

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.	Daga Commodities Private Limited	INZ000028833

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated July 05, 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 Daga Commodities Private 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. INZ000028833) 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. INZ000028833 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 30, 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:

“33. 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. Daga Commodities Private Ltd., registered as Stock Broker (SEBI Registration No INZ000028833) may be cancelled in the interest of the securities market.”

6. After considering the Enquiry Report, a Show Cause Notice dated July 23, 2019 (hereinafter referred to as “**SCN**”) enclosing therewith the Enquiry Report of the DA was issued to the *Noticee* under regulation 28(1) of the Intermediaries Regulations (as applicable

at the relevant time) calling upon it to show cause as to why the action of cancellation of Certificate of Registration that has been granted to the *Noticee* as recommended by the DA including passing of appropriate direction, should not be taken against it in terms of regulation 28(2) of the Intermediaries Regulations, as 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 August 13, 2019 had requested to provide copies of certain documents as specified in the said letter. Subsequently, vide Second Show Cause Notice dated September 20, 2019 (hereinafter referred to as “**Second SCN**”) certain material/information relevant for the proceedings as specified in the said Second SCN were also forwarded to the *Noticee* and further advised to file its reply within 21 days from the date of the receipt of the Second SCN. In response, the *Noticee* vide its letter dated October 10, 2019 filed its reply wherein the *Noticee inter alia* requested for grant of an opportunity of personal hearing. Thereafter, an opportunity of personal hearing was granted to the *Noticee* on June 02, 2020 before the then competent authority which was neither attended by the *Noticee* nor any adjournment was sought by the *Noticee* with respect to the said hearing.

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, Second SCN and SSCN are referred to as “SCNs”) provided certain additional documents/material (as indicated in the SSCN) to the *Noticee* and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The *Noticee* was further informed that if no reply is received within 15 days of receipt of this SSCN, it shall be presumed that it has no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been duly served on the *Noticee*. However, the *Noticee* did not file its response to the SSCN.
9. Thereafter, an opportunity of personal hearing was granted to the *Noticee* on November 03, 2022 whereon Mr. Sanjeev Rawal, Chief Financial Officer (‘CFO’) of the *Noticee* appeared and requested time to file the reply to the SSCN and further requested to reschedule the hearing thereafter. The aforesaid request for grant of time and rescheduling of the hearing was acceded to and the *Noticee* was granted time till November 25, 2022 to file its reply and the next date of hearing was fixed on December 01, 2022. Subsequently, the hearing scheduled on December 01, 2022 was postponed to December 02, 2022 on account of administrative exigencies. On the scheduled date, Ms. Pragya Singh, Company Secretary of the *Noticee*, appeared through Video Conferencing and requested for a short adjournment on account of non-availability of Mr. Sanjeev Rawal, CFO of the *Noticee* who had to appear on behalf of the *Noticee* and accordingly, the matter was adjourned to December 08, 2022.
10. On the fixed date, Mr. Sanjeev Rawal, CFO, appeared and made submissions on behalf of the *Noticee* to the effect that an appeal has been filed against the SSCN dated October 11, 2022 before the Hon'ble SAT on December 06, 2022 and therefore, requested for an adjournment of the hearing. Considering the fact that there was no stay granted with respect to the present proceedings by the Hon'ble SAT, which was also affirmed by Mr. Rawal, and also the fact that intimation regarding the filing of aforesaid appeal was given to SEBI, just before the start of the hearing, the *Noticee* was advised to make submissions on the merits of the matter. However, the *Noticee* did not avail the opportunity to make

submissions and requested for time until December 09, 2022 to make written submissions. Further, the *Noticee* vide its email dated December 09, 2022 sought copies of certain documents (as specified therein) to file its reply. Subsequently, Appeal No. 52 of 2023 filed by the *Noticee* against the SSCN before the Hon'ble SAT was dismissed by it vide its order dated January 23, 2023 wherein the Hon'ble Tribunal *inter alia* held as under:

"2. The appellant has challenged the supplementary show cause notice dated October 11, 2022. In our opinion, the appellant should file an appropriate reply to the supplementary show cause notice before the authority concerned. Such reply so filed would be considered by the authority concerned after giving an opportunity of hearing. We find no reason to interfere in the supplementary show cause notice at this stage. Dismissed."

11. Since the *Noticee* did not comply with the aforesaid SAT order, SEBI vide email dated February 13, 2023 advised the *Noticee* to file its written submissions (if any) and also indicate whether the *Noticee* is desirous of personal hearing in the matter, latest by February 17, 2023. It was further informed to the *Noticee* vide the aforesaid email that the relied upon relevant documents have already been provided to the *Noticee*. Further, as requested by the *Noticee*, a CD containing the aforesaid documents was sent through SPAD to the *Noticee* on February 17, 2023. The *Noticee* vide email dated February 22, 2023 acknowledged receiving the aforesaid CD however, again sought copies of certain documents as mentioned in the said email. SEBI vide its email dated March 01, 2023 informed the *Noticee* that a last and final opportunity of personal hearing has been granted the *Noticee* on March 23, 2023 and further advised the *Noticee* to file its reply latest by March 17, 2023. In the meantime, the *Noticee* vide email dated March 14, 2023 *inter alia* informed that it has filed application for consent in the present proceedings and requested to keep the extant proceedings in abeyance. In response to the said email, SEBI informed the *Noticee* that (i) the relied upon relevant documents have already been provided to the *Noticee* and (ii) as per regulation 8 (1) of SEBI (Settlement Proceedings) Regulations, 2018, the filing of an application for settlement of any specified proceedings shall not affect the continuance of the proceedings save that the passing of the final order shall be kept in abeyance till the application is disposed of. Therefore, the *Noticee* was advised to comply with the intimation sent vide email dated March 01, 2023 with regard to submission of reply and scheduled hearing. Accordingly, the *Noticee* vide its email dated March 17, 2023 forwarded a scanned copy of its reply dated March 06, 2023 and further confirmed that Mr. Sanjeev Kumar Rawal, CFO would be attending the hearing Scheduled on March 23,

2023. Accordingly, on the scheduled date of hearing which was held through video conferencing, Mr. Rawal appeared and made submissions in line with its reply. As advised during the course of the hearing, the *Noticee* vide its email dated March 23, 2023 provided its clarification pertaining to its submission made in para 18 of its reply dated March 06, 2023 (received on March 17, 2023). Subsequently, the *Noticee* vide its email dated April 19, 2023 made additional submission.

12. The replies dated August 13, 2019, October 10, 2019 and March 06, 2023 and the oral submissions made during the course of the personal hearing held on March 23, 2023, are summarized hereunder:

- i. The *Noticee* had never dealt in commodities market in a fraudulent/unfair manner.
- ii. The *Noticee* never used/employed any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under.
- iii. The *Noticee* never employed any device, scheme or artifice to defraud in connection with dealing in commodities which are being traded on a recognized commodities exchange.
- iv. The Notice never done any short sale of commodity in NSEL.
- v. The *Noticee* never advanced or agreed to advance money to any person thereby including, any other person to offer to deal in Commodity market more specifically in NSEL.
- vi. The *Noticee* never paid, offered or agreed to pay or offer, directly or indirectly, to any person any money or money's worth for inducing, such person for dealing in NSEL.
- vii. The *Noticee* never encouraged its clients to trade in NSEL solely with an object to enhance brokerage
- viii. The *Noticee* never indulged in any alleged circular transactions in NSEL trades entered & never enhanced its commission/brokerage to provide a false appearance of trading in such security or to inflate, depress or cause fluctuations in the price of such security
- ix. That *Noticee* never predated or otherwise falsified records such as contract notes.

- x. The *Noticee* did not execute any trade (own or of clients) on the last trading day i.e. July 31, 2013 and even none of the client of *Noticee* incurred any loss on account of suspension of trades by NSEL.
- xi. FMC Order is not related to the *Noticee* in any manner whatsoever. There is no name specific adverse remark w.r.t. the *Noticee* in the entire Grant Thornton Report. The *Noticee* do not fall under any of the categories mentioned in the EOW Interim Report and the *Noticee* had settled the account of its NSEL clients to their fullest satisfaction. Further, the name of the *Noticee* is not mentioned in Fortnightly reports submitted by NSEL providing details of Top 10 participants in Agri and Non Agri Commodities. Hence, the reliance of DA on aforesaid reports/order is totally misplaced.
- xii. Cancelling certificate of Registration of the *Noticee* on the mere fact that it is an intermediary of NSEL, is complete mockery to the administration of justice.
- xiii. In general, every statute is prospective unless it is expressed in the statute that it has retrospective operation. Similarly, amendment in SEBI Intermediary Regulation were made applicable on November 17, 2021. But said amendments, if made applicable in present matter, the *Noticee* would undoubtedly fall in aforesaid disqualification. In that sense, the amended Intermediaries Regulations would have retrospective operation and the issuance of present SSCN would be considered as just an eye wash where the outcome of SCNs is pre-decided.
- xiv. The *Noticee* being member broker of NSEL was abide by FCRA Act, rules and regulations and circulars issued, from time to time, by FMC/NSEL as may be applicable to it at that point of time and maintained high standards of integrity, promptitude & fairness towards its dealing with its registered clients and had acted with due skill, care and diligence in its conduct of all its businesses. And mere acting, as facilitator/intermediary between NSEL and clients should not make the *Noticee* liable to any alleged pair contract issued by NSEL and traded by Clients.
- xv. The *Noticee* became member of NSEL and started its client business in NSEL in 2011. Whereas the *Noticee* opened total 222 clients' accounts in NSEL after complying with KYC formalities & duly uploaded their UCC.
- xvi. The *Noticee* fairly provided NSEL trading terminal to its clients interested to perform trades at NSEL in spot market & never executed any alleged pair trades.

- The *Noticee* honestly maintained ledgers of its NSEL clients giving true and fair image of their accounts.
- xvii. The *Noticee* had earned very minimal amount of brokerage of INR 8,49,621.3 in the entire period of NSEL trades. The *Noticee* did not earn any hidden wrongful gains at the cost of wrongful loss to its registered clients. It is worthy to mention here that the *Noticee* had already settled accounts of all of its registered clients.
- xviii. The *Noticee* had been performing its roles and responsibilities casted on it being a commodity broker with true spirit namely fair dealing, duty of loyalty and Fiduciary duty, disclosure, trading authorization and good faith.
- xix. Being a commodity broker it is not the duty of the *Noticee* to watch the legality of contracts offered by any Exchange. The *Noticee*, being commodity broker, *bonafide* performed trades of its clients in the spot trading contracts made available by NSEL as the duty of a commodity broker is limited to the extent to ensure fair dealing & loyalty while dealing with its clients while adhering to its fiduciary duty and under no stretch of imaginations the *Noticee* can be held responsible to not checking the legality of contracts introduced by NSEL.
- xx. The *Noticee* has already filed Surrender Application with NCDEX which is pending because of pendency of present NSEL matter.
- xxi. The *Noticee* was granted SEBI Registration Certificate on March 04, 2016 considering it "*Fit and Proper Person*". Whereas the alleged transactions on NSEL were carried out way before the date of granting of the aforesaid SEBI Registration Certificate. Hence, a person once declared "*Fit and Proper Person*" after the date of carrying out alleged transactions on NSEL cannot now be declared "*Not Fit and Proper Person*".

CONSIDERATION OF ISSUE AND FINDINGS

13. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee*, Second SCN dated September 20, 2019, the SSCN dated October 11, 2022, the replies dated August 13, 2019, October 10, 2019, March 06, 2023 and post hearing submission (forwarded vide email dated April 19, 2023) 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 SCNs

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.

14. 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.*

15. 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. March 04, 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.

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 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

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

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.
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

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

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

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, Daga Commodities Private Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000028833.
 - 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. 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”.

25. 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:

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/>

*“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 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.
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 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.

29. 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.
30. 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 25 and 27, 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.
31. 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*.
32. 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.
33. In this context, as per reply of the *Noticee*, it is noted that the *Noticee* has opened total 222 clients' accounts in NSEL after complying with KYC formalities & duly uploaded their

UCC. Further the *Noticee* has claimed that it had earned very minimal amount of brokerage of INR 8,49,621.3 in the entire period of NSEL trades. Thus, it is abundantly clear that the *Noticee* has indulged into trading in '*paired contracts*' on behalf of its customers.

34. Having held that the *Noticee* has traded in/facilitated '*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.
35. 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.
36. In this context, as noted above, I note that the *Noticee* is holding a Certificate of Registration No. INZ000028833. 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.

37. 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 March 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;

38. 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*.
39. In this regard, it is noted that the *Noticee* has admittedly traded in/facilitated '*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.

40. 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 the *Noticee* did not earn any hidden wrongful gains at the cost of wrongful loss to its registered clients and had earned very minimal amount of brokerage of INR 8,49,621.30, is equally misplaced and flawed 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.
41. 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* never encouraged its clients to trade in NSEL solely with an object to enhance brokerage. The fact that is undeniably clear before me is that the involvement of the *Noticee* in trading/facilitation of trading in '*paired contracts*' on the NSEL is certainly a conduct which was not permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct as has been displayed by the *Noticee* in its trading on the NSEL platform is detrimental to the interest of the Securities Market.
42. Further, as noted above, the *Noticee* has also earned disqualification under 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of 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.

43. 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

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.

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.

44. 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.
45. In view of the above observations and admission of the *Noticee* having traded in /facilitated 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, the

argument on the lines that the *Noticee* fairly provided NSEL trading terminal to its clients interested to perform trades at NSEL in spot market & never executed any alleged pair trades and also honestly maintained ledgers of its NSEL clients giving true and fair image of their accounts, does not detract the diligence required to be performed by any reasonable or prudent person including the *Noticee* as the *Noticee* cannot turn a blind eye on the actions of its clients and thus claim that its clients carried out the trades especially when it has earned a brokerage from those trades on NSEL. 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.

46. 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.
47. 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.

48. 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.
49. 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.
50. Under the circumstances, I therefore note that there were enough red flags for a reasonable or prudent person to come to the conclusion that what was being offered as '*paired contracts*' on NSEL were not spot contracts in commodities. Given the above discussions and deliberations, I am constrained to conclude that the *Noticee*, presumably driven by its desire to earn brokerage and/or profit, provided access to its 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

51. 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. Daga Commodities Private Limited, Certificate of Registration bearing No. INZ000028833 of the *Noticee* i.e., Daga Commodities Private Limited, is hereby cancelled.
52. The *Noticee* shall, after receipt of this order, immediately inform its existing customers, if any, about the aforesaid direction in paragraph 51 above.
53. Notwithstanding the direction at paragraph 51 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.
54. The Order shall come into force with the immediate effect.
55. 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.

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

DATE: APRIL 25, 2023
PLACE: MUMBAI

Sd/-
PRAMOD RAO
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA