

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:

K R Choksey Commodity Brokers Pvt. Ltd.

SEBI Registration No: INZ000032234

In the matter of National Spot Exchange Limited (NSEL)

A. BACKGROUND

1. K R Choksey Commodity Brokers Pvt. Ltd. (hereinafter referred to as "**KRC**" / "**Noticee**") is registered with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") as a stock broker bearing SEBI registration no. INZ000032234 in the commodity derivative segment. KRC was earlier a member of National Spot Exchange Limited (hereinafter referred to as "**NSEL**").
2. The present proceedings originate from the Enquiry Report dated April 30, 2019 (hereinafter referred to as "**DA Report**"), submitted by the Designated Authority (hereinafter referred to as "**DA**") in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as "**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 DA Report, recommended that the registration of KRC as a commodities derivatives broker may be cancelled. Pursuant to the same, a Post Enquiry Show Cause Notice dated June 28, 2019 (hereinafter referred to as "**SCN**"), along with the copy of the aforesaid DA Report was issued to the Noticee. Subsequently, a second show cause notice dated September 20, 2019 providing there with the copies of letter dated December 30, 2014 of DEA, Ministry of Finance and a copy of the decision of the Hon'ble Bombay High Court dated August 22, 2014 was also issued to the Noticee. A personal hearing in the matter

was concluded on October 28, 2021 before the Competent Authority. After taking into consideration the facts and circumstances of the case and the submissions of the Noticee, the Competent Authority vide Final Order dated February 18, 2022, cancelled the certificate of registration granted to the Noticee.

3. 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 (hereinafter referred to as "**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 (hereinafter referred to as "**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..."

4. The Noticee also, aggrieved by the Final Order dated February 18, 2022, passed by the Competent Authority, appealed before the Hon'ble SAT and the Hon'ble SAT vide its Order dated July 20, 2022 remitted the matter back to SEBI for deciding the matter afresh in light of its observations made in the Order dated June 9, 2022, as noted above. The relevant excerpt from the decision of the Hon'ble SAT Order dated July 20, 2022 is hereunder:

"Thus, for the reasons stated in our order dated June 9, 2022 in Appeal no. 214 of 2022 and other connected companion appeals, the impugned orders passed by the TM against the brokers / appellants in the present appeals cannot be sustained and

are quashed. The appeals of the brokers are allowed. The matters are remitted to the WTM to decide the matter afresh in the light of the observation made in our order dated June 9, 2022 in accordance with law after giving an opportunity of hearing to the brokers....”

B. SHOW CAUSE NOTICE, REPLY AND HEARING

5. In view of the above, it was felt necessary to furnish certain additional documents / material to the Noticee before proceeding further in the present proceedings. Accordingly, a supplementary SCN dated February 27, 2023 (hereinafter referred to as “**SSCN**”) was served on the Noticee along with the following documents:
 - (i) Copy of SEBI complaint dated September 24, 2018 filed with Economic Offences Wing (hereinafter referred to as “**EoW**”);
 - (ii) Copy of FIR dated September 28, 2018 filed by SEBI under Section 154 of Criminal Procedure Code, 1973 (hereinafter referred to as “**CrPC**”); and
 - (iii) Amended Schedule II of Intermediaries Regulations;
 - (iv) Copy of chargesheet dated December 02, 2022 filed by EoW.
6. The Noticee, in response to the SSCN, informed vide its letter dated March 20, 2023 that it had filed a settlement application in the matter. SEBI vide an email dated June 2, 2023 informed the Noticee that its settlement application has been rejected. Thereafter, the Noticee was granted an opportunity of hearing on August 23, 2023. Noticee vide its letters dated August 16 and 18, 2023 while acknowledging the scheduled hearing, requested to adjourn the hearing to file written submissions and had also requested few documents in the matter including an opportunity of inspection. Vide an email dated August 17, 2023, Noticee was provided certain documents in the matter and was also granted an opportunity of inspection on August 21, 2023. Post inspection, the Noticee was granted another opportunity of hearing on September 13, 2023.
7. Noticee filed its written submissions dated September 4, 2023, which has been summarized and examined under the “Consideration of Issues and Findings” part of the Order. Noticee vide its letter dated September 8, 2023 again requested to adjourn the scheduled hearing, which was not acceded to. On the day of the scheduled hearing the authorized representatives (hereinafter referred to as “**ARs**”)

of the Noticee appeared before me and reiterated the submissions made in the reply dated September 4, 2023. The ARs also requested for additional 2 weeks' time to submit post hearing submissions. The Noticee filed its post hearing submissions vide its letter dated September 27, 2023, which is on the similar lines as that of its initial reply.

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:

- (i) 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.
- (ii) 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.

- (iii) On February 6, 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.
- (iv) 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.
- (v) 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:
 - 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
- (vi) NSEL issued a circular on July 31, 2013 suspending its spot exchange operations.
- (vii) 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 (hereinafter referred to as "**MPID Act**").

(viii) After analyzing 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 (hereinafter referred to as “**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:

- (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 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.
- (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 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.

- (ix) On September 19, 2014, Ministry of Finance, Government of India, issued a notification withdrawing the exemption granted to NSEL *vide* the 2007 Exemption Notification.
- (x) 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 Rs. 5600 Crores.
- (xi) 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.

(xii) *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.*

(xiii) *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.*

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

(xv) 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 (hereinafter referred to as "**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....."

(xvi) 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), 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."

- (xvii) 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. Before moving forward to examine charges and the evidence available on record, it would be appropriate to 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 Brokers Regulations read with Schedule II of Intermediaries Regulations; and (ii) regulation 9(b), 9(f) read with clauses A(1), A(2) and A(5) of Schedule II of 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.

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.

10. 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 Noticee has violated the conditions stipulated in the 2007 Exemption Notification and consequently also the provisions of the FCRA. Therefore, it was alleged in the SCN that 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, FIR dated September 28, 2018 and chargesheet dated December 02, 2022, 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 and EoW as well as observations / findings against the Noticee in the DA Report dated April 30, 2019, 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.
11. I find it appropriate to first deal with the preliminary contentions raised by the Noticee.
12. Noticee has submitted that as the subject matter of legality of the amended Regulations / provisions of Intermediaries Regulations are still *sub-judice* before the Hon’ble Bombay High Court (*V. Rajamani and Ors. vs. SEBI*), the proceedings may be kept in abeyance till the disposal of the matter by the Hon’ble High Court. In this regard, it is pertinent to note that on perusal of the chargesheets filed by EoW in the

NSEL matter, SEBI had noted that certain individuals, who were named in it, were also functioning as Directors / Promoters / MDs / CEOs in the associated broking firms of the commodity broking firms, who have been chargesheeted in the NSEL matter. Since such individuals, common to the commodity brokers and associated broking firms, had been chargesheeted by EoW in December 2022, SEBI issued the impugned notices / communications dated June 19, 2023 to the associated broking firms seeking information on the manner of compliance of said associated broking firms with clause 6 of Schedule II of the Intermediaries Regulations which provides that disqualification of an associate or group entity of the 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 intermediary unless the intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter. The proviso to the said clause (6) however provides 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 and that the intermediary shall also ensure that such person does not exercise any voting rights and also divests its holding within 6 months from the date of disqualification, failing which the 'fit and proper person' criteria may be invoked against the intermediary. In this background, after hearing brief arguments from both sides, Hon'ble Bombay High Court, vide the aforesaid Order, *inter alia*, directed as follows: -

"...2. Although we have heard the parties for some time, we accept Mr Dada's statement on behalf of SEBI that given the pendency of the matters before the Court and the challenges that are raised, SEBI is not presently insisting on compliance within 15 days with the requirements of paragraph 4 of the notice at page 122 in Writ Petition (Lodging) No. 18014 of 2023. We note the statement. Mr Dada's statement is clearly on a without prejudice basis..."

Thus, it is clear that the subject matter of the said petitions has nothing to do with the issue under present proceedings, which is solely to determine the 'fit and proper' status of the Noticee. Accordingly, I do not find merit in the submission of the Noticee.

13. Noticee has argued that during the relevant time, SEBI was not the Regulator of NSEL. Therefore, SEBI ought not to initiate any action under regulation 23 of the Intermediaries Regulations.

14. In relation to the above, I note that:

- (i) 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.
- (ii) The Noticee had applied for a certificate of registration as a broker and was granted a certificate of registration by SEBI. Therefore, the Noticee had become a SEBI registered intermediary 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".
- (iii) 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, SEBI and EoW, i.e., filing of the criminal complaint to the EoW under Section 154 of CrPC and filing of chargesheet dated December 2, 2022 by EoW. 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.

- (iv) 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 SEBI not being the Regulator of NSEL at the relevant time, is without merit.

15. Noticee has submitted that Enquiry Officer did not grant an opportunity of personal hearing to the Noticee. It is noted from the Intermediaries Regulations that prior to the amendment of the regulations 25 and 26 of Intermediaries Regulations, the regulations did not provide for an opportunity of hearing to the Noticee before the Enquiry Officer. Therefore, the submission of the Noticee cannot be accepted.
16. Noticee has contended that it has not been provided with all the relevant and vital materials and therefore, SEBI is requested to provide the requisite details and documents to the Noticee to file a comprehensive reply. I note that sub-regulation (4) of regulation 25 of the Intermediaries Regulations specify that 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. On a perusal of the material made available on record, I find that the following documents were provided to the Noticee: copy of the relevant FMC Order with annexures, copy of EoW Report, copy of the

Notification issued by the Ministry of Consumer Affairs dated June 5, 2007, letter dated December 30, 2014 of DEA, Ministry of Finance, SIT email, copy of the Grant Thornton Report with its Annexures, FMC letter dated January 16, 2015, SEBI letters dated July 9, 2018 and September 28, 2018, NSEL complaints dated March 17 and 24, 2015, SEBI complaint dated September 24, 2018, FIR dated September 28, 2018, chargesheet dated December 2, 2022 and trade details. Thus, I am of the view that all the documents referred and relied upon by SEBI for levelling charges against the Noticee have been provided to the Noticee along with the SCNs and SSCN. Thus, I find that submission of the Noticee in this regard holds no merit.

17. It has been contended by the Noticee that in view of the additional documents referred to and relied in the SSCN and in view of the additional facts and circumstances, the matter should be remitted back to the DA in terms of regulation 27(3) of the Intermediaries Regulations. I find that the said contention, is totally misplaced as the Hon'ble SAT while remanding the matters to SEBI had issued the directions to adjudge the matters in light of the decision of the Hon'ble SAT in order dated June 9, 2022. The Hon'ble SAT while remanding the present matter back to SEBI has, *inter alia*, held as under:

"... The appeals of the brokers are allowed. The matters are remitted to the WTM to decide the matter afresh in the light of the observations made in our order dated June 9, 2022 in accordance with law after giving an opportunity of hearing to the brokers".

Here, I deem it appropriate to refer to the aforementioned SAT Order dated June 9, 2022 wherein the Hon'ble SAT has, *inter alia*, held that:

"...It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by 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..."

In view of the above, the Hon'ble SAT had already granted permission to SEBI to issue SSCN which was complied with by SEBI in this regard and therefore the contention of the Noticee does not hold merit.

18. Prior to moving forward, it is pertinent to refer to June 2022 SAT Order passed by Hon'ble SAT wherein it set aside the impugned orders of WTM concerning similar facts and evidence as the present case. I find it appropriate here to briefly delve into the grounds on which the impugned orders of SEBI were set aside by Hon'ble SAT leading to the issuance of SSCN. The grounds are as follows:

- (i) The observations of the Hon'ble Bombay High Court in the matter of *63 Moons vs. Union of India* (Writ Petition No. 2743 of 2014 dated December 4, 2017) cannot be relied upon as the said judgement has been set aside in appeal by the Hon'ble Supreme Court in the Merger Petition judgment.
- (ii) The observation from the order dismissing the Writ Petition filed by NSEL against the invocation of the MPID Act in *NSEL vs. State of Maharashtra and Ors.* (Writ Petition No. 1403 of 2015 dated October 01, 2015), cannot be relied upon, as in a subsequent Writ Petition moved by 63 Moons Technologies Ltd., in Writ Petition No. 1181 of 2018, a Division Bench of the Hon'ble Bombay High Court observed that the *prima facie* observations made in its earlier order were not binding and the same was observed since further investigation was in process at the relevant stage.
- (iii) The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*, cannot also be relied upon as such observations were limited to the fact as to whether the bail should be granted or not.
- (iv) Reliance on the SFIO Report was misplaced. The report only directs EoW / Police to initiate appropriate proceedings against NSEL and its Directors / Promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an order dated July 29, 2019, which was challenged due to jurisdiction before Hon'ble Bombay High Court. The Hon'ble Bombay High Court by an order dated January 15, 2020 passed an

interim order staying the effect and operation of the impugned order dated July 29, 2019.

- (v) Reliance placed on decisions of the Hon'ble Tribunal in the matter of *Jermyn Capital vs. SEBI* and *Mukesh Babu Securities vs. SEBI* is misplaced as decisions in the said matters are distinguishable on facts. *Jermyn Capital* was held to be in relation to an *Interim Order* passed by SEBI, and the Hon'ble Tribunal was of the view that the criteria for passing an *ad Interim Order* are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of certificate of registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the said matter a criminal complaint was filed against the chairman of the company. The Hon'ble Tribunal noted that with respect to the appellants, there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- (vi) Regarding close association of the appellant with NSEL, forensic report which was made at the behest of SEBI has exonerated the appellant on this charge. This fact has not been considered by the WTM while holding the appellant to be closely connected with NSEL. There is no finding in the impugned cases indicating that the appellants have any control directly or indirectly over NSEL and, therefore, the question as to whether the appellant is a close associate of NSEL has not been considered in the right perspective.
- (vii) In the impugned cases, the application for grant of registration certificate has been rejected without specifying how long the rejection of application would continue. Such rejection cannot continue indefinitely and if an application is rejected, a period should be prescribed within which the broker cannot apply for grant of a fresh registration certificate but after the expiry of the period he could file such an application.

19. Now, I proceed to deal with the allegation levelled against the Noticee.

20. Noticee has submitted that at the relevant time, the transactions were carried out in due compliance of the bye laws, rules, regulations and circulars as issued by NSEL and no grievance of any nature was raised against the Noticee by NSEL or FMC or by any of the clients for whom transactions were carried out at NSEL. Further, NSEL had introduced the concept of alleged "paired contracts" and not the broker members of the NSEL. The Noticee had no role to play in NSEL deciding to launch such alleged paired contracts. With respect to the aforesaid submissions of the Noticee, I am of the view that, the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or 'ignorance of law is no excuse' becomes applicable in the situation. It is noted 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 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. 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 which were portrayed as spot contracts in commodities. Since trading in "paired contracts" was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said 2007 Exemption Notification cannot be claimed. Therefore, not adhering to the terms of the 2007 Exemption Notification and attempting to deflect the responsibility to NSEL and to contend that no grievance of any nature was raised by NSEL or FMC or by any of

the clients, is misplaced, as the primary onus of diligence enjoined on an intermediary, has not been undertaken by the Noticee.

21. It has been argued by the Noticee that at the relevant time, based on the information available with the Noticee and in the public domain, it could never have been held that alleged paired contracts, which were so widely traded on a national level government approved Exchange and regulated by the FMC, could ever be illegal or can be in violation of any conditions of the GoI Notification dated June 5, 2007. Further, FMC was expected to play a very proactive role by monitoring trades at NSEL platform and its statutory compliance requirements in terms of GoI notification dated June 5, 2007. Thus, their silence is the root cause of the subject matter of present proceedings.

In relation to the above submissions, I note that the the long leg of the paired transaction involved contracts being settled on a T+25 or T+36 basis, whereas the exemption granted by the DCA permitted NSEL to only offer spot delivery contracts. When provisions of law specify certain acts to be done in a particular manner, the same is required to be honoured in letter and spirit. Law does not provide any exception to any person to perform such acts that are not permissible under an extant legal framework as per his whims and fancies. Therefore, if an exemption is granted in respect of 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 compliance with certain conditions, then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. The 2007 Exemption Notification was available in the public domain and even basic due diligence would have shown that the paired contracts were *per se* in violation of the said notification. Therefore, for the Noticee to state that there was nothing in public domain and the fact that paired contracts were traded on the NSEL platform there could nothing be amiss, shows that the Noticee had failed to examine the basic nature of the product and also failed in understanding the source of powers relied upon by NSEL for selling such products which other Exchanges were not offering. Thus, the Noticee failed to conduct proper and effective due diligence on these aspects of “paired contracts” which were not essentially spot contracts. Hence, the Noticee cannot evade its

responsibility in execution of the paired contracts by stating that there was nothing in public domain or there was lack of action on the part of FMC.

22. The submission of the Noticee that the entire eco-system of the NSEL was similar to all other Exchanges and there were no "red flags" or anything else to arouse any suspicions about NSEL's legitimacy and *bona fides* is untenable. The fact of the matter show that the actions of NSEL were not *bona fide* as it itself was advertising such contracts as an alternative to fixed deposits and the return offered was fixed (e.g. 16%) across all commodities irrespective of the nature of the contract or the duration. The 2007 Exemption was available in public domain and the fact that the contracts were structured in a manner which ensured that the buyer always made pre-determined profit, would make any prudent person (including the Noticee) come to the conclusion that what was being offered were not spot contracts in commodities. Rather it had trappings of a financial product which offered fixed and assured returns, as has been observed by the Hon'ble Supreme Court in the *State of Maharashtra vs. 63 Moons Technologies Ltd.* Therefore, the aforesaid submission of the Noticee is without any merit.
23. It has been contended by the Noticee that the first leg of the alleged paired contract was always a "purchase". Hence, there is no question of a short sale. I find it relevant to refer to the finding of Hon'ble Supreme Court in the Merger Petition, wherein it inter alia held that:

"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 Eseries contracts), at least 46% of the turnover of NSEL was made up of such paired contracts....."

Thus, it is clear that on NSEL (other than E-series contracts) the proportion of paired contracts as a percentage of total trades amounted to 99% in 2013. It is not the Noticee's case that the transactions facilitated by it for its clients were only E-series contracts. Accordingly, by inference, transactions on NSEL facilitated by the Noticee, could not have been anything but "paired contracts" apart from few E-series contracts. Further, the Noticee has neither demonstrated by way of illustration as to

how the trades executed by its clients in contracts other than E-series are not “paired contracts”.

The Noticee has further submitted that 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. I note that the submission of the Noticee is devoid of any merit considering the nature of “paired contracts”. As noted 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) *“‘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).”* Further, as noted from the Grant Thornton report (paragraph 1.2) not only the two set of contracts were always back to back and between the same parties, the settlement price of the longer trade is higher in the second contract as compared to the price as per the initial contract. As illustrated in the Grant Thornton report, the buyer of the initial contract (short term) gets an allocation letter with a warehouse receipt number based on which it can either trade the goods or take the delivery. However, since on the same date the two parties enter into a long term contract for the same goods, the buyer of the initial contract sells the goods back to the seller of the initial contract at a higher price.

24. Noticee has submitted that there was never any default in delivery obligations for any of its contracts. Noticee had fulfilled its obligations on execution of buy / sell contracts. It is noted that the issue, which is germane to the present proceedings, is the participation of the Noticee in the paired contracts that has a bearing on the Noticee’s ‘fit and proper person’ status. Therefore, whether or not, the Noticee has default in its delivery obligations for any of its contracts, is not material to the present proceedings.
25. Noticee has contended that except member/ broker relation with NSEL, Noticee has no other connection or association with NSEL in any manner whatsoever. In this regard, I note that for the clients, the face of the NSEL and the “paired contracts” was the Noticee itself and the “paired contracts” could not have been executed in

large volumes, across several clients without the actions and facilitation of the Noticee. 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*). I find that such association of the Noticee in “paired contracts” has seriously questioned the reputation, fairness, honesty, integrity and character of the Noticee in the securities market.

26. I also note that the Noticee has submitted that all features of the contract were formulated and approved by NSEL. Besides the entire product cycle, including the verification of stocks in the warehouses was the responsibility of the NSEL, which was providing electronic trading platform / Exchange mechanism for this purpose. At the relevant time, NSEL used to allocate warehouse receipts through issuance of allocation letter to the concern buyer and the same were disseminated on the NSEL website. Therefore, the Noticee has not executed contract that violate the concept of spot market for trading in commodities. I am of the view that any argument on the aforesaid lines does not lessen the extent of Noticee’s obligations. I note that when provisions of law specify certain acts to be done in a particular manner, the same is required to be honoured in letter and spirit. Law does not provide any exception to any person to perform such acts that are not permissible under an extant legal framework as per their whims and fancies. As noted above, exemption was granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from the operations of the provisions of the FCRA subject to compliance with certain conditions, which in the instant matter was not complied with. 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. Therefore, the fact that the contract were formulated by NSEL or NSEL used to allocate warehouse receipts, neither diminishes the responsibility of the Noticee nor make the said trades genuine or legal, as has been claimed by the Noticee.

27. Noticee has argued that subsequent to merger of FMC with SEBI, Noticee's registration was duly permitted by SEBI to be converted into a valid registration, sans any conditions. Under the said circumstances having granted and / or accepted the registration, issuing order of its cancellation as not a 'fit and proper person' for an allegation well known to SEBI would be contrary to the established principles of equity, fairness, justice and estoppel.

In this context, as noted above, the Noticee is holding a certificate of registration granted by SEBI. In order to continue to hold such certificate of registration from SEBI, the Noticee is also required to satisfy the conditions of eligibility, which *inter alia* included continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper person is not a one-time condition that is applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is 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. Therefore, the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the Noticee remains operational in the securities market as a registered intermediary. 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 the 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, such an intermediary can still be assessed on being fit and proper at a later date.

28. Noticee has further contended that the Intermediaries Regulations has been amended w.e.f. November 17, 2021 to insert 3(b) (i) & (ii). Prior to the said amendment, there was no reference of criminal complaint. The FIR was registered on September 28, 2018 (i.e. prior to amendment) and chargesheet dated December 02, 2022 is filed for alleged trades executed from 2011 – 2013. In view thereof, the said Regulation is not applicable since chargesheet pertains to cause of action of

period 2011-2013 and retrospective application of the same would be in gross violation of principles of natural justice.

As held in preceding paragraph, the 'fit and proper' person criteria, being a continuing requirement under the Intermediaries Regulations ought to be complied with at all times as long as an entity desires to remain associated with the securities market as a registered intermediary. Furthermore, as and when the 'fit and proper' criteria changes, the Noticee will be required to comply with the revised criteria, and in this instance, criteria as revised vide the amendments in November 2021, which the Noticee has to mandatorily comply with.

29. The Noticee has argued that the various orders, judgments / Reports passed / issued by various regulatory authorities as referred in the Enquiry Report cannot be considered and observations in respect of the same should be quashed and set aside. Considering the findings of Hon'ble SAT with respect to the above in the June 2022 SAT Order, I find that the said documents are not relevant for consideration in the present matter.
30. It has been submitted by the Noticee that the allegation of SCNs have been quashed by Hon'ble SAT in its order dated June 9, 2022, the SCNs issued against Noticee ought to be disposed without issuing any directions. In this regard, I note that the SSCN issued pursuant to the June 2022 SAT Order takes into consideration additional material available on record. Further, Hon'ble SAT while remanding the present matter has kept all the issues open and has directed to decide the matter afresh. Therefore, the aforesaid submission of the Noticee is untenable.
31. The Noticee has submitted that the amended provisions are punitive in nature and impinge upon the intermediaries fundamental rights as enshrined under Articles 14, 19(1)(g) and 21 of the Constitution of India, 1950 and the constitutional right enshrined under Article 300-A of the Constitution of India, 1950. It is also violative of the basic principles of Indian criminal jurisprudence that an accused is presumed to be innocent until proven guilty. In relation to this submission, I note that an FIR has been registered with the MIDC Police Station, Mumbai, *inter alia*, against the Noticee on September 28, 2018 is pending as on date and is subsisting and a chargesheet dated December 02, 2022 has been filed by EoW *qua* the Noticee.

Further, 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. Due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field till date which is binding upon SEBI, and arguments to the contrary as advanced by the Noticee are not maintainable. Once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. It is, therefore, noted that the disqualification provided in paragraph 3(b) (ii) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the Noticee.

32. It is submitted by Noticee that no action has been taken against MCX that had initially promoted NSEL. SEBI has not taken any action against the defaulting brokers and proceedings are relentlessly being pursued against non-defaulting brokers like the Noticee. No action has also been taken against insurance companies, auditors, banks etc. It will be relevant here to quote the Order of the Hon'ble Supreme Court in the matter of *Union of India and anr. vs. International Trading Co. and anr.* (AIR 2003 SC 3983) dated May 7, 2003, wherein it was held as follows:

"...Even if hypothetically it is accepted that a wrong has been committed in some other case by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish the strength of their case on some other basis and not by claiming negative equality..."

The aforesaid Order clearly shows that the submission of the Noticee is devoid of any merit. Even otherwise, SEBI in its administrative capacity has discretion to launch action against entities. The mere fact that an action has not been initiated against a particular entity, same does not mean that it cannot be initiated against another entity. The entity to whom the notice has been issued has to answer the said notice on its own merits.

33. In view of the above, I note that the Noticee has traded in "paired contracts" on behalf of its clients on NSEL as well as has executed proprietary trades. The execution of such paired contracts shows participation of the Noticee in the said scam which raises questions regarding the integrity, honesty, ethical behavior, reputation,

fairness and character of the Noticee. The Noticee has also attracted clause 3(b)(ii) of Schedule II to the Intermediaries Regulations which states that pendency of a chargesheet against a person is a ground that SEBI may take into consideration for determining whether any person is a “fit and proper person”.

34. 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.
35. 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.
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. Hence, the continuation of the Noticee as a registered broker will be detrimental to the interest of the securities market. Therefore, activities of the Noticee, as discussed in the preceding paragraphs, as a registered broker requires that appropriate measure

should be taken against the Noticee to prevent recurrence of such wrong doings which is detrimental to the interest of the securities market.

E. CONSIDERATION OF THE RECOMMENDATION OF THE DESIGNATED AUTHORITY

37. In the DA Report, the DA has, after determining that the Noticee is not 'fit and proper person', recommended that Noticee's registration may be cancelled.
38. In this regard, the facts and circumstances in the instant matter lead to the conclusion that since the Noticee also attracts the disqualification provided in paragraph 3(b)(ii) under the amended Schedule II of the Intermediaries Regulations, the Noticee does not fulfil the 'fit and proper person' criteria.
39. 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 and a chargesheet has been filed by EoW which is pending. The disqualification provided in paragraph 3(b)(ii) under the amended Schedule II of the Intermediaries Regulations stands invoked.
40. Considering the above, the question that now arises for determination is whether the Noticee registration may be cancelled as recommended by the DA or whether it should be suspended for a specific period. Given the peculiar facts and circumstances of the case and the fact that chargesheet filed by EoW is pending, I am of the considered view that a direction of cancellation of certificate of registration of the Noticee would be appropriate to the violations brought out in the present case.

F. ORDER

41. 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) read with Section 19 of the SEBI Act and regulation 27 of the Intermediaries Regulations, cancel the Certificate of Registration (bearing no. INZ000032234) of K R Choksey Commodity Brokers Pvt. Ltd.

42. The Noticee shall, after receipt of this Order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 41 above.
43. Notwithstanding the direction at paragraph 41 above, the Noticee shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this Order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the Noticee shall transfer the funds and securities of such clients to another broker registered with SEBI within a period of next 15 days thereon, under advice to the said clients.
44. This Order is without prejudice to the proceedings pending in pursuance of the chargesheet filed by EoW 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.
45. A copy of this Order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories for necessary compliance.

-Sd-

DATE: December 14, 2023

PLACE: MUMBAI

ANANTH NARAYAN G.

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA