

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**FINAL ORDER**

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

**In respect of:**

<b>NAME OF THE NOTICEE</b>	<b>PAN</b>	<b>SEBI REGISTRATION NO.</b>
<b>SHAREWEALTH COMMODITIES PVT. LTD.</b>	<b>AAJCS6152K</b>	<b>INZ000057535</b>

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

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**I. Background:**

1. Sharewealth Commodities Pvt. Ltd. (hereinafter referred to as "**SCPL**")/**"Noticee"**) is a commodities derivative broker and a member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as "**MCX**"). SCPL was earlier a Member of the National Spot Exchange Limited (hereinafter referred to as "**NSEL**"). Subsequent to the merger of the Forward Market Commission (hereinafter referred to as "**FMC**") with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") on September 28, 2015, SCPL registered with SEBI as a trading/clearing member bearing SEBI Registration No INZ000057535.
2. As the Noticee was a member of the NSEL and had participated in / facilitated trading in 'paired contracts' on the NSEL platform, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the "**Intermediaries Regulations**") and appointed a Designated Authority (hereinafter referred to

as the “**DA**”) vide order dated September 21, 2018, to enquire into whether the Noticee was a ‘fit and proper person’ (hereinafter referred to as “**FPP**”) to continue to hold the certificate of registration as Trading and Clearing Member in terms of Regulation 5 (e) read with Regulation 27 (iv) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the “**Broker Regulations**”).

## **II. Brief History of Illegal Forward Contracts on NSEL:**

3. Before considering the compliance of the Noticee with the FPP criteria, it would be appropriate to have a preliminary discussion on the background of NSEL which forms the basis of the current proceedings.
4. NSEL was incorporated in 2005 as an exchange for spot trading of commodities. I note from the FMC Order No.4/5/2013-MKT-1/B dated December 17, 2013 (“**FMC Order**”), that on June 05, 2007, the Department of Consumer Affairs (“**DCA**”), Ministry of Consumer Affairs, Food and Public Distribution, Government of India, issued a Notification S.O.906(E) under Section 27 of Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as “**FCRA**”) granting certain exemptions from the provisions of FCRA to NSEL subject to specified conditions. The relevant extract of the said notification is reproduced hereunder for ease of reference:

*“...the Central Government exempts all forward contracts of one day duration for the sale and purchase of commodities traded on the National Spot Exchange Limited, from operation of the provisions of the said Act subject to the following conditions, namely:-*

- i. no short sale by members of the Exchange should be allowed;*
- ii. all outstanding positions of the trade at the end of the day shall result in delivery;*
- iii. the National Spot Exchange Ltd. shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;*

*iv. all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;*

*.....”*

5. The aforesaid notification was amended on February 6, 2012 by DCA vide Gazette Notification S.O. 228(E) specifying “Forwards Market Commission, Mumbai” as the designated agency of the Central Government.
6. NSEL commenced operations in October 2008. It is seen from the FMC Order and the Judgement dated April 22, 2022 of the Hon’ble Supreme Court, in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, that NSEL, in September 2009, introduced the concept of ‘paired contracts’, 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 short, 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. “T” indicates the trade date, that is, the date on which the trade took place; and +2 or +3 or +25 or +36, indicates the number of business days after the trading day when the delivery of the commodity and the payment of price ought to have been made. The transactions were structured in a manner that the buyer of the short duration contract always ended up making profits.
7. Further, from Para 8 of the FMC Order, I note that the DCA on April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the notification dated June 05, 2007. In response to the same, NSEL submitted a reply vide their letter dated May 29, 2012. DCA, vide its letter dated May 31, 2012, sought comments of the FMC on the NSEL reply. The FMC, vide its letter dated August 02, 2012 to the DCA

provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:

(i) Short Sale by members of the Exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order. FMC was of the view that all those sale transactions which are not backed by the ownership of goods were in violation of the condition of *“no short sale by the members of the Exchange shall be allowed”*.

(ii) Contracts in which settlement period goes beyond 11 days: In view of the definition of forward contract under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are Non-Transferable Specific Delivery contracts. Thus even if the gazette notification does not specify the delivery period, NSEL had to settle the delivery for all open position within a period of 11 days as NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days.

8. I also note from Para 8 of the FMC Order that DCA, vide its letter dated July 12, 2013, directed NSEL to give an undertaking that:

- (i) *No further/ fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and*
- (ii) *All the existing contracts will be settled on the due dates.*

9. To sum up, as per the original notification dated June 05, 2007, NSEL was granted conditional exemption from the provisions of FCRA for all forward contracts of one-day duration for the purchase and sale of commodities. The two main conditions were that (i) there should be no short sale and (ii) all outstanding positions at the end of the day should result in delivery. Thereafter, FMC had observed that 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 provisions of FCRA. Under the FCRA, a *“forward contract”* is defined as a *“contract for delivery of goods and which is not a ready delivery contract”*. A *“ready delivery contract”* is defined as *“a contract which provides*

*for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days".* In view of the said definition contained in FCRA, FMC 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.

10. NSEL, thus, had permitted contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL vide the Government Notification dated June 05, 2007. Further, I note that the Hon'ble Supreme Court, in its Judgement dated April 22, 2022 in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, while drawing reference to the presentations made by NSEL in respect of 'paired contracts' had *inter alia* held that:

*"44.... NSEL in the course of its brochures has held out representations about the trading and investment opportunities available for:*

- a) corporate clients*
- b) high net worth individuals; and*
- c) retail investors*

*45. Under the head of "contract specifications", the following representation has been held out :*

<i>Commodity</i>	<i>Duration</i>	<i>Investment (lacs.)</i>	<i>Yield</i>
<i>Castor Seed</i>	<i>T+3 &amp; T+36</i>	<i>7.5 -9 Lacs</i>	<i>16%</i>
<i>Castor Oil</i>	<i>T+5 &amp; T+30</i>	<i>7-9</i>	<i>16%</i>
<i>Cotton Wash Oil</i>	<i>T+2 &amp; T+25</i>	<i>10</i>	<i>16%</i>
<i>Paddy</i>	<i>T+2 &amp; T+25</i>	<i>3.5-4.5</i>	<i>16%</i>
<i>Steel</i>	<i>T+2 &amp; T+25</i>	<i>4.5-5</i>	<i>16%</i>
<i>Raw Wool</i>	<i>T+2 &amp; T+25</i>	<i>3.5-4</i>	<i>16%</i>
<i>Wool Top</i>	<i>T+2 &amp; T+25</i>	<i>1.8-2</i>	<i>16%</i>
<i>Crude Soybean Oil</i>	<i>T+2 &amp; T+25</i>	<i>3.3.-3.5</i>	<i>16%</i>
<i>Soya DOC</i>	<i>T+2 &amp; T+25</i>	<i>1.7-2.0</i>	<i>16%</i>

<i>Refined Mustard Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Soybean Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Sunflower Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>RBD Palmolein Oil</i>	<i>T+2 &amp; T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Sugar</i>	<i>T+2 &amp; T+25</i>	<i>3.0</i>	<i>16%</i>
<i>Maize</i>	<i>T+2 &amp; T+25</i>	<i>3.0</i>	<i>16%</i>

*The above representation specifies:*

- (i) Commodities;*
- (ii) Duration of trades;*
- (iii) Investment; and*
- (iv) Yield.*

*For example, in the case of castor seeds, NSEL held out a buy contract (T+3) and sale contract (T+36), in which the yield is stated to be 16%. Moreover, NSEL represented that:*

***“Opportunities***

- Traders can trade and lock their return*
- Trader has to buy in near settlement contract and sell in far settlement contract simultaneously*
- Price for both settlement available*
- Exchange provides counterparty guarantee risk*
- No basis risk, No link with future contracts*

*While describing the features of trading opportunity, NSEL represented that:*

***“Features of Trading Opportunity:***

- T+2 and T+25 contract offers unique trading opportunity to traders*
- Trader purchases T+2 contract and simultaneously sells T+25 contract*

- *Pay-in obligation is on T+2 while Pay-out of the funds will be on T+25. Entire settlement cycle is of 35-37 days*
- *Price differential between the two settlement dates i.e premium if annualized offers interest rate of about 16%*
- *Income arising out of such trades are treated as Business Income”*

*While comparing the investment opportunities of bank fixed deposits with trading opportunities at NSEL, NSEL represented that:*

**“Comparison**

- *Bank FD 9.25% for 390 days; NSEL Trading Opportunity 16%;*
- *Bank FD minimum duration 390 days; NSEL Trade duration 35-55 days, depending on the contract*
- *Traders have an option of rolling over their position as per their convenience*

.....

*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.”*

11. As such, both the FMC Order and the aforesaid order of Hon'ble Supreme Court have explicitly brought out the details as to how NSEL permitted short sales - i.e. by permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse.
12. It is also pertinent to note that the Hon'ble Supreme Court in another Judgement dated April 30, 2019, titled 63 Moons Technologies Ltd Vs. Union of India, Civil Appeal No. 4476 of 2019 observed that these contracts were in the nature of "financing transactions". The relevant extract of the said order is as under: -

*"55.3. 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 were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA.**"*

### **III. Show Cause Notice, Reply and Hearing**

13. In light of the background and history narrated above, the DA issued show cause notice dated September 25, 2018 to the Noticee, calling upon it show cause as to why it should not be found to be a 'fit and proper person' and hence, liable for cancellation of its registration. Vide letter dated October 10, 2018, the Noticee submitted its reply to the said show cause notice. Upon completion of the enquiry, the DA submitted its report dated October 16, 2019, recommending cancellation of the certificate of registration granted to the Noticee since the Noticee was not a FPP in terms of Regulation 5(e) read with Regulation 27(iv) of the Broker Regulations and Schedule II of the Intermediaries Regulations.



14. Pursuant to the same, a post enquiry show cause notice (hereinafter referred to as the “**SCN-1**”) dated January 8, 2020, was issued to the Noticee, under Regulation 28(1) of the Intermediaries Regulations to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the Noticee. A copy of the DA’s Report was also forwarded to the Noticee along with an advice to file a reply, if any, within 21 days from the date of receipt of the notice. Along with the DA’s Report, letter dated December 30, 2014 of the Ministry of Finance (“**MoF**”), Department of Economic Affairs (“**DEA**”) addressed to the Chairman, FMC was provided to the Noticee, wherein it was stated that the DEA was in agreement that NSEL had violated the conditions of exemptions granted to it under the FCRA. Further, Order dated August 22, 2014 of Hon’ble Bombay High Court, in the matter of *Jignesh Prakash Shah Vs. The State of Maharashtra*, Criminal Bail Application No. 1263 of 2014, wherein it was held that the brokers through whom the paired contracts were entered into had knowledge of the illegality of such contracts, was also furnished to the Noticee. The SCN-1 also *inter alia* highlighted the observations made by the Hon’ble Supreme Court in the matter of *63 Moons Technologies Ltd. Vs. Union of India* (order dated April 30, 2019), wherein it was held that paired contracts were in fact financing transactions in breach of exemptions granted to NSEL under the FCRA. The Noticee submitted its reply to the SCN-1 vide letter dated February 5, 2020 which contained submissions on line of its reply dated October 10, 2018.
15. In the meantime, while the proceedings in the present matter were ongoing, Whole Time Member, SEBI (“**WTM**”) passed certain orders rejecting the applications of five other entities for registration as commodity brokers. The Hon’ble Securities Appellate Tribunal (“**the Hon’ble SAT**”) vide its order dated June 9, 2022 remitted the matters to the WTM to decide the matter afresh after giving an opportunity of hearing to the brokers. Further, Hon’ble SAT had 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 SEBI 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”.*

16. In light of the order of Hon'ble SAT dated June 9, 2022, a supplementary show-cause notice dated October 07, 2022 (hereinafter referred to as “**SCN-2**”) was issued to the Noticee. Vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to Economic Offence Wing (“EOW”), First Information Report (“FIR”) dated September 28, 2018 filed by SEBI and the amended Schedule II of the Intermediaries Regulations were furnished to the Noticee calling upon it to show cause as to why information/material provided therein along with the Enquiry Report should not be considered against the Noticee.
17. In response to the SCN-2, the Noticee, vide email dated October 28, 2022, forwarded a letter dated October 25, 2022, acknowledging receipt of the SCN-2 and reiterating its submissions made vide its replies dated October 10, 2018 (as filed before the DA) and February 05, 2020, and stating that the same may be considered.
18. In order to proceed with the matter, a hearing was granted to the Noticee in terms of Regulation 27(4) of the Intermediaries Regulations, 2008 as the DA had recommended cancellation of the certificate of registration of the Noticee. The hearing was held on November 22, 2022, during which Peethambaran NC, the compliance officer of the Noticee, appeared and reiterated the submissions made in replies dated October 10, 2018, February 5, 2020 and October 25, 2022. The summary of the said replies of the Noticee is given hereunder:
  - (i) The Noticee is an entity constituted under the Companies Act, 1956 and registered with SEBI as stock broker having registration no. INZ00057535.
  - (ii) Earlier, it was registered with FMC, National Commodity and Derivative Exchange Ltd (“**NCDEX**”), National Multi Commodity Exchange (India)

Ltd (“**NMCE**”) and Indian Commodity Exchange Ltd (“**ICEX**”). Its memberships of NCDEX, NMCE and ICEX stand surrendered.

- (iii) It has been engaged in business of commodity trading activities for last 13 years and its compliance track record is impeccable. Till date, it has not been held guilty of any violations relating to securities market or commodities market.
- (iv) It has maintained high standards of transparency, integrity, honesty and accountability in all its operations.
- (v) It obtained membership of NSEL in April 2010 to act as trading and clearing member of the exchange. It had completed formalities required by the NSEL which was monitored and regulated by the concerned regulators to serve the investing clients with intention to secure their investments.
- (vi) The approval of the membership with NSEL was in accordance with the submission of application prescribed by the exchange stating that *"I/We am/are desirous of becoming a Trading Member (TM) of National Spot Exchange Ltd. (NSEL). I/we hereby apply for said membership and, undertake, to confirm to and to abide by the Memorandum of Association & Articles of Association and Rules, Bye-laws, Business Rules, Circulars, Notifications and Office Orders, issued by the exchange, from time to time. I/We shall be liable for all contracts and transactions in the Exchange entered into by us or by our authorized representatives and I/We comply with all requirements of the Exchange relating to settlement thereof. I/We shall also abide by all decisions of the Exchange with respect to the operations of the Exchange and would perform accordingly in meeting my/our financial, regulatory and operational responsibility as decided by the Exchange from time to time. I/We agree to be responsible for all non-compliance and the Exchange shall reserve all rights of disciplinary action for any non-compliance by me/us"*.

(vii) On approval of the Membership, it had submitted a Trading –cum-clearing membership undertaking with NSEL, which was mandatory as part of commencement of business and quoted some points of the undertaking which, inter-alia, read as follows: -

- “1. We shall comply with all such requirements, existing and future, with regard to and in connection with appointment and continuance as a Trading cum-Clearing Member;*
- 2. on being admitted as a Trading-cum-Clearing Member, the Undersigned shall be active participant of NSEL;*
- 3. We shall abide by, comply with and be bound by the Bye- Laws, Rules and Business Rules of NSEL as in existence or in force from time to time and any modification through any circular, order, direction, notice, instruction issued and in force from time to time.*
- 4. We shall abide by the code of conduct as laid down by NSEL from time to time.*
- 5. We shall conduct business at NSEL prudently and shall ensure that it will not be prejudicial or detrimental to public interest in general, and to NSEL in particular;*
- 6. We shall abide by and adopt the Rules and Business Rules of the clearing and settlement systems of NSEL and any other agencies appointed by NSEL for this purpose and any amendments made thereto from time to time;”*

(viii) It was bound to obey and follow the decision of the exchange from time to time. It was unaware of the mala fide intentions of NSEL and their promoters as self-regulators, who should have been the watchdog of the industry.

(ix) It is a legitimate expectation of a Commodity broker that if a product is introduced by a stock exchange, 'paired contracts' in the present case, it must be legal and valid. As a Commodity broker, it cannot be suspicious

of conduct of the Exchanges and assume that a contract on the platform of stock exchange, on which the trades are undertaken in the regular course of business, was illegal. The reason that no commodity broker could have thought that there was anything amiss in the contracts or products offered by NSEL are as follows: -

- i. NSEL was a demutualised national electronic spot exchange setup as a limited liability company in 2005 which offered trading in 52 commodities of which 34 were agricultural. It had 800 members and 46,000 terminals.
- ii. It was promoted by MCX subsequently as MCX was in the business of trading in commodity futures segment, the view emerged that MCX's shareholding in NSEL be transferred to FTIL.
- iii. NSEL had a network of alliances with clearing banks (such as SBI, Axis, HDFC, ICICI, Kotak); national depositories (NSDL, CDSL); public sector undertakings, (NAFED, FCI, MMTC etc) and other market participants. All leading brokers on BSE, NSE and were members of NSEL.
- iv. More than 13,000 investors were trading in these contracts launched by NSEL as they were lucrative and every commodity broker was dealing in these contracts on behalf of their Client.
- v. The paired contract which were launched by the NSEL in different commodities vide various Circulars were available on the website of NSEL and so were in public domain accessible to everyone including the regulatory authorities like FMC.
- vi. A Commodity exchange is supposed to be a responsible, self-regulatory institution which ought to inspire trust and confidence of the people who invest in the trading on its platform.

- (x) Sharewealth Securities Limited, the holding company of the Noticee had empaneled as a Depository Participant to deal and serve the clients for taking delivery of the e-products launched by NSEL, an Exchange which is approved by another leading regulator and both the Depositories in India. How could anyone generate a simple cause of doubt that NSEL is into malpractices?
- (xi) From 2010 July to March 2013, it transacted in e-products of NSEL and all the delivery were in electronic form received in the respective Beneficiary Account of the investors and why should someone raise a point of suspicion about the working and status of the Exchange?
- (xii) NSEL was supervised and its functions were regulated by FMC and how anybody will suspect or disbelieve the products launched by NSEL to public is in fraudulent nature? How can someone imagine NSEL is not regulated and its products are not authorized by the regulator after going through the FMC Letters and Gazette Notifications? If there had been any fraudulent activities by NSEL, FMC should have highlighted and informed the general public about the same to safeguard the investments in crores.
- (xiii) After understanding and going through the documents and obtaining opinions of the leading Brokers from Kerala, who were already participating in the Contracts, it allowed clients to participate in the contracts.
- i. The first contract transacted on 20.02.2013 and subsequently second on 20.02.2013, third on 06.03.2013 and fourth on 26.03.2013 for the financial year 2012-13. Thus, a total of four contracts in the year 2012-2013 for four clients.
  - ii. In the financial year 2013-14, there were seven contracts dated 03.05.2013, 17.05.2013, 22.05.2013, 10.06.2017, 29.07.2013, and 29.07.2013 for six clients.

- (xiv) The Noticee was informed that the delivery activities marked for the products bought and sold and the Delivery activities will be fulfilled by IBMA, the Authorised Delivery Settlement Agent of NSEL. Each and every transaction were charged for delivery mode activities, which establishes delivery.
- (xv) It had incurred a huge nonrefundable expense to get the membership of the Exchange in the mode of cash worth Rs.5,30,000/- (Rs. 5,00,000 as Membership Fee, Rs. 25,000 as Annual subscription for 2010-2011 and Rs. 5,000 as processing charges). Rs. 2,00,000/- incurred to get the empanelment with CDSL for NSEL for Delivery business of the Exchange. The investment made by it for the membership of the Exchange was on the view that there will be long term benefits to the clients and the Member but resulted in total fiasco. The efforts of the member and its man power deployment were met with losses due to the faulty decisions of the said Exchange, which should be acted as self-regulator.
- (xvi) In the year 2012-13, there were only 'Four' clients who have entered the paired contracts as per NSEL Circular and the brief calculations provided with a total investment of Rs.19,13,237.00 and the Brokerage earned by it was Rs.3,409.76 only. All Clients were doing the transactions on their own without making any obligations to the Member.
- (xvii) In the year 2013-14, there were 'Six' Clients who participated in the paired contract of NSEL Circular and the brief calculations provided with a total investment of Rs.16,01,420.91 and the Brokerage earned by it was Rs.3497.30 only.
- (xviii) As a disciplined member of the Exchange and bound by the preconditions and undertakings in place it was forced to conduct the business of the Exchange as it believed in systems and procedures laid

down by NSEL as it performed business with other National Commodity Exchanges like NCDEX and NMCE.

(xix) Being a member of NSEL, it only participated and/or facilitated the clients on the platform provided by NSEL and not violated any Regulations mentioned in the Show cause notice.

(xx) It is victim of the regulatory system on which NSEL operated. It lost its own hard earned money of Rs.7,30,000/- in the way of membership, the employee salaries and other expenses incurred in the period. It also lost the credibility to say a commodity exchange member as it believed in the regulatory systems.

(xxi) All the time, it maintained fit and proper person criteria specified in Schedule II of the Intermediaries Regulations. It always complied with the rules, regulations and bye-laws of the stock/commodity exchange applicable to it and the Code of Conduct as specified in Schedule II of the Intermediaries Regulations. It maintained high standards of integrity, promptitude and fairness in the conduct of all businesses. As a stock/commodity-broker, it always acted with due skill, care and diligence in the conduct of all his business. It abided 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 it.

(xxii) The Clients who transacted through it with NSEL do not have any type of grievance or fund balance payable to them by it. All Clients were settled through the Clearing and Settlement Mechanism of NSEL. One Client has to receive Rs.2,01,962.65 from NSEL, being the balance payment receivable.

19. Pursuant to hearing dated November 22, 2022, vide email dated November 22, 2022, the Noticee forwarded a letter dated October 5, 2021 sent by it to



MCX and email dated November 24, 2021 received from MCX. Vide the aforesaid letter dated October 05, 2021, the Noticee had submitted an application for surrender of its membership with MCX. In response thereto, MCX vide email dated November 24, 2021 stated that *“Further, please note that, you have received a show cause notice from SEBI in the matter of NSEL and also find attached SEBI ATR pending. In view of the same your application for surrender of MCX Trading Membership will be kept on hold and the same will be processed only on receiving clear instructions from SEBI.”* Further, the Noticee submitted that *“Sharewealth Commodities Pvt. Ltd doesn’t do any commodity based business in any commodity exchanges in India as of now”*.

#### **IV. Consideration of Issues**

20. I have considered the SCN-1, SCN-2, the Enquiry Report submitted by the DA, Noticee’s replies dated October 10, 2018, February 5, 2020 and October 25, 2022, documents sent vide Noticee’s email dated November 22, 2022 and other material available on record. Having regard to the same, I now proceed to deal with the issues in the present matter.
21. It is alleged that the Noticee has violated Regulation 9(b) and (f) read with Clause A(1), A(2) and A(5) of the Schedule II of the Broker Regulations and Regulation 5(e) of the Broker Regulations read with Schedule II of the Intermediaries Regulations. The relevant provisions are reproduced hereunder: -

#### **Provisions of 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

**SCHEDULE II**

*Securities and Exchange Board of India (Stock 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.*

**Provisions of 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-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."*

22. From the reply of the Noticee, it is seen that the Noticee has admitted to the fact of execution of the illegal contracts, referred to as "paired contracts" by FMC and the Hon'ble Supreme Court, on behalf of its clients on NSEL. Further, the Noticee has stated that circulars issued by NSEL pertaining to paired

contracts were available on website of NSEL and available to all regulatory authorities. The Noticee has attempted to shift the entire burden for the illegality underlying the trades onto NSEL and the other regulators who were supposed to supervise. In short, it is contended that there was no reason for the Noticee to suspect the regulators or functioning of NSEL. I have also taken note of the fact that the Noticee has vaguely stated that it relied on some confirmations given by IBMA, the Authorised Delivery Settlement Agent of NSEL regarding delivery. Even assuming that the Noticee relied on IBMA representations, it was well aware that the duration of the contracts exceeded one day which was stipulated as one of the conditions of exemption notification. I note from the reply that the Noticee executed four contracts in the year 2012-2013 for four clients and in the financial year 2013-14, it executed seven contracts for six clients. On perusal of reply of the Noticee, I find that the Noticee had sufficient experience in dealing with other commodity exchanges such as NCDEX, NMCE, ICEX etc. As a broker with sufficient experience and knowledge and having presence in various other exchanges and in different markets, the Noticee ought to have refrained from participating on the subject contracts or from allowing its clients to participate on such platform, going by the very structure of the back-to-back contracts. It appears to be the case of the Noticee that since everything was in public domain and it was all being done with the knowledge of regulators, it presumed that the activities were legally valid and that there was nothing that raised his suspicion. In this context, I note that NSEL itself was advertising such contracts as an alternative to fixed deposits. The return offered was 16% across all commodities irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits. I am, therefore, of the view that while executing trades for clients in such contracts, the Noticee failed to examine the basic nature of the product and also failed in understanding the source of powers relied upon by NSEL for selling such products which other exchanges were not offering. Thus, the Noticee failed to conduct proper and effective due diligence on these aspects of paired contracts which were not essentially spot contracts.

23. I further note that the SCN-1 dated January 8, 2020 provided the Noticee with the DA's Report, the letter dated December 30, 2014 of the DEA, MoF addressed to FMC and copy of 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*. I do not find that the said documents are relevant for consideration in the instant matter. Moreover, as regards the order of Hon'ble Bombay High Court, I note that the Hon'ble SAT, in its order dated June 09, 2022, in respect of the applications of five other entities for registration as commodity brokers, has held that the observations in the bail rejection order of the Hon'ble Bombay High Court cannot be relied upon as the observations therein are limited to the fact as to whether the bail should be granted or not.
24. I also note that vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to EOW, FIR dated September 28, 2018 filed by SEBI and the amended Schedule II of the Intermediaries Regulations was provided to the Noticee. I note that Schedule II of the Intermediaries Regulations was amended vide SEBI(Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021 and the following disqualifications have been included amongst others:
- “(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;”*
25. I also note that as per the amendment, the disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3) of Schedule II to the Intermediaries Regulations, shall not have any bearing on the FPP 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.
26. It is pertinent to note that in terms of Regulation 5(e) of Broker Regulations, the eligibility criteria for an entity to get registered as a stock broker includes that it should be a 'fit and proper person' based on the criteria specified in Schedule

II of Intermediaries Regulations. It has been specified in Clause 7 of Schedule II of Intermediaries Regulations that the said criteria are required to be satisfied by the intermediary at the time of registration as well as during the continuity of registration with SEBI. Therefore, even if the Noticee fulfilled the eligibility requirements at the time of grant of certificate of registration, it is required to continually comply with the criteria including those conditions which are incorporated subsequently.

27. It is a matter of record that SEBI has filed a complaint dated September 24, 2018 with Economic Offence Wing (EOW), seeking appropriate action against the brokers/members of NSEL, including the Noticee as mentioned at serial no. 217, and certain other persons in the NSEL matter under Sections 20 and 21 and other appropriate provisions of FCRA. Additionally, SEBI has filed a FIR No. Spl LAC No. 110/18 dated September 28, 2018 under section 154 of the Code of Criminal Procedure, 1973 at the MIDC Police Station, Mumbai requesting it to take lawful action against trading members of NSEL and other members of NSEL who were involved in trading of illegal forward contracts in violation of FCRA. The same list of members provided by SEBI in its complaint made to EOW was annexed to the said FIR. I note that both the criminal complaint and FIR are currently pending with the respective authorities. In view thereof, I note that disqualifications contained in paragraph 3(b)(i) of Schedule II of Intermediaries Regulations are attracted against the Noticee.
28. When the pendency of a criminal complaint or FIR filed by SEBI is prescribed as a negative criterion / disqualification from eligibility under Schedule II of the Intermediaries Regulations, it is imperative for me to consider the same while adjudging the eligibility of the Noticee to continue to hold the authorization granted. In my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of specific parameters, which would apply uniformly to all intermediaries. To reiterate, the fact that SEBI has filed a complaint and FIR against the Noticee and the same are pending, in itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.

29. Coming to the question of the directions to be issued, I note that the Noticee has, vide letter dated October 05, 2021, expressed its desire to surrender membership with MCX and its application for surrender has been kept on hold by MCX owing to pendency of the instant proceedings. The evaluation of the facts and legal provisions as brought out above, compels me to arrive at the conclusion that the Noticee is not a 'fit and proper' person and hence is not eligible to continue its business as a stock broker using the certificate of registration no. INZ000057535 granted by SEBI.

### **DIRECTIONS**

30. In exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992 and Regulation 27 of the Intermediaries Regulations, 2008, I, hereby, cancel the Certificate of Registration bearing no. INZ000057535 of the Noticee i.e. Sharewealth Commodities Private Limited.

31. The Order shall come into force with the immediate effect.

32. A copy of this order shall be served upon the Noticee and the recognized Stock Exchanges, Depositories and Clearing Corporations for necessary compliance.

**Date: February 28, 2023**

**Place: Mumbai**

**Sd/-**

**GEETHA G**

**CHIEF GENERAL MANAGER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**