

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In respect of

NAME OF THE NOTICEE	SEBI REGISTRATION NO.
Religare Commodities Limited	INZ000022334

In the matter of National Spot Exchange Limited

BACKGROUND

- The present proceedings originate from the Enquiry Report dated January 31, 2020 (hereinafter referred to as the **“Enquiry Report”**), submitted by the Designated Authority (hereinafter referred to as the **“DA”**) in terms of Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 as it stood at the relevant point of time prior to its amendment vide Securities and Exchange Board of India (Intermediaries) (Amendment) Regulations, 2021, with effect from January 21, 2021 (hereinafter referred to as the **“Intermediaries Regulations”**), wherein the DA, based on various factual findings and observations so recorded in the said Enquiry Report, recommended cancellation of the certificate of registration granted to Religare Commodities Limited (hereinafter referred to as **“Noticee”**). Pursuant to the same, a Post Enquiry Show Cause Notice dated February 24, 2020 (hereinafter referred to as the **“SCN”**) was issued to the Noticee alongwith the copy of the aforesaid Enquiry Report, copy of letter dated December 30, 2014 of Department of Economic Affairs, Ministry of Finance and copy of the decision of the Hon’ble Bombay High Court dated August 22, 2014 in respect of paired contracts offered on the platform provided by the National Spot Exchange Limited (hereinafter referred to as the **“NSEL”**).

2. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as the “**SEBI**”) passed five separate orders during February 2019 rejecting the applications filed by five other entities for registration as commodity brokers who were involved in NSEL matter. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as the “**Hon’ble SAT**”). The Hon’ble SAT, vide its common order dated June 09, 2022 (hereinafter referred to as “**SAT order**”), remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said order. While remanding the aforesaid SEBI orders, the Hon’ble SAT, *inter alia*, held as under:

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

3. Thereafter, the Competent Authority of SEBI allocated the present matter to me for further proceedings. In light of the aforesaid SAT order, it was felt necessary to furnish certain additional documents/ material to the Noticee and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, vide Hearing Notice dated November 10, 2022 (hereinafter referred to as the “**Hearing Notice**”), Noticee was provided an opportunity of personal hearing on November 22, 2022 along with certain additional documents/ material. Noticee was also advised to submit its response, if any, in relation to the Hearing Notice. On receipt of the Hearing Notice, the Noticee vide letter dated November 21, 2022, requested for inspection of certain documents and adjournment of the hearing. Accordingly, the hearing in the matter was rescheduled to December 9, 2022 and the relevant documents, as sought by the Noticee were also provided to it vide email dated November 24, 2022. The Noticee, vide letter dated December 8, 2022 filed its reply. On the scheduled date

of hearing, the authorised representatives of the Noticee appeared on behalf of the Noticee through video conference and made submissions on the lines of the replies submitted earlier. During the course of hearing, certain queries were raised to the Noticee and the Noticee was granted time to submit response to the said queries along with the post hearing submissions, if any. Accordingly, the Noticee, vide reply dated January 12, 2023 furnished its submissions.

4. The submissions made by the Noticee during the course of hearing and through written replies are summarized hereunder:
- (i) Allegations and averments contained in the Notice are flawed and erroneous.
 - (ii) Notice is general and vague. It does not provide any details to the allegation levied in the Notice. No material including the investigation report, enquiry report or trade details has been provided to the Noticee.
 - (iii) The Notice is silent on the aspect if the Noticee has carried out trades only on behalf of its clients or has also traded in its proprietary account.
 - (iv) It is a legitimate expectation of a stock broker that if a product is introduced by a stock exchange, 'paired contract' in this case, it must be legal and valid.
 - (v) The liability rests with either NSEL for launch of any illegal contract or the with the clients who traded in those contracts. A stock broker merely acts as an agent of the Exchange and the clients and thus, the liability for trading in the illegal contracts cannot extend to the stock brokers.
 - (vi) Reliance is placed on the decision of the Hon'ble Supreme Court in the matter of **Securities and Exchange Board of India Vs. Rakhi Trading**¹ (hereinafter referred to as "**Rakhi Trading**") and **Kasat Securities Private Limited Vs. SEBI**² (hereinafter referred to as "**Kasat Securities**") to submit that to hold a broker liable it must be proved that it knowingly participated in the illegal contracts and merely executing trades on behalf of their clients will not make the broker liable.

¹ [2018] 207CompCas 443 (SC)

² Appeal No. 27 of 2006, Decided on June 29, 2006

- (vii) To make the broker liable for violation of Stock Broker Regulations, first the clients and the stock exchange must be held liable as the mischief done by the clients is a prerequisite to prove the alleged mischief done by the Noticee.
- (viii) In terms of section 29A(2)(e), SEBI could have initiated fresh proceedings within a period of three from the date on which the FCRA was repealed and the fact that the DA has issued the Notice few days before the expiry of the aforesaid period of three years, leads to the reasonable deduction that the Notice has been issued in haste.
- (ix) SEBI does not have power and jurisdiction to regulate the spot market in India. The said contention can be corroborated by the “*Report of Expert Committee on Integration of Commodity Spot and Derivatives Markets*” which has observed that spot contracts for commodities are not within the ambit of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the “**SCRA**”) and SEBI may be made the regulating authority for the same only after necessary changes to the SCRA. SEBI cannot state that jurisdiction to try the present matter emanates from the merger of SEBI with FMC as the said merger only empowers SEBI to initiate proceedings against an entity for violation of provisions of FCRA and not for violation of the Broker Regulations and Intermediaries Regulations.
- (x) The DA has been appointed by the Whole Time Member in the present matter, which is not in accordance with regulation 24(2) of the Intermediaries Regulations, which stipulates that the DA has to be appointed by the Executive Director.
- (xi) The noticee has not been provided with the trade log and order log of the scrip/ contracts during the investigation period and in the absence of the same, it is not possible for the noticee to provide any justification for its trades whatsoever. Even the copy of the investigation report has not been provided to the noticee.
- (xii) The terms ‘*fails*’ and ‘*contravenes*’, as used in regulation 23 of the Intermediaries Regulations imply that the said provision is only applicable when the default is committed by the person after obtaining

the registration with SEBI. The noticee was granted the Certificate of Registration on February 11, 2016 implying that the noticee was a 'fit and proper' person as on date. Thus, SEBI cannot change its stance and noticee cannot be held liable for any alleged wrong committed before February 11, 2016.

- (xiii) The noticee cannot be held liable solely on the basis of trading in pair contracts, in absence of evidence showing collusion/ malice on the part of the noticee. It is a legitimate expectation of a stock broker that the products introduced by the exchange must be legal and valid and the broker cannot be suspicious of the conduct of the exchange.
- (xiv) The noticee was trading in the commodities contracts including alleged paired contracts on behalf of its clients as the said contracts were specified by the Board of NSEL for trading on Exchange.
- (xv) The liability can be fastened on either the exchange for launch of any illegal contract or on the clients for trading and the noticee cannot be held liable for merely acting as the agent of the clients and the exchange.
- (xvi) Reliance is placed upon the decision of the Hon'ble SAT in the matter of ***MJ Patel Vs SEBI***³ to submit that suspension or cancellation of certificate is not a matter which could be treated lightly and in the absence of sufficient justification supported with reasonable evidence, such action cannot be sustained.
- (xvii) Mere registration of FIR is not an adjudicatory/ conclusive stage but merely signifies that an investigation in this regard will be carried out. An FIR is nothing but a record of allegations reported by the complainant to the authorities. FIR cannot be given any weightage for determining the 'fit and proper' person status of the Noticee as it is only at investigation stage and any reliance on the FIR would be in gross violation of the principles of the natural justice.
- (xviii) The Hon'ble Supreme Court in its judgment dated April 22, 2022 in the matter of State of Maharashtra Vs. 63 Moons Technologies Limited has

³ (2002) 38 SCL 889

held that “*The two-judge Bench of this Court took note of the modus operandi through which the trading members were duped by a conspiracy hatched by a few trading members along with NSEL*” and considering the above, even the Apex Court has held that the controversy in question was devised by a few trading members along with NSEL;

- (xix) In terms of SAT order, no reliance can be placed on the observation of the Hon’ble Supreme Court in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. vs. Union of India & Others* (Civil Appeal No. 4476 of 2019 decided on April 30, 2019) (hereinafter referred to as the “**merger petition**”), as the observations therein reflect upon the character and reputation of NSEL and cannot be used to judge the character and reputation of the Noticee.
- (xx) The Intermediaries Regulations were amended with effect from November 17, 2021 and any retrospective reliance on the same would be in gross violation of principles of natural justice.
- (xxi) SEBI cannot rely upon its own complaint (dated September 24, 2018) as evidence against the Noticee.
- (xxii) Reliance is placed on the order passed by the Whole Time Member in the matter of Anand Rathi Commodities Limited (Dated November 29, 2022) to submit that a similar direction of suspension for a period of three months or till acquittal of the Noticee, whichever is earlier, would be commensurate in the present matter.

CONSIDERATION OF ISSUE AND FINDINGS

5. I have carefully perused the SCNs issued to the Noticee and the Enquiry Report, the replies filed by the Noticee and other material/ information available on record. After considering the allegations made/ charges levelled against the Noticee in the instant matter as spelt out in the SCNs and Hearing Notice, the limited issue which arises for my consideration in the present proceedings is whether the Noticee satisfies the ‘fit and proper’ person criteria as laid down under Schedule II of the Intermediaries Regulations and whether the Certificate

of Registration granted to the Noticee should be cancelled, as recommended by the DA or any other action should be taken against the Noticee.

6. Before I proceed to examine the issue *vis-à-vis* the material available on record before me, it would be appropriate to refer to the provisions of law applicable, which are alleged to have been violated by the Noticee and/ or are referred to in the present proceedings. The same are reproduced below for ease of reference:

SEBI Act, 1992

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, 1992

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;

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;

Intermediaries Regulations, 2008

SCHEDULE II

***SECURITIES AND EXCHANGE BOARD OF INDIA (INTERMEDIARIES)
REGULATIONS, 2008***

[See regulation 7]

(1) *The applicant or intermediary shall meet the criteria, as provided in the respective regulations applicable to such an applicant or intermediary including:*

- (a) the competence and capability in terms of infrastructure and manpower requirements; and*
- (b) the financial soundness, which includes meeting the net worth requirements.*

(2) *The 'fit and proper person' criteria shall apply to the following persons:*

- (a) the applicant or the intermediary;*
- (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and*
- (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly:*

Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfil 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 -clause s (b) and (c) of clause (2) comply with the 'fit and proper person' criteria."

Recommendation of action

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures, –
- (i) disposing of the proceedings without any adverse action;
 - (ii) cancellation of the certificate of registration;
 - (iii) suspension of the certificate of registration for a specified period;
 - (iv) prohibition of the Noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;

- (v) debarment of an officer of the Noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;*
- (vi) debarment of a branch or an office of the Noticee from carrying out activities for such period as may be specified;*
- (vii) issuance of a regulatory censure to the Noticee:*
Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

Order

27. (5) After considering the facts and circumstances of the case, material on record and the written submission, if any, the competent authority shall endeavor to pass an appropriate order within one hundred and twenty days from the date of receipt of submissions under sub-regulation (2) or the date of personal hearing, whichever is later.

7. As noted above, taking cognizance of the order passed by the Hon'ble SAT, in NSEL matters, a Hearing Notice dated November 10, 2022 was issued to the Noticee calling upon the Noticee to show cause as to why the following information/ material along with the Enquiry Report dated January 31, 2020 should not be considered against it for determining whether the Noticee satisfies 'fit and proper person' criteria as laid down under Schedule II of the Intermediaries Regulations:
 - a. SEBI complaint dated September 24, 2018 filed with EOW;
 - b. First Information Report dated September 28, 2018; and
 - c. Amended Schedule II of the Intermediaries Regulations.
8. Before moving forward to test the fulfilment of the 'fit and proper' person criteria by the Noticee, on the basis of available material including the additional material as detailed at paragraph 7 above, the background facts necessary for the present proceedings are narrated in brief, hereunder:
 - a. The Noticee is a commodity derivatives broker registered with SEBI having Registration No. INZ000022334 with effect from February 11, 2016 and is currently a member of National Commodity & Derivatives Exchange Clearing

Corporation, Multi Commodity Exchange of India Limited and National Commodity and Derivatives Exchange Limited.

- b. NSEL was incorporated in May, 2005 as a Spot Exchange, *inter alia*, as an electronic exchange for trading in commodities. In exercise of powers conferred under Section 27 of the Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as the "**FCRA**"), the Central Government vide its Exemption Notification granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on the NSEL from operation of the provisions of the FCRA subject to certain conditions, *inter alia*, including "*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*".
- c. 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 introduced the concept of 'paired contracts' in September 2009 which allowed buy and sell 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 the 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.
- d. On February 06, 2012, FMC was appointed by the Department of Consumer Affairs, Government of India as the 'designated agency' as stipulated in one of the conditions specified under the said Exemption Notification, authorizing it to collect the trade data from NSEL and to examine the same for taking appropriate measures, if needed, to protect investors' interest. FMC had accordingly called for the trade data from NSEL in the specified reporting formats. After analysing the trade data received from NSEL, FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter ("FMC Order") wherein it was, *inter alia*, observed that 55 paired contracts offered

for trade on the NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of '*no short sale by members of the exchange shall be allowed*', as specified in the Exemption Notification was not being complied by NSEL and its members.

9. Noticee has contended that the notice issued to the Noticee is vague and general in nature as it has not been provided with material documents which is in violation of the principles of natural justice. On perusal of the SCN, Enquiry Report and other material/ information available on record, I find that all the documents relied upon by SEBI and relevant for levelling charges against the Noticee have been provided to the Noticee vide letter dated October 16, 2019 SCN dated February 24, 2020, Hearing Notice dated November 10, 2022 and email dated November 24, 2022. Thus, I find no merit in the contention of the Noticee in this regard.
10. It is relevant to deal with the contention of the Noticee that the power to appoint a DA is vested in the Executive Director, whereas in the instant case the DA has been appointed by the Whole Time Member of SEBI thereby raising a concern about the irregularity in the appointment of DA. In this regard, I note that Section 3(2) of the Securities and Exchange Board of India (Delegation of Powers) Order, 2015 specifically provides that, "*The powers and functions delegated to any member or officer of the Board or authority under the Order can be exercised by any officer or authority higher in grade or rank or position to him*". Thus, in presence of a valid delegation conferred upon by the statute, I find that the Noticee's challenge to the appointment of DA by the Whole Time Member of SEBI, who is an authority higher in rank and position to the Executive Director of SEBI, is devoid of any merit.
11. I note that FMC was a statutory body set up under the FCRA and its functions were enumerated under section 4 of the Act. FCRA regulated forward contracts in notified goods entered into between the members of a recognised association or through or with any such member. An association recognised under the FCRA was empowered to make rules and bye-laws for the regulation of forward contracts subject to approval of the Central Government/FMC. Such an association concerned with the regulation and control of business relating to

forward contracts was also required to obtain a certificate of registration from FMC, under FCRA. I note that FMC was having jurisdiction only on the associations recognised or registered under the FCRA or any member of such association. NSEL was neither an association recognised under section 6 of FCRA nor was it an association registered under section 14A of FCRA, which provided that –

"No association concerned with the regulation and control of business relating to forward contracts shall, after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (62 of 1960) carry on such business except under, and in accordance with the conditions of a certificate of registration granted under this Act by the Commission."

12. Section 27 of the FCRA empowered the Central Government to exempt any contract or class of contracts from the operation of all or any of the provisions of the Act. In exercise of the powers conferred under Section 27 of the FCRA, the Central Government, vide the Exemption Notification, had granted exemption to one-day forward contracts traded on NSEL from the operation of all provisions of FCRA, subject to conditions mentioned in the said Exemption Notification. Subsequently, the Central Government has issued notifications on February 06, 2012 and August 06, 2013, in partial modification of this notification dated June 05, 2007, by way of amending or inserting new conditions to the original notification, thereby assigning specific responsibility to FMC with respect to NSEL. Recognised associations were empowered to make rules and bye-laws under FCRA which would be approved by the Central Government/ FMC. However, NSEL was neither a registered nor a recognised association/ Exchange under FCRA and the bye-laws of NSEL were not reviewed or regulated or monitored by any authority.
13. The Noticee has contended that SEBI does not have power and jurisdiction to regulate the Spot Market and the said contention can be corroborated by the *"Report of Expert Committee on Integration of Commodity Spot and Derivatives Markets"* which has observed that spot contracts for commodities are not within the ambit of SCRA and SEBI may be made the

regulating authority for the same only after necessary changes to the SCRA. In this regard, without going into the merits of the contention that whether SEBI has the authority to regulate Spot Market or not, I note, that the issue under consideration in the present proceedings is limited to the determination of “*fit and proper*” status of the Noticee under the Intermediaries Regulations. It is a settled position of law that SEBI has statutory authority to determine the “*fit and proper*” status of the intermediaries registered with it. Since the Noticee is an intermediary registered with SEBI, I am of the considered view that SEBI is within its jurisdiction to determine the “*fit and proper*” status of the Noticee. I note that prior to the merger of FMC with SEBI on September 28, 2015, the Noticee was not required to be registered with either FMC or any other regulatory authority under the FCRA. The Parliament, noticing that the intermediaries dealing with commodities derivatives market were not required to be registered under FCRA and were not under control of any competent authority, rectified the same through the Finance Act, 2015, as notified on May 14, 2015, by bringing them under the regulatory supervision of SEBI. With regard to the aforesaid, the Hon'ble Bombay High Court while dealing with the Writ Petition Nos. 3262, 3266, 3294 and 3295 of 2018 in the matter of *Anand Rathie Commodities Limited, Motilal Oswal Commodities Broker Private Limited, Geofin Comtrade Limited and IIFL Commodities Limited vs. SEBI*, vide its Order dated October 04, 2018, observed the following:

“It is not in dispute that prior to the coming into effect of the Finance Act, 2015, the intermediaries dealing with the commodity derivatives were not required to be registered under any of the provisions of law including the FCR Act. We find that the said mischief was Noticed by the Parliament. As such, by virtue of the Finance Act, 2015, the said intermediaries dealing with commodity derivatives have been brought under the control of SEBI. We find that the reason as to why by Finance Act, 2015, the said intermediaries were brought under the control of SEBI appears to be that the Parliament found that the activities of intermediaries dealing in commodity derivatives should not remain uncontrolled and they should be brought under the control of competent authority”.

14. I further note that the provisions in the Finance Act, 2015 effecting the merger of FMC with SEBI in September, 2015 do not, *prima facie*, confer any power on SEBI to take charge, deal, inquire and resolve NSEL settlement crisis that broke out in 2013. Pursuant to repeal of FCRA and dissolution of FMC in terms of Section 131 of Finance Act, 2015, all recognised associations under the FCRA became deemed recognised stock exchanges under the SCRA. NSEL was not a recognised association under FCRA, therefore, a question regarding NSEL falling under the regulatory jurisdiction of SEBI does not arise.
15. I note that pursuant to the merger of FMC with SEBI, a commodity derivatives broker was mandatorily required to obtain a certificate of registration from SEBI in case it sought to remain associated with the securities market as a commodity derivatives broker. The Finance Act, 2015, *inter alia*, conferred the powers to SEBI to regulate commodity derivatives brokers, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with the commodity derivatives market under the erstwhile FCRA to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. Accordingly, the Noticee applied for a certificate of registration and was registered as a broker with effect from February 11, 2016 and since then it has been acting as a market intermediary registered with SEBI.
16. At this juncture, I deem it fit to deal with the contention of the Noticee that in terms of section 29A(2)(e) of FCRA, SEBI could have initiated fresh proceedings within a period of three years from the date of repeal of FCRA and the fact that the DA has issued the Notice few days before the expiry of the aforesaid period of three years, leads to the reasonable deduction that the Notice has been issued in haste. In this regard, I note that the power of SEBI to investigate/ inquire into the alleged violation of FCRA flows from the Finance Act, 2015, which amended the provisions of FCRA. Section 29A of FCRA, as inserted by the Finance Act, 2015 reads as under—

“(1) The Forward Contracts (Regulation) Act, 1952 is hereby repealed.

(2) On and from the date of repeal of Forward Contracts Act–

(a)....

(b)....

(c)....

(d)....

(e) a fresh proceeding related to an offence under the Forward Contracts Act, may be initiated by the Security Board under that Act within a period of three years from the date on which that Act is repealed and be proceeded with as if that Act had not been repealed;

(f) no court shall take cognizance of any offence under the Forward Contracts Act from the date on which that Act is repealed, except as provided in clause (d) and (e);

(g) clause (d), (e), (f) shall not be held to or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal to matters not covered under these sub-sections.”

17. The aforesaid provision empowers SEBI to initiate a fresh proceeding with respect to the offences within a period of three years from the date of repeal of FCRA. 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 the Economic Offences Wing (“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, it is relevant to mention here that the aforesaid proceedings are different from the proceedings before me.
18. 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 EOW under Section 154 of the CrPC. I note that in terms of Regulation 5(e) of the Stock Brokers Regulations, every applicant/ stock broker at the time of seeking registration, and thereafter, throughout the time it holds a valid certificate of registration, has to satisfy the “fit and proper person” criteria specified in Schedule II of the Intermediaries Regulations. I note that the Enquiry Report

proceeds on the basis that the past conduct of the Noticee in facilitating access to the “paired contracts” traded on NSEL calls into question the compliance of the Noticee with ‘fit and proper’ person criteria. Further, SEBI while examining the compliance of an applicant, or even a registered intermediary, with the ‘fit and proper’ person criteria can take into consideration not just contravention of the provisions of securities laws, but also the general conduct of the Noticee which may have a bearing on its functioning as a registered intermediary. The ‘fit and proper’ person criteria including the amended criteria must be satisfied by the Noticee, at the time of making application of registration under the Stock Brokers Regulations as well as during the continuance of the registration, once granted. The Noticee is required to satisfy the ‘fit and proper’ person criteria during the continuance of the registration, and thus, it is well within the jurisdiction and powers of SEBI to adjudge the said ‘fit and proper’ status of the market intermediaries in the interest of securities market. Accordingly, the notice issued to the Noticee for present proceedings is to test the ‘fit and proper’ status of the Noticee under Intermediaries Regulations and is independent of the three-year limitation period provided under the FCRA (for which SEBI has already taken appropriate steps). In view of the aforesaid discussion, I find that the submission of the Noticee that the merger of SEBI with FMC does not empower SEBI to initiate proceedings for violation of Broker Regulations and Intermediaries Regulations is misplaced. Further, as noted above, since the present proceedings have been initiated under the Intermediaries Regulations, which are independent of the three-year limitation period provided under the FCRA, and an FIR has already been filed within the time period stipulated under the FCRA, the submission of the Noticee that the notice has been issued in haste is also not tenable.

19. Before moving forward to consider the matter on merits, it would be appropriate to look at the background of NSEL and understand the nature of the ‘paired contracts’ that were offered on NSEL which ultimately is the cause/ genesis of the current proceedings.

20. From the perusal of the FMC Order in respect of the 'paired contracts', which were traded on the NSEL platform during the relevant period, I note that the FMC had, *inter alia*, observed that the following conditions stipulated in the Exemption Notification were violated:

a. Short Sale

NSEL had not made it mandatory for the seller to deposit goods in its warehouse before taking a sell position. Hence, the condition of "*no short sale by members of the NSEL shall be allowed*" was not being met by the NSEL and its trading/clearing members who traded in the 'paired contracts' during the relevant period.

b. Contracts with Settlement Period going beyond 11 days

Some of the contracts offered for trade on NSEL had settlement periods exceeding 11 days and therefore, such contracts were "non-transferable specific delivery" contracts under the FCRA. As per the FCRA, the "ready delivery contracts" were required to be settled within 11 days of the trade and hence, the contracts traded on NSEL, which provided settlement schedule for a period exceeding 11 days were not allowed and were in violation of Exemption Notification.

21. I note that NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (hereinafter referred to as the "**MCA**"), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for forward contracts for sale and purchase of the commodities of one-day duration traded on NSEL subject to certain conditions which, *inter alia*, included that 'no short sale by members of the NSEL shall be allowed' and that all '*outstanding positions of the trade 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. The spot exchanges were envisaged as a platform for providing transparent and

secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

22. It is observed that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per the Exemption Notification. In its order, FMC had observed that the 55 contracts offered for trade on the NSEL were with settlement periods exceeding 11 days and all such contracts traded on the NSEL were in violation of provisions of FCRA. I note from the FMC Order 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 the said definition contained in the FCRA, FMC was of the view that all the contracts traded on the NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts. It is, therefore, seen that even though MCA had stipulated in the Exemption Notification that only contracts of one-day duration 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 one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. However, what is beyond doubt is that the NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to NSEL.
23. At this stage, it is also pertinent to refer to the judgment of the Hon'ble Supreme Court of India passed in the matter of merger petition, wherein it was, *inter alia*, held that:

“55.3. We have seen that neither FTIL nor NSEL has denied the fact that ‘paired contracts’ in commodities were going on, and by April to July, 2013, 99% (and excluding E-series contracts), at least 46% of the turnover of NSEL was made up of such ‘paired contracts’. There is no doubt that such Paired Contracts were, in fact, financing transactions which were distinct from sale and purchase

transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA”.

24. Further, I note that in the judgment 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) (hereinafter referred to as the “**MPID matter**”), the Hon'ble Supreme Court while drawing reference to the representations made by NSEL in respect of the paired contracts, *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.”

25. Thus, I note that the Hon'ble Supreme Court has already described the nature of the ‘paired contracts’ offered on the NSEL platform. In the merger petition (63 Moons Technologies Ltd. vs. UOI), it was 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 held that such transactions come within the definition of ‘deposits’ under the MPID Act. The Hon'ble Supreme Court in the MPID matter, has extensively referred to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources. The Hon'ble Supreme Court has also observed that NSEL was advertising annualized return of about 16% p.a. for the ‘paired contracts’ traded on its platform where the return offered was same across the commodities. The return remained the same irrespective of the duration of the

contract. In the said order, the Hon'ble Supreme Court has 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 return as a T+5 and T+35 paired contract in castor oil. The 'paired contracts' were being marketed as an alternative to fixed deposits. In view of the above, I note that the FMC Order and both the judgments of the Hon'ble Supreme Court discuss in detail that, NSEL was permitting short sales, i.e., permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity was available in the warehouse.

26. At this juncture, I deem it fit to deal with the submission of the Noticee that no reliance can be placed on the decision of the Hon'ble Supreme Court in merger petition as the observations therein reflect upon the character and reputation of the Noticee and cannot be used to judge the character and reputation of the Noticee. In this regard, I note that the aforesaid decision of the Hon'ble Supreme Court has not been relied upon to draw any adverse inference against the Noticee, rather, the same has been produced herein to explain the nature of the paired contracts, which were in violation of the Exemption Notification.
27. The Noticee in its reply dated January 12, 2023 has, *inter alia*, submitted that “...It is hereby confirmed that Religare Commodities Limited has not done any trades in proprietary account on NSEL platform during the said period. Detail of trades done on behalf of clients as per their orders on NSEL platform since April 2010 to July 2013 and client ledgers are enclosed...”. I note that during the period, Noticee facilitated transactions in paired contracts for its clients. Considering the deliberations and discussions recorded above and the submissions of the Noticee, the moot question is whether the Noticee facilitated transactions in 'paired contracts' for its clients under a bonafide belief that such transactions were actually spot contracts in commodities. Or, can it be said that the very fact that 'paired contracts' were offered meant that NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the Noticee should have been aware that such a product was far removed from the spot trading in commodities which was permitted on NSEL's platform. Further,

as stated above, NSEL itself was advertising such contracts as an alternative to fixed deposits and an annualized return of about 16% was offered across all commodities, irrespective of the nature of the contract or the duration. Also, these contracts were structured in a manner which ensured that the buyer always made pre-determined profits.

28. In this context, I deem it apposite to refer to the reply of the Noticee dated January 12, 2023, wherein the Noticee has, *inter alia*, provided details of the trades executed by it on the NSEL platform for its clients. The relevant excerpt of the said details is produced hereunder:

Date	Account Type	Name of Commodity	Sum of Buy Quantity	Sum of Sell Quantity
17-Jul-13	Client	FCHRMO3112		5
17-Jul-13	Client	FCHROO3112	5	
16-Jul-13	Client	PP1121KH1	280	
16-Jul-13	Client	PP1121KH34		280
15-Jul-13	Client	PP1121KH1	280	
15-Jul-13	Client	PP1121KH34		280
12-Jul-13	Client	CTBLEO3112	10	
12-Jul-13	Client	CTBLGO3112		10
11-Jul-13	Client	PDYLH2112	150	
11-Jul-13	Client	PDYLH25112		150

On the basis of the aforesaid table and the submissions of the Noticee, I am of the view that the factum of Noticee having indulged in the trading of 'paired contracts' for its clients is sufficiently established. Since the fact of Noticee having traded in the paired contracts for its clients is sufficiently established, I am of the view that the fact that the trade log has not been provided to the Noticee has not caused any prejudice to the Noticee. Further, since the Noticee has itself submitted that it has not traded in the proprietary account, the submission as regards the notice being silent on the aspect if the Noticee has carried out trades only on behalf of its clients or has also traded in its proprietary account is also not sustainable.

29. The above mentioned execution of the trades in 'paired contracts' by the Noticee shows the participation of the Noticee in the said scheme perpetrated by NSEL to facilitate trading in 'paired contracts' that were not permitted under the Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the Noticee by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and 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, by providing access for taking exposure to 'paired contracts' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval, thereby raising doubts on the competence of the Noticee to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the Noticee in 'paired contracts' for its clients on the NSEL platform have serious ingredients jeopardizing the competence and integrity of the Noticee in the Securities Market.
30. 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-a-vis* the conditions specified in the aforesaid Notification.
31. Noticee has contended that while working as a trading member/ broker at NSEL, it was merely acting as an agent of the clients and NSEL, and that solely based

on the instructions and directions of the clients did it enter into any trades on the platform of NSEL. The Noticee has also submitted that it cannot be held liable for the violations until and unless its clients who may have actually indulged in trading in paired contracts launched by NSEL are also held liable. In this regard, I note that the said contention of the Noticee has to be seen in light of the fact that the 'paired contracts' have been held to be in violation of the 2007 Exemption Notification by the Hon'ble Supreme Court. Thus, as understood in light of the above observations of the Hon'ble Supreme Court, the nature of the transactions being carried out on the NSEL platform was simply "financing", whereby fixed returns (e.g. 16%) were being given by one party to the other. The same was apparent on a bare perusal of the "paired contracts" executed on the NSEL platform. Considering the above, I do not find any merit in the argument of the Noticee that it was not aware of the nature of transactions being carried out on the NSEL platform. Accordingly, Noticee's reliance on the decisions of Kasat Securities and Rakhi Trading to submit that merely because Noticee acted as a broker, it cannot be said that the Noticee knew about the nature of transactions cannot be accepted. Further, any argument that it cannot be held liable for the violations until its clients are also held liable or the argument that the clients demanded such access to the 'paired contracts' does not lessen the diligence required to be performed by any reasonable or prudent person.

32. I also 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 without the actions and facilitation of the Noticee.
33. Having established that the Noticee has traded in 'paired contracts' for its clients, I now proceed to examine the allegations levelled against the Noticee in the SCN read with the Hearing Notice. 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 basis of certain documents/material such as SEBI's Complaint dated September 24, 2018 and FIR dated September 28, 2018 as provided to the Noticee vide Hearing Notice, further alleged that in light of the aforesaid documents as well as observations against the Noticee in the Enquiry Report, the Noticee is not a 'fit and proper person' for holding the certificate of registration. I note that 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. 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.

34. In order to continue as a SEBI registered intermediary, the Noticee is, *inter alia*, required to satisfy the conditions of eligibility, which included 'fit and proper person' criteria. The above condition to be a fit and proper person is a preliminary condition applicable at the time of seeking registration and also during the continuation of registration. 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 was revised vide the amendments in November 2021. It is noted that parameters provided under clause 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which, *inter alia*, include the following:

“(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;

35. From the records, I note that SEBI has filed a complaint with EOW Mumbai on September 24, 2018, against brokers who facilitated access to *'paired contracts'* traded on NSEL, including the Noticee. On the basis of this complaint, FIR dated September 28, 2018, was registered with the MIDC Police Station, Mumbai, against the Noticee. I note that the Noticee is holding a certificate of registration No. INZ000022334 granted by SEBI on February 11, 2016. 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 fit and proper person is not a one time condition 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. Accordingly, the submission of the Noticee that it was granted the Certificate of Registration on February 11, 2016 implying that the noticee was a 'fit and proper' person as on date and thus, SEBI cannot change its stance now is also not tenable. As noted above, 'fit and proper' person criteria is a continuing requirement which is to be complied with by the Noticee at all times. Thus, even if the Noticee was granted the Certificate of Registration in 2016, the same does not preclude SEBI from adjudging the 'fit and proper' status of the Noticee at a later stage.
36. The scope of the instant proceeding is not to analyse the actual impact and consequences of the conduct of the Noticee but to examine as to whether or not, the Noticee has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the Noticee. The fact that is undeniably clear before me is that the involvement of the Noticee in trading and facilitating the trading in 'paired contracts' on NSEL is certainly a conduct which was not permitted by the Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct, as has been displayed by

the Noticee in its trading on NSEL platform, is detrimental to the interest of the Securities Market.

37. As discussed above, the Noticee has facilitated its clients to trade in 'paired contracts'. As the paired contracts were violative of the conditions stipulated in the 2007 Exemption Notification, a complaint was filed by SEBI with EOW on September 24, 2018, against the brokers who participated/ facilitated access to 'paired contracts' traded on NSEL, including the Noticee within the time limit, as specified under section 29A(2)(e) of the FCRA. On the basis of the said complaint of SEBI, FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai.
38. The Noticee has also submitted that Schedule II of the Intermediaries Regulations was amended with effect from November 17, 2021 and the same cannot be made applicable retrospectively. In this regard, it is pertinent to note that 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 its powers to examine the '*fit and proper person*' status of such entity based on various parameters. Therefore, even if the Noticee was found to have fulfilled the '*fit and proper person*' criteria when SEBI granted it the certificate of registration in 2016, such an intermediary can still be assessed on being fit and proper at a later date. Furthermore, as and when the '*fit and proper person*' criteria changes, the Noticee will be required to comply with the revised criteria, and in the instant case, criteria as revised vide the amendment in November, 2021. It is noted that parameters provided under Clause 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lay down a list of disqualifications which includes filing of a complaint/ FIR. In the present matter, the complaint and FIR has been filed/ registered against certain entities, including the Noticee, for violation of Section 21 of the FCRA. Further, it is also not the case of the Noticee that the aforesaid FIR is either stayed or quashed by

any competent court *qua* the Noticee or otherwise. It is, therefore, noted that the Noticee attracts the disqualification provided in Clause 3(b)(i) of the Schedule II of the Intermediaries Regulations.

39. At this juncture, I deem it appropriate to deal with the submission of the Noticee SEBI cannot rely upon its complaint as evidence and that FIR cannot be given any weightage for determining the 'fit and proper' status of the Noticee. In this regard, I note that being a '*fit and proper*' person is a continuing '*eligibility criteria*'/ statutory requirement, which must be satisfied by the Noticee including the amended criteria, at all times. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II of the Intermediaries Regulations holds the field which is binding upon SEBI, and arguments to the contrary are not maintainable. Further, no material has been brought on record by the Noticee to dispute the fact that the said FIR validly subsists as on date. It is not the case of the Noticee that the said FIR has been quashed *qua* the Noticee. In view of the above, I am not inclined to accept the submissions put forth by the noticee in this context.
40. Given the above, I am constrained to conclude that the Noticee facilitated its clients to access a product which was not permitted to trade. The same raises serious questions on the ability of the Noticee to conduct proper and effective due diligence regarding the product itself. By failing to disassociate itself from, and continuing to facilitate participation in the said paired contracts, the Noticee failed to act with due diligence.
41. The Noticee has also submitted that the alleged paired contracts were launched by NSEL as per their Bye laws and with the permission of FMC and, thus, a trading member cannot be held liable for the wrong contracts introduced by NSEL. Further, since the paired contracts were launched by NSEL, the Noticee was under a legitimate expectation that the products introduced by the exchange must be legal and valid. In this regard, 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, 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. As held by the Hon'ble Supreme Court in the merger petition, the 'paired contracts' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-by to the terms of the 2007 Exemption Notification and attempting to camouflage the nature of the transactions brings into question the appropriateness and suitability of the continuance of the registration of the Noticee as a broker. Accordingly, the Noticee can no longer be called 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 Broker Regulations read with the provisions of Schedule II of the Intermediaries Regulations.

42. In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowered SEBI to grant registration to several classes of entities including brokers, which are not only required to act as an intermediary simplicitor, i.e., a bridge or a connector between the markets and investors, but they also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors and any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.
43. Given the above discussions and deliberations, I conclude that the act of the Noticee in providing access to its clients to participate in a product, which was not permitted to trade, raises serious questions on the ability of the Noticee to

conduct proper and effective due diligence regarding the said product itself. Further, as per findings recorded in earlier paragraphs, the Noticee attracts the disqualification provided in Clause 3(b)(i) under the amended Schedule II of the Intermediaries Regulations in view of the FIR filed against the Noticee which is pending as on date. Further, it is also not the case of the Noticee that said FIR is either stayed or quashed by any competent court *qua* the Noticee or otherwise. In view of the above, I hold that the Noticee does not satisfy the '*fit and proper person*' criteria specified in Schedule II of the Intermediaries Regulations and hence, the continuance of the Noticee as a registered broker will be detrimental to the interest of the Securities Market and deserves appropriate measure.

44. In view of the discussion in the aforesaid paragraphs, I am of the view that the Noticee cannot place reliance on the decision of the Hon'ble SAT in the matter of ***MJ Patel Vs. SEBI*** as in the present case, there is sufficient material to justify taking of appropriate action against the Noticee.

Consideration of DA's recommendation:

45. The DA in the Enquiry Report, after determining that the Noticee is not "fit and proper", has recommended that the certificate of registration of the Noticee be cancelled.
46. As discussed in the preceding paragraphs, the facts and circumstances in the instant matter lead to the conclusion that the Noticee is not a "fit and proper" person. Once an entity has been declared to be not "fit and proper", in the interest of securities market, it 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 not "fit and proper" is curable at the hands of the intermediary, while in certain scenarios, it is not.
47. In the present case, the Noticee has been found to be not "fit and proper" for the reason that its conduct has been found wanting because of the Noticee's

involvement in trading of “paired contracts” on the NSEL platform and also for the reason that in that regard, the FIR dated September 28, 2018 has been registered by EOW, which is subsisting as on date.

48. Schedule II of the Intermediaries Regulations, in clause 4 provides that “*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*”. This clause, in my view, covers scenarios of ‘cancelation’ or ‘suspension’ of the certificate of registration of the intermediary.
49. Thus, the Intermediaries Regulations envisage deeming time limit (of 5 years) or specification of a time limit by the deciding authority, within which the intermediary can cure the defects which led to determination of its status, if the same can be done at its end. The said specification of period also serves as a reformatory direction against the intermediary.
50. Considering the above, in the instant case, having held that the Noticee is not “fit and proper”, the question for determination is what would be the appropriate direction in the given facts and circumstances. In my view, “suspension” of the certificate of registration of the Noticee would serve the desired purpose, as envisaged under the Intermediaries Regulations, of keeping the Noticee out of the securities market for the specified period after which the Noticee would be eligible to resume its business.
51. Given the fact that the transactions in paired contracts facilitated by the Noticee pertain to the period 2010-13, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three (3) months or till the time the FIR ceases to be “pending” or the Noticee is discharged or acquitted by a Court in relation to the FIR, whichever is later, would be proportionate and more appropriate in the present case.

ORDER

52. In view of the foregoing discussions and deliberations, I, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with Regulation 27 of the Intermediaries Regulations, hereby suspend the certificate of registration (bearing no. INZ000022334) of the Noticee viz. Religare Commodities Limited as a commodities derivatives broker, for a period of three (3) months from the date of this Order or till the FIR filed against the Noticee by EOW ceases to be pending or the Noticee is discharged or acquitted by a Court in relation to the FIR, whichever is later.
53. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction.
54. This Order shall come into force with immediate effect.
55. The above Order is without prejudice to the proceedings pending in pursuance of the criminal complaint filed by SEBI in the matter of trading on NSEL and/or any proceedings pending before any authority in respect of similar matter concerning the Noticee or other relevant persons.
56. A copy of this order shall be served upon the Noticee and the recognized Market Infrastructure Institutions for necessary compliance.

Sd/-

Place: Mumbai

Date: December 12, 2023

AMARJEET SINGH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA