

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

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

In respect of:

Name of the Noticee	SEBI Registration No.
Integrated Commodity Trades Private Limited	INZ000033534

In the matter of National Spot Exchange Limited (NSEL)

A. BACKGROUND

1. Integrated Commodity Trades Private Limited (hereinafter referred to as “**ICTPL**”/ “**Noticee**”) is registered with Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) as a stock broker bearing registration no. INZ000033534. ICTPL was earlier a member of National Spot Exchange Limited (hereinafter referred to as the “**NSEL**”).
2. The present proceedings originate from the enquiry report dated May 18, 2020 (hereinafter referred to as the “**Enquiry Report**”), submitted by the Designated Authority (hereinafter referred to as the “**DA**”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 (hereinafter be referred to as the “**Intermediaries Regulations**”) as it stood at the relevant point of time prior to its amendment vide SEBI (Intermediaries) (Amendment) Regulations, 2021, w.e.f.

January 21, 2021. The DA, based on findings recorded in the said Enquiry report, recommended that the registration of ICTPL as a stock broker may be cancelled.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

3. Pursuant to the Enquiry Report, a post enquiry show cause notice dated July 10, 2020 (hereinafter referred to as “**SCN**”) was issued to the Noticee, along with copies of (i) the aforesaid Enquiry Report; (ii) Finance Ministry letter dated December 30, 2014 to Forward Markets Commission (“**FMC**”); (iii) Hon’ble Bombay HC’s order in criminal bail application no. 1263 of 2014 in Jignesh Prakash Shah vs. State of Maharashtra dated August 22, 2014. In response to the SCN, the Noticee filed a reply dated August 08, 2020.
4. While the aforesaid proceedings were pending, SEBI passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (“**Hon’ble SAT**”). The Hon’ble SAT *vide* its common order in the matter of Geofin Comtrade Ltd. And Ors. vs. SEBI (Appeal no. 214 of 2019) dated June 09, 2022 (“**June 2022 SAT Order**”), remanded the aforesaid SEBI orders to decide these matters afresh within six months from the date of the said order. While remanding the aforesaid SEBI orders, the Hon’ble SAT *inter alia* held as under:

“ ...

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

notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice...”

5. In light of the June 2022 SAT Order, it was felt necessary to furnish certain additional documents/material to the Noticee and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, a supplementary SCN dated February 27, 2023 (“**SSCN**”) was served on the Noticee along with the following documents:
 - 5.1. Copy of SEBI complaint dated September 24, 2018 filed with Economic Offences Wing (“**EoW**”);
 - 5.2. Copy of FIR dated September 28, 2018 filed by SEBI under section 154 of Criminal Procedure Code, 1973 (“**CrPC**”);
 - 5.3. Amended Schedule II of Intermediaries Regulations; and
6. Vide letter dated March 18, 2023, the Noticee submitted a request for certain documents, which were provided by SEBI vide email dated May 24, 2023. The Noticee submitted another reply vide letter dated May 31, 2023. Thereafter, the Noticee was granted an opportunity of personal hearing on July 19, 2023. On the said date, the Authorised Representative of the Noticee appeared before me through video conferencing and reiterated the submissions made in the Noticee’s replies.
7. The written submissions filed by the Noticee dated August 08, 2020, March 18, 2023 and May 31, 2023 are summarized hereunder:
 - 7.1. The Noticee was not provided all the documents sought by it.
 - 7.2. The Noticee’s name does not appear in the letters of NSEL as accused broker or defaulter in the NSEL matter. The Noticee has no connection with the five brokers/ entities mentioned in the said letter.
 - 7.3. The Noticee’s name does not appear in the top 10 participants named in the fortnightly reports sent by NSEL to FMC.
 - 7.4. After coming to know of the fraudulent acts of NSEL, its various employees, default brokers, the Noticee had filed a complaint against NSEL, its directors,

officials and defaulters on 18.10.2013 which after rigorous follow ups was converted into FIR No. 0090/2015 with Barakhamba Road Police Station. The said FIR has been converted into charge sheet and the Noticee's name does not appear in the list of accused persons. One of the Noticee's director namely, Kunal Khaneja is appearing in the list of witnesses. Thus, it shows that the Noticee is not accused. A copy of the said charge sheet is enclosed.

7.5. The Noticee has submitted that it has not been included in the charge sheets filed by EOW Mumbai and EOW New Delhi in the FIR no 89/13 and FIR No 24/2015. One of the directors of the Noticee namely, Virender Khaneja is appearing in the list of witnesses.

7.6. The error trades of the Noticee did not cause any adverse impact on any of the clients and it did not derive any benefit/gain, rather it incurred transaction charges.

7.7. The Noticee is competent and capable in terms of Infrastructure, manpower requirements and financial soundness. The Noticee's principal officer, directors, the compliance officer and KMPs are competent and capable. The promoters or persons holding controlling interest are also competent and capable.

7.8. There is no criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) which has been filed against the company and is pending. No charge sheet has been filed against the Noticee by any enforcement agency in matters concerning economic offences and pending.

7.9. There is no order of restraint, prohibition or debarment passed against the Noticee by the Board or any other regulatory or enforcement agency. No recovery proceedings have been initiated by the Board against the Noticee and are pending.

7.10. No order of conviction has been passed against the company by a court for any offence involving moral turpitude.

7.11. No winding up proceedings have been initiated or an order for winding up has been passed against the company.

7.12. The Company has not been declared insolvent and not discharged.

- 7.13. The company has not been found to be of unsound mind by a court of competent jurisdiction and the finding is in force.
- 7.14. The company has not been categorised as a wilful defaulter or fugitive economic offender.
- 7.15. Pursuant to the exemption was granted by the Central Government in June 2007, NSEL introduced the alleged pair contracts and for 6 years Central Government had not raised any objections with regard to the contracts introduced by NSEL. The Central Government had given the impression to the public at large that the pair contracts were in consonance with the exemption granted by the Central Government.
- 7.16. The Notification dated June 05, 2007 which was gazetted did not cast upon any independent responsibility on the members of NSEL but on the contrary it saddled NSEL with the responsibility of seeing that no transaction of short sales took place and that all outstanding positions of trade at the end of the day would result in delivery.
- 7.17. There was no need for the Noticee to doubt the credential of NSEL. It was NSEL who was in charge of approving the contracts and it was only after the approval by NSEL that the transaction could materialize.
- 7.18. The Noticee merely followed the Regulations and carried on business on the Exchange like other brokers already registered with the exchange.
- 7.19. The Stock Broker is only acting as an agent of the Exchange as well as for its client and so the liability for trading in the alleged illegal contracts cannot extend to the Stock Broker.
- 7.20. It is not the duty of Stock Broker to independently investigate and assess the legality of the contracts launched. Even if it is now to be held that there was any such violation of the said exemption conditions, only NSEL and its officers can be held liable and not the broker.
- 7.21. The Noticee had no reason to suspect that NSEL lacks competence or that it would be operating in breach of exemptions sought by it from the government.

- 7.22. FMC was appointed as the designated authority for the regulation of NSEL and NSEL was providing it with fortnightly information on exchange operation.
- 7.23. The Noticee had no other business relationship/ association with NSEL except as an ordinary member of the exchange in the normal course of business.
- 7.24. The Noticee had not given any kind of assurance to any of its clients about fixed and high returns on NSEL. The Noticee did not do any lending or funding any of its clients.
- 7.25. All the client code modifications were done to correct the genuine punching errors in consonance with NSEL circular dated July 8, 2011. The modification was done with due intimation to the concerned clients with their consent. The value of original trade and modified trade is the same and there was no impact on profit/loss due to the client code modification. Most of the client code modifications are within the family/ group of the concerned clients and done with their consents.
- 7.26. No undue gain/ benefit has been derived by anyone of the clients due to modification in client code. All the trade modifications are bonafide having no economic impact on any of the clients. The clients have duly honoured their trades and paid their pay-in obligations without any delay. There is absolutely no dispute raised by any of the clients due to client code modification. The exchange has never imposed any penalty due to client code modification.
- 7.27. The Noticee as a broker has not done any proprietary trading on NSEL. The Noticee has not funded directly or indirectly any of the clients on NSEL.
- 7.28. The Noticee should not be held liable solely on the basis of their trading in "pair contract".

C. BRIEF HISTORY OF NSEL SCAM

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

8.1. NSEL was incorporated in May 2005 with the purpose of developing an electronic spot exchange for trading in commodities. In exercise of powers conferred under section 27 of the FCRA, the Central Government *vide* the 2007 Exemption Notification, granted an exemption to all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to certain conditions. The said notification *inter alia* stated that “*no short sale by the members of the exchange shall be allowed*” and “*all outstanding positions of the trades at the end of the day shall result in delivery*”. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency.

8.2. In October 2008, NSEL commenced operations providing an electronic trading platform to its participants for spot trading of commodities, such as bullion, agricultural produce, metals, etc. It is observed that NSEL had introduced the concept of ‘paired contracts’ in September 2009 which allowed buying and selling in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and *vice versa* at the same time and at a pre-determined price. The trades for the buy contract (T+2 /T+3) and the sell contract (T+25/T+36) used to happen on NSEL on the same day at same time and at different prices, involving the same counterparties. The transactions were structured in a manner that buyer of the short duration contract always ended up making profits.

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

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

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

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

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

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

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

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

against NSEL for violation of the conditions of the 2007 Exemption Notification. In response to the same, NSEL submitted a reply *vide* their letter dated May 29, 2012. DCA, *vide* its letter dated May 31, 2012, sought comments of FMC on the NSEL reply. The FMC, *vide* its letter dated August 02, 2012 to the DCA provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:

8.8.1. Short sale by members of the exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order. FMC was of the view that all the sale transactions which are not backed by the ownership of goods were in violation of the condition of “*no short sale by the members of the Exchange shall be allowed*” as stated in the 2007 Exemption Notification.

8.8.2. Contracts in which settlement period goes beyond 11 days: In view of the definition of “forward contract” under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are “non-transferable specific delivery contracts”. Thus, even if the 2007 Exemption Notification does not specify the delivery period, NSEL had to settle the delivery for all open positions within a period of 11 days as NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days.

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

8.10. From the above, it is clear that NSEL had permitted contracts of various commodities having duration longer than 11 days and these contracts were in contravention of the exemption granted to NSEL. Subsequently, certain entities who were primarily borrowing on the NSEL platform through the modus

of trading in the aforesaid “paired contracts” defaulted in fulfilling their payment obligations leading to a huge settlement default of outstanding contracts to the tune of INR 5600 Crores.

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

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

The actual role of the brokers was:

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

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

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

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

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

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

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

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

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

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

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

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

"....There is no doubt that such Paired Contracts were, in fact, financing transactions which were distinct from sale and purchase transactions in commodities and were, thus, in breach of both the exemptions granted to NSEL, and the FCRA....."

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

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

the deposits and has failed return the deposits on demand. Therefore, the State of Maharashtra was justified in issuing the attachment notifications under Section 4 of the MPID Act.”

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

D. CONSIDERATION OF ISSUES AND FINDINGS

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

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

SEBI Act

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

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

Stock Brokers Regulations

Consideration of application for grant of registration.

5. The Board shall take into account for considering the grant of a certificate, all matters relating to trading, settling or dealing in securities and in particular the following, namely, whether the applicant, -

(e) is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

Conditions of registration.

9. Any registration granted by the Board under regulation 6 shall be subject to the following conditions, namely,

(b) he shall abide by the rules, regulations and bye-laws of the stock exchange which are applicable to him;

(f) he shall at all times abide by the Code of Conduct as specified in Schedule II; and

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

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

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

SCHEDULE II

Code of Conduct for Stock Brokers

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

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

Intermediaries Regulations

Schedule II

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

(a) the competence and capability in terms of infrastructure and manpower requirements; and

(b) the financial soundness, which includes meeting the net worth requirements.

(2) The 'fit and proper person' criteria shall apply to the following persons: (a) the applicant or the intermediary; (b) the principal officer, the directors or managing partners, the compliance officer and the key management persons by whatever name called; and (c) the promoters or persons holding controlling interest or persons exercising control over the applicant or intermediary, directly or indirectly: Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfill the 'fit and proper person' criteria. Explanation— For the purpose of this sub-clause, the expressions "controlling interest" and "control" in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.

(3) For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:

(a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;

(b) the person not incurring any of the following disqualifications:

(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;

(ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;

(iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in

any matter concerning securities laws or financial markets and such order is in force;

(iv) recovery proceedings have been initiated by the Board against such person and are pending;

(v) an order of conviction has been passed against such person by a court for any offence involving moral turpitude;

(vi) any winding up proceedings have been initiated or an order for winding up has been passed against such person;

(vii) such person has been declared insolvent and not discharged;

(viii) such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;

(ix) such person has been categorized as a wilful defaulter;

(x) such person has been declared a fugitive economic offender; or

(xi) any other disqualification as may be specified by the Board from time to time.

(4) Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.

(5) At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.

(6) Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub-clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter: Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such

person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:

Provided further that if any person as referred in sub-clause (c) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall ensure that such person does not exercise any voting rights and that such person divests their holding within six months from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against such intermediary.

(7) The 'fit and proper person' criteria shall be applicable at the time of application of registration and during the continuity of registration and the intermediary shall ensure that the persons as referred in sub-clauses (b) and (c) of clause (2) comply with the 'fit and proper person' criteria.

11. The Noticee has admitted and not disputed that it has dealt in paired contracts offered on the NSEL platform for its clients. In this regard, I note from the EoW report that the Noticee had outstanding obligation of INR 29,11,50,498. Having established that the Noticee has traded in 'paired contracts' on behalf of its clients, I now proceed to examine the allegations levelled against the Noticee in the SCN and the SSCN. It is noted that the main allegation against the Noticee, as levelled in the SCN, is that by facilitating the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/ Clearing Member, the Noticee has, *prima facie*, 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 and FIR dated September 28, 2018 etc.) as provided to the Noticee vide SSCN dated February 27, 2023, further alleged that in light of the aforesaid documents filed against the Noticee by SEBI

as well as observations/ findings against the Noticee in the Enquiry Report dated May 18, 2020, the Noticee is no longer a 'fit and proper person' for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

12. The Noticee has submitted that all the trades were executed in accordance with the rules and regulations specified by the NSEL and that Central Government had not raised any objections with regard to the contracts introduced by NSEL. Further, it has submitted that the details of trades were being regularly reported to the FMC. In this regard, I note that under the FCRA, a "forward contract" is defined as a "contract for delivery of goods and which is not a ready delivery contract". A 'ready delivery contract' is defined as "a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days". Given these definitions in the FCRA, all the contracts traded on the NSEL which provided for a settlement schedule exceeding 11 days were treated by the FMC as Non-Transferable Specific Delivery Contracts. It is, therefore, seen that while the Ministry of Consumer Affairs (MCA) had stipulated in the Exemption Notification that only forward contracts of 'one-day' were permitted to be offered on the NSEL, the FMC, in its order, relying on the definition of the "forward contract" under FCRA held that the NSEL was allowed to only trade in forward contracts of 'one-day duration' and was obligated to ensure delivery and settlement within 11 days. Thus, 55 contracts of various commodities, having duration longer than 11 days that were executed on the NSEL were paired contracts without regulatory approval and in contravention of the exemption granted to NSEL and thus clearly not in accordance with law.

13. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), the Hon'ble Supreme Court held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon'ble Supreme Court enlarged the interpretation and held that such transactions come within the definition of 'deposits' under the MPID Act. While extensively

referring to the claims made on the website of the NSEL and the contents of the publicity material and other investor resources, the Hon'ble Court also observed that the NSEL were advertising assured and uniform returns of 16% per annum for the 'paired contracts' traded on the NSEL platform where the return offered was the same across the commodities and that the return remained the same irrespective of the duration of the contract. At paragraph 45 of the said order, the Hon'ble Supreme Court also depicted certain examples of 'paired contracts', which offered assured returns. For example, a T+2 and T+25 paired contract in Steel had the same offered rate of return as a T+5 and T+35 paired contract in Castor Oil. Thus, the judgement of the Hon'ble Supreme Court in the MPID matter highlighted how the 'paired contracts' were being marketed as an alternative to fixed deposits wherein the overwhelming majority of the sale leg of the 'paired contracts' which were executed were in fact short sales and further that, the commodities to back such sales were not available at the designated warehouses of the NSEL.

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

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

16. While Noticee has contended that it had not given any kind of assurance to any of its clients about fixed and high returns on NSEL and that it was only acting as an agent of the Exchange, I note that there are no two opinions of the fact that the paired contracts were being advertised as an alternative to fixed deposit returns by offering fixed returns (approx. 16%) across all commodities, irrespective of the nature of the contract or the duration and were in fact structured in a manner which ensured that the buyer always made pre-determined profits. Any prudent person (including the Noticee, who is an intermediary and well versed with financial and commercial knowledge) would have or should have come to the conclusion that what was being offered were not spot contracts in commodities rather that they had the trappings of a financial product which offered fixed and assured returns, as has been already observed by the Hon'ble Supreme Court in State of Maharashtra vs. 63 Moons Technologies Ltd. which was contrary to the FCRA and the Exemption Notification and which eventually caused losses to the market stated to be to the extent of ₹ 5,500 Crores.

17. The Noticee submitted that it was not the duty of the stock broker to independently assess the legality of the contracts and that there was no reason for the Noticee to doubt the credential of NSEL. In this regard, it is noted that 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. 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, I am of the view that while participating in such contracts, the Noticee 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 by citing that NSEL was functioning in complete public knowledge and was permitted to provide the trading platform for paired

contracts. For these reasons, the Noticee is found to have violated Clause A (1), A (2) and A (5) Code of Conduct of Stock Brokers Regulations.

18. 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.

19. 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.

20. The Noticee has also contended that all the documents sought by the Noticee was not provided to it. I note that Sub-regulations (3) and (4) of Regulation 25 of the Intermediaries Regulations specify that the copies of the documents "relied upon by SEBI" along with the extracts of relevant portions of the reports containing the findings arrived at in an inquiry, investigation or inspection, if any, shall be provided to the Noticee. In this regard, I note that the Noticee has been provided with the documents relied upon by SEBI vide letters dated February 13, 2019 and March

28, 2019. Such documents include copies of the FMC Order dated December 17, 2013, Grant Thornton Report, Report of the Economic Offences Wing, Notification issued by the Ministry of Consumer Affairs dated June 05, 2007 and Copy of relevant extracts of SFIO report. I also note that vide post Enquiry SCN dated July 10, 2020, Noticee was provided with additional material such as letter dated December 30, 2014 of DEA, Ministry of Finance and Order dated August 22, 2014 of the Hon'ble High Court of Bombay in the criminal bail application of *Jignesh Prakash Shah vs. State of Maharashtra*. I further note that vide SSCN dated February 27, 2023, the Noticee was provided with copies of SEBI complaint dated September 24, 2018 filed with EOW and FIR dated September 28, 2018 filed by SEBI. Thereafter, vide email dated May 24, 2023, the Noticee was provided with copies of Fortnightly report of NSEL, NSEL complaint letters dated March 17, 2015 and March 24, 2015, Email dated August 31, 2018 sent by SIT EOW to SEBI, FMC complaint letter dated January 16, 2015 against NSEL, SEBI letter dated July 09, 2018 to EOW and data pertaining to Noticee's error trades in paired contract on NSEL platform. Therefore, I find that all the material / relevant documents have been duly provided to the Noticee in compliance with the principles of natural justice in conducting present enquiry proceedings. Hence, the contention of the Noticee is devoid any merit.

21. Regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations and Regulation 9(b) of the Stock Brokers Regulations mandates a registered stock broker to abide by the rules, regulations and bye-laws of the stock exchange which are applicable to it. In terms of Regulation 9(f) of the Stock Brokers Regulations, a registered stock broker is required to abide by the Code of Conduct as specified in Schedule II of the Stock Brokers Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI (Intermediaries) (Third Amendment) Regulations, 2021 with effect from November 17, 2021.

22. Thus, as and when any of the 'fit and proper' criteria change, every registered entity is required to comply with the revised criteria, including as in this instance, the criteria as revised vide the amendment in November 2021. The requirement is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria provides it to be a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the securities market as a registered intermediary. It is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market at any point of time.

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

“(1).....

(2).....

(3) *For the purpose of determining as to whether any person is a 'fit and proper person', the Board may take into account any criteria as it deems fit, including but not limited to the following:*

(b) the person not incurring any of the following disqualifications:

(i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;

.....”

24. The Noticee has contended that it has not been included in the charge sheets filed by EOW and that there is no criminal complaint pending against it. As detailed in the SSCN, FIR was registered by the EOW with the MIDC Police Station, Mumbai, against the Noticee under section 154 of the CrPC on September 28, 2018. However, I note that the FIR filed by SEBI has not been challenged, quashed or stayed by any competent court *qua* the Noticee till date. The disqualifications listed under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries

Regulations are unambiguously clear and no exemption from such criteria has been provided. Once the disqualification is triggered, the 'fit and proper' person criteria is open for determination by SEBI. The disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations has also been triggered *vis-à-vis* the Noticee.

25. Thus, by virtue of its conduct, trades and being a member of NSEL, the Noticee acted as an instrument in promoting and/or dealing in 'paired contracts' which were in the nature of financing transactions (as held by the Hon'ble Supreme Court of India referred *supra*). The Noticee has contended that it had no other business relationship/ association with NSEL except as an ordinary member of the Exchange. The present proceedings are not solely based on the Noticee's relationship with NSEL as a trading member. Other factors such as the filing and continued pendency of FIR, facilitation of trading by the Noticee in paired contracts (which were found to be in violation of the 2007 Exemption Notification by the Hon'ble Supreme Court), and other material have been taken into account. By providing a platform for trading to its clients and by providing access for taking exposure to such 'paired contracts', the Noticee exposed its clients to the risks involved in trading in a product that did not have regulatory approval.

26. I also note that the Noticee has submitted that at the request of its clients, it facilitated their participation in paired contracts on NSEL. I am of the view that any argument on the lines that the clients demanded such access to the '*paired contracts*' after doing their own research and after investing their own money or that they hold no grievance with the Noticee who merely executed the contracts without soliciting, does not lessen the extent of its obligations. The lack of diligence required to be performed by an intermediary of prudence is indicative of lack of competence and integrity while acting as a registered intermediary. Undoubtedly such activities of the Noticee not only seriously jeopardized the integrity of market and that of its investors but also SEBI's belief in the reputation, character, competence and integrity of the Noticee and other brokers which compelled SEBI to file the criminal complaint against it as also against several other brokers. Thus,

the Noticee has also incurred the disqualification under Clause 3(b)(i) of the amended provisions of Schedule II of the Intermediaries Regulations on account of this complaint filed by SEBI and the FIR that was registered by the EOW based on the said complaint of SEBI.

27. The Noticee has submitted that its directors namely, Virender Khaneja and Kunal Khaneja have been named as witnesses in the charge-sheet filed by the EoW Mumbai in FIR no. 89/13 and by EOW Delhi in FIR no. 24/2015 respectively, in the matter. Further, the Noticee has stated that it had filed a complaint against NSEL which was converted by FIR no. 90/2015 and further converted into a charge-sheet. The subject matter of the proceedings in this case is the involvement of the Noticee in the NSEL paired contract trades and liability thereof is the basis of the FIR pursuant to the complaint filed by SEBI. The complaints/ grievances that the Noticee may have against NSEL or any other person would therefore have no bearing on the present proceeding. As noted above, the FIR dated September 28, 2018 is subsisting against the Noticee as on date.

28. 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. 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 the 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 principle of '*ignorantia juris non excusat*' or that '*ignorance of law is no excuse*' becomes squarely applicable.

29. In view of the above, I note that the Noticee has traded in "paired contracts" on behalf of its clients on NSEL. The execution of such paired contracts show participation of the Noticee in the said scam which raises questions regarding the

integrity, honesty, ethical behaviour, reputation, fairness and character of the Noticee. Therefore, this leads to the conclusion that since the Noticee also attracts the disqualification provided in paragraph 3(b)(i) under the amended Schedule II of the Intermediaries Regulations, the Noticee does not fulfil the “fit and proper” criteria. Once an entity is declared to be not in compliance with the “fit and proper” criteria, in the interest of the securities market, such an entity should not be allowed to continue to act as an intermediary till the time it does not regain its “fit and proper” status. In this context, it is pertinent to mention that in several scenarios, a defect which is the reason for holding an intermediary as not “fit and proper” is curable at the hands of the intermediary, while in certain scenarios it is not.

30. In the present case, the conduct, integrity and reputation of the Noticee has been found wanting on account of its involvement in trading of “paired contracts” on the NSEL platform and also for the reason that since SEBI has filed a complaint on the basis of which an FIR dated September 28, 2018 has been registered by EOW, which is yet to be finally determined by a Court of competent jurisdiction, the disqualification provided in paragraph 3(b) under the amended Schedule II of the Intermediaries Regulations stands invoked.

31. 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 ‘cancellation’ or ‘suspension’ of the certificate of registration of the intermediary.

32. Thus, the Intermediaries regulations envisage a deeming time limit of 5 years or specification of a time limit by the deciding authority, within which the intermediary may cure the defects which led to the determination of its status, if the same is done at its end. The said specification of period also serves as a reformatory direction against the intermediary.

33. Considering the above, the question that now arises for determination is whether the certificate of registration of the Noticee should be cancelled as recommended by the DA or whether it should be suspended for a specific period. A direction of cancellation, even when the EOW charge sheet is the subject matter of *lis* before the MPID Court, would entail the complete winding up of the business of the Noticee. On the other hand, “suspension for a specific period” would serve the purpose of keeping the Noticee out of the securities market for a specified period, after which, the Noticee may resume its business, upon curing the issues that have led to such an action.

34. Given the peculiar facts and circumstances of the case, I am of the considered view that a direction of suspension of certificate of registration of the Noticee for a period of three months or till discharge/ acquittal of the Noticee by a Court of competent jurisdiction, whichever is later, would be more appropriate, and proportionate to the violations brought out in the present case.

E. ORDER

35. In view of the facts and circumstances of the case and the conclusions arrived at discussed above, I, in exercise of powers conferred upon me under Section 12(3) and Section 19 of the SEBI Act read with regulation 27 of the Intermediaries Regulations, hereby suspend the certificate of registration (bearing registration no. INZ000033534) of the Noticee i.e. Integrated Commodity Trades Private Limited, for a period of three months from the date of this Order or till such time an order is passed by a Court of competent jurisdiction discharging or acquitting the Noticee, whichever is later.

36. The Noticee shall, after receipt of this order, immediately inform its existing clients, if any, immediately about the aforesaid direction in paragraph no. 35.

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

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

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

Sd/-

ANANTH NARAYAN G.

DATE: OCTOBER 26, 2023

WHOLE TIME MEMBER

PLACE: MUMBAI

SECURITIES AND EXCHANGE BOARD OF INDIA