

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of –

Eureka Commodity Brokerage Pvt. Ltd.

[SEBI Registration No. INZ000047901]

In the matter of National Spot Exchange Limited

BACKGROUND

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

in exercise of powers conferred by the Section 27 of FCRA subject to certain conditions.

3. In September 2009, NSEL introduced the concept of 'paired contracts', i.e. buying and selling the same commodity through two different contracts at two different prices on its platform wherein investors could buy a short duration settlement contract and sell a long duration settlement contract and vice versa at the same time. It entailed occurrence of Buy Trades (T+2 / T+3) and Sell Trades (T+25 / T+36) on the same day at different prices on the platform of NSEL.
4. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as "**FMC**") was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from the NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest. The FMC had accordingly called for the trade data from different Spot Exchanges, including the NSEL in the prescribed reporting formats. After analysing 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.
5. On perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had inter alia, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

a. **Short Sale**

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

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

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

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

ENQUIRY BY DESIGNATED AUTHORITY

8. A Designated Authority (hereinafter referred to as “DA”) was appointed by SEBI vide communique dated September 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. The DA, accordingly, issued a Show Cause Notice dated September 25, 2018 (hereinafter referred to as “**Enquiry SCN**”) to the Noticee under Regulation 25(1) of the Intermediaries Regulations (as applicable at the relevant time) calling upon it to show cause as to why appropriate recommendation should not be made against it under Regulation 27 of the Intermediaries Regulations (as applicable at that time) read with Section 12(3) of the SEBI Act for the alleged violation of the provisions of Regulation 9(b) and 9(f) read with Clauses A(1), A(2) and A(5) of the Schedule II of the Stock Broker Regulations and being not a ‘*fit and proper person*’ for holding the certificate of registration as trading / clearing member in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations read with Schedule II of the Intermediaries Regulations.
9. The Noticee participated in the Enquiry Proceedings before the DA and had replied to the Enquiry SCN vide letter dated October 27, 2018. Thereafter, vide letter dated January 15, 2019 additional material in relation to the Enquiry SCN was forwarded to the Noticee. Vide letter dated February 16, 2019, the Noticee had submitted its reply.
10. Upon completion of the enquiry, the DA submitted an Enquiry Report dated June 28, 2019 (“Enquiry Report”) to the Competent Authority, inter alia, observing as under:

“42. 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. Eureka Commodity Brokerage Pvt. Ltd., registered as Stock Broker (Sebi Registration No INZ000047901] may be cancelled in the interest of the securities market.”

POST ENQUIRY PROCEEDINGS

Show Cause Notice, Reply and Personal Hearing

11. After considering the Enquiry Report, a post-enquiry Show Cause Notice dated September 11, 2019 (hereinafter be referred to as, the “**SCN**”) was issued to the Noticee under Regulation 28(1) of the Intermediaries Regulations (as applicable at the relevant time) enclosing therewith (a) copy of the Enquiry Report, (b) copy of the letter dated December 30, 2014 of the Department of Economic Affairs (DEA) Ministry of Finance and (c) a copy of the order dated August 22, 2014 passed by the Hon’ble Bombay High Court in Criminal Bail Application No. 1263 of 2014 in the case of *Jignesh Prakash Shah Vs. The State of Maharashtra*. The SCN was issued to the Noticee calling upon it as to why action as recommended by the DA including any other action should not be taken against, as deemed fit, by the Competent Authority.
12. The Noticee replied to the said SCN vide its letter dated October 24, 2019 and made the following submissions:
- (i) The Noticee denied each and every allegation or contention or conclusion sought to be drawn in the said SCN which is contrary to and/or inconsistent with what is stated herein.

Submission on the issue of adherence to principles of natural justice:

- (ii) The finding on the Ld. DA is erroneous, contrary to the facts and law, arbitrary and without any basis. SCN did not provide any details of actions/ instances which constituted the alleged violations of the SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 and the Intermediaries Regulations. The Noticee requested for copies of the documents relied upon by SEBI but SEBI after about 5 months from the SCN had provided some documents which are available in public domain. Instead of giving relevant information, data, trade and order log, investigation/inspection report or any other material relied upon by SEBI for issuing of SCN, SEBI advised the Noticee to refer to publicly available documents such as FMC’s order dated December 17, 2013. The reliance of SEBI on the said FMC Order is completely misconceived and misplaced as neither the Noticee was party to the said order nor the trades of the Noticee in paired contracts were matter under consideration of the Ld.

FMC. The said Order in fact has primarily focused on the defaults, irregularities and the breaches committed by the promoters and management of NSEL which had ultimately resulted into loss of Rs.5,600 Crore to the investors. SEBI vide its aforesaid letter has again omitted to provide either any document specified in the Noticee's reply dated October 27, 2018 or any clarification on the points raised in paragraph 4 of the Noticee's said Reply.

- (iii) The enquiry report has been prepared based on wrong assumption that the Noticee has been provided with the documents relied upon by SEBI while the fact is that the Noticee has been provided documents which are not germane to the issues under consideration.

Submission on the issue of Appointment of Designated Authority:

- (iv) The Ld. Designated Authority has given erroneous finding on the issue of the Appointment of the Designated Authority as raised by the Noticee in its earlier correspondence dated October 27, 2018 and February 16, 2019. Hence, the Designated Authority failed to appreciate that the appointment of the Designated Authority in the present matter is bad in law and violation of regulation 24 (2) of Intermediaries Regulations in terms of which the Designated Authority is required to be appointed by the Executive Director and not by the Ld. Whole Time Member (WTM). Additionally, it has also been specified that only after being satisfied that an intermediary has committed a default of the nature specified in Regulation 23, it may approve the initiation of proceedings under Chapter V against such person. It is thereafter that an Executive Director may appoint an officer not below the rank of a Division Chief as Designated Authority. The same is also in breach of Section 3(1) of SEBI (Delegation of Powers) Order, 2015, in terms whereof the general Order for delegation of powers shall not override the delegation of powers and functions specified under Securities laws. The Ld. DA has relied upon the order of Hon'le Delhi High Court in the matter of *SEBI v. Amit Jain* which is not the final order but only an interim order for maintaining status quo.

Submission on applicability of SEBI Intermediaries & Broker Regulations

- (v) The finding of the Ld. DA with regard to the applicability of Intermediaries Regulations for the purpose of conducting the enquiry proceedings in the instant case is patently wrong and perverse. As per the Show Cause Notice, the Noticee has allegedly participated in/facilitated the paired contracts at the trading platform of NSEL when it was governed by rules, regulations, bye laws of NSEL and also by the provisions of Forward Contract (Regulations) Act, 1952 ("FCRA"). SEBI Act and its regulations were not applicable to the Noticee for trading at the NSEL at the relevant time. When the commodity brokers were brought under the jurisdiction of SEBI with effect from September 29, 2015, the Finance Act, 2015 inserted a new Section 29A in the SCRA in terms whereof a fresh proceeding related to any offence under the FCRA could be initiated by SEBI under the FCRA within a period of three years from the dated on which the FCRA is repealed. Hence, in view of the provisions in Section 29A (2) (e) of the FCRA, SEBI could initiate prosecution proceedings against the members of the NSEL for alleged violation of FCRA and could not initiate the enquiry proceedings under the Intermediaries Regulations, which are attracted when an intermediary allegedly violates any of the conditions of the Certificate of Registration or any of the provisions of the Securities laws and the regulations framed there under. FCRA does not fall within the definition of 'Securities Laws' as given in regulation 2(1)(k) of the Intermediaries Regulations. While SEBI is well within its rights to determine whether the Noticee is a fit and proper person to be granted such registration, the Noticee has contended that at the relevant time the Noticee could not violate any of SEBI's regulations as they were not applicable to the members of NSEL and hence the violation, if any, could be only in relation to the FCRA; accordingly as empowered by Section 29(A) (e) of FCRA, SEBI could initiate the prosecution proceedings against the Noticee. The Ld. DA has not given any finding on the said contention of the Noticee, thereby conceding by implication that the SEBI regulations were not applicable to the Noticee at the relevant time.

- (vi) The findings of the Ld. DA with regard to the applicability of SEBI Regulations are completely misconceived, perverse and contrary to law. Firstly, the Ld. DA has not provided any answer to the Noticee's contention that SEBI Regulations cannot be made applicable retrospectively. In order to justify the applicability of SEBI Regulations, the Ld. DA has wrongly relied upon the case of *Jermyn Capital LLC v. SEBI* wherein the Hon'ble SAT has held inter alia that the SEBI Regulations apply to all intermediaries of the securities market. The said case referred to the applicability of SEBI Regulations to intermediaries in general and there was no issue pertaining to the applicability of SEBI Regulations retrospectively.
- (vii) The Ld. DA has committed a gross error in not paying any heed to the objection of the Noticee to SEBI's jurisdiction on spot market. It submitted that the letter dated November 20, 2015 of the Ministry of Finance (issued after Notification of the Repeal of FCRA and vesting of jurisdiction in SEBI in respect of commodities markets) has direct bearing on the question of jurisdiction of SEBI on spot market. The said letter of Ministry of Finance (MoF) clearly states that "*SEBI is not expected to deal with matters which were not dealt with by the erstwhile FMC... It is further clarified that since spot market/ ready delivery contracts were not being regulated by the FMC, SEBI is not expected to take upon itself any regulatory function with regard to such markets.*" It's a matter of record that FMC had not dealt with / initiated any act against the brokers including the Noticee for trading in the paired contracts at NSEL. Hence, as per the mandate of the said letter, SEBI is not supposed to deal with the matter in question pertaining to the members of NSEL which was not taken up by the erstwhile FMC. Further, as per the said letter SEBI is not expected to take upon itself any regulatory function with respect to spot markets/ ready delivery contracts. Clearly, the enquiry proceedings in question pertain to the activities of the Noticee at spot market (NSEL) and hence the same are also prohibited as per the said letter of Ministry of Finance.

Submissions on the merits of the cases:

- (viii) The Ld. DA has wrongly relied upon the case of *Jermyn Capital LLC v. SEBI*, decided by Hon'ble SAT, to show that close association with any person who

does not enjoy a good reputation, is good enough to determine that the person in question is not a fit and proper. In the case of Jermyn Capital LLC, the entity was not found to be fit and proper person for being an intermediary as Jermyn Capital, a Dubai company registered with SEBI as a Foreign Institutional Investor and as a Sub-account of Taib Bank EC was managed by one Mr. Andrews, who had close links with Dharmesh Doshi and Ketan Parekh against whom CBI and other intelligence agencies had launched prosecution for committing securities scam. In the instant case, there is no allegation that any of the directors or KMP of the Noticee is having any close association with anyone against whom CBI or any other intelligence agencies have initiated prosecution proceedings. It also flagged the caution given by the Hon'ble SAT in the said order in the following words:

*“We may hasten to add here that when the Board decides to debar an entity from accessing the capital market on the ground that he/it is not a fit and proper person it must have some reasonable basis for saying so. The Board cannot give the entity as bad name and debar it. When such an action of the Board is brought to challenge, it (the Board) will have to show the material on the basis of which it concluded that the entity concerned was not a fit and proper person or that it did not enjoy a good reputation in the securities market. **The basis of the action will have to be judged from the point of view of a reasonable and prudent man. In other words, the test would be what a prudent man concerned with the securities market thinks of the entity.**” (Emphasis supplied)*

- (ix) In the aforesaid case relied upon by the Ld. DA, the Hon'ble Tribunal had found close associations between the entities/ persons considering their close business and personal relations. In the instant case no such facts are available. A member of a stock 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. It simply doesn't make any sense to declare practically all the brokers of NSEL as not fit and proper persons as they have traded in paired contracts (which constituted more than 99% of the trades on

NSEL) and that on account of such trading all the brokers of NSEL had close association with NSEL. Such an interpretation/ approach is completely flawed and perverse.

DA's reliance on observations of multiple agencies and Courts:

- (x) The Ld. DA has set out certain observations made by Courts and certain authorities including the observations made by the Economic Offence Wing (EOW) which were not pertaining to the Noticee. Further, the reliance has been placed upon the proceedings which were sub-judice or to which the Noticee was not privy.
- (xi) Based on observations of certain courts and authorities including EOW to the effect that the paired contracts were in violation of FCRA and the same were also in the nature of financing transactions, the Ld. DA has concluded held that the Noticee is not a fit and proper person for being given registration as a broker, given the close association of the Noticee with NSEL and paired contracts.
- (xii) The Noticee dealt with the following main findings in the Enquiry Report:
 - a. The paired contracts were not contracts in commodity but in the form of financial transactions;
 - b. Adverse observations made by various courts/ competent authorities against NSEL and paired contracts have seriously impacted the reputation of NSEL and paired contracts;
 - c. The Appellant facilitated the trading in paired contracts and hence was closely associated with NSEL and paired contracts and
 - d. Adverse observations made by courts/ authorities including EOW can be taken into account for determining the fit and proper person criteria.
- (xiii) The aforesaid contentions of the Ld. DA have become irrelevant and devoid of any force after the detailed Judgment dated August 22, 2019 of the Hon'ble Bombay High Court in the matter of *63 Moons' Technologies Lt. v. State of Maharashtra*, in which the Hon'ble Court after detailed analysis of the issues involved therein has held inter-alia as under:

- a. *Bare reading of the said documents would divulge that what was contemplated through the platform of NSEL was purchase and sell transactions which was also accompanied with other statutory levies in respect of buy/sell transactions and this contract was deemed to constitute an agreement between the client and a member and was governed by the regulations and the bye laws (Para 27).*
 - b. Rejecting the contention of the State Government that in paired contracts, money was received by NSEL from investors and it was passed on to the borrowers of NSEL and the entire transaction was a financial transaction with assured fixed returns to the investors and that the NSEL is covered within the fold of the definition of “Financial Establishment” attracting the provisions of MPID Act.
- (xiv) The Noticee submitted that Bombay High Court vide its Order dated August 22, 2019 has clearly held that the paired contracts were not financial transactions but were trades in commodity as per regulations and bye laws of NSEL.
- (xv) Assuming that any member of NSEL (while trading on the platform of NSEL) is found guilty of violating any provisions of FCRA, Regulations and bye laws of NSEL and Circulars issued by FMC, NSEL, etc., he can be penalized under FCRA which provides for regulatory regime to deal with all such infractions. It is not necessary that he must be declared as not a fit and proper person for operating as an intermediary. The Ld. DA has recommended harsh and disproportionate measure of declaring the Appellant not a fit and proper person for being given registration as a commodity broker.
- (xvi) It appears that SEBI has initiated enquiry not only against the Noticee but also against other 304 members of NSEL who participated in the trading in paired contracts. It is simply illogical to contend that anyone who dealt in paired contracts as a member of NSEL would be declared as not a “fit and proper person. SEBI has initiated enquiry proceedings to declare practically all members of NSEL as not “fit and proper” person considering that in the year

2013, the trading in paired contracts constituted 99.00% of the total trading on the platform of NSEL. The recommendation of the Ld. DA against the Noticee is nothing but perverse and legally untenable.

(xvii) FMC order dated December 17, 2013 has found fault with the operations of NSEL for launching paired contracts and the role of its promoters and key managerial personnel. Neither the Noticee was a party to the said proceedings nor the Court had considered the role/ activities of the Noticee as a member of NSEL. Hence, the said order has no relevance so far as the Noticee is concerned.

(xviii) In fact, the following observation of the Hon'ble Court favors the Noticee: -

“Therefore, to say that all this was without the involvement or even knowledge of FTIL and NSEL and to attempt to blame certain trading clients, commodities sellers or brokers is just not prima facie acceptable”.

It submitted that there is nothing in the said order which can be viewed as adverse to this Noticee. Therefore, any reliance on the said order to draw any adverse inference against the Noticee is unwarranted.

(xix) Further, the reliance of Ld. DA on the interim report of EOW is also erroneous and misplaced. The Noticee had traded in/ facilitated the paired contracts as a member of NSEL in accordance with the business rules and regulations of NSEL and as on the date of closure of business of NSEL, there was pay out obligations as on September 19, 2013 amounting to Rs. 7,42,45,953/-.

(xx) The EOW Report doesn't hold the Noticee responsible for indulging in any of the aforesaid activities. Further, the Show Cause Notice dated September 25, 2018 as also the enquiry report have neither alleged nor brought out any of the said activities of the Noticee in particular.

Other observations of DA:

(xxi) The Ld. DA has made another erroneous observation to the effect that the Noticee as a commodity broker allowed itself to become an instrument of NSEL in promoting trading in paired contracts among its clients. Such a finding

is perverse and totally baseless. The Ld. DA has failed to appreciate that the paired contracts were introduced by NSEL with the approval of its Board. The Noticee as a member of NSEL had no other option but to trade in such contracts by observing the business rules and regulations of NSEL. There is no allegation whatsoever that the Noticee has committed any breach of the business rules and regulations of NSEL as applicable to the trading in paired contracts. NSEL had always presented to the public as well as to the broker including the Noticee that the paired contracts provided by the Exchange are legal and permissible contracts as per Government of India Gazette Notification date June 05, 2007. When it was reported in the Economic Times dated October 3, 2012 about issuance of Show Cause Notice by Department of Consumer Affairs, GOI to NSEL alleging short selling charge, NSEL on the same day, issued a circular/clarification No- NSEL/GEN.2012/001, dated October 03, 2012 as under:

“.. it had clarified that all contracts traded on the National Spot Exchange Limited are for one day duration only, which are covered under the said exemption. Further, it confirmed that with respect to short sale, the Exchange has clarified its operational procedure, which does not allow any member to carry out short sale, as the Seller is forced to deliver as per the scheduled delivery day. Hence, the Exchange is in full compliance with the provisions of Forward Contracts Regulations Act read with the Gazette notification dated 5th June 2007. Neither Central Government nor FMC has directed the Exchange to discontinue any of the contracts that has been allowed for trading by the Exchange.”

(xxii) The Noticee submitted that while preparing the DA Report, the Ld. DA has not dealt with or given due consideration to various contentions including but not limited to the following:

- a. All client who dealt through the Noticee were duly registered clients with proper KYC, Member Client Agreement and other relevant documents signed and executed by the Clients as per the system of NSEL.

- b. All the trades were carried out as per NSEL system from time to time. The Contracts notes were issued to the Client as per the formats and the terms and conditions and bye laws of NSEL.
- c. No brochures/pamphlets presentations on NSEL Products were issued or provided to its clients by the Noticee.
- d. NSEL was functioning in complete public knowledge and was permitted to provide the trading platform for paired contracts and hence there was no reason for the Noticee to question the legality of such product launched by NSEL. The concept of paired contracts was designed/introduced and operationalized by NSEL and the Noticee as a broker of NSEL provided the product to the clients as received from NSEL.

The said paired contract product was widely traded in the market and became very popular amongst the risk savvy investors having investible surplus and intending to invest it in the relatively low risk with reasonable return products. In this background, a few of the Noticee's clients were constantly requesting it to allow them to invest their funds in this product as the Noticee already has necessary infrastructure in place but was not active in that product. After carrying out due diligence of product on the basis of inquiries with NSEL officials, fellow brokers and their clients who were already participating in this product since last few years, the Noticee started trading activity in the product for only some of its clients.

That out of around 2800 registered clients with the Noticee in the equity and commodity broking entities, the Noticee executed trades only for 95 clients who had approached it at their own instance. This number itself proves that the Noticee neither marketed this product nor it had intention to do so, otherwise at least 1 or 2 percentage of its registered clients would have traded at least once in this product. The Noticee earned brokerage of barely Rs. 373588.86/-. There has been no complaints or grievances or allegations of any violations of regulations against the Noticee.

Additional Material/ Information given vide SCN dated September 11, 2019:

- (xxiii) With respect to GOI's Letter dated December 30, 2014, the Noticee submitted that the said letter merely confirms GOI's agreement with the view of FMC that NSEL has violated the first two conditions of exemption granted to it under Section 27 of the FCRA and hence FMC was advised to initiate appropriate actions against NSEL under FCRA. It is clear from the contents of the said letter that the GOI wanted FMC to take action against NSEL. The letter is conspicuously silent on the activities of members of NSEL or may contemplated action against them.
- (xxiv) As regards the Judgment and order dated April 30, 2019 of the Apex Court in the case of amalgamation of 63 Moons by the Central Govt with NSEL, the Hon'ble Court has observed that the paired contracts of NSEL were in breach of exemption granted to NSEL and FCRA. The said judgment has no relevance so far as the role of members of NSEL or the Noticee is concerned. It is incorrect to suggest or infer that because the Noticee traded in paired contracts, it was closely associated with the NSEL and paired contracts.
- (xxv) The Noticee submitted that a broker operating on the stock exchange cannot be treated as a close associate of a stock exchange, unless there is a common ownership, management or control. As paired contracts were a product of NSEL in which the investors could trade, same cannot be viewed as a person or entity enjoying good or bad reputation. Hence, alleging close association between the Noticee and paired contracts is conceptually a flawed argument. It is reiterated that adverse observations made by Apex Court/ GOI against NSEL and paired contracts has nothing to do with the Noticee as the Noticee was neither a party to be said proceedings nor the observations were directed against the Appellant. Further, the said adverse observations were made on the ground that the paired contract were in the nature of financial transactions and not in the nature of commodity contract. Now, as, the Bombay High Court vide its judgment dated August 22, 2019 in the matter of *63 Moons Technologies Ltd. V. State of Maharashtra* has reversed the said position, the adverse observation of certain courts/authorities against NSEL and paired

contracts have become redundant and in fructuous. It is vehemently denied that the Noticee permitted itself to become the instrument of NSEL in promoting paired contracts amongst its clients.

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 Securities Appellate Tribunal (hereinafter referred to as "Hon'ble SAT"). The Hon'ble SAT, vide its common order dated June 9, 2022, remanded the aforesaid orders to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon'ble SAT, inter alia, held as under:

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

14. Thereafter, in August 2022, the present matter was allocated to me. In the light of the aforesaid Order passed by the Hon'ble SAT in similar set of cases, it was felt necessary to furnish certain additional documents/material to the Noticee before concluding the present proceedings. Accordingly, vide letters dated October 04, 2022 and November 02, 2022 and email dated December 14, 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 October 25, 2022 and December 05, 2022, made the following submissions:

- (i) With respect to SFIO Complaint, the Noticee made the following submissions:

- a. The Noticee has not been named in the SFIO Complaint, therefore, the allegation made in the SFIO Complaint are not applicable to the Noticee.
 - b. Since the Noticee is not arraigned as a party or accused in the said complaint, the Noticee was unable to offer its comments on the same.
 - c. SFIO Complaint observes that the main charge against the accused persons is that they had entered into criminal conspiracy with the object to earn revenue through a fraudulent illegal scheme of trading on NSEL Exchange and thereby caused a wrongful loss of approximate Rs. 5600 crore to 13000 persons registered as traders on NSEL.
 - d. The SFIO Complaint also makes specific allegations against certain accused persons for violation of particular provisions of the Companies Act, 1956, the Companies Act, 2013 and IPC.
 - e. As the Noticee was not a defaulting member, the SFIO Complaint is of no relevance to the case of the Noticee.
 - f. The nature of observations/inference made in the SFIO Complaint are mere allegations and there is no final determination for the same made till date.
 - g. SEBI vide the said Notice, in effect has attempted to transfer the purported allegations in the SFIO Complaint upon the Noticee without any basis and hence, the Noticee takes strong objection to the same.
- (ii) With respect to the FIR filed by SEBI, the Noticee submitted that SEBI may not give any weightage to the said FIR for determining the “fit and proper person” status of the Noticee for the following reasons:
- a. As the name suggests a First Information Report (FIR) is only the first instance of based reporting of a complaint that is lodged with the police which is a preliminary document based on the one – sided statements(s) of the complainant without any adjudication of the same. There is no final determination.
 - b. The main plank of the said FIR is that the Noticee like all other trading members of NSEL has traded in paired contracts on the NSEL platform, which trading was allegedly in violation of FCRA. There are no other allegations against the 300 accused persons named therein. The Complaint has been filed by SEBI pursuant to Section 29A (2) (e) of the FCRA just a

few days before expiry of 3 years period specified therein, impliedly indicating that the alleged violations of FCRA are not of serious nature else SEBI would have acted promptly and not waited for about 3 years to file the said complaint.

- c. The Hon'ble Supreme Court in its judgement dated April 22, 2022 in the matter of 63 Moons has clearly observed at Para 49 that NSEL and defaulting members have duped the trading members and investors. The Hon'ble Court further noted that the Enforcement Directorate has traced proceeds of crime amounting to Rs. 3973.83 Crores to the 25 defaulters and attached assets worth Rs. 837.01 Crore belonging to 12 defaulters. Further, the Hon'ble Court held that NSEL had falsely represented that it had full stock as collateral to the value of Rs. 6000 Crores. Hence, master minds of the scam were NSEL and the Defaulters who have duped not only the investors but trading members as well.
- d. Against such background, the allegation in the said FIR against the Noticee may not survive, but in the meantime, if relying upon the said FIR, SEBI declares the Noticee as "not a fit and proper person" for acting as a commodity broker, such decision will cause an irreparable damage to the business as well as the reputation of the Noticee.
- e. It would be a miscarriage of justice if the Noticee is not registered as a commodity broker to run its broking business merely on the ground of the said FIR, as it will infringe the fundamental rights of the Noticee.

(iii) The Noticee submitted that though chargesheets, FIRs and complaints have been filed both against NSEL and brokers of NSEL, the fact remains that trading on the NSEL platform continued for a period of 6 (six) years and that these activities were undertaken under the full glare and scrutiny of all the regulatory authorities. Such trading was not surreptitious and/or clandestine activity. The Noticee cannot be implicated merely based on FIR lodged by SEBI.

15. Thereafter, in compliance with the principles of natural justice, an opportunity of personal hearing was granted to the Noticee before me on December 01, 2022. On the date of hearing, the Noticee was represented by Mr. Kunal Kataria, Counsel and Ms. Aparna Wagle, Advocate (Authorised Representatives) who reiterated the

submissions made by the Noticee vide its letters dated October 24, 2019, October 25, 2022 and December 05, 2022. The Authorized Representatives admitted that, the Noticee had executed trades on the NSEL platform during the relevant period. Further, as requested, time was granted till December 22, 2022 to the Noticee to make additional submissions, if any. Accordingly, vide letter dated December 22, 2022, the Noticee, while reiterating its previous submissions, made additional submissions in the matter which are summarized as under:

- (i) The Noticee submitted that SEBI cannot rely on its own Complaint dated September 28, 2018 as evidence against the Noticee.
- (ii) Further, in paragraph 34 of Hon'ble SAT's Order dated June 09, 2022, it has considered SEBI's submission that it is entitled to rely upon observations, findings given in the EOW Report, EOW Charge Sheet, the complaint letters given by NSEL and the observations in the SFIO Report. SAT has observed in this regard that additional documents must be first considered by the WTM who is required, *"to consider these documents and arrive at its own opinion as to whether the observations/finding could bring any conclusion on the reputation, integration and character of the Appellant."*
- (iii) The Noticee submitted that no such determination has been made whether the documents forwarded along with the SCN or the Supplementary SCN would bring any conclusive finding on the reputation, integration, and character of the Noticee as mandated by the Hon'ble SAT
- (iv) The Noticee submitted that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations took effect from November 17, 2021 which is much after the Noticee being granted a certificate of registration and/ or initiation of the present proceedings. It is trite law that a delegated legislation cannot be retrospective unless the parent statute contains a power for the same.
- (v) It has been held in the Hon'ble Supreme Court's Judgement dated April 22, 2022 in the matter of the *State of Maharashtra v/s. 63 Moons Technologies Ltd.* in paragraph 49 at page 62 that *"The two-Judge Bench of this Court took note of the modus operandi through which the trading members were duped by a conspiracy hatched by a few trading members along with NSEL"*

Considering the above, the Noticee submitted that even the Hon'ble Supreme Court in the aforesaid matter held that this controversy in question was devised by a few trading members along with NSEL

- (vi) Further, the Hon'ble Supreme Court in its Judgement dated April 30, 2019 in the matter of *63 Moons Technologies Ltd. & Ors. v/s. Union of India & Ors.* in paragraph 3 at Pg 4 held that *"Sometime in July 2013, 13,000 persons who traded on the platform of NSEL claimed to have been duped by other trading members (being 24 in number), who defaulted in payment of obligations amounting to approximately INR 5600 crore."*
- (vii) The Noticee submitted that in view of the categoric findings and directions in SAT's Judgement, the Ld. WTM in the present matter is required to give deference to SAT's Judgement and decide the matter keeping in mind the observations made in SAT's Judgment.
- (viii) The Noticee has relied upon the Hon'ble Supreme Court's judgment in the matter of *Securities and Exchange Board of India v. Rakhi Trading Private Limited (2018) 13 Supreme Court Cases 753* and some observation made by WTM., SEBI in the matter of *Anand Rathi Commodities Ltd.*
- (ix) In the circumstances set out above, the Noticee submitted that SEBI ought to allow the Noticee to continue to operate under its registration and ought not to accept the report made by the DA in so far as it holds that the Noticee is not a fit and proper person to be registered under the provisions of the said Regulations.

CONSIDERATION OF ISSUES AND FINDINGS

16. 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 14, 2022. After considering the allegations made/ charges levelled against the Noticee in the instant case, I note that the only issue that arises for consideration in the present proceedings is whether the Noticee satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.

17. However, before moving forward with considering the said issue, it is pertinent to refer to the common order dated June 09, 2022¹ passed by the Hon'ble SAT, which is 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*² cannot be relied upon as the said judgement has been set aside in appeal³ by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
- (b) Observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act") (*NSEL vs. State of Maharashtra*)⁴ cannot be relied upon, as in a subsequent Writ Petition⁵ moved by 63 Moons, a Division Bench of the Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore, the provisions of the MPID Act are not applicable. The Division Bench also observed that the prima facie observations made by the single bench while dismissing the NSEL petition could not be relied upon as they were preliminary observations and such observation does not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that prima facie observations cannot be the basis to judge the reputation, character or integrity of NSEL.
- (c) Observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of ***Jignesh Prakash Shah vs. The State of Maharashtra***, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.

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

² Writ Petition No. 2743 of 2014

³ Civil Appeal No. 4467 of 2019

⁴ Writ Petition No. 1403 of 2015

⁵ Writ Petition No. 1181 of 2018

- (d) Reliance placed on decisions of the Hon'ble Tribunal in the matter of **Jermyn Capital vs. SEBI**⁶ and **Mukesh Babu Securities vs. SEBI**⁷ is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely prima facie case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- (e) Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- (f) The SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.
- (g) Grant Thornton Forensic report commissioned by SEBI does not find any close connection between the applicant and the NSEL. This is overlooked by SEBI.
- (h) With respect to the additional material available, the Hon'ble SAT observed that, "It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available."

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

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

18. 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.
19. Before considering the matter on merits and test the compliance of the Noticee with the '*fit and proper person*' criteria, on the basis of the material that have been brought on record, it would be appropriate to look at the background and understand the nature of the '*paired contracts*' that were offered on NSEL – which ultimately is the cause / genesis of the current proceedings. While undertaking this exercise, I will not be independently recording any findings on the nature of the contracts that were entered on the NSEL platform or commenting on the actions of any entity which is not a party to the present proceedings. I will, however, be relying on the observations made by other authorities including the Hon'ble Supreme Court, wherever appropriate.

Transactions in the nature of 'paired contracts' on NSEL:

20. 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.

21. 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 such that buyer of the short duration contract always ended up making profits.
22. Thereafter, FMC, vide an order No. 4/5/2013-MKT/B dated December 17, 2013 ("FMC Order"), FMC has 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".
23. Further, in the above mentioned Order, FMC, inter alia, held that the contracts traded on NSEL violated the following conditions stipulated in the MCA Notification SO906(E) dated June 5, 2007, that granted permission to NSEL to offer spot trading in commodities which, inter alia, included "no short sale by members of the exchange shall be allowed; that all outstanding positions of the trade at the end of the day shall result in delivery" and that "all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency".
24. 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. The FMC Order had observed⁸ that the 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of the provisions of FCRA. I further note from the FMC Order that under the FCRA, a "forward contract" is defined as a "contract for delivery

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

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.

25. 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. It is observed in the FMC order that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL. It is pertinent to note that all the 15 contracts that were advertised by NSEL, and which are captured in the Hon'ble Supreme Court's Judgement in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd⁹*, were for durations exceeding 11 days.

26. I note that the Hon'ble Supreme Court in the matter of NSEL 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, 2019¹⁰, 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***

⁹ Civil Appeal No. 2748-49 of 2022

¹⁰ (2019)18 SCC 401. Also available at <https://indiankanoon.org/doc/169098295/>

transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL and the FCRA.” (emphasis supplied)

- b. the Hon’ble Supreme Court in the MPID matter vide judgement dated April 22, 2022¹¹, has drawn reference to the presentations made by NSEL in respect of the ‘paired contracts’. Upon analysing the representations 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)*

27. 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.

28. It is further noted that the Hon’ble Supreme Court, in the MPID matter, had extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. As observed by Hon’ble SC,

¹¹ Civil Appeal No. 2748-49 of 2022. Also available at <https://indiankanoon.org/doc/184205229/>

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', Hon'ble SC noted, were being marketed as an alternative to fixed deposits.

29. I note that the FMC Order and both the judgments of the Hon'ble Supreme Court have discussed about 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.
30. In addition, I note that Economic Offences Wing, Mumbai, vide letter 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, had mentioned that the obligation outstanding against the Noticee as per the EOW report was Rs. 74,245,953/-. Relevant extracts of the report are as follows:

"IV. Objectives of this investigation into the brokers' role:

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

The actual role of the brokers was:

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

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

Though the matter is still under investigation, brokers have also received back from exchange certain charges collected from investors such as transaction fees, delivery and warehousing charges, etc. It is suspected that these are indirect motivation

incentives for brokers to generate huge volumes. It is also possible that brokers may have benefitted from or compensated by the sellers or defaulters.

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

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

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

31. 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, does not fulfil the ‘fit and proper’ criteria.

32. The Enquiry Report has referred to the NSEL Circular Dated March 10, 2015 wherein NSEL sought the information of payment to the clients by the brokers and also annexed the details of the pay-out made to the brokers vide special payout made in August 2013. Further, Enquiry Report has noted that the Noticee is one of the members to whom special pay-out was made by the NSEL as per the following details:

Member Code	Member Name	No.of clients	Total Special Payout
10990	Eureka Commod Brokerage Pvt. Ltd.	16	45,74,298

Preliminary objection raised by the Noticee:

33. The Noticee has submitted that the cases referred to in the Enquiry Report viz. SAT Order in *Jermyn Capital LLC Vs. SEBI* and *Mukesh Babu Securities Ltd Vs. SEBI* and the order of the Bombay High Court in *Jignesh Prakash Shah Vs. State of*

Maharashtra being adversely treated by the Hon'ble SAT in its order dated June 09, 2022 would not be of any substantive value and therefore, the case made out in the Enquiry Report falls on this ground alone. In view of the observations of the Hon'ble SAT with respect to the said orders, I do not wish to place any reliance on the said orders while dealing with the issue in the present case in hand.

34. With regard to the Noticee's contention that the Ld. DA has committed a gross error in not paying any heed to the objection to SEBI's jurisdiction on spot market, I note that before merger of FMC with SEBI, the Noticee was functioning as a member of recognized commodity derivative exchange 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 view of the same, I do not find any merit in the submissions of the Noticee that SEBI could initiate prosecution proceedings

against the members of the NSEL for alleged violation of FCRA and could not initiate the enquiry proceedings under the Intermediaries Regulations.

35. 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."

36. The Noticee has contended that DA is required to be appointed by the Executive Director and not by the Ld. Whole Time Member (WTM). In terms of para 3(2) of the Securities and Exchange Board of India (Delegation of Powers) Order 2015, "*The power and functions delegated to any member or officer of the Board or authority under the Order can be exercised by any officer or authority higher in grade or rank or position to him*". Thus, I am not in agreement with the aforesaid contention as the power to appoint the DA has been exercised by the whole time member who is higher in authority than the executive director. In view of the same, it is clear that the appointment of DA by the Whole Time Member is valid and cannot be questioned on legality.
37. The Noticee has contended that certain documents were not provided to him. The Noticee stated that instead of giving relevant information, data, trade and order log, investigation/inspection report or any other material relied upon by SEBI for issuing the SCN, SEBI advised the Noticee to refer to publicly available documents. I note

that all documents relied upon by SEBI was provided to the Noticee in the instant case.

38. The Noticee has further submitted that the orders passed by various courts which have been referred to are not applicable to it as neither there is any finding against the Noticee in the said orders nor the Noticee is a party to the said cases. Here, it is pertinent to mention that the said orders and reports of the authorities have been considered in the present proceedings only with an objective of conclusively stating that the 'paired contracts' executed on the NSEL platform were in violation of the Government Notification dated June 05, 2007. Therefore, even though the Noticee's name does not form part of these orders and proceedings of other authorities, mention of such orders and reports of other authorities with respect to the establishment of paired contracts being in violation of the said notification is of importance in the present proceedings.
39. Further, the Noticee has contended that the Ld. DA has relied upon the order of Hon'ble Delhi High Court in the matter of *SEBI v. Amit Jain* which is not the final order but only an interim order for maintaining status quo and that the reference to the said decision is misplaced. However, it may be noted that the above referred decision is not being relied upon in the instant proceedings.

Fit and proper person criteria

40. 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.

41. 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.
42. From the records, I note that SEBI has filed a complaint with EOW Mumbai dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on NSEL, including the Noticee. On the basis of this complaint, an FIR dated September 28, 2018, was registered against the Noticee. I note that the Noticee is holding a certificate of registration No. INZ00047901 granted by SEBI on December 25, 2015. 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.
43. The Noticee has, however, contended that SEBI Regulations for intermediaries in general cannot be made applicable retrospectively. In view of the same, it is the case of the Noticee that the Intermediaries Regulations would not apply to it for the period when the transactions alleged to be in the nature of paired contracts were executed

by it on the NSEL platform. The Noticee has been granted a certificate of registration by SEBI only on December 25, 2015.

44. In this regard, I note that the Noticee has admitted the fact that the clients of the Noticee had indulged in paired contract traded on the NSEL platform which in turn is an admission of facilitating paired contracts by it. I note that the act of the Noticee in offering access to 'paired contracts' by facilitating trading in such contracts, seriously calls into question the integrity, honesty and lack of ethical behaviour on the part of the Noticee. As recorded in the FMC order and the judgements of the Supreme Court, these contracts, as stated earlier, were *ex facie* offered in violation of the exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. The 'paired contracts' were nothing but financing transactions masquerading as spot contracts in commodities. The execution of the trades in 'paired contracts' were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities, as observed by FMC in its Order. Therefore, the Noticee, by its conduct and as a member of the NSEL, has 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.

45. The Noticee has submitted that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations took effect from November 17, 2021 which is much after the Noticee was granted a certificate of registration and/or initiation of the present proceedings. I am unable to accept such contention. It is noted that paragraph 3(b) of the amended criteria lays down a list of disqualifications which includes the following:

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

46. I note from the available records that the Noticee has facilitated its clients to trade in 'paired contracts'. The Noticee has even admitted that it had executed trades on the NSEL platform 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.

47. 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 2015, 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.

48. 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.
49. 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.
50. 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 providing a facility to execute paired contracts brings into question appropriateness and suitability of the continuance of the registration of the Noticee as a broker. Clearly, the actions of the Noticee has been detrimental to the interest of the Securities Market and accordingly the Noticee can no longer be called a 'fit and proper person' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

51. In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including brokers, which are not only required to act as an intermediary simpliciter i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

52. I am also aware that recently SEBI has passed 5 separate orders¹² 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

¹² 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.

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 so long it desires to remain associated with the Securities Market as a registered intermediary. Necessity of specifying a period of time may also not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries) when dealing with an entity holding a certificate of registration which is cancelled as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable regulations.

53. 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 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.

54. 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

- 55.** I, therefore, in exercise of powers conferred under Section 12(3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, 2008 and upon considering the gravity of the violations committed by the Noticee viz. Eureka Commodity Brokerage Pvt. Ltd, the Certificate of Registration (bearing no. INZ000047901) of the Noticee i.e. Eureka Commodity Brokerage Pvt. Ltd, is hereby cancelled.
- 56.** The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 55 above.
- 57.** Notwithstanding the direction at paragraph 55 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.
- 58.** This Order shall come into force with immediate effect.
- 59.** 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.

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

Date: February 28, 2023

Place: Mumbai

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