

**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:

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
HARDIK MULTI-COM BROKING PRIVATE LIMITED	INZ000061032

in the matter of NATIONAL SPOT EXCHANGE LIMITED

I. Background

1. Hardik Multi-Com Broking Private Limited (hereinafter referred to as “**HMBPL / Noticee**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker having SEBI Registration No. INZ000061032. HMBPL is a commodities derivative broker and member of the Multi Commodity Exchange of India Ltd. (hereinafter referred to as “**MCX**”). HMBPL was earlier a member of the National Spot Exchange Limited (hereinafter referred to as “**NSEL**”).
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 24, 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 Stock Broker in terms of

Regulation 5(e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the “**Broker Regulations**”) read with Schedule II of the Intermediaries 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 No. 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 No. 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:
 - a. 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”*.

- b. 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:

- a. *No further/ fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and*
- b. *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 & T+36</i>	<i>7.5 -9 Lacs</i>	<i>16%</i>
<i>Castor Oil</i>	<i>T+5 & T+30</i>	<i>7-9</i>	<i>16%</i>
<i>Cotton Wash Oil</i>	<i>T+2 & T+25</i>	<i>10</i>	<i>16%</i>
<i>Paddy</i>	<i>T+2 & T+25</i>	<i>3.5-4.5</i>	<i>16%</i>
<i>Steel</i>	<i>T+2 & T+25</i>	<i>4.5-5</i>	<i>16%</i>
<i>Raw Wool</i>	<i>T+2 & T+25</i>	<i>3.5-4</i>	<i>16%</i>
<i>Wool Top</i>	<i>T+2 & T+25</i>	<i>1.8-2</i>	<i>16%</i>
<i>Crude Soybean Oil</i>	<i>T+2 & T+25</i>	<i>3.3.-3.5</i>	<i>16%</i>
<i>Soya DOC</i>	<i>T+2 & T+25</i>	<i>1.7-2.0</i>	<i>16%</i>
<i>Refined Mustard Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Soybean Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Refined Sunflower Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>RBD Palmolein Oil</i>	<i>T+2 & T+25</i>	<i>6.5</i>	<i>16%</i>
<i>Sugar</i>	<i>T+2 & T+25</i>	<i>3.0</i>	<i>16%</i>
<i>Maize</i>	<i>T+2 & 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 to show cause as to why it should not be found to be not ‘fit and proper person’ in terms of Regulation 5(e) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations and hence, liable for cancellation of its registration. The Noticee vide letter dated November 13, 2018 filed its reply to the SCN. Certain additional documents related to the matter were sent to the Noticee vide letter dated September 05, 2019, which was responded to by the Noticee vide letter dated September 17, 2019. Upon completion of the enquiry, the DA submitted his report September 27, 2019 recommending cancellation of the certificate of registration granted to the Noticee since it was not a ‘fit and proper person’.
14. Thereafter, Show Cause Notice dated October 15, 2019 (hereinafter referred to as “**SCN-1**”), 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, copy of 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, copy of 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 was also called upon to show cause as to why the said documents should not be considered along with the Enquiry Report. The Noticee submitted its reply to the SCN-1 vide letter dated December 21, 2019.

15. In the meantime, Whole Time Member, SEBI ("**WTM**") passed certain orders rejecting the applications of five other entities for registration as commodity brokers, which were challenged before the Hon'ble Securities Appellate Tribunal ("**the Hon'ble SAT**"). 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, with the following directions:

"...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. The Noticee was granted opportunities of personal hearing on November 23, 2022 and December 14, 2022, which were adjourned on the request of the Noticee. The Noticee was granted another opportunity of personal hearing on January 12, 2023. Advocate Jitendra Sharda appeared on behalf of the Noticee for the hearing and reiterated the written submissions made by the Noticee. Subsequently, based on the request of the Noticee, certain documents which were previously sent to the Noticee were provided again. Thereafter, additional submissions were made by the Noticee vide email dated April 10, 2023.
18. The written submissions filed by the Noticee are summarized hereunder:
- a. The Noticee, as a broker, had no duty to do due diligence on the exchange or exchange traded products. It had no role in the introduction of any product by NSEL.
 - b. The Noticee had neither done any marketing nor advised its clients to invest in products offered at NSEL. The clients had approached the Noticee to trade in the paired contracts. The Noticee and its clients are victims of NSEL fraud. NSEL has breached the trust of brokers and investors by not getting proper collateral and issuing fake warehouse receipts.
 - c. If the allegation of fixed return in paired contracts and having close association with NSEL are assumed to be the proof, then there should be trading by the Noticee on the NSEL. However, on the contrary, the

Noticee has not done any proprietary trading on NSEL platform. It had traded on behalf of its clients. The Noticee had undertaken 4 trades for 1 client, 1005 trades for 79 clients and 731 trades for 78 clients in paired contracts during the year 2011-12, 2012-13 and 2013-14, respectively.

- d. The Noticee had believed that NSEL is doing business as per the rules and regulations of FMC. FMC had allowed only delivery based transaction and no short sale. NSEL was giving warehouse receipt and taking full payment against buy order. NSEL was also delivering the commodity from warehouse to the buyer in case of sale order. The Noticee has followed all rules, regulations and bye-laws of NSEL.
- e. The Noticee had started business with NSEL in February 2012 assuming that the exchange is active since 2009 and had taken all approvals from the regulator i.e. FMC. The use of the word “national” meant that it was a regulated exchange and every trade was counter guaranteed.
- f. During the history of its business since incorporation in 2004, Noticee has always complied with the rules and regulations of SEBI and Exchange. No regulatory proceeding has been initiated against the Noticee. Till date, no complaint or arbitration has been filed or pending with any authority with respect to the Noticee. Hence, there is no question of repetitive nature of the default.
- g. The proceeding is discriminatory, unfair, unreasonable and untenable in law as approximately 800 brokers had traded in paired contracts while the proceeding has been initiated only against 300 brokers.
- h. The Noticee, as a broker, had no role or responsibility in the physical verification of the stock which was conducted by NSEL or any agency appointed by NSEL.
- i. The Noticee does not come under the purview of Chapter V of the Intermediaries Regulations as adjudication of violations of FCRA fall outside the regulatory purview of SEBI.
- j. The Noticee is not a defaulting broker of NSEL. It had no common directors or promoters with NSEL and apart from being one of the brokers registered with NSEL, it had no other connection with NSEL.

- k. The amendments made to the 'fit and proper person' criteria in 2021 are prospective in nature and cannot apply in the present matter.
- l. There are no findings which lead to the conclusion that there has been disproportionate gain or unfair advantage by the Noticee.
- m. The irregularities committed by the Noticee are unintentional and technical in nature. The Noticee undertakes that it will not occur in future course of business.
- n. SEBI has considered all aspects while granting registration to the Noticee in the year 2016. Thus, the doctrine of estoppel applies in the instant case.
- o. If there is a case against the Noticee, it can only be on lack of due diligence and not for fraud or cancellation of membership.
- p. SEBI has painted all the brokers with the same brush without even looking into the role of the broker in its individual capacity. The Noticee is a small broker in Tier II city and not a large broker who were actually involved in the scam with NSEL. Recent order of SEBI on some big brokers, who have 100 times more than the Noticee's client turnover in the paired contract, were debarred for only 3 months, on the contrary, where the Noticee has not traded at all and turnover of its client is so minuscule in comparison to the said big brokers, was called for the cancellation of the membership. The cancellation of membership would be arbitrary and violation of principle of proportionality as the bigger brokers, whose name in the FIR and EOW Report, were awarded only 3 months of debarment.
- q. Hon'ble SAT, in the similar matter of NSEL i.e. *B.N. Rathie Comtrade Private Limited Vs SEBI (Appeal no. 282 of 2023)* vide its order dated 24.03.2023 has considered the fact that the appellant was already granted registration as a broker and the show cause notice was issued on September 25, 2018 for the trades in 2011 and accordingly, has granted stay on the effect and operation of the impugned order of SEBI. The Noticee also cited the matter of Comtrade Commodities Services Ltd. (Appeal No. 352 of 2023) wherein Hon'ble SAT vide order dated April 13, 2023 had granted stay on SEBI's order stating that interim

relief has been granted in similar appeals. The Noticee submitted that since the Noticee's case is similar in the facts and circumstances, this proceeding should be kept in abeyance till the final outcome of Hon'ble SAT comes out in the matter of B. N Rathi.

IV. Consideration of Issues

19. I have considered the SCN-1, SCN-2, the Enquiry Report submitted by the DA, Noticee's submissions and other material available on record. Having regard to the same, I now proceed to deal with the issues in the present matter.
20. 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."

21. The Noticee has cited the orders of Hon'ble SAT dated March 24, 2023 and April 13, 2023 in respect of B.N. Rathi Comtrade Private Limited and Comtrade Commodities Services Limited, respectively, in the matter of NSEL wherein Hon'ble SAT has granted stay on the effect and operation of the impugned orders of SEBI. The Noticee has contended that since it is a similar matter, the instant proceedings may accordingly be kept in abeyance till the final outcome of the said matter. The Hon'ble SAT has granted an interim stay qua the appellants therein. I note that the appeals are still pending before the Appellate Tribunal. I am of the view that the Noticee cannot rely on an interim relief granted by the Hon'ble SAT in other matters and require the instant proceedings also to be kept in abeyance.

22. The Noticee has also raised the question of estoppel stating that once registration is granted, all these aspects of FPP have been considered and SEBI is estopped from re-examination. In my opinion, the statutory mandate of FPP contained in the Intermediaries Regulations will override the administrative action of registration.
23. From the reply of the Noticee, it is seen that the Noticee has admitted to the fact of dealing in the contracts on the NSEL platform on behalf of its clients. These trades have been referred to as “paired contracts” by FMC and the Hon’ble Supreme Court. Further, the Noticee has contended that the entire burden for the illegality underlying the trades fell upon NSEL and the other regulators who were supposed to supervise. It has 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 stated that it was not responsible for the physical verification of the stock which was the responsibility of NSEL or its authorized agency. Even assuming the same, the Noticee was well aware that the duration of the contracts exceeded one day which was stipulated as one of the conditions of the exemption notification. The Noticee has also contended that it had not undertaken any proprietary trades or it had no malafide intention or had earned undue profits. However, I note that it is an admitted fact that the Noticee had executed a total of 1740 trades in paired contracts on behalf of its clients on the platform of NSEL during financial years 2011-12, 2012-13 and 2013-14. I find that as a broker with sufficient experience and knowledge, the Noticee ought to have refrained from participating on the subject contracts, 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 its clients in such contracts, the Noticee failed to examine the basic nature of the product and also failed in understanding and evaluating the source of powers relied upon by NSEL for selling such products which other exchanges were not offering. Thus, I find that the Noticee failed to conduct proper and effective due diligence on these aspects of paired contracts which were not essentially spot contracts.

24. I note that the Noticee has also raised the issue regarding treatment of brokers based on their size, turnover etc. and the application of doctrine of proportionality. As the matter pertains to ascertaining of the FPP criteria of the brokers, I do not find it appropriate to apply the test of severability or proportionality to the tainted contracts.
25. I further note that the SCN-1 dated January 15, 2021 provided the Noticee along 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* and the Noticee was called upon to show cause as to why information/material brought therein should not be considered along with Enquiry Report. 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. Accordingly, I find that the said documents are not relevant for consideration in the present matter. Further, I note that the Bombay High Court Judgment dated August 22, 2019 was set aside by the Hon'ble Supreme Court vide its judgment dated April 22, 2022, in the matter of *The State of Maharashtra Vs. 63 Moons Technologies Ltd*, Civil Appeal No. 2748 of 2022.
26. 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;”

27. 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.
28. 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. I note that the Noticee has contended that the provisions of the Broker Regulations cannot be applied to it as the alleged actions were prior to registration with SEBI. The effect of insertion of Section 28A in the FCRA in the year 2015 is to grant powers to SEBI to deal with matters relating to commodities derivatives and to regulate persons “...*buying, selling or otherwise dealing in commodity derivatives as a commodity derivatives broker, or any other intermediary who may be associated with the commodity derivatives market, immediately before the transfer and vesting of rights and assets to the Securities and Exchange Board of India for which no registration certificate was necessary prior to such transfer...*”. Accordingly, the Noticee applied for registration as a broker and was granted the same w.e.f. December 30, 2016. Since then, it has been acting as a market intermediary registered with SEBI. I note that it has been specified in Clause 7 of Schedule II of Intermediaries Regulations that the FPP criterion is required to be satisfied by the intermediary at the time of registration as well as during the continuity

of registration with SEBI. Therefore, even assuming that the Noticee fulfilled the eligibility requirements at the time of grant of certificate of registration, it is required to comply with the criteria continuously including those conditions which are incorporated subsequently. Hence, the submission of the Noticee in this regard is not tenable. It is also settled position that the authority which has the power to grant registration also has the power to cancel or suspend the same, if there are valid reasons for such action. Thus, the only question at this point of time is whether the Noticee can be said to be a FPP as a broker today.

29. It is a matter of record that SEBI has filed a complaint dated September 24, 2018 with EOW seeking appropriate action under Sections 20 and 21 and other applicable provisions of FCRA against the brokers/members of NSEL, mentioned in the list attached thereto. I note that the Noticee is listed at serial no. 97 in the said list. Pursuant to the SEBI complaint, FIR No. Spl LAC No. 110/18 dated September 28, 2018 under section 154 of the Code of Criminal Procedure, 1973 has been registered at the MIDC Police Station, Mumbai against the same trading members, which were listed in the SEBI complaint to EOW. I note that the said FIR is currently pending. In view thereof, I note that disqualifications contained in paragraph 3(b)(i) of Schedule II of Intermediaries Regulations are attracted against the Noticee.

30. 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 distinctly identifiable parameters, which would apply uniformly to all intermediaries. The FPP criteria, being an eligibility condition which has to be complied with on a continuing basis, the question of prospective application does not arise, as contended by the Noticee. To reiterate, the fact that SEBI has filed a complaint and FIR has been registered against the Noticee and the same is pending, in

itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.

31. 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. INZ000061032 granted by SEBI.

DIRECTIONS

32. 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 do, hereby, cancel the Certificate of Registration bearing no. INZ000061032 of the Noticee i.e. Hardik Multi-Com Broking Private Limited.
33. Upon receipt of this order, the Noticee shall immediately inform its existing clients, if any, about the direction at paragraph 29 above.
34. Notwithstanding the direction at paragraph 29 above,
- a. 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; and
 - b. the Noticee shall square off open positions, if any, within 30 days from the date of this order.
35. The Order shall come into force with immediate effect.

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

Date: April 20, 2023

Place: Mumbai

Sd/-

GEETHA G

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA