fair play and but also arbitrary and ultra vires the Constitution of India. In this regard, as recorded above, I note that the SCN was issued to the *Noticee* on September 11, 2019 in response to which, a reply dated November 15, 2019 was filed by the *Noticee*. Thereafter, pursuant to availing an opportunity of personal hearing on December 11, 2019, the *Noticee* filed its post hearing written submissions on January 06, 2020 before the then Competent Authority. While the extant proceedings in the present matter were ongoing, aggrieved by the earlier five separate orders passed by SEBI in

February 2019 rejecting the applications filed by five other entities for registration as commodity brokers in the NSEL matter, the said five entities had filed separate appeals before the Hon'ble SAT which came to be decided vide SAT Order dated June 09, 2022. Since the aforesaid appeals filed against the orders passed by SEBI in 2019 in the matter of NSEL were pending before the Hon'ble SAT, the present proceedings did not progress. I have already dealt with the issuance of SSCN being in accordance with the orders of the Hon'ble SAT as well as the fact that '*fit and proper*' criteria (as amended from time to time) are a continuous requirement for all intermediaries. The *Noticee* has been provided due opportunity to evaluate, make submissions and availed of opportunity to be heard and hence principles of natural justice have been abided with. Considering the aforesaid, I find no merit in the aforesaid submissions of the *Noticee* and therefore reject the same. Accordingly, the case laws cited in support of the said contention are also rejected in this regard.

36. In the background of the aforesaid discussion and deliberation pertaining to '*paired contract*' as captured in the preceding paragraphs, I now move on to examine whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
37. In this context, as per reply of the *Noticee*, it is noted that the *Noticee* has carried out '*paired contracts*' on NSEL for a total of 18 customers. Further the *Noticee* has claimed that its turnover from '*paired contracts*' for the period FY 2011- FY 2014 was equal to INR 8.24 Crore. Thus, it is abundantly clear that the *Noticee* has indulged into trading in '*paired contracts*' on behalf of its customers.
38. Having held that the *Noticee* has traded in '*paired contracts*' for its customers, I will now proceed to examine the allegations levelled against the *Noticee*. It is noted that the main allegation against the *Noticee*, as levelled in the SCN, is that by participating/facilitating in the trading in '*paired contracts*' on the NSEL platform during the relevant period as a Trading Member/Clearing Member, the *Noticee* has, *prima facie*, violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it was alleged in the SCN that the continuance of the registration of the *Noticee* as a broker is detrimental to the interest of the Securities Market and the *Noticee* is no longer a '*fit and proper person*' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of

registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents/material (such as SEBI Complaint dated September 24, 2018 and SEBI FIR dated September 28, 2018 etc.) as provided to the *Noticee* vide SSCN dated October 11, 2022, further alleged that in light of the aforesaid documents filed against the *Noticee* by SEBI as well as observations against the *Noticee* in the SCN dated July 23, 2019, the *Noticee* is no longer a '*fit and proper person*' for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

39. 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.
40. In this context, as noted above, I note that the *Noticee* is holding a Certificate of Registration No. INZ000060936. In this regard, I note that the *Noticee* has contended that when the *Noticee* changed its earlier name of Edelweiss Comtrade Limited to the present name of Comtrade Commodities Services Limited, SEBI issued a fresh certificate of registration dated September 21, 2022. At that time, SEBI did not raise any contention of the *Noticee* not complying with '*fit and proper criteria*' as laid down in the Intermediaries Regulations. The aforesaid submission of the *Noticee* is both flawed as well as misplaced because as per available records, at the time of name change, the registration number of the *Noticee* did not change in the records which is also evident from the details available on SEBI's website and therefore need to check the '*fit and proper person*' criteria of the *Noticee* did not arise at all at the time of issuance of the said updated Certificate of Registration. In any case, issuance of an updated Certificate of Registration containing the new name (i.e. Comtrade Commodities Services Limited) and existing registration number (i.e., INZ000060936) of the *Noticee* was the natural consequence of the said request made by the *Noticee*. As such, mere name change of a company does not abrogate any rights or obligations, duties or obligations, and contentions to the contrary are fallacious.

41. 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 a fit and proper is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.
42. Therefore, the criteria of '*fit and proper person*', is an ongoing requirement throughout the period during which the *Noticee* remains operational in the Securities Market as a registered intermediary. 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 the Certificate of Registration was initially granted in 2016, such an intermediary can still be assessed on being *fit and proper* at a later date. Furthermore, as and when the '*fit and proper*' criteria changes, the *Noticee* will be required to comply with the revised criteria, and in this instance criteria as revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which includes:
- (3) *For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*
- (b) *the person not incurring any of the following disqualifications:*
- (i) *criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
43. As already recorded in the SSCN and captured above, SEBI has filed an FIR against the *Noticee* under Section 154 of the CrPC with EOW, Mumbai on September 28, 2018 and the same is pending as on date and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. It is, therefore, noted that the disqualification provided in paragraph 3(b) (i) under the amended Schedule II of the Intermediaries Regulations is triggered vis-à-vis the *Noticee*. Resultantly, in view of the aforesaid deliberations and discussions the contentions of the *Noticee* that in the event of a change in law during a pending proceeding, the law to be applied must be the law that

existed at the time of the initiation of the proceedings and the amended Schedule II of the Intermediaries Regulations is prospective in nature and does not apply to acts that may or may not have been committed prior to such amendment coming into effect on November 17, 2021, are rejected as *sans* any merit. Consequently, the case laws relied upon by the *Noticee* in support of the aforesaid contentions are also rejected.

44. In this regard, it is noted that the *Noticee* has admittedly traded in '*paired contracts*' on behalf of its customers. I note that the *Noticee*, as a broker and as a member of the NSEL, represented the NSEL to the regular investors. The execution of the trades in '*paired contracts*' by the *Noticee* shows the participation of the *Noticee* in the said scheme perpetrated by the NSEL to provide its platform for trading in '*paired contract*' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the *Noticee* by its conduct and as a member of the NSEL has acted as an instrument of the NSEL in promoting and/or dealing in '*paired contracts*' which were in the nature of financing transaction (as held by the Hon'ble Supreme Court of India to be so as noted above). The *Noticee*, by providing access for taking exposure to '*paired contracts*' has exposed its customers to the risk involved in trading in a product that did not have regulatory approval which raises 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 customers and itself on the NSEL platform have serious ingredients amounting jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* in the Securities Market.
45. The fact that the *Noticee* has not carried out any proprietary trades in the '*paired contracts*', does not come to the aid of the *Noticee*. Further, the contention of the *Noticee* that it is also not SEBI's case that the *Noticee* was affiliated to NSEL or its Promoters in any way or that the *Noticee* personally gained or benefitted from '*paired contracts*' or trades, is equally misplaced as earning of brokerage from customers is part of the gain or benefit arising to the *Noticee* irrespective of the fact that whether the said brokerage is meagre or not.
46. Therefore, looking holistically I find that the said conduct of the *Noticee* is detrimental to the Securities Market. It may also be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the *Noticee* but to examine as to whether or not, the *Noticee* has acted in a manner expected of a market intermediary

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

47. Further, as noted above, the *Noticee* has also earned disqualification under 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of 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. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II hold the field which are binding upon SEBI, and arguments to the contrary are not maintainable. Further, the submission of the *Noticee* that the criteria laid down under the amended Schedule II of the Intermediaries Regulations are to be applied by SEBI exercising its discretion as the said provision contains the word 'may', also does not cut ice as SEBI has already invoked the said disqualification to test the criteria of the 'fit and proper person' of the *Noticee*. Also, the *Noticee* has strongly argued that a FIR or a Criminal Complaint under Section 154 of the CrPC is only the starting point of an investigation and a skeleton and cannot be construed as the accused being guilty as the Indian jurisprudence is clear that a person is innocent until proven guilty beyond reasonable doubt as held in catena of Supreme Court's judgements as captured in para 9 above. To such a protest, I am of the considered view that there is no assertion of guilt made in the SCNs as the present proceedings pertains to test the continuing 'eligibility criteria' of 'fit and proper criteria' of the *Noticee*. Besides, no material has been brought on record by the *Noticee* to dispute the fact that the said FIR validly subsists as on date. It is neither the case of the *Noticee* that the said FIR has been quashed nor a C-Summary has been filed by the authority concerned in this regard. In the absence of the above discussed factors, I am not inclined to accept the submissions put forth by the *Noticee* in this context. Needless to

say that the relied upon case laws cited to buttress the said submissions also do not come to the rescue of the *Noticee*.

48. I am also aware that recently SEBI has passed 5 separate orders⁹ in the related NSEL matters where the noticees therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the *Noticee* is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of those 5 cases where the applications for grant of certificate of registration were pending at the time of passing those orders whereas in the extant matter the *Noticee* is already having registration with SEBI. At this stage, one may argue that at the time of grant of Certificate of Registration to the *Noticee* in 2016, it was already adjudged as a '*fit and proper person*' by SEBI and therefore the said criteria are already satisfied by the *Noticee*. However, as noted above '*fit and proper person*' criteria is a continuing requirement under the Intermediaries Regulations which the *Noticee* ought to comply with at all times so long it desires to remain associated with the Securities Market as a registered intermediary. Necessity of specifying a period of time may also not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) when dealing with an entity holding a certificate of registration which is cancelled as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable regulations. If it chooses not to, such issue becomes moot.

⁹ 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.

49. It is also foreseeable that an objection may be taken to the issuance of the SSCN dated October 11, 2022 which was issued pursuant to and on the basis of the SAT Order on account of the fact that the said SAT Order is not applicable to the *Noticee* as the *Noticee* was not a party before the Hon'ble SAT in those 5 appeals where the said SAT Order was passed. However, I find that the said objection, if taken would have been totally misplaced as the essence of the said SAT Order is that it advises SEBI to provide the documents which it intends to use/rely in the present proceedings so that the entity would have an opportunity to prepare its defence pertaining to these documents and which is also in adherence to the principles of natural justice. Due opportunity to evaluate the materials and to be heard addresses the principles of natural justice. In any case, as recorded above, the Hon'ble SAT had already required SEBI to issue SSCN which was complied with by SEBI in this regard.
50. In view of the above observations and admission of the *Noticee* having traded in these '*paired contracts*' on the NSEL, I have no hesitation in holding that the *Noticee* has participated/facilitated in the trading in '*paired contracts*' on the NSEL platform during the relevant period as a Trading Member/Clearing Member and has violated the conditions of the 2007 Exemption Notification and also the provisions of the FCRA. Further, as noted above, the *Noticee* has also attracted disqualifications under point 3(b)(i) of Schedule II and the act of *Noticee* in offering access to '*paired contracts*', as detailed above, also seriously calls into question the integrity, honesty and lack of ethical behaviour on its part. These contracts, as stated earlier, were *ex facie* offered in violation of the 2007 Exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on the NSEL. Here it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' also becomes applicable in the situation since trading in '*paired contracts*' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The '*paired contracts*' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-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. Equally, any argument on the lines that the customers demanded such access to the '*paired contracts*' and may have given business to someone else or that other persons were engaged in such

conduct, does not detract the diligence required to be performed by any reasonable or prudent person including the *Noticee*, which cannot rely upon such client entreaties/threats or swayed by actions of others on the street. Clearly, the actions of the *Noticee* has been and could be detrimental to the interest of the Securities Market and accordingly the *Noticee* can no longer be called a '*fit and proper person*' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

51. 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 simpliciter i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its customers and which will uphold the integrity of the Securities Market.
52. It would not be material for the *Noticee* to submit that there is no loss caused to the investors or no gain has accrued to the *Noticee* on account of its trades since the limited scope of the present proceeding is to examine the conduct of the *Noticee* in the background of its active participation in the trading platform of the NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA and also attracting disqualification under amended Schedule II of the Intermediaries Regulations so as to decide on its continuing role in the Securities Market. From the above, it is evident that the *Noticee* was a part of a scheme that was contrary to the permissible activities prescribed by the Central Government. Under the garb of '*paired contracts*' the *Noticee* had indulged in facilitating impermissible financing transactions, and such illegal activities as well as

participation of the *Noticee* therein are certainly detrimental to the interest of the promotion and development of the Securities Market.

53. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honoured in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. As noted above, the principle of '*ignorantia juris non excusat*' or that '*ignorance of law is no excuse*' becomes squarely applicable.
54. It further needs appreciation that the issue under consideration is not to gauge the profit/loss incurred or likely to be incurred by an individual, but the limited scope of the present proceedings is to see whether the indulgence, engagement and promotion of such activities could be held to be beneficial to the development of Securities Market or the same contain elements that are potentially dangerous and detrimental to the interest, integrity, safety and security of the Securities Market. In this respect, the undisputed fact that the scheme of '*paired contracts*' traded on the NSEL ultimately has caused loss to the market to the extent of INR 5,500 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.
55. Under the circumstances, I therefore note that there were enough red flags for a reasonable or prudent person to come to the conclusion that what was being offered as '*paired contracts*' on NSEL were not spot contracts in commodities. As per the *Noticee's* contention, its internal evaluation also led to it considering these '*paired contracts*' as a high risk product, and it decided not to conduct proprietary trades and also cautioned its customers but then facilitated their trades basis declaration obtained. These actions underscore that the red flags were known or understood by the *Noticee*. Given the above discussions and deliberations, I am constrained to conclude that the *Noticee*, presumably driven by its desire to earn brokerage and/or profit, provided access to its customers to

participate in a product which raises serious questions on the ability of the *Noticee* to continue being associated with the Securities Market. 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 CrPC 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

56. In view of the foregoing discussions and deliberations, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and upon considering the gravity of the violations committed by the *Noticee* viz. M/s Comtrade Commodities Services Limited (formerly known as Edelweiss Comtrade Limited), Certificate of Registration bearing No. INZ000060936 of the *Noticee* i.e., M/s **Comtrade Commodities Services Limited** (formerly known as Edelweiss Comtrade Limited), is hereby cancelled.
57. The *Noticee* shall, after receipt of this order, immediately inform its existing customers, if any, about the aforesaid direction in paragraph 56 above.
58. Notwithstanding the direction at paragraph 56 above, the *Noticee* shall allow its existing customers, 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 customers to withdraw or transfer their securities or funds within the said 15 days, the *Noticee* shall transfer the funds and securities of such customers to another broker within a period of next 15 days thereon, under advise to the said customers.
59. The Order shall come into force with the immediate effect.
60. It is clarified that in view of the amendment made *w.e.f.* January 21, 2021 in the Intermediaries Regulations, 2008, powers that were exercised under regulation 28 of the

Intermediaries Regulations, 2008 are now being exercised under regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the *Noticee* or other relevant persons.

61. A copy of this order shall be served upon the *Noticee* and the recognized Market Infrastructure Institutions for necessary compliance.

DATE: MARCH 28, 2023
PLACE: MUMBAI

PRAMOD RAO
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA