

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of Acumen Commodities (India) Limited formerly registered with the Registration No. INZ000075735

In the matter of National Spot Exchange Limited

BACKGROUND

1. The present proceedings originate from the Enquiry Report dated February 28, 2020 (hereinafter referred to as the **“Enquiry Report”**), submitted by the Designated Authority (hereinafter referred to as the **“DA”**) in terms of Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 as it stood at the relevant point of time prior to its amendment vide Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021, with effect from January 21, 2021, (hereinafter referred to as the **“Intermediaries Regulations”**), wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, recommended cancellation of the certificate of registration granted to Acumen Commodities (India) Limited (hereinafter referred to as the **“Noticee”**). Pursuant to the same, a Post Enquiry Show Cause Notice dated March 18, 2020 (hereinafter referred to as the **“SCN”**) was issued to the Noticee, along with the copy of the aforesaid Enquiry Report, copy of letter dated December 30, 2014 of Department of Economic Affairs, Ministry of Finance and copy of the decision of the Hon’ble Bombay High Court dated August 22, 2014 in respect of paired contracts offered on the platform provided by the National Spot Exchange Limited (hereinafter referred to as the **“NSEL”**).
2. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as the **“SEBI”**) passed five separate orders during February 2019, rejecting the applications filed by five other entities for

registration as commodity brokers who were involved in NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**Hon'ble SAT**"). The Hon'ble SAT, vide its common order dated June 09, 2022 (hereinafter referred to as "**SAT order**"), remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said order. While remanding the aforesaid SEBI orders, the Hon'ble SAT, *inter alia*, held as under:

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

3. Thereafter, the Competent Authority of SEBI allocated the present matter to me for further proceedings. In light of the aforesaid SAT order, it was felt necessary to furnish certain additional documents/ material to the Noticee and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, vide Hearing Notice dated November 11, 2022 (hereinafter referred to as the "**Hearing Notice**"), Noticee was provided an opportunity of personal hearing on December 13, 2022 along with certain additional documents/ material. Noticee was also advised to submit its response, if any, in relation to the Hearing Notice. On the scheduled date of hearing, the authorised representatives of the Noticee appeared on behalf of the Noticee through video conference and made submissions. During the course of hearing, certain queries were raised to the Noticee and the Noticee was granted time to submit response to the said queries along with the post hearing submissions, if any. Accordingly, the Noticee, vide its letter dated December 29, 2022 provided its response to the queries.
4. The submissions filed by the Noticee vide its letter dated December 29, 2022 are summarized hereunder:
 - (i) The Noticee had not induced anyone to do the alleged paired contracts. Only pursuant to one of the seminar conducted by NSEL at their place, four of its clients met the officials of NSEL and executed the contracts without any persuasion or assurance from the Noticee.

- (ii) There never arose any situation to suspect that the NSEL having nationwide terminal and executing such trades through the terminal was not authorized to carry such trade.
- (iii) The total volume of trade carried out in NSEL was only around ₹ 98,00,000 with brokerage earning of mere ₹9,874.
- (iv) Only 4 clients trades in paired contracts out of its clientele of over 9,000 clients.
- (v) The Noticee had no intention of motive to indulge in any unlawful trades or to induce anyone to carry such trades.
- (vi) Noticee requested to be pardoned for the mistakes, if any, alleged against it.

CONSIDERATION OF ISSUE AND FINDINGS

5. I have carefully perused the SCN, the Hearing Notice, the Enquiry Report, the replies filed by the Noticee and other material/ information available on record.
6. On a perusal of the registration details of the Noticee, it was noted that the registration number mentioned against the name of the Noticee in the Enquiry Report is INZ000075735. In order to verify this registration number, details were sought from the Stock Exchange(s) namely, Multi Commodity Exchange of India Limited ("MCX") and National Commodity & Derivatives Exchange Limited ("NCDEX").
7. MCX vide its email dated November 28, 2023, informed that the Noticee was the erstwhile member of the exchange. However, it ceased to be the member of the exchange pursuant to transfer of membership to Acumen Capital Market (India) Limited (hereinafter referred to as '**Acumen Capital**'). It was further informed that the Noticee had transferred its membership to Acumen Capital and No Objection Certificate (NOC) for the same was issued on June 08, 2018. Subsequently, Acumen Capital was admitted as a member of the exchange on July 05, 2018 and was activated on August 04, 2018.
8. NCDEX vide its email dated November 28, 2023 informed that the Noticee was a member of NCDEX since December 29, 2003 and it had transferred its membership by way of sale of business to Acumen Capital w.e.f. August 14, 2018 and the membership status of Acumen Capital is enabled. It has been informed that NCDEX had issued NOC for transfer of membership through sale of business to Acumen Capital on July 02, 2018 and it got effective on August 14, 2018.
9. It is noted that during the period when paired contracts were being traded on NSEL, the Noticee had admittedly executed trades in the paired contracts on

behalf of its clients. The material available on record suggests that the Noticee was registered with SEBI on September 15, 2016 pursuant to the merger of FMC with SEBI. Further, the material available on record does not show that any conditions were placed in relation to grant of the NOC regarding the transfer of membership.

10. It is relevant to note here that in terms of the provisions of the Finance Act, 2015 read with Forward Contracts Regulations Act, 1952, SEBI had filed a complaint dated September 24, 2018 to Economic Offences Wing (“EOW”) based on which the EOW registered the FIR dated September 28, 2018. It is noted that the Noticee was named in the said FIR on account of the alleged trading in paired contracts on the NSEL platform. It is noted that vide the SEBI (Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021, Schedule II of the Intermediaries Regulations was amended to add criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973, as one of the criteria to be taken into account for the purpose of determining ‘fit and proper’ status of any entity. In terms of clause (7) of Schedule II, the ‘fit and proper person’ criteria is applicable at the time of application of registration and during the continuity of registration. Thus, “fit and proper” criteria is an essential condition to be met for continued recognition of an entity as a SEBI registered intermediary. In case of transfer of membership from a registered intermediary to another entity, the transferee entity, seeking to be an intermediary, will have to separately fulfil the “fit and proper” criteria.
11. Accordingly, ‘fit and proper person’ criteria being a continuing one, would have applied to the Noticee had the Noticee’s registration been alive as on date. However, it appears from the material available on record that the Noticee in the present case had surrendered its certificate of registration and the same has also been confirmed by MCX and NCDEX. Hence, the registration number, which was earlier granted to the Noticee at the time of registration with SEBI, has ceased to exist.
12. The present proceedings are only limited to determine the ‘fit and proper’ status of the Noticee as an intermediary (holding the Registration No. specified in the Enquiry Report) under the Intermediaries Regulations. In view of the discussed facts and circumstances, since the Noticee has ceased to be a registered intermediary, it would not serve any purpose to continue the present proceedings under the Intermediaries Regulations against the Noticee and an order cancelling the certificate of registration as recommended by the DA would be infructuous at this point.

Order

13. In exercise of powers conferred under Section 19 of the SEBI Act read with Regulation 27 of the Intermediaries Regulations, I hereby dispose of the instant proceedings against the Noticee, namely, Acumen Commodities (India) Limited without issuing any directions.
14. The above Order is without prejudice to the proceedings pending in pursuance of the criminal complaint filed by SEBI in the matter of trading on NSEL and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.
15. A copy of this order shall be served on the Noticee and upon all the recognized Market Infrastructure Institutions for their record.

Place: Mumbai

Date: December 15, 2023

Sd/-

AMARJEET SINGH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA