

**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.
Sharekhan Commodities Pvt. Ltd.	INZ000018938

in the matter of NATIONAL SPOT EXCHANGE LIMITED

I. Background

1. Sharekhan Commodities Pvt. Ltd. (hereinafter referred to as “**SCPL / Noticee**”) was registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker having SEBI Registration No. INZ000018938. SCPL was a commodities derivative broker and 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 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 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 October 20, 2018 sought inspection of documents in the matter. Vide an email dated May 14, 2019, the Noticee was advised to provide specific details of the documents required by them. Further, certain additional documents related to the matter were sent to the Noticee vide letter dated September 16, 2019. I note from the DA’s Report that the Noticee filed a reply dated September 30, 2019. Upon completion of the enquiry, the DA submitted his report October 25, 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 January 15, 2020 (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 February 5, 2020, once again seeking inspection of documents

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 an opportunity of personal hearing on November 22, 2022. The Noticee reiterated its earlier request for inspection of documents and requested that the hearing be scheduled thereafter. The request of the Noticee was acceded to and inspection of documents was granted on November 29, 2022 and a hearing was scheduled for December 14, 2023. While the Noticee undertook inspection of documents, they requested that the hearing be rescheduled since all relevant documents had not been provided to them. Additional relevant documents were provided to the Noticee thereafter and the Noticee filed its reply dated March 20, 2023. A hearing was granted in the matter on April 5, 2023, which was rescheduled to April 24, 2023 due to administrative exigencies. On the scheduled date, Shri Pesi N. Modi, Senior Counsel appeared on behalf of the Noticee and made submissions.
18. The written submissions filed by the Noticee are summarized hereunder:
- a. The SCN 2 completely bypasses the procedure under the Intermediaries Regulations which envisages a two-step process and the matter should be remanded to the DA for reconsideration.
 - b. NSEL had been openly carrying out trading in a variety of commodities and the details of the same were being regularly reported to the FMC. Atleast from August 2011 onwards, the FMC was performing the function of a regulator over NSEL. Trading in paired contracts was being openly

carried out and the Noticee had no reason to doubt the legality or validity of these contracts.

- c. As per bye law 4.1 of NSEL bye laws, paired contracts must have been launched by NSEL after taking prior concurrence of FMC. The FMC/ government did not raise any concern that the paired contracts were in violation of the notifications granting exemption. There is no finding that FMC did not give its concurrence to the said contracts being traded on NSEL.
- d. The Noticee is not a defaulter, rather it is a victim of the default and is entitled to recover approximately 15 lakhs from NSEL to date. SEBI has not taken any action against the defaulting brokers and proceedings are relentlessly being pursued against non-defaulting brokers like the Noticee.
- e. SEBI has not taken any action against the clients who have traded. The Noticee as a broker was only acting as an agent of its clients. No action has also been taken against insurance companies, auditors, banks etc.
- f. The Noticee had traded in paired contracts only on behalf of 14 clients, none of whom have lodged any complaint. Even the NSEL order had no adverse observation against the non-defaulting brokers like the Noticee.
- g. While granting registration to the Noticee, SEBI was fully aware that the Noticee had carried out trades in paired contracts and now the principles of res judicata and estoppel would apply.
- h. In NSE and BSE also simultaneous transactions are taken in cash and futures segments, and hence there was no reason to suspect any red flag in case of paired contracts.
- i. The Noticee has not been provided all relevant documents.
- j. The SCN is vitiated by delay.
- k. The order dated June 9, 2022 passed by the Hon'ble SAT as referred to in SCN2 makes it clear that no reliance can be placed on orders in the matter of Jermyn Capital LLC, Mukesh Babu Securities Ltd. or the Bail order (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).

- l. Amendments to the Intermediaries Regulations are not retrospective in operation. The amended provisions cannot be retrospectively applied to the present proceedings.
- m. SEBI cannot keep changing the allegations when it realizes that the original allegations are untenable. Merely because the FPP criteria are continuing, SEBI cannot keep reopening the past events and apply new standards to historic events.
- n. SEBI's complaint and FIR are untenable. Further, SEBI's reliance on its own complaint/ FIR is erroneous. No evidence has been filed by SEBI along with the complaint.
- o. The Noticee traded in paired contracts almost 3.5 years after the commencement of trading in paired contracts on NSEL. The Noticee had no reason to doubt the legality of these contracts. The Noticee earned a meagre brokerage of Rs.24,846 from these trades.
- p. There was never any lack of due diligence. The real problem was the lack of requisite goods in the warehouses, for which the Noticee cannot be blamed as it relied on the trading system and counterparty guarantee of NSEL.
- q. A broker cannot be expected to verify the bonafides of an exchange.
- r. The paired contracts were not mere financing transactions. The Noticee did not lend any money and trades were backed by payment and delivery. The trading platform was anonymous and the Noticee was never aware of who was the counterparty. There was no predetermination of profit between the Noticee and the counterparty. Bye law 5.26 of the NSEL Bye laws stipulated that NSEL would act as the legal counterparty for the transactions as it may specify transactions for which it would not be the legal counter party. Additional costs like cess, warehouse charges were being paid over to state governments/ other authorities, which proves that the trades were genuine.
- s. FMC order mentions that market participants were being kept in the dark.
- t. The first leg of the paired contract was always a "purchase" for the Noticee's clients. Hence there is no question of a short sale. There appears to be a misconception that a party has to go to the warehouse

and take actual physical possession of commodities. However, NSEL was an exchange and not a mandi. The goods were represented by documents. There was never any default in delivery obligations for any of its contracts. The Noticee gave pay in within 11 days and cannot be blamed for payout after 11 days from NSEL. Netting of trades was permitted.

- u. The reference to “one day’s duration” in the exemption notification means those contracts that were not squared off intraday. There was no condition that the settlement of all contracts had to be less than 11 days. Further, the exemption was withdrawn ‘on the basis of experience gained’ and not for any violation. No authority cautioned against these contracts that exceeded 11 days.
- v. The mere fact that other courts and authorities have made observations against NSEL does not mean that the Noticee is not fit and proper. The Noticee had never promoted NSEL or paired contracts, and it is not an agent of NSEL. It had no close association with NSEL.
- w. There is no allegation/ adverse observation specifically against the Noticee in the Grant Thornton Report, NSEL’s fortnightly reports submitted to FMC or the EOW Interim Report.
- x. The recommendation of cancellation is totally disproportionate to the allegation against the Noticee.

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. At the outset, I note that 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 act of registration.
22. The Noticee has also stated that the SCN 2 completely bypasses the two step procedure under the Intermediaries Regulations. However, as noted above, the SCN 2 was issued in line with directions of the Hon'ble SAT in the order dated June 9, 2022 as referred to in paragraph 15 above.
23. I note in the instant set of facts that the Noticee has surrendered its certificate of registration as a broker and that the surrender application was approved by SEBI on May 29, 2018. The action against the Noticee and appointment of the DA was approved on September 21, 2018, by when the registration had already been surrendered. I also note that SEBI had subsequently filed a complaint to EOW dated September 24, 2018 and an FIR was filed by SEBI on September 28, 2018, and the same includes the name of the Noticee.
24. However, in light of surrender of certificate of registration of the Noticee and acceptance of the same by SEBI, the present proceedings for determination of whether the Noticee is a FPP are rendered infructuous. Hence, I am not inclined to pass any directions against the Noticee.

Order –

25. In view of the facts and circumstances of the case as discussed above, I, in exercise of powers conferred upon me under Section 19 of the Securities and Exchange Board of India Act, 1992 and Regulation 27 of the SEBI

(Intermediaries) Regulations, 2008, hereby dispose of the SCN I and SCN 2 issued to M/s. Sharekhan Commodities Private Limited without any directions.

26. This order is without prejudice to any other action that may be taken against the Noticee by SEBI or any other authority in accordance with law.
27. A copy of this order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories.

Date: June 16, 2023

Place: Mumbai

**GEETHA G
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**