

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTION 12(3) OF THE 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.
Master Commodity Services Limited	INZ000087536

In the matter of National Spot Exchange Limited (NSEL)

A. BACKGROUND

1. Master Commodity Services Limited (hereinafter referred to as “**MCSL**”/ “**Noticee**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker bearing registration no. INZ000087536. MCSL was earlier a member of National Spot Exchange Limited (hereinafter referred to as the “**NSEL**”).
2. The present proceedings originate from the enquiry report dated December 17, 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 SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as the “**Intermediaries Regulations**”) as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021. The DA, based on findings recorded in the said Enquiry report, recommended that the registration of MCSL as a commodities derivative broker may be cancelled.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Pursuant to the Enquiry Report, a post enquiry show cause notice dated January 15, 2021 (hereinafter referred to as “**SCN**”) was issued to the Noticee, along with copies of (i) the aforesaid Enquiry Report; (ii) Finance Ministry letter dated December 30, 2014 to Forward Markets Commission (“**FMC**”); (iii) Hon’ble Bombay HC’s order in criminal bail application no. 1263 of 2014 in Jignesh Prakash Shah vs. State of Maharashtra dated August 22, 2014.
4. While the aforesaid proceedings were pending, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (“**Hon’ble SAT**”). The Hon’ble SAT *vide* its common order in the matter of Geofin Comtrade Ltd. And Ors. vs. SEBI (Appeal no. 214 of 2019) dated June 09, 2022 (“**June 2022 SAT Order**”), remanded the aforesaid SEBI orders 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...”
5. In light of the June 2022 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, a

Supplementary SCN dated February 27, 2023 (“**SSCN**”) was served on the Noticee along with the following documents:

- 5.1. Copy of SEBI complaint dated September 24, 2018 filed with Economic Offences Wing (“**EoW**”);
 - 5.2. Copy of FIR dated September 28, 2018 filed by SEBI under section 154 of Criminal Procedure Code, 1973 (“**CrPC**”); and
 - 5.3. Amended Schedule II of Intermediaries Regulations.
6. Noticee was granted an opportunity for inspection of documents on September 04, 2023. However, at the request of Noticee, the inspection was rescheduled and the same was granted on September 11, 2023. Though the Noticee was granted an opportunity of personal hearing on September 14, 2023, the Noticee sought adjournment. Thereafter, the Noticee was granted another opportunity of personal hearing on October 10, 2023. The Noticee submitted its reply dated October 03, 2023. On October 10, 2023, the Authorised Representatives of the Noticee appeared before me through video conferencing and reiterated the submissions made in the Noticee's reply. During the course of hearing, Noticee sought 2 weeks' time for filing its post hearing submissions and the same was granted and hearing was concluded. Noticee filed its post hearing submissions vide letter dated October 26, 2023.
7. The reply/ submissions filed by the Noticee are summarized hereunder:
- 7.1. There has been inordinate delay in initiation of proceedings by SEBI.
 - 7.2. The Noticee was not provided all the relevant documents sought by it.
 - 7.3. The Noticee had executed alleged 'paired contracts' on behalf of its clients under their instructions and authorization. The Noticee had never induced or given advice to any of its clients. None of the Noticee's clients had raised any complaint against it.
 - 7.4. The Noticee had executed trades on NSEL platform when at the relevant time around 500 Brokers were executing trades through thousands of terminals for lacs of clients including Government companies and Organizations like MMTC, FCI, NAFED, etc. No adverse remark/red flag were raised against any of the entities who were also purported to be closely associated with NSEL and

alleged paired contracts. Thus, their dealing in NSEL trading platform be considered on similar lines.

7.5. The Noticee had carried out transactions in due compliance of the Bye Laws, Rules, Regulations and circulars issued by NSEL and no grievance was raised against them by NSEL.

7.6. The turnover in the alleged paired contracts was miniscule in comparison to the Noticee's total turnover in other Commodity Exchanges.

7.7. On August 05, 2011, FMC was appointed as the designated agency for NSEL and it was expected to play a proactive role by monitoring trades at NSEL platform and its statutory compliance requirements in terms of Government of India notification dated June 05, 2007. There was gross failure of FMC in performing its duties as an apex regulator of commodities market and their presence as mere silent spectator is root cause of subject matter of present proceedings.

7.8. The Noticee's association with NSEL was one amongst all entities with which the Noticee was associated as a broker or distributor. There was no connection or association between the Noticee and NSEL other than as a Broker/ Member.

7.9. The paired contracts were also referred to as 'Trader Contract'. Noticee had fulfilled its total obligation on execution of buy and sell contracts independently. Notably, it was acting as a 'Member' of NSEL and thus on execution of buy order, it made full payment of consideration on buy contract and were in totality delivery based transaction executed on NSEL. Thus, on making full payment for buy contract, it had complied with entire obligation. With regard to sell contracts, on fulfilment of pay in obligation for delivery of underlying commodities, pay out was received by it. Thus, it had complied with its entire obligation qua sell contracts. On each buy and sell contracts, levy of VAT as applicable, warehousing charges and octroi as applicable were recovered and paid by it.

7.10. While granting registration to it, SEBI was fully aware that it had carried out the trades in alleged paired contracts and therefore the principles of *res judicata* and *estoppel* would apply.

- 7.11. It was NSEL which had introduced the concept of alleged 'paired contracts' and the brokers had no role to play in NSEL deciding to launch such alleged paired contracts. It could never have been held that such widely traded contracts were illegal or in violation of GOI notification dated June 05, 2007. The paired contracts were launched in accordance with the NSEL bye laws.
- 7.12. It was Noticee's genuine and bonafide belief that the alleged contracts were in compliance with the conditions of GOI notification and there was nothing contrary thereto. If any such alleged paired contract had to be considered to be illegal, then the same had to be annulled as void in law ab initio. Neither GOI nor FMC nor the Department of Consumer Affairs (DCA) nor SEBI nor any authority has held that all such transactions need to be annulled.
- 7.13. At the relevant time, SEBI was not the regulator of the NSEL, and it ought not to have initiated any action under Regulation 23 of the Intermediaries Regulations on the purported ground of alleged contravention of *"...provisions of the securities laws or directions, instructions or circulars issued thereunder."*
- 7.14. Noticee ought to have been granted an opportunity of personal hearing before issuing Enquiry Report.
- 7.15. Trading in alleged paired contracts was being openly carried out and Noticee had no reason to doubt the legality or validity of these contracts.
- 7.16. As per NSEL bye-laws, if the relevant authority of the Exchange concludes that there were "financial transactions", then it would have the authority and discretion to withdraw the Exchange as the legal counterpart to such transactions. Vide letter dated August 16, 2013, FMC had directed NSEL that it would be the sole responsibility of NSEL to settle all the trades including the alleged paired trades. Hence, at the relevant time such trades were not considered financial transactions as alleged.
- 7.17. The various orders, judgements / Reports passed / issued by various regulatory authorities as referred in the Enquiry Report, however, the Noticee was not even a party to the said proceedings. Further, in light of the observations made by the Hon'ble SAT by Order dated June 09, 2022, the said orders, judgements / Reports cannot be considered.

- 7.18. FMC order mentions that market participants were being kept in the dark. This proves that there was no “association” or collusion between the Noticee and NSEL. The FMC Order dated December 17, 2013 had been challenged by way of Writ petitions which are pending before the Hon’ble Bombay High Court and therefore the same is *sub judice*.
- 7.19. A show cause notice dated April 27, 2012 was issued to NSEL by DCA. In this regard, NSEL had filed a writ petition before the Hon’ble Bombay High Court and vide Order dated October 04, 2021, the Hon’ble Bombay High Court has granted ad-interim relief on the ground of submissions made by NSEL that proceedings became stale. Therefore, whether there was any violation of exemption notification is in itself *sub judice* before the Hon’ble Bombay High Court.
- 7.20. The Hon’ble Supreme Court in its Order dated April 30, 2019 in the matter of 63 Moons Technologies has not made any adverse observations or finding against it or any other non-defaulting broker.
- 7.21. No flaws, non-compliance, deficiencies and breaches of trading in commodities were pointed out by any government department, FMC or by any other regulatory authorities when it was functional. The allegations against it are afterthought and without any cogent, incriminating material against it. At all the time, the Noticee had maintained fit and proper person criteria specified in Schedule II of the Intermediaries Regulations. It has always complied with the applicable rules, regulations and bye-laws of the Stock/Commodity Exchange.
- 7.22. The amendment to Scheduled II of the Intermediaries Regulation came into force from November 11, 2021 which is after the initiation of present proceedings in 2018 and therefore, retrospective application of the same would be in gross violation of the principles of natural justice. The subject matter of legality of the amendments to Intermediaries Regulations is sub-judice before the Hon’ble Bombay High Court.
- 7.23. In view of the additional facts and circumstances of the matter, the matter may be remitted to Designated Authority in terms of Regulation 27(3) of the Intermediaries Regulations.

7.24. The Complaint/First Information Report (FIR) dated September 24, 2018 cannot be given any weightage for determining the 'fit and proper' status of the Noticee for the following reasons:

7.24.1 FIR is only the first instance of reporting of the complaint and is a preliminary document based on the one sided statement of the complainant without any adjudication of the same. There is no final determination.

7.24.2 SEBI cannot rely on its own complaint dated September 24, 2018, pursuant to which FIR September 28, 2018 was filed. Thus, while SEBI itself has filed the FIR, by way of these proceeding, SEBI itself would be judging the same allegation. Thus, these proceedings are void ab initio.

7.24.3 No charge sheet has been filed against the Noticee.

7.25. The Noticee was meeting all the important criteria for being fit and proper person provided under Schedule II at the relevant time i.e. prior to the SEBI (Intermediaries) (Third Amendment) that was w.e.f. November 17, 2021.

7.26. As regards the Noticee's 'close association' with NSEL, the following is submitted by the Noticee:

7.26.1 No clients were permitted to execute trades directly on the NSEL and had to do so through a registered broker;

7.26.2 The trading in NSEL was open and transparent and there was nothing surreptitious about it and no authority had ever questioned the legitimacy or validity of any contracts/ trades;

7.26.3 The entire ecosystem of NSEL was similar to all other Exchanges and there were no 'red flags' to arouse any suspicion;

7.26.4 Till the time the Noticee continued to act as a broker of NSEL, the reputation of NSEL had not been tarnished;

7.26.5 The Noticee was not on any committee or Advisory Board of NSEL and there was no relationship between NSEL and the Noticee apart from member and exchange;

7.27. Chapter II of Intermediaries Regulations which contains the details of Consideration of application and the applicability of fit and proper person is not notified.

- 7.28. The punishment of being declared as not fit and proper is the ultimate punishment and should be imposed sparingly in case of repeated offences while consistently applying the doctrine of proportionality.
- 7.29. Noticee has applied for surrender of membership of MCX in January 2023 and presently, its membership of NCDEX is also temporarily deactivated. Noticee has relied on SEBI Order dated June 16, 2023 in the matter of Sharekhan Commodities Pvt. Ltd. wherein proceedings were disposed of in light of surrender of certificate.

C. BRIEF HISTORY OF NSEL SCAM

8. Before moving forward to consider the matter on merits, the background facts necessary for the present proceedings are narrated in brief as under:

- 8.1. NSEL was incorporated in May 2005 with the purpose of developing an electronic spot exchange for trading in commodities. In exercise of powers conferred under section 27 of the FCRA, the Central Government *vide* the 2007 Exemption Notification, granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to certain conditions. The said notification *inter alia* stated that “*no short sale by the members of the exchange shall be allowed*” and “*all outstanding positions of the trades at the end of the day shall result in delivery*”. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency.
- 8.2. In October 2008, NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that NSEL had introduced the concept of ‘paired contracts’ in September 2009 which allowed buying and selling in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and *vice versa* at the same time and at a pre-determined price. The trades for the buy contract (T+2 /T+3)

and the sell contract (T+25/T+36) used to happen on NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.

8.3. On February 06, 2012, the erstwhile FMC was appointed by DCA as the 'designated agency' as stipulated in one of the conditions prescribed under the said 2007 Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measure, if needed, to protect investors' interest.

8.4. DCA on April 27, 2012 directed NSEL to show cause as to why action should not be initiated against it for violation of the conditions mentioned in the 2007 Exemption Notification.

8.5. Subsequent to the above, NSEL filed a reply. Further, MCA sought comments of FMC on the said replies. MCA also sought certain information from NSEL pursuant to which *vide* its letter dated July 12, 2013, MCA directed NSEL to give an undertaking that:

8.5.1. No further/fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and

8.5.2. All the existing contracts will be settled on the due dates

8.6. NSEL issued a circular on July 31, 2013 suspending its spot exchange operations.

8.7. On August 27, 2013, FMC directed a forensic audit of NSEL by Grant Thornton LLP. Further, the Union of India ordered an inspection of accounts of NSEL and 63 Moons Technologies Ltd. (*earlier FTIL*) under section 209A of the Companies Act. The EoW also registered cases against the directors and key management personnel of the NSEL and 63 Moons (*earlier FTIL*) and against trading members and brokers of NSEL under the provisions of the Indian Penal Code and Maharashtra Protection of Interest of Depositors Act, 1999 ("**MPID Act**").

8.8. After analysing the trade data received from NSEL and the forensic audit report submitted by Grant Thornton LLP, the FMC passed Order dated December 17, 2013 in the matter (“**FMC Order**”) wherein it *inter alia* observed that Financial Technologies (India) Ltd. is not a fit and proper person to continue to be a shareholder of 2% or more of the paid-up equity capital of MCX. Further, from paragraph 8 of the FMC Order, I note that the DCA *vide* its letter dated April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the 2007 Exemption Notification. 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 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:

8.8.1. 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 the 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*” as stated in the 2007 Exemption Notification.

8.8.2. 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 2007 Exemption Notification does not specify the delivery period, NSEL had to settle the delivery for all open positions 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.

8.9. On September 19, 2014, Ministry of Finance, Government of India, issued a notification withdrawing the exemption granted to NSEL *vide* the 2007 Exemption Notification.

8.10. From the above, it is clear that NSEL had permitted contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to NSEL. Subsequently, certain entities who were primarily borrowing on the NSEL platform through the modus of trading in the aforesaid “paired contracts” defaulted in fulfilling their payment obligations leading to a huge settlement default of outstanding contracts to the tune of INR 5600 Crores.

8.11. EOW, Mumbai, *vide* letter dated April 04, 2015, had forwarded an interim report in connection with the investigation conducted by them to identify the role played by the broking houses in the NSEL case. The relevant extracts of the said interim report are as follows:

“IV. Objectives of this investigation into the brokers’ role: A scam of this magnitude would be difficult to continuously occur for 3 years without some of the large brokers’ gross negligence or perhaps active participation.

The actual role of the brokers was:

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

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

Though the matter is still under investigation, brokers have also received back from exchange certain charges collected from investors such as transaction fees, delivery and warehousing charges, etc. It is suspected that these are indirect motivation incentives for brokers to generate huge volumes. It is also possible that brokers may have benefitted from or compensated by the sellers or defaulters.

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

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

a) Any activities which were detrimental to the investors, NSEL, or third parties. To determine whether they had made false and misleading representations, offered inducement, financing and deliberately made wrongful assertions purely to get brokerage and facilitate NSEL in generating higher volumes.

b) Whether they had any illegitimate personal enrichment, or, there has been knowing dereliction in their duties as clearing and forwarding agents towards the commodities and protect the investors.

c) It was also deemed necessary to ensure that their activities were within the framework of law.

8.12. *Vide the Finance Act, 2015, FMC was merged with SEBI on September 28, 2015 in pursuance thereof SEBI was entrusted with the powers to regulate the trading in commodities futures market. As per the said act, an existing intermediary could continue to buy, sell or deal in commodity derivatives as a commodity broker, if it would make an application for its registration as an intermediary to SEBI within a period of 3 months from the date of merger till the disposal of such application by SEBI. Accordingly, the Noticee on the basis of an application so made by it, was granted SEBI registration number to operate as a stock broker in the securities market. In terms of the said act, FCRA was also repealed with effect from the aforesaid date.*

8.13. *On September 24, 2018, SEBI filed a complaint with EoW to initiate appropriate action against brokers/members of NSEL and other persons in the NSEL matter under sections 20, 21 and other appropriate provisions of the FCRA.*

8.14. On September 28, 2018, SEBI gave a statement to the police which resulted into a FIR under section 154 of CrPC.

8.15. It is also pertinent to refer to the judgment of the Hon'ble Supreme Court decided on April 30, 2019, passed in the matter of 63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. vs. Union of India & Ors. (Civil Appeal No. 4476 of 2019) (2019)18 SCC 401 ("**Merger Petition**"), wherein it *inter alia* held that:

"....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....."

8.16. Further, in judgement dated April 22, 2022 passed by the Hon'ble Supreme Court in the matter of The State of Maharashtra vs. 63 Moons Technologies Ltd. (Civil Appeal No. 2748-49 of 2022) ("**MPID matter**"), the Hon'ble Supreme Court while drawing reference to the presentations made by NSEL in respect of the "paired contracts" has *inter alia* held that:

"The above representation indicates that 'paired contracts' were designed as a unique trading opportunity by NSEL under which a trader would, for instance, purchase a T+2 contract (with a pay-in obligation on T+2) and would simultaneously sell a T+25 contract (with a pay-out of funds on T+25). The price differential between the two settlement dates was represented to offer an annualized return of about 16%. NSEL categorically represented that all trades were backed by collaterals in the form of stocks and its management activities included selection, accreditation, quality testing, fumigation and insurance. Therefore, NSEL represented that on receiving money and commodities, the members would receive assured returns and a service. Though NSEL has been receiving deposits, it has failed to provide services as promised against the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act."

8.17. In the background of the aforesaid discussion pertaining to “paired contracts” as captured in the preceding paragraphs, I now move on to examine whether the Noticee satisfies the “fit and proper person” criteria as laid down in Schedule II of the Intermediaries Regulations.

D. CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the contents of the Enquiry Report, the SCNs issued to the Noticee, the responses filed by the Noticee and the submissions made during the course of the personal hearing and other documents available on record as shared with the Noticee.

10. Before moving forward to examine charges and the evidence available on record, it would be appropriate to take a look at the legal provisions of the SEBI Act, which are relevant in the present case. It is alleged that the Noticee has violated (i) regulation 5(e) of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as “**Stock Brokers Regulations**”) read with Schedule II of Intermediaries Regulations; and (ii) regulation 9(b), 9(f) read with clause A (1), A (2) and A (5) of Schedule II of Stock Brokers Regulations. The same are reproduced below for reference:

SEBI Act

Registration of stock brokers, sub-brokers, share transfer agents, etc.

12. (3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations: Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Stock Brokers 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; and

Liability for action under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

27. A stock broker shall be liable for any action as specified in Chapter V of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 including suspension or cancellation of his certificate of registration as a stock broker, if he —

(iv) has been found to be not a fit and proper person by the Board under these or any other regulations;

SCHEDULE II

Code of Conduct for Stock Brokers

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.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

Intermediaries Regulations

Schedule II

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.

11. I find it appropriate to first deal with the preliminary contentions raised by the Noticee.

12. On the submission of the Noticee that there has been inordinate delay in initiation of proceedings by SEBI, I note that the NSEL scam unfolded in 2013 after which several agencies such as EOW, SFIO, etc. conducted investigations into the activities of NSEL. Further, FMC, Hon'ble Bombay HC and Hon'ble SC made important pronouncements relating to different facets of the matter such as whether merger of NSEL with FTIL should be permitted and whether NSEL can be considered as a "financial establishment" under the MPID Act. A large number of brokers had allegedly participated in the illegal contracts at NSEL platform. After the merger of FMC with SEBI on September 28, 2015, some of these brokers applied for registration with SEBI. Thereafter, assessing all the factual circumstances available before SEBI and considering the importance of fulfilling "fit and proper person" criteria by brokers, action was duly initiated against the set of brokers who executed the alleged trades. Thus, in absence of any prejudice caused to the Noticee, merely because proceedings were initiated in 2018 by way of DA SCN, I find that the present proceedings do not stand vitiated. Further, I note that after issuance of DA SCN, June 2022 SAT Order was passed by Hon'ble SAT wherein the Hon'ble SAT inter alia observed that it will be open to SEBI to rely upon other material provided such material is provided to Noticee and opportunity is given to rebut the allegations. Further, Hon'ble SAT also observed that it will be open for SEBI to issue Supplementary SCN to provide such additional material/

documents. The SSCN issued pursuant to the June 2022 SAT Order takes into consideration additional material available on record and SEBI had furnished additional documents/ material to the Noticee in compliance with June 2022 SAT Order. The issuance of SSCN, delivery of SSCN, examining the reply to the SSCN, inspection of documents and hearing conducted thereafter, were essential steps in ensuring that principles of natural justice are being met at the cost of prolonging the conclusion of present proceedings. Therefore, I find that the events detailed above necessitated an extended period for concluding the proceedings.

13. The Noticee has also contended that all the documents sought by the Noticee was not provided to it. I note that Sub-regulations (3) and (4) of Regulation 25 of the Intermediaries Regulations specify that the copies of the documents “relied upon by SEBI” along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any, shall be provided to the Noticee. In this regard, I note that the Noticee has been provided with the documents relied upon by SEBI. Vide e-mail dated July 22, 2020, the Noticee was provided with the trading data of paired contracts dealt by the Noticee along with copies of Notification dated June 05, 2007 and FMC Order dated December 17, 2013. I also note that vide post Enquiry SCN dated January 15, 2021, Noticee was provided with documents such as letter dated December 30, 2014 of DEA, Ministry of Finance and Order dated August 22, 2014 of the Hon’ble High Court of Bombay in the criminal bail application of Jignesh Prakash Shah vs. State of Maharashtra. I further note that vide SSCN dated February 27, 2023, the Noticee was provided with copies of SEBI complaint dated September 24, 2018 filed with EOW and FIR dated September 28, 2018 filed by SEBI. Thereafter, during inspection of documents granted on September 11, 2023, the Noticee was provided with copies of FMC Order dated December 17, 2013, Grant Thornton Report along with its annexures, EOW Report, NSEL complaint letters dated March 17, 2015 and March 24, 2015, Email dated August 31, 2018 sent by SIT EOW to SEBI, FMC complaint letter dated January 16, 2015 against NSEL, SEBI letter dated July 09, 2018 to EOW and SEBI complaint dated July 09, 2018 and September 28, 2018. Therefore, I find that all the material / relevant documents have been duly provided to the Noticee in compliance with the principles of natural justice in conducting

present enquiry proceedings. Hence, the contention of the Noticee is devoid any merit.

14. The Noticee has also contended that it was not provided with personal hearing before the DA. In this regard, I note that the DA had issued the show cause notice dated September 25, 2018 under the then existing Regulation 25(1) of the Intermediaries Regulations. Thereafter, the Enquiry Report was submitted on December 17, 2020. The Intermediaries Regulations were amended vide the SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f. January 21, 2021. The amended Regulations now provide that the DA shall grant an opportunity of personal hearing and issue or cause to issue a notice scheduling a date for hearing. Thus, under the then existing Intermediaries Regulations prior to its amendment w.e.f. January 21, 2021, there was no legal requirement for providing the opportunity of personal hearing to the Noticee by the DA as contended by the Noticee. The Regulations specified granting of opportunity of personal hearing by the competent authority, which as has been detailed in the previous paras has been more than adequately provided to and availed by the Noticee. Thus, every opportunity was provided to the Noticee and no prejudice has been caused to the Noticee and there is no defect in the process followed in the present enquiry proceedings. Accordingly, the contention raised by the Noticee in this regard is also misplaced and devoid of any merit.

15. The Noticee has argued that during the relevant time, SEBI was not the regulator of NSEL and SEBI should not have initiated any action under Regulation 23 of the Intermediaries Regulations. In this regard, I note the following:

15.1. Before merger of FMC with SEBI, the Noticee was not required to be registered with either FMC or any other regulatory authority under the FCRA for carrying out the alleged paired contracts on NSEL. The Finance Act, 2015, recognized the said fact and also that the commodity derivative brokers should be regulated by SEBI. Considering the same, it was made mandatory for all commodity derivative brokers, who wished to continue their activities, to apply for registration with SEBI within a period of 3 months' from

September 28, 2015. Thus, by virtue of the provisions of the Finance Act, 2015, all those entities, who were functioning as commodity derivatives brokers, after having made their application within 3 months from September 28, 2015, were under the supervision and control of SEBI like any other intermediary holding a certificate of registration.

15.2. The Noticee had applied for a certificate of registration as a broker and was granted a certificate of registration by SEBI with effect from December 21, 2015. Therefore, the Noticee had become a SEBI registered intermediary from the said date and falls under the definitions of a “stock broker” and an “intermediary”. Being a SEBI regulated intermediary, SEBI has the jurisdiction to examine whether the activities of the Noticee in “paired contracts” for its clients on the NSEL platform affects its ability to be considered as a “fit and proper person”.

15.3. Further, I note that Section 29A(2)(e) of FCRA as inserted by the Finance Act, 2015 empowers SEBI to initiate a fresh proceeding with respect to the offences under FCRA within a period of three years from the date on which FCRA was repealed. Thus, pursuant to the merger of FMC with SEBI, SEBI stepped into the shoes of FMC and was well within its powers to initiate proceedings under Chapter V of FCRA i.e., filing of the criminal complaint to EOW. I note from the complaint dated September 24, 2018 filed by SEBI that EOW was requested to take appropriate action under Sections 20 and 21 and other provisions of FCRA against the brokers/ members of NSEL and other persons mentioned in the complaint. However, the aforesaid proceedings are different from the proceedings before me. The present proceedings pertain to adjudging the ‘fit and proper person’ status specified in the Broker Regulations and the Intermediaries Regulations in light of the activities undertaken by the Noticee on the NSEL platform and consequent action taken by FMC and SEBI, i.e., filing of the criminal complaint to the EOW under Section 154 of CrPC. The Noticee is obligated to maintain the fit and proper person criteria on a continuous basis and it is well within SEBI’s jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market.

15.4. Moreover, post the merger of FMC with SEBI and due to Finance Act, 2015, the liabilities of the Noticee with respect to all the omissions and commissions done earlier while dealing with commodity derivatives continued to be subject to the jurisdiction of SEBI.

In light of the aforesaid discussion, the submission of the Noticee that the present proceedings are not maintainable on the grounds of being without jurisdiction and being retrospective in nature, is without merit.

16. The Noticee has admitted and not disputed that it has dealt in paired contracts offered on the NSEL platform for its clients. Having established that the Noticee has traded in 'paired contracts' on behalf of its clients, I now proceed to examine the allegations levelled against the Noticee in the SCN and the SSCN. It is noted that the main allegation against the Noticee, as levelled in the SCN, is that by facilitating the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/ Clearing Member, the continuance of the registration of the Noticee as a broker is detrimental to the interest of the Securities Market and the Noticee is no longer a 'fit and proper person' for holding the certificate of registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations as applicable at the relevant time. Subsequently, SEBI, on the strength of certain documents/ material (such as SEBI Complaint dated September 24, 2018 and FIR dated September 28, 2018 etc.) as provided to the Noticee vide SSCN dated February 27, 2023, further alleged that in light of the aforesaid documents filed against the Noticee by SEBI as well as observations/ findings against the Noticee in the Enquiry Report dated December 17, 2020, the Noticee is no longer a 'fit and proper person' for holding the Certificate of Registration being in violation of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

17. The Noticee has submitted that it conducted its business in due compliance with applicable laws and norms and the paired contracts were in public domain accessible by everyone. The Noticee has submitted that all the trades were

executed in accordance with the rules and regulations specified by the NSEL and that Central Government had not raised any objections with regard to the contracts introduced by NSEL. In this regard, I note that 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”. Given these definitions in the FCRA, all the contracts traded on the NSEL which provided for a settlement schedule exceeding 11 days were treated by the FMC as Non-Transferable Specific Delivery Contracts. It is, therefore, seen that while the Ministry of Consumer Affairs (MCA) had stipulated in the Exemption Notification that only forward contracts of ‘one-day’ were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the “forward contract” under FCRA held that the NSEL was allowed to only trade in forward contracts of ‘one-day duration’ and was obligated to ensure delivery and settlement within 11 days. Thus, 55 contracts of various commodities, having duration longer than 11 days that were executed on the NSEL were paired contracts without regulatory approval and in contravention of the exemption granted to NSEL and thus clearly not in accordance with law.

18. The Noticee has argued that at the relevant time, trades in paired contracts were not considered as financial transactions. Further, the Noticee has submitted that whether there was any violation of the exemption notification is sub judice. In this regard, I note that no directions have been issued by the Hon’ble Bombay High Court to keep the present proceedings in abeyance. In the merger petition (63 *Moons Technologies Ltd. vs. UOI*), the Hon’ble Supreme Court held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon’ble Supreme Court enlarged the interpretation and held that such transactions come within the definition of ‘deposits’ under the MPID Act. While extensively referring to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources, the Hon’ble Court also observed that the NSEL were advertising assured and uniform returns of 16% per annum for the ‘paired

contracts' traded on the NSEL platform where the return offered was the same across the commodities and that the return remained the same irrespective of the duration of the contract. At paragraph 45 of the said order, the Hon'ble Supreme Court also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in Steel had the same offered rate of return as a T+5 and T+35 paired contract in Castor Oil. Thus, the judgement of the Hon'ble Supreme Court in the MPID matter highlighted how the 'paired contracts' were being marketed as an alternative to fixed deposits wherein the overwhelming majority of the sale leg of the 'paired contracts' which were executed were in fact short sales and further that, the commodities to back such sales were not available at the designated warehouses of the NSEL.

19. The Noticee has contended that the Hon'ble Supreme Court in its Order dated April 30, 2019 in the matter of 63 Moons Technologies has not made any adverse observations or finding against it or any other non-defaulting broker. In this regard, I note that reference drawn to the said Order is to recognize the nature of contracts being traded on the NSEL and violations of the relevant provisions.

20. I also note that the scope of the present proceeding is to analyse the apparent impact as well as the consequences of the conduct of the Noticee as per the justification and contentions advanced and also to examine as to whether or not, the Noticee acted in a manner expected of a registered market intermediary. It cannot be denied that the involvement of the Noticee in trading in 'paired contracts' was neither permitted by the Exemption Notification nor by any of the applicable provisions of the FCRA. Under these circumstances, any conduct similar to that displayed by the Noticee in its trading on the NSEL platform would be detrimental to the interest of the securities market.

21. Despite the above and the discussion in the context of the facts of the case, I have examined at length the other submissions made by the Noticee and also examined whether while transacting in paired contracts, the Noticee could have been under the *bonafide* belief that such transactions were actually spot contracts in commodities or alternatively that since 'paired contracts' were offered, that meant that NSEL was offering contracts which were not resulting in compulsory delivery.

22. The Noticee has contended that its turnover in the alleged paired contracts was miniscule in comparison to the Noticee's total turnover in other Commodity Exchanges. Further, the Noticee has submitted that it had fulfilled its total obligation on execution of buy and sell contracts independently. With regard to the said submissions, I note that it is an admitted fact that the Noticee had indulged in / facilitated paired contracts and therefore, the same does not alter the fact that the Noticee did facilitate trading in paired contracts, which as discussed above, were not in accordance with the 2007 Exemption Notification.

23. While Noticee has contended that it has not incentivised or promoted such trading or given any kind of assurance to any of its clients for trading on NSEL and that it was only acting as an agent of the Exchange, I note that there are no two opinions of the fact that the paired contracts were being advertised as an alternative to fixed deposit returns by offering fixed returns (approx. 16%) across all commodities, irrespective of the nature of the contract or the duration and were in fact structured in a manner which ensured that the buyer always made pre-determined profits. Any prudent person (including the Noticee, who is an intermediary and well versed with financial and commercial knowledge) would have or should have come to the conclusion that what was being offered were not spot contracts in commodities rather that they had the trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in State of Maharashtra vs. 63 Moons Technologies Ltd., which was contrary to the FCRA and the Exemption Notification and which eventually caused losses to the market stated to be to the extent of ₹ 5,600 Crores.

24. The Noticee has contended that no adverse remarks/red flags were raised against various agencies like MMTC, FCI, NAFED, etc. who had executed trades as clients on the NSEL platform and who were also purported to be closely associated with NSEL and that Noticee's dealings on the NSEL trading platform should also be considered on similar lines. In this regard, I note that proceedings have been proposed and initiated against several entities based on the trades executed by them in the paired contracts on the NSEL platform and the accompanying facts

and circumstances of their respective cases, solely relying on the material available on record. Since the Noticee was one such entity that had facilitated the trading in paired contracts on behalf of its clients, the present proceedings have been initiated against it. The extent of the role of the Noticee has been clearly brought out in the SCNs issued to it and as a quasi-judicial authority, the issue before me is to adjudicate the gravity of the allegations in the SCNs and arrive at a finding. Thus, the contention of the Noticee is devoid of any merit.

25. The Noticee submitted that the brokers had no role to play in NSEL deciding to launch the alleged 'paired contracts' and that it was a bonafide belief that the alleged contracts were in compliance with the conditions of GOI notification. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the Noticee when these products were first offered by NSEL. With the material on record, it is further clear that any prudent person (including the Noticee) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in the State of Maharashtra vs. 63 Moons Technologies Ltd. The Noticee was expected to do due diligence on the products which it offered for trading to its clients. An assumption as to the legality of 'paired contracts' clearly shows that the Noticee failed to do adequate due diligence. The Notification regarding approval of contracts permitted on NSEL was in public domain. Thus, I find that Noticee failed to perform basic due diligence of the contracts offered vis-à-vis the conditions specified in the aforesaid Notification. For these reasons, the Noticee is found to have violated Clause A (1), A (2) and A (5) Code of Conduct of Stock Brokers Regulations.

26. The Noticee has contended that SEBI Regulations cannot be made applicable retrospectively and that the amendment of the criteria for fit and proper person laid out in Schedule II of the Intermediaries Regulations took effect from November 17, 2021 which is much after the initiation of the present proceedings. It is a settled position of law that every registered intermediary in the securities market is

required to fulfil all the conditions of its registration at all points of its functioning including any additional criteria statutorily provided for, from time to time. Else, there would arise an anomalous situation where an entity that has obtained a certificate of registration after fulfilling the said criteria would fail the test after a period of time and yet continue to function in the securities market despite not fulfilling the required criteria. On this premise, it can be said that the requirement of being a 'fit and proper' person, is a continuing 'eligibility criteria'/ statutory requirement, which ought to be satisfied by all registered entities at all points of time. This condition is not a one-time condition applicable only at the time of seeking registration. Rather, the provisions governing the grant of registration provides that this is a condition which every registered intermediary is required to fulfil, on a continuous basis as long as the entity remains associated with the securities market as a registered intermediary. Therefore, the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which an entity remains operational in the securities market as a registered intermediary and for this reason, the principles of estoppel do not apply to the instant case of the Noticee. If the continued applicability of the fit and proper criteria to its functioning is challenged, there would exist a market where the overall interest of the investors would stand compromised. In case, pursuant to the grant of registration by SEBI, any evidence comes to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within its powers to examine the 'fit and proper' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the 'fit and proper person' criteria while granting the Certificate of Registration, in 2015, such an intermediary can still be assessed on being fit and proper at a later date. I therefore find no merit in the said submission of the Noticee.

27. The Noticee has further contended that Chapter II of Intermediaries Regulations has not been notified and thus, applicability of Schedule II is untenable and unsustainable. I note that Noticee has been granted certificate of registration under SEBI Stock Brokers Regulations. Regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant

has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations and Regulation 9(b) of the Stock Brokers Regulations mandates a registered stock broker to abide by the rules, regulations and bye-laws of the stock exchange which are applicable to it. In terms of Regulation 9(f) of the Stock Brokers Regulations, a registered stock broker is required to abide by the Code of Conduct as specified in Schedule II of the Stock Brokers Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

28. I note that Schedule II of Intermediaries Regulations is relied upon for the purpose of granting certificate of registration under Stock Brokers Regulations and Regulation 5 of the Stock Brokers Regulations has been notified. Thus, as and when any of the 'fit and proper' criteria change, every registered entity is required to comply with the revised criteria, including as in this instance, the criteria as revised vide the amendment in November 2021. The requirement is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria provides it to be a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the securities market as a registered intermediary. It is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market at any point of time.

29. The parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lay down a list of disqualifications which, *inter alia*, include the following:

“(1).....

(2).....

(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:*

(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;
.....”

30. As detailed in the SSCN, FIR was registered by the EOW with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPC on September 28, 2018. However, I note that the FIR filed by SEBI has not been challenged, quashed or stayed by any competent court *qua* the Noticee till date. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations are unambiguously clear and no exemption from such criteria has been provided. Once the disqualification is triggered, the ‘fit and proper’ person criteria is open for determination by SEBI. The disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations has also been triggered *vis-à-vis* the Noticee.

31. Thus, by virtue of its conduct, trades and being a member of NSEL, the Noticee acted as an instrument in promoting and/or dealing in ‘paired contracts’ which were in the nature of financing transactions (as held by the Hon’ble Supreme Court of India referred *supra*). The Noticee has contended that it is not in close association with NSEL and mere facilitation of trades on NSEL cannot amount to close association with NSEL. The present proceedings are not solely based on the Noticee’s relationship with NSEL as a trading member. Other factors such as the filing and continued pendency of FIR, facilitation of trading by the Noticee in paired contracts (which were found to be in violation of the 2007 Exemption Notification by the Hon’ble Supreme Court), and other material have been taken into account. By providing a platform for trading to its clients and by providing access for taking exposure to such ‘paired contracts’, the Noticee exposed its clients to the risks involved in trading in a product that did not have regulatory approval.

32. I also note that the Noticee has submitted that at the request of its clients, it facilitated their participation in paired contracts on NSEL and there are no complaints with respect to the Noticee. I am of the view that any argument on the lines that the clients demanded such access to the ‘paired contracts’ after doing

their own research and after investing their own money or that they hold no grievance with the Noticee who merely executed the contracts without soliciting, does not lessen the extent of its obligations. The lack of diligence required to be performed by an intermediary of prudence is indicative of lack of competence and integrity while acting as a registered intermediary. Undoubtedly such activities of the Noticee not only seriously jeopardized the integrity of market and that of its investors but also SEBI's belief in the reputation, character, competence and integrity of the Noticee and other brokers which compelled SEBI to file the criminal complaint against it as also against several other brokers. Thus, the Noticee has also attracted disqualification under Clause 3(b)(i) of the amended provisions of Schedule II of the Intermediaries Regulations on account of this complaint filed by SEBI and the FIR that was registered by the EOW based on the said complaint of SEBI, and the complaint remains pending.

33. Here, I deem it appropriate to deal with the submission of the Noticee wherein it has relied on the decision of the Hon'ble SAT in the matter of Almondz Global Securities Limited Vs. SEBI, to submit that SEBI must be absolutely certain that by not declaring the Noticee as not 'fit and proper' person, irreparable harm would be caused to the securities market as the said declaration is an ultimate punishment and must be used sparingly. I am of the considered view that the said decision cautions SEBI to use the power to declare an entity as not 'fit and proper' sparingly and only when it is certain that not doing the same would cause irreparable damage to the securities market. In the present case, the conduct, integrity and reputation of the Noticee has been found wanting on account of its involvement in trading of "paired contracts" on the NSEL platform and also for the reason that since SEBI has filed a complaint on the basis of which an FIR dated September 28, 2018 has been registered by EOW, which has not been challenged, quashed or stayed by any competent court *qua* the Noticee till date, the disqualification provided in paragraph 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked.

34. Noticee has relied on the decision of SEBI in the matter of Sharekhan Commodities Pvt. Ltd. ('**Sharekhan**') wherein proceedings were disposed of in light of surrender

of certificate of registration. I note that in the said matter, the surrender application of Sharekhan was approved by SEBI in May 2018 and action against Sharekhan was approved in September 2018. However, in the instant matter, as per the information available on record, the Noticee has only filed the said application for surrender of membership and as on date, the same has not been approved and Noticee continues to be a member of the exchanges as well as a SEBI registered stock broker. I therefore find no merit in the said submission of the Noticee.

35. In view of the above, I note that the Noticee has traded in “paired contracts” on behalf of its clients on NSEL. The execution of such paired contracts show participation of the Noticee in the said scam which raises questions regarding the integrity, honesty, ethical behaviour, reputation, fairness and character of the Noticee. Therefore, this leads to the conclusion that since the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations, the Noticee does not fulfil the “fit and proper” criteria. Once an entity is declared to be not in compliance with the “fit and proper” criteria, in the interest of the securities market, such an entity should not be allowed to continue to act as an intermediary till the time it does not regain its “fit and proper” status. In this context, it is pertinent to mention that in several scenarios, a defect which is the reason for holding an intermediary as not “fit and proper” is curable at the hands of the intermediary, while in certain scenarios it is not.

36. The facts and circumstances along with other material available on record clearly leads me to the conclusion that the Noticee has not satisfied the “fit and proper person” criteria specified in Schedule II to the Intermediaries Regulations. I have also taken into consideration orders previously passed by SEBI in the context of similar facts and circumstances, namely, R. Wadiwala Commodities Private Limited (order dated September 26, 2023) and Adroit Commodities Services Pvt. Ltd. (order dated September 01, 2023), wherein the registration of the said entities has been suspended for 3 months or till the said entity is acquitted by an order of a Court, whichever is later.

37. Considering all of the above, while I find that the Noticee does not satisfy the “fit and proper person” criteria specified in Schedule II of the Intermediaries Regulations, I do not agree with the measure recommended by the DA.

E. ORDER

38. In view of the facts and circumstances of the case and the conclusions arrived at discussed above, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with regulation 27 of the Intermediaries Regulations, hereby suspend the certificate of registration (bearing registration no. INZ000087536) of the Noticee i.e. Master Commodity Services Limited, for a period of three months from the date of this Order or till such time an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is later.

39. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph no. 38.

40. The Order shall come into force with immediate effect.

41. This Order is without prejudice to the criminal complaint filed by SEBI in the NSEL matter and/ or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.

42. A copy of this Order shall be served upon the Noticee and all recognized stock exchanges and depositories for necessary compliance.

ANANTH NARAYAN G.

DATE: DECEMBER 14, 2023

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA