

**QJA/AA/MIRSD/DOP/24159/2022-23**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

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

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**In respect of –**

**Vertex Commodities and Finpro Private Limited  
Registration No. INZ000066235**

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

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**BACKGROUND**

1. The Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) initiated enquiry proceedings against Vertex Commodities and Finpro Pvt. Ltd. (bearing registration no. INZ000066235) (hereinafter referred to as “**Noticee**”), registered with SEBI as a stock broker in commodity derivative segment under the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Broker Regulations**”), for the alleged violations of Regulations 5(e), 9(b) and 9(f) read with clause A(1), A(2) and A(5) of the Schedule II and regulation 27(iv) of the of the Stock Broker Regulations read with Schedule II of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as “**Intermediaries Regulations**”).
2. The Noticee was a Trading and Clearing Member of the National Spot Exchange Limited (hereinafter referred to as “**NSEL**”), which was incorporated in May 2005 as a spot exchange for trading in commodities. NSEL organised trading in commodities after it was granted exemption from provisions of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) by the Department of Consumer Affairs of the Ministry of Consumer Affairs, Food and Public Distribution, Government of India, vide Gazette Notification No. SO 906(E) dated June 05, 2007 (hereinafter referred to as “**Exemption Notification**”), in exercise of powers conferred by the Section 27 of FCRA subject to certain conditions which, *inter alia*, included “*no short sale by members of the*

*exchange shall be allowed” and “all outstanding positions of the trade at the end of the day shall result in delivery” and that “all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency”.*

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

**(a) Short Sale**

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

**(b) Contracts with Settlement Period going beyond 11 days**

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

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

## **ENQUIRY BY DESIGNATED AUTHORITY**

8. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated September 24, 2018 to conduct an enquiry against the Noticee and submit a report and make recommendation/s in compliance with Regulation 27 of the Intermediaries Regulations as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, w.e.f. January 21, 2021. The DA, accordingly, issued a Show Cause Notice dated September 25, 2018 (hereinafter referred to as “**Enquiry SCN**”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations.
9. Upon completion of the enquiry, the DA submitted an Enquiry Report dated November 27, 2020 (hereinafter referred to as “**Enquiry Report**”) to the Competent Authority, *inter alia*, observing as under:

*“46. In view of the facts and circumstances of the case and material placed before me, I am of the view that the Noticee is not a ‘fit and proper’ person in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. Therefore, in terms of Regulation 27 of the Intermediaries Regulations, I recommend that that the registration of the Noticee, i.e., Vertex Commodities & Finpro Pvt Ltd [Registration No. INZ000066235] as a commodity derivatives broker may be cancelled.”*

## **POST ENQUIRY PROCEEDINGS**

### ***Show Cause Notice, Reply and Personal Hearing***

10. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated January 15, 2021 (hereinafter referred to as “**SCN**”) was issued to the Noticee under Regulation 28(1) of

the Intermediaries Regulations (as applicable at the relevant time) enclosing therewith (a) Enquiry Report, (b) Letter dated December 30, 2014 of the Department of Economic Affairs (DEA) Ministry of Finance and (c) Copy of the order dated August 22, 2014 passed by the Hon'ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the case of ***Jignesh Prakash Shah v. The State of Maharashtra***. The SCN was issued to the Noticee calling upon it as to why action as recommended by the DA including any other action should not be taken, as deemed fit, by the Competent Authority.

11. The Noticee, in its reply dated March 21, 2021 has stated that its replies dated October 15, 2018, January 21, 2019 and July 17, 2019 may also be considered. The submissions of the Noticees vide the aforesaid replies and replies dated March 21, 2021, December 05, 2022 and December 13, 2022 are as under:

- SEBI lacks jurisdiction to deal with its trading on NSEL in various contracts on the assumption that FMC was regulating the affairs of NSEL and the brokers registered with NSEL, but SEBI has issued the SCN. The said assumption is totally flawed as commodity spot markets were not regulated by the FMC. NSEL was not a “recognized association” under the FCRA.
- Section 29A of the FCRA stated that a fresh proceeding related to an offence under the FCRA may be initiated by SEBI under the FCRA within a period of three years from the date on which FCRA is repealed i.e. September 29, 2015 and be proceeded with as if FCRA had not been repealed. On the strength of the said provision, SEBI initiated proceedings for the violation of provisions of FCRA under SEBI Act/ Regulations, which is contrary to the express provisions of Section 29A of the FCRA. The commodity brokers came under the regulatory ambit of SEBI only after September 28, 2015 and therefore, the Noticee cannot be held liable for the alleged violation of SEBI Regulations for the period preceding September 28, 2015.
- The relationship between NSEL and the Noticee was that of Regulator/ Exchange and Regulatee/ Member and the said relationship was completely at arms' length.
- The DA has not provided any additional material/ evidence to prove the close association between NSEL and the Noticee. There exists no commonality of address/ shareholding/ directorship; no direct/ indirect shareholding in NSEL or its promoter companies; existence

of any financial transactions between the Noticee and the promoters/ directors/ management of NSEL.

- It is the Exchange which designs the products which are permitted to be traded on its platform. The legality of the products to be permitted to trade on its platform is to be ensured by the Exchange and not by the Trading Member.
- To expect that as a Trading Member, the Noticee should have done due diligence on the products permitted by the Exchange is to place a reverse burden on the Trading Members.
- At the relevant time, there was nothing to excite its suspicion that NSEL would not be conducting its affairs in compliance with the provisions of law.
- At no point of time, the Central Government had raised any issue with regard to contracts being traded on NSEL not being compliant with its Exemption Notification.
- The Noticee carried out its first transaction only in November 2010. The Noticee's clients wanted to trade, and therefore, the Noticee traded on their behalf. The Noticee did not induce its clients to trade in the paired contracts nor promised any returns.
- In *Jermyn Capital LLC v. SEBI*<sup>1</sup> and *Mahesh Babu v. SEBI*<sup>2</sup>, the the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**Hon'ble SAT**") had found close association between the entities/ persons considering their close business and personal relations. However, in the present case no such facts are available. A member of an Exchange or a person holding a certificate of registration from SEBI as an intermediary cannot be construed as having close association with the Exchange or SEBI merely on the basis of being a member or intermediary.
- The Noticee has relied on the observations of the Hon'ble SAT in its order dated June 09, 2022 in the matter of *Geofin Comtrade Ltd. v. SEBI*<sup>3</sup> wherein the Hon'ble SAT observed that all brokers facilitate trades on behalf of their clients on the exchange platform but that does not mean that all brokers are closely connected to the exchange. As regards, "close association", the Hon'ble SAT observed that "associate" has been defined under Regulation 2(1)(b) to mean any person controlled, directly or indirectly, by the intermediary, or any person who controls, directly or indirectly, the intermediary, or any entity or person under common control of such intermediary. There is no finding in the instant case indicating that the appellants have any control directly or indirectly over NSEL

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<sup>1</sup> Appeal No. 26 of 2006 decided on September 06, 2006 (available at <https://www.sebi.gov.in/satorders/jermyn.html>).

<sup>2</sup> Appeal No. 53 of 2007 decided on December 10, 2007.

<sup>3</sup> Appeal no. 214 of 2019 decided on June 09, 2022.

and, therefore, the question as to whether the appellant is a close associate of NSEL has not been considered in the right perspective. Based on the aforesaid, the Noticee reiterated that merely because it had traded on the Exchange platform does not mean that it was closely connected with the Exchange.

- SEBI in its orders passed against brokers such as India Infoline Commodities, Anand Rathi Commodities Ltd. and Geofin Commtrade Ltd. found that the said brokers: (i) gave false assurances to the clients, (ii) indulged in market capturing by large scale UCC manipulations, (iii) conducted short selling on the Exchange, (iv) induced investors through marketing material and power point presentations showing risk free returns. The said factors to infer that there is collusion/ nexus between broker and NSEL, are totally absent in the Noticee's case.
- The EOW's interim Report contains mere allegations and therefore, cannot be used for adverse inference against the Noticee. Further, the observations of the EOW are not applicable to the Noticee.
- The Noticees did not receive any "motivation incentives" or transaction fees, delivery and warehousing charges etc.
- At no point of time, prior to the filing of the Complaint, SEBI had ever sought the Noticee's version with regard to the alleged transactions on the platform of NSEL.
- As against the Noticee, save and except stating in a sweeping and vague manner that it had executed trades on the NSEL platform, no specific allegation has been made.
- Based on the observations of Hon'ble SAT in *Geofin Comtrade Ltd. v. SEBI*, the Noticee also argued that merely because an FIR has been filed by SEBI against it, no adverse inferences can be drawn against it.
- While deciding the matter, SEBI cannot proceed mechanically and ignore the contents, quality and the allegations contained in the complaint, which lack any credible foundational basis. Further, the Complaint/ FIR is pending, and therefore, the same cannot result in automatic disqualification.
- The amendment to Schedule II of the Intermediaries Regulations is prospective in nature and the same cannot be applied retrospectively in order to erroneously brand the Noticee as no longer being a "fit and proper person" for holding the certificate of registration under the Broker Regulations read with Schedule 11 of the Intermediaries Regulations.
- The impugned transactions pertain to FY 2011, the Enquiry SCN against the Noticee was issued in September 2018, the FIR/ Complaint was filed in September 2018 and the present

SCN has been issued in January 2021. However, the amendment to Schedule II came into force from November 2021, and therefore the same cannot be relied on for deciding “fit and proper person” criteria. The said amendment is substantive in nature, since any finding based on the same would entail severe adverse civil consequences qua the Noticee.

- As regards the recommendation of cancellation of its certificate of registration, the Noticee relied on the observations of the Hon’ble SAT in ***Almondz Global Securities Ltd. v. SEBI***<sup>4</sup> wherein it was observed that “*in this case, SEBI is trying to ensure the implementation of Schedule II of the Intermediaries Regulation which spells out the criteria to be satisfied before a person can be deemed to be a fit and proper person. As stated above, to say that a person does not fulfill these criteria, SEBI must be absolutely certain that by not doing so, irreparable harm would be caused to the securities market for the simple reason that this punishment of being declared unfit is the ultimate punishment that can be imposed upon an intermediary. Therefore, this weapon in SEBI’s arsenal must be wielded sparingly only in cases of repeated offences committed with impunity by intermediaries.*”
- While recommending cancellation, the DA has ignored the principle of proportionality. In this case, the recommendation of cancellation is disproportionate. In this regard, the Noticee relied on the observations on the Hon’ble Supreme Court in (i) ***Excel Crop Care Ltd. v. CCF***<sup>5</sup>, (ii) ***Coimbatore District Central Coop. Bank v. Employees Assn.***<sup>6</sup> and (iii) ***Ranjit Thakur v. UOI & Others***<sup>7</sup>.
- The Noticee is a victim of the fraud perpetuated by NSEL and not accessories or collusive facilitators.

12. Hearing in the matter was scheduled on December 07, 2022. The hearing was attended by Counsel, Adv. Shri Vinay Chauhan, Ms. Priya V G, Compliance Officer and Mr. Raviraja Poojary, officers of the Noticee. The Counsel *inter alia* made the following submissions:

- The Enquiry Report observes that there was a close association between NSEL and the Noticee. The Noticee has submitted that the relationship between the two was that of a “regulator” and “regulated entity”. The Noticee did not have any shareholding in NSEL.
- The Noticee has not received any incentives from NSEL for promoting the said ‘paired contracts’.

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<sup>4</sup> SAT Appeal No. 222 of 2015, date of decision: May 13, 2016.

<sup>5</sup> (2017) 8 SCC 47.

<sup>6</sup> (2007) 4 SCC 669.

<sup>7</sup> 1987 AIR 2386.



- The Noticee has earned a brokerage of Rs. 6 lakhs over a period of four years.
  - There has been no finding/ allegation of fraud in the inspections conducted by SEBI after the Noticee's registration with SEBI.
  - The Noticee, itself, is a victim of the fraud perpetuated by NSEL.
  - The Noticee also relied on the order of the Hon'ble Supreme Court in ***State of Maharashtra v. 63 Moons Technologies Ltd.*** to argue that the guilt lies at NSEL's end.
  - The DA has recommended cancellation of the certificate of registration of the Noticee which is disproportionate.
  - The Noticee also relied on the order of the Hon'ble Securities Appellate Tribunal in *Almondz Global Securities Ltd. v. SEBI* wherein it was held that cancellation is a weapon in SEBI's arsenal which must be wielded sparingly.
13. 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 SAT. The Hon'ble SAT, vide its common order dated June 9, 2022<sup>8</sup>, remanded the aforesaid orders to SEBI to decide these matters afresh within six months from the date of the said 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.....”*
14. In light of the aforesaid order dated June 9, 2022 passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee

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<sup>8</sup> Geofin Comtrade Ltd Vs. SEBI (Appeal No. 214 of 2019), Philip Commodities India Pvt. Ltd Vs. SEBI (Appeal No. 217 of 2019), IIFL Commodities Ltd Vs. SEBI (Appeal No. 218 of 2019), Anand Rathi Commodities Ltd Vs. SEBI (Appeal No. 288 of 2019) and Motilal Oswal Commodities Broker Pvt. Ltd. v. SEBI (Appeal No. 289 of 2019) (available at [https://sat.gov.in/english/pdf/E2022\\_JO2019214.PDF](https://sat.gov.in/english/pdf/E2022_JO2019214.PDF)) .

before concluding the present proceedings. Accordingly, vide letters dated October 04, 2022 and November 02, 2022 and email dated December 06, 2022, certain additional documents were provided to the Noticee and the Noticee was requested to file its reply, if any, within 15 days of receipt of the said letters. In response to the said letters, the Noticee, vide its letters dated December 05, 2022 and December 13, 2022 which have been captured in the preceding paragraphs.

## CONSIDERATION OF ISSUES AND FINDINGS

15. I have carefully perused the Enquiry Report issued to the Noticee, the replies submitted by the Noticee along with all the other material / information available in public domain and also made available to the Noticee vide letters dated October 04, 2022 and November 02, 2022 and email dated December 06, 2022. After considering the allegations made/ charges levelled against the Noticee in the instant case, I note that the only issue that arises for consideration in the present proceedings is whether the Noticee satisfies the ‘fit and proper person’ criteria as laid down under Schedule II of the Intermediaries Regulations.
16. However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022 passed by the Hon’ble SAT also referred in the preceding paragraph no. 13. The Hon’ble SAT, while setting aside the earlier WTM Orders, had made the following observations (relevant to the present case as well) remanding the matters to SEBI:
  - (a) Observations of the Bombay High Court in the matter of **63 Moons vs. Union of India**<sup>9</sup> cannot be relied upon as the said judgement has been set aside in appeal<sup>10</sup> by the Hon’ble Supreme Court vide judgment dated April 30, 2019.
  - (b) Observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (“MPID Act”) (**NSEL vs. State of Maharashtra**<sup>11</sup>) cannot be relied upon, as in a subsequent Writ Petition<sup>12</sup> moved by 63 Moons, a Division Bench of the Bombay High Court has allowed the prayer and held that NSEL is not a financial

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<sup>9</sup> Writ Petition No. 2743 of 2014.

<sup>10</sup> Civil Appeal No. 4467 of 2019.

<sup>11</sup> Writ Petition No. 1403 of 2015

<sup>12</sup> Writ Petition No. 1181 of 2018

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 observation does not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that prima facie observations cannot be utilized to judge the reputation, character or integrity of NSEL.

- (c) Observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
- (d) Reliance placed on decisions of the Hon'ble Tribunal in the matter of *Jermyn Capital vs. SEBI*<sup>13</sup> and *Mukesh Babu Securities vs. SEBI*<sup>14</sup> is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely prima facie case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- (e) Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- (f) The SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.
- (g) Grant Thornton Forensic report commissioned by SEBI does not find any close connection between the applicant and the NSEL. This is overlooked by SEBI.
- (h) With respect to the additional material available, the Hon'ble SAT observed that,

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<sup>13</sup> *Supra* note 1.

<sup>14</sup> *Supra* note 2.

*“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.”*

17. In view of the above, the following additional documents were provided to the Noticee in the present case in hand:
- (a) Copy of the SFIO Complaint dated May 15, 2019 filed before the Court of Special Judge at Greater Mumbai, and
  - (b) Copy of the FIR dated September 28, 2018 filed by SEBI against 300 trading members of NSEL.
  - (c) Copy of the amended Schedule II of the Intermediaries Regulations.
18. Before considering the matter on merits and test the compliance of the Noticee with the ‘fit and proper person’ criteria, on the basis of the additional material that have been brought on record, it would be appropriate to look at the background and understand the nature of the ‘paired contracts’ that were offered on the exchange – which ultimately is the cause / genesis of the current proceedings. While undertaking this exercise, I will not be independently recording any findings on the nature of the contracts that were entered on the NSEL platform or commenting on the actions of any entity which is not a party to the present proceedings. I will, however, be relying on the observations made by other authorities including the Hon’ble Supreme Court, wherever appropriate.

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

19. NSEL was incorporated in 2005 as an electronic exchange for spot trading of commodities. On June 5, 2007, the Ministry of Consumer Affairs (“MCA”), Government of India, issued a Notification SO 906(E) under Section 27 of the FCRA granting conditional exemption from the provisions of that Act for (i) forward contracts, (ii) for sale and purchase of commodities, of one-day duration traded on NSEL. The conditions, inter alia, placed an absolute bar on short sales and stipulated that all outstanding positions at the end of the day must result in delivery. It was also stipulated that all information or returns relating to the trade as and when

asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

20. As evident from the FMC order, NSEL introduced, on its platform, the concept of 'paired contracts', in September 2009, which involved buying and selling the same commodity through two different contracts at two different prices wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In other words, the 'paired contract' involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.
21. Thereafter, FMC, vide an order No. 4/5/2013-MKT/B dated December 17, 2013 ("FMC Order") observed that: "55 contracts offered for trade on NSEL were with settlement period exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA" and "the condition of 'no short sale by members of the exchange shall be allowed' was not being met by NSEL".
22. Further, the above mentioned FMC Order *inter alia*, held that the contracts traded on NSEL violated the following conditions stipulated in the MCA Notification SO906(E) dated June 5, 2007, that granted permission to NSEL to offer spot trading in commodities which, *inter alia* included "no short sale by members of the exchange shall be allowed; that all outstanding positions of the trade at the end of the day shall result in delivery" and that "all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency".
23. It is, therefore, clear that from the order of FMC that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one –day duration as per the Notification dated June 05, 2007. I note from the FMC Order that the 55 contracts offered for trade on NSEL were with settlement periods

exceeding 11 days and all such contracts traded on NSEL were in violation of the provisions of FCRA. I further note from the FMC Order that under the FCRA, a “forward contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A ‘ready delivery contract’ is defined as “a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”. Given the said definition contained in FCRA, FMC, I note, was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.

24. Therefore, it is noted that even though MCA had stipulated in the exemption Notification in 2007 that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of “*forward contract*” under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. I note from FMC Order that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL. It is pertinent to note that all the 15 contracts that were advertised by NSEL, and which are captured in the Hon’ble Supreme Court’s Judgement in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*<sup>15</sup> (hereinafter referred to as “**the MPID Matter**”), were for durations exceeding 11 days.
25. I note that the Hon’ble Supreme Court in the matter of NSEL (supra) has also extensively commented on the nature of the ‘paired contracts’ traded on NSEL. The said observations by:
- a. The Two-Judge Bench of the Hon’ble Supreme Court in the course of determining the validity of the amalgamation order in the matter of 63 Moons (supra) vide judgment dated April 30, 2019<sup>16</sup>, had observed as under:

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

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<sup>15</sup> Civil Appeal No. 2748-49 of 2022 (available at <https://indiankanoon.org/doc/184205229/>).

<sup>16</sup> (2019)18 SCC 401 (available at <https://indiankanoon.org/doc/169098295/>).

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

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

26. I, therefore, note that the Hon'ble Supreme Court has already commented on the nature of the 'paired contracts' offered on the NSEL platform. In the case of **63 Moons Technologies Ltd. vs. UOI**, the Hon'ble Supreme Court held that these contracts were in the nature of financing transactions. In the MPID matter (**The State of Maharashtra vs. 63 Moons Technologies Ltd.**), the Hon'ble Supreme Court has held that such transactions come within the definition of 'deposits' under the MPID Act.
27. 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.
28. I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail, the NSEL permitting short sales i.e. permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available

in the warehouse. It is further noted from the judgement of the Hon'ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the 'paired contracts' which were executed were naked short sales i.e., the commodities to back such sales were not available at the designated warehouses of the NSEL.

29. In addition, I note that Economic Offences Wing, Mumbai, vide letter 789 dated April 04, 2015, had forwarded an interim report for the investigation conducted to identify role played by broking houses in NSEL Case (EOW C.R. No. 89/2013). As explained in the Enquiry Report, EOW, in its report, the name of the Noticee is appearing amongst the list of brokers who had client or money exposure at the time of default and the amount of money exposure mentioned against the name of the Noticee in the said list are Rs. 46,12,810/- and Rs. 29,11,50,498/-.
30. The paired contracts being in contravention of the provisions of FCRA and the Notification dated June 05, 2007, the DA, by stating that the fact of participation in trades in paired contract not being disputed by the Noticee, has observed that the Noticee, by failing to disassociate itself from, and continuing to facilitate participation in the said paired contracts, has observed that the Noticee does not fulfil the 'fit and proper' criteria.

**Preliminary objections raised by the Noticee:**

31. With regard to the Noticee's contention that SEBI has been given the jurisdiction over the commodities market and not the spot markets, I note that before merger of FMC with SEBI, the Noticee was functioning as a member of recognized commodity derivative exchanges and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Finance Act, 2015, recognized the said fact and also that the commodity derivative brokers should be regulated by SEBI. Considering the same, it was made mandatory for all commodity derivative brokers, who wished to continue their activities, to apply for registration with SEBI within a period of 3 months from September 28, 2015. Thus, all the commodity derivative brokers, who applied to SEBI and whose application was in process, were allowed to carry on their functions as commodity derivative brokers till the disposal of their respective application. Thus, by virtue of provisions of Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their



application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e., 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, I note that pursuant to the merger of FMC with SEBI, the Noticee had applied for a certificate of registration as a commodity broker and was granted a certificate of registration by SEBI. Therefore, the Noticee has become a SEBI registered intermediary from the said date and falls under the definitions of a ‘stock broker’ and an ‘intermediary’ under the SCRA. Being a SEBI regulated intermediary, SEBI has the jurisdiction to examine whether the activities of the Noticee in ‘paired contracts’ for its clients on the NSEL platform affects its ability to be considered “fit and proper person”. In addition to the above, I find it relevant to refer to observations of the order dated October 04, 2018 of the Hon’ble Bombay High Court in *Anand Rathi Commodities Limited v. SEBI* (W.P. (L) no. 3262 of 2018) wherein it was argued that the alleged deeds or misdeeds prior to September 29, 2015 by the petitioners who were acting as commodity brokers are beyond the jurisdiction of SEBI. The said argument was rejected by the Court and while interpreting Section 28A of the Finance Act, 2015, the Court observed as under:

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

### **Fit and proper person criteria**

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

## **SEBI Act**

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

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

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

## **Broker Regulations**

### ***Consideration of application for grant of registration.***

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

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

### ***Conditions of registration.***

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

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

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

### ***Liability for action under the Enquiry Proceeding Regulations.***

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

*(i) ....*

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

## **SCHEDULE II**

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

#### **CODE OF CONDUCT FOR STOCK BROKERS**

#### **[Regulation 9]**

### ***A. General.***

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

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

**(3)**....

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

**Intermediaries Regulations:**

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

**[See regulation 7]**

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

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

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

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

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

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

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
- (b) the person not incurring any of the following disqualifications:*
  - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
  - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
  - (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
  - (iv) recovery proceedings have been initiated by the Board against such person and are pending;*
  - (v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
  - (vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
  - (vii) such person has been declared insolvent and not discharged;*

- (viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*
- (ix) such person has been categorized as a wilful defaulter;*
- (x) such person has been declared a fugitive economic offender; or*
- (xi) any other disqualification as may be specified by the Board from time to time.*

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

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

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

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

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

33. I note that regulation 5(e) of the Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations, 2008 was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021. The Noticee, however, has argued that the impugned transactions pertain to FY 2011, the Enquiry SCN against the Noticee was issued in September 2018, the FIR/ Complaint was filed in September 2018 and the present SCN has been issued in January 2021, and the

amendment to Schedule II came into force from November 2021. In view of the same, the amended Schedule II cannot be relied on for deciding “fit and proper person” criteria as the said amendment is substantive in nature, and any finding based on the same would entail severe adverse civil consequences qua the Noticee.

34. From the records, I note that SEBI has filed a complaint with EOW Mumbai dated September 24, 2018, against brokers who facilitated access to ‘paired contracts’ traded on NSEL, including the Noticee. On the basis of this complaint, an FIR dated September 28, 2018, has been registered. I note that the Noticee is holding a certificate of registration granted by SEBI. In order to continue to hold such Certificate of Registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included, continuance of its status as a ‘fit and proper person’. The above condition to be 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.
35. In this regard, I note that as mentioned in the preceding paragraphs, before merger of FMC with SEBI, the Noticee was functioning as a member of recognized commodity derivative exchanges and was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Finance Act, 2015, recognized the said fact and also that the commodity derivative brokers should be regulated by SEBI. Considering the same, it was made mandatory for all commodity derivative brokers, who wished to continue their activities, to apply for registration with SEBI within a period of 3 months from September 28, 2015. Thus, all the commodity derivative brokers, who applied to SEBI and whose application was in process, were allowed to carry on their functions as commodity derivative brokers till the disposal of their respective application. Thus, by virtue of provisions of Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration. Thus, it is an admitted position that prior to the date of merger of FMC with SEBI (i.e., 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, I note that pursuant to the merger of FMC

with SEBI, the Noticee had applied for a certificate of registration as a commodity broker and was granted a certificate of registration by SEBI on June 05, 2017. Therefore, the Noticee has become a SEBI registered intermediary from the said date and falls under the definitions of a 'stock broker' and an 'intermediary' under the SCRA, and by virtue of the same required to comply with the conditions of registration stipulated under Regulation 9 of the Broker Regulations read with Code of Conduct as specified in Schedule II of the said Regulations.

36. The Noticee vide its replies dated October 15, 2018 and March 21, 2021 has admitted to providing access to its clients to the NSEL platform to trade in paired contract. I note that the act of the Noticee in offering access to 'paired contracts' by participating in and facilitating trading in such contracts, seriously calls into question the integrity, honesty and lack of ethical behavior on the part of the Noticee. As recorded in the FMC order and the judgements of the Supreme Court, these paired contracts, as stated earlier, were ex facie offered in violation of the exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. The 'paired contracts' were nothing but financing transactions masquerading as spot contracts in commodities. The execution of the trades in 'paired contracts' were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities, as observed by FMC in its Order. Therefore, the Noticee by its conduct and as a member of the NSEL has promoted and/or dealt in 'paired contracts' which were held to be in the nature of financing transaction by the Hon'ble Supreme Court. The Noticee, by providing access for taking exposure to 'paired contracts' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' for its clients on the NSEL platform have serious ingredients amounting to jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the Noticee in the Securities Market.
37. I note from the available records that the Noticee has facilitated its clients to trade in 'paired contracts'. Since the paired contracts were violative of the conditions stipulated in the Government Notification dated June 05, 2007, a complaint was filed by SEBI with Economic Offences Wing, Mumbai (EOW) on September 24, 2018, against the brokers who participated

/ facilitated access to 'paired contracts' traded on NSEL, including the Noticee within the time limit as specified in the aforementioned provision of the Finance Act, 2015. On the basis of the said complaint of SEBI, FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai. I note that the name of the Noticee is reflected in the complaint and the FIR.

38. It is pertinent to note that the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, the SEBI is well within the powers to examine the 'fit and proper' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the 'fit and proper person' criteria when SEBI granted Certificate of Registration in 2017, such an intermediary can still be assessed on being fit and proper at a later date. Furthermore, as and when the 'fit and proper' criteria changes, the Noticee will be required to comply with the revised criteria, and in 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 a criminal complaint or information under section 154 of Code of Criminal Procedure filed against such an entity by the Board and which is pending. It is, therefore, noted that the Noticee attracts the disqualification provided in paragraph 3(b) (i) of the Schedule II of the Intermediaries Regulations.
39. Therefore, looking holistically I find that the said conduct of the Noticee is detrimental to the Securities Market being not in conformity with the applicable code of conduct. I, therefore, note that there were enough red flags for a reasonable person to come to conclude that what was being offered as 'paired contracts' on NSEL were not spot contracts in commodities. Given the above, I am constrained to conclude that the Noticee provided a platform for its clients to access a product which raised serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the product itself.
40. Furthermore, as mentioned 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.

41. 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, facilitating the go-by to the terms of the 2007 Exemption Notification and thereby facilitating the paired contracts brings into question the appropriateness and suitability of the continuance of the registration of the Noticee as a broker. Clearly, the actions of the Noticee has been detrimental to the interest of the Securities Market and accordingly the Noticee can no longer be called a 'fit and proper person' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.
42. In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including brokers, which are not only required to act as an intermediary simplicitor i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.



43. I am also aware that recently SEBI has passed 5 separate orders<sup>17</sup> 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, 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 as long as 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.
44. The limited scope of the present proceedings is to see whether the indulgence, engagement and facilitation of paired contracts 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

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<sup>17</sup> 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-brokerpvt-ltd-\\_65602.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-brokerpvt-ltd-_65602.html)), Anand Rathi Commodities Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov2022/order-in-the-matter-of-anand-rathi-commodities-ltd-\\_65604.html](https://www.sebi.gov.in/enforcement/orders/nov2022/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/nov2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtradelimited\\_65597.html](https://www.sebi.gov.in/enforcement/orders/nov2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtradelimited_65597.html)), India Infoline Commodities Ltd.(at [https://www.sebi.gov.in/enforcement/orders/nov2022/order-in-the-matter-of-india-infoline-commodities-ltd-\\_65595.html](https://www.sebi.gov.in/enforcement/orders/nov2022/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-indiapvt-ltd-\\_65593.html](https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-indiapvt-ltd-_65593.html)) in the matter of NSEL.

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

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

46. I, therefore, in exercise of powers conferred under Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee, Vertex Commodities and Finpro Pvt. Ltd., the certificate of registration of the Noticee, Vertex Commodities and Finpro Pvt. Ltd. (bearing registration no. INZ000066235), is hereby cancelled.
47. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 46 above.

48. Notwithstanding the direction at paragraph 46 above, the Noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients.
49. This Order shall come into force with immediate effect.
50. It is clarified that in view of the amendment made w.e.f. January 21, 2021 in the Intermediaries Regulations, powers that were exercised under Regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under Regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.
51. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

**Date: February 27, 2023**

**Place: Mumbai**

**Sd/-**

**Dr. ANITHA ANOOP**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF  
INDIA**