

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

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

In respect of:

NOTICEE	Registration No.
Ventura Commodities Private Limited	INZ000030132

In the matter of NATIONAL SPOT EXCHANGE LIMITED

I. BACKGROUND

1. Ventura Commodities Private Limited ("**VPL**")/ "**Noticee**") is a commodities derivative broker and a member of the Multi Commodity Exchange of India Ltd. ("**MCX**"). VPL was earlier a Member of the National Spot Exchange Limited ("**NSEL**"). Subsequent to the merger of the Forward Market Commission (hereinafter referred to as "**FMC**") with Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") on September 28, 2015, VPL registered with SEBI as a commodities derivative broker having registration no. INZ000030132.
2. As the Noticee was a member of the NSEL and had participated in / facilitated trading in paired contract(s) on the NSEL platform, SEBI initiated enquiry proceedings against the Noticee under Chapter V of the SEBI (Intermediaries) Regulations, 2008 (hereinafter referred to as the "**Intermediaries Regulations**") and appointed a Designated Authority (hereinafter referred to as the "**DA**") vide order dated September 21, 2018, to enquire into whether the

Noticee was 'fit and proper person' (hereinafter referred to as "**FPP**") to continue to hold the certificate of registration as Trading and Clearing Member in terms of Regulation 5 (e), 9(b) and 9(f) of the SEBI (Stock Brokers) Regulations, 1992 (hereinafter referred to as the "**Broker Regulations**") read with Schedule II of the Intermediaries Regulations.

II. Brief History of Illegal Forward Contracts on NSEL:

3. Before considering the compliance of the Noticee with the FPP criteria, it would be appropriate to have a preliminary discussion on the background of NSEL which forms the basis of the current proceedings.
4. NSEL was incorporated in 2005 as an exchange for spot trading of commodities. I note from the FMC Order No.4/5/2013-MKT-1/B dated December 17, 2013 ("**FMC Order**"), that on June 05, 2007, the Department of Consumer Affairs ("**DCA**"), Ministry of Consumer Affairs, Food and Public Distribution, Government of India, issued a Notification No. S.O.906(E) under Section 27 of Forward Contracts (Regulation) Act, 1952 (hereinafter referred to as "**FCRA**") granting certain exemptions from the provisions of FCRA to NSEL subject to specified conditions. The relevant extract of the said notification is reproduced hereunder for ease of reference:

"...the Central Government exempts all forward contracts of one day duration for the sale and purchase of commodities traded on the National Spot Exchange Limited, from operation of the provisions of the said Act subject to the following conditions, namely:-

- i. no short sale by members of the Exchange should be allowed;*
- ii. all outstanding positions of the trade at the end of the day shall result in delivery;*
- iii. the National Spot Exchange Ltd. shall organize spot trading subject to regulation by the authorities regulating spot trade in the areas where such trading takes place;*

iv. all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency;

.....”

5. The aforesaid notification was amended on February 6, 2012 by DCA vide Gazette Notification No. S.O. 228(E) specifying “Forwards Market Commission, Mumbai” as the designated agency of the Central Government.
6. NSEL commenced operations in October 2008. It is seen from the FMC Order and the Judgement dated April 22, 2022 of the Hon’ble Supreme Court, in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, that NSEL, in September 2009, introduced the concept of ‘paired contracts’, which involved buying and selling the same commodity through two different contracts at two different prices, wherein investors could buy a short duration settlement contract and sell a long duration settlement contract or vice versa, with the same counterparty at the same time. In short, the ‘paired contract’ involved two simultaneous transactions being undertaken at the same time with the same counterparty—one being a purchase transaction (settling at T+2 or T+3) and the other being a sale transaction (settling at T+25 or T+36), at different prices on the platform of NSEL. “T” indicates the trade date, that is, the date on which the trade took place; and +2 or +3 or +25 or +36, indicates the number of business days after the trading day when the delivery of the commodity and the payment of price ought to have been made. The transactions were structured in a manner that the buyer of the short duration contract always ended up making profits.
7. Further, from Para 8 of the FMC Order, I note that the DCA on April 27, 2012 directed NSEL to explain as to why action should not be initiated against NSEL for violation of the conditions of the notification dated June 05, 2007. 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 the FMC on the NSEL reply. The FMC, vide its letter dated August 02, 2012 to the DCA

provided its comments on the two main issues, which are relevant for consideration of the matter at hand, as paraphrased hereunder:

- a. Short Sale by members of the Exchange: NSEL did not insist upon ownership of goods before allowing its members to place the sale order. FMC was of the view that all those 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”*.
 - b. Contracts in which settlement period goes beyond 11 days: In view of the definition of forward contract under FCRA, FMC was of the view that all the contracts traded on NSEL which provide settlement schedule for a period exceeding 11 days are Non-Transferable Specific Delivery contracts. Thus even if the gazette notification does not specify the delivery period, NSEL had to settle the delivery for all open position 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. I also note from Para 8 of the FMC Order that DCA, vide its letter dated July 12, 2013, directed NSEL to give an undertaking that:
- a. *No further/ fresh contracts shall be launched by NSEL until further instructions from the concerned authority; and*
 - b. *All the existing contracts will be settled on the due dates.*
9. To sum up, as per the original notification dated June 05, 2007, NSEL was granted conditional exemption from the provisions of FCRA for all forward contracts of one-day duration for the purchase and sale of commodities. The two main conditions were that (i) there should be no short sale and (ii) all outstanding positions at the end of the day should result in delivery. Thereafter, FMC had observed that 55 contracts offered for trade on NSEL were with settlement periods exceeding 11 days and all such contracts traded on NSEL were in violation of provisions of FCRA. 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"*. In view of the said definition contained in FCRA, FMC was of the view that all the contracts traded on NSEL which provided settlement schedule exceeding 11 days were treated as Non-Transferable Specific Delivery contracts.

10. NSEL, thus, had permitted contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL vide the Government Notification dated June 05, 2007. Further, I note that the Hon'ble Supreme Court, in its Judgement dated April 22, 2022 in the matter of The State of Maharashtra Vs. 63 Moons Technologies Ltd, Civil Appeal Nos. 2748-49 of 2022, while drawing reference to the presentations made by NSEL in respect of 'paired contracts' had *inter alia* held that:

"44.... NSEL in the course of its brochures has held out representations about the trading and investment opportunities available for:

- a) corporate clients*
- b) high net worth individuals; and*
- c) retail investors*

45. Under the head of "contract specifications", the following representation has been held out :

<i>Commodity</i>	<i>Duration</i>	<i>Investment (lacs.)</i>	<i>Yield</i>
<i>Castor Seed</i>	<i>T+3 & T+36</i>	<i>7.5 -9 Lacs</i>	<i>16%</i>
<i>Castor Oil</i>	<i>T+5 & T+30</i>	<i>7-9</i>	<i>16%</i>
<i>Cotton Wash Oil</i>	<i>T+2 & T+25</i>	<i>10</i>	<i>16%</i>
<i>Paddy</i>	<i>T+2 & T+25</i>	<i>3.5-4.5</i>	<i>16%</i>
<i>Steel</i>	<i>T+2 & T+25</i>	<i>4.5-5</i>	<i>16%</i>
<i>Raw Wool</i>	<i>T+2 & T+25</i>	<i>3.5-4</i>	<i>16%</i>
<i>Wool Top</i>	<i>T+2 & T+25</i>	<i>1.8-2</i>	<i>16%</i>
<i>Crude Soybean Oil</i>	<i>T+2 & T+25</i>	<i>3.3.-3.5</i>	<i>16%</i>

Soya DOC	T+2 & T+25	1.7-2.0	16%
Refined Mustard Oil	T+2 & T+25	6.5	16%
Refined Soybean Oil	T+2 & T+25	6.5	16%
Refined Sunflower Oil	T+2 & T+25	6.5	16%
RBD Palmolein Oil	T+2 & T+25	6.5	16%
Sugar	T+2 & T+25	3.0	16%
Maize	T+2 & T+25	3.0	16%

The above representation specifies:

- (i) Commodities;
- (ii) Duration of trades;
- (iii) Investment; and
- (iv) Yield.

For example, in the case of castor seeds, NSEL held out a buy contract (T+3) and sale contract (T+36), in which the yield is stated to be 16%. Moreover, NSEL represented that:

“Opportunities

- Traders can trade and lock their return
- Trader has to buy in near settlement contract and sell in far settlement contract simultaneously
- Price for both settlement available
- Exchange provides counterparty guarantee risk
- No basis risk, No link with future contracts

While describing the features of trading opportunity, NSEL represented that:

“Features of Trading Opportunity:

- T+2 and T+25 contract offers unique trading opportunity to traders
- Trader purchases T+2 contract and simultaneously sells T+25 contract

- *Pay-in obligation is on T+2 while Pay-out of the funds will be on T+25. Entire settlement cycle is of 35-37 days*
- *Price differential between the two settlement dates i.e premium if annualized offers interest rate of about 16%*
- *Income arising out of such trades are treated as Business Income”*

While comparing the investment opportunities of bank fixed deposits with trading opportunities at NSEL, NSEL represented that:

“Comparison

- *Bank FD 9.25% for 390 days; NSEL Trading Opportunity 16%;*
- *Bank FD minimum duration 390 days; NSEL Trade duration 35-55 days, depending on the contract*
- *Traders have an option of rolling over their position as per their convenience*

.....

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.”

11. As such, both the FMC Order and the aforesaid order of Hon'ble Supreme Court have explicitly brought out the details as to how NSEL permitted short sales - i.e. by permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse.
12. It is also pertinent to note that the Hon'ble Supreme Court in another Judgement dated April 30, 2019, titled 63 Moons Technologies Ltd Vs. Union of India, Civil Appeal No. 4476 of 2019 observed that these contracts were in the nature of "financing transactions". The relevant extract of the said order is as under: -

"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."

III. Show Cause Notice, Reply and Hearing

13. Pursuant to the initiation of enquiry proceedings, the DA issued show cause notice no. SEBI/HO/EAD/E&AO/SR/SM/OW/26672/7/2018 dated September 25, 2018 (hereinafter referred to as "**SCN**") to the Noticee, calling upon it to show cause as to why it should not be found to be not 'fit and proper person' in terms of Regulation 5(e) of the Stock Broker Regulations read with Schedule II of the Intermediaries Regulations and hence, liable for cancellation of its registration. Vide letter dated October 15, 2018, the Noticee sought extension of time by eight weeks to submit reply to the SCN. Thereafter, the Noticee vide letter dated November 03, 2018 sought inspection of documents. The DA vide letters dated June 26, 2019 and July 11, 2019 provided to the Noticee certain

additional documents such as the relevant FMC Order along with Annexures; Grant Thornton Report with Annexures; notification dated June 05, 2007, issued by the Ministry of Consumer Affairs; documents explaining specifications of 'paired contracts'; list of Trading Members/Fund names and Clearing Members, who had applied/registered with SEBI, with corresponding amounts indicating default amount of clients (investors) who traded through them, mentioned in the Economic Offence Wing ("**EOW**") interim report dated April 04, 2015; fortnightly reports (total 11) submitted by NSEL to FMC; List of members against whom NSEL had pay-out obligations as on September 19, 2013; data containing registration documents and annual return documents. Vide letter dated August 06, 2019, the Noticee acknowledged receipt of letters dated June 26, 2019 and July 11, 2019 and stated that reports marked as 'Sr.No.8 and Sr.No.9' are not legible.

14. The DA vide email dated June 18, 2020 provided to the Noticee details of its trades and granted time till July 08, 2020 to file reply to the SCN. The Noticee vide email dated June 19, 2020 requested that proceedings in the matter be kept in abeyance as he is stuck outside India owing to prolonged lockdown in India.
15. In the meantime, there was a change of the DA due to transfer of the earlier DA. Vide email dated November 09, 2020, the Noticee was informed regarding the appointment of a new DA and the Noticee was granted time till November 16, 2020 to file its reply to the SCN. In response thereto, the Noticee vide email dated November 17, 2020 stated that it has not been provided with documents and inspection thereof. Further, the Noticee vide letter dated November 25, 2020 filed reply and also sought inspection of documents. The DA vide email dated December 16, 2020 intimated to the Noticee that all documents relied upon in consideration of the matter have been provided to it. Further, the Noticee was informed that query made by it vide letter dated August 06, 2019 is not clear and the Noticee asked to clarify which are the documents at Sr. No. 8 and Sr No. 9, referred to in the Noticee letter dated August 06, 2019, which are not legible. In response thereto, the Noticee vide email dated December

16, 2020 requested for time of 10 days to send details of documents which are not clear and legible. The DA vide email dated December 16, 2020 granted time till December 18, 2020 to the Noticee to provide clarification regarding documents which are 'not clear and legible'. In response thereto, the Noticee vide email dated December 16, 2020 reiterated its request for grant of 10 days to provide said clarification. The DA vide email dated December 16, 2020 responded to the Noticee's email stating that all relied upon documents have been provided to the Noticee and it has been only asked to give clarification regarding annexures which should not take 10 days. The DA granted time till December 20, 2020 to the Noticee to provide clarification and clarified that matter will be proceeded based on available record, in case clarification is not received by such time. The Noticee vide email dated December 25, 2020 provided clarification. The DA vide email dated December 28, 2020 informed the Noticee that Fortnightly reports (Sr. No.8 and 9 of enclosures in the letter dated July 11, 2019) which are not clear, according to the Noticee, do not make a reference to Ventura Commodities Limited i.e. the Noticee herein. Accordingly, the Noticee was advised to submit its reply by December 30, 2020. Thereafter, the DA proceeded to consider the matter on basis of documents available on record and submitted its enquiry report dated December 31, 2020 ("**ER**") to the Competent Authority recommending cancellation of the certificate of registration granted to the Noticee since it was not a 'fit and proper person'.

16. Pursuant thereto, a post enquiry show cause notice (hereinafter referred to as the "**SCN-1**") dated January 20, 2021, was issued to the Noticee, under Regulation 28(1) of the Intermediaries Regulations to show cause as to why action, as recommended by the DA or any other action as considered appropriate by the Designated Member, should not be taken against the Noticee. A copy of the DA's Report was also forwarded to the Noticee along with an advice to file a reply, if any, within 21 days from the date of receipt of the notice. Along with the DA's Report, letter dated December 30, 2014 of the Ministry of Finance ("**MoF**"), Department of Economic Affairs ("**DEA**") addressed to the Chairman, FMC was provided to the Noticee, wherein it was

stated that the DEA was in agreement that NSEL had violated conditions of exemptions granted to it under the FCRA. Further, copy of Order dated August 22, 2014 of Hon'ble Bombay High Court, in the matter of *Jignesh Prakash Shah Vs. The State of Maharashtra*, Criminal Bail Application No. 1263 of 2014, wherein, it was held that the brokers through whom the paired contracts were entered into had knowledge of the illegality of such contracts, was also furnished to the Noticee. The SCN also *inter alia* highlighted the observations made by the Hon'ble Supreme Court in the matter of *63 Moons Technologies Ltd. Vs. Union of India* (order dated April 30, 2019), wherein it was held that paired contracts were in fact financing transactions in breach of exemptions granted to NSEL under the FCRA. The Noticee was also called upon to show cause as to why the said documents should not be considered along with the ER. The Noticee vide email dated February 19, 2021 denied allegations and disputed findings recorded in the DA report.

17. In the meantime, Whole Time Member, SEBI ("**WTM**") passed certain orders rejecting the applications of five other entities for registration as commodity brokers. The Hon'ble Securities Appellate Tribunal ("**the Hon'ble SAT**") vide its order dated June 9, 2022 remitted the matters to the WTM to decide the matter afresh after giving an opportunity of hearing to the brokers. Further, it was observed that it will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by SEBI 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.
18. In light of the order of Hon'ble SAT dated June 9, 2022, a supplementary show-cause notice dated October 07, 2022 ("**SCN-2**") was issued to the Noticee. Vide the SCN-2, additional documents viz. SEBI's complaint dated September 24, 2018 to EOW, First Information Report ("**FIR**") dated September 28, 2018 filed by SEBI and amended Schedule II of the Intermediaries Regulations were furnished to the Noticee calling upon it to show cause as to why

information/material provided therein along with the ER should not be considered against the Noticee.

19. The Noticee, vide letter dated November 14, 2022 acknowledged receipt of the SCN-2 and sought inspection of documents. Accordingly, the Noticee was granted inspection of relied upon documents on November 24, 2022. Subsequently, the Noticee vide letter dated December 15, 2022 filed response to the SCN-2.
20. The Noticee was granted an opportunity of hearing on December 16, 2022. On the scheduled date, Ravinchandra S Hegde, Advocate, along with Dwarika Prasad Singh, Director of the Noticee, appeared for the hearing and reiterated the submissions made in reply dated December 15, 2022. Subsequently, the Noticee, vide letter dated December 25, 2022 submitted post hearing written submissions.
21. SEBI vide email dated March 09, 2023 forwarded final charge sheet, filed by EOW before the Special Court under MPID Act, Sessions Court, Mumbai, wherein the Noticee is arraigned as an accused person and called upon the Noticee to file its reply/additional submissions in relation to it. In response thereto, the Noticee vide email dated March 23, 2023 intimated that it is in process of filing an application for settlement under provisions of SEBI(Settlement Proceedings) Regulations, 2018.
22. The Noticee filed an application with SEBI for settlement of present proceedings. However, the same was rejected. In this regard, SEBI vide email dated June 02, 2023 intimated the Noticee about rejection of its application for settlement of present proceedings.
23. The Noticee vide email dated June 05, 2023 requested for 15 days` time to file its submissions with reference to the charge sheet containing its name. Vide email dated June 19, 2023, the Noticee was granted time till June 22, 2023 to file its written submissions. The Noticee vide email dated June 22, 2023 requested for extension of time till June 26, 2023 to file same. In response

thereto, vide email dated June 22, 2023, the Noticee was granted time till June 26, 2023 to file submissions. In furtherance thereto, the Noticee vide letter dated June 26, 2023 filed its submissions. Subsequently, the Noticee vide letter dated July 12, 2023 filed additional submissions.

24. The submissions made by the Noticee vide letters dated December 15, 2022 and December 25, 2022 are as follows:-

- a. SEBI issued SCN dated September 25, 2018. In response thereto, the Noticee vide letter dated November 03, 2018 requested for inspection of documents. SEBI vide letters dated July 11, 2019 and July 26, 2019 provided copies of documents including FMC Order, notification of the Ministry of Consumer Affairs, documents explaining specifications of paired contracts (part of the Grant Thornton Report), list of trading members, fortnightly reports submitted by FMC, list of Trading Members/Fund Name & Clearing Member and their corresponding amounts mentioned in the EOW Interim Report dated April 04, 2015, who applied/registered with SEBI, list of 148 members against whom NSEL has pay-out obligations as on September 19, 2013 and data containing registration documents and Annual Return documents.
- b. The Noticee vide letter dated August 6, 2019 informed SEBI that certain documents provided by SEBI were not legible and inspection of certain documents were not offered.
- c. Vide emails dated November 9, 2020 and November 27, 2020, the DA issued revised communique for appointment of DA and granted time till December 4, 2020 to furnish written statement. The Noticee vide letter dated November 06, 2020 reiterated request to inspect documents.
- d. On December 29, 2020, the Noticee received email from the DA calling upon it to furnish reply within 24 hours. On account of this, the Noticee addressed an email to the DA on January 05, 2021 stating that the

Noticee had previously communicated to the DA vide letter dated November 25, 2020.

- e. The Noticee requested for documents and permission to inspect the documents on several occasions but SEBI did not respond to emails dated November 03, 2018, August 09, 2019 and June 19, 2020 and issued SCN dated January 21, 2021 providing the DA Report. The Noticee vide email dated February 19, 2021 disputed findings of the DA.
- f. DA report is premised on background facts pertaining to NSEL and orders passed by the Hon`ble Supreme Court in the case of 63 Moon Technologies Ltd. and the Hon`ble Bombay High Court order in Jignesh Prakash Shah. Hon`ble SAT Order dated June 09, 2022 has vitiated the DA report as allegation of facilitation/participation in trading of paired contract and documents/material relied upon have been set aside and ruled against by the Hon`ble SAT. By virtue of the Hon`ble SAT Order, SEBI can no longer rely upon documents of these nature to arrive at finding of fit and proper status of a broker.
- g. The supplementary SCN and annexures thereto do not contain material particulars about any wrong doing or violation by the Noticee. Apart from SEBI complaint and the FIR, there is no material provided along with the supplementary SCN to allege wrongdoing by the Noticee. In the case of Mukesh Babu Vs. SEBI, decided on December 10, 2007 there was a charge sheet. However, in the present case no charge sheet naming the Noticee has been filed by EOW.
- h. The SCN fails to demonstrate the specific securities laws which have been violated and on account of which proceedings under Intermediaries Regulations is warranted.
- i. Criteria of factors for determining fit and proper status, as detailed in Schedule II of the Intermediaries Regulations underwent a sea change

and have been enhanced with inclusion of detailed list of disqualifications which includes “criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973” as material factor for assessment of an entity.

- j. Notwithstanding the legislative wisdom, mere criminal complaint alone, absent any other material in its support, cannot be legitimate basis for determination of the Noticee`s fit and proper status.
- k. While the requirement of fit and proper person is a continuous requirement and ought to conform with the law at all times, at the relevant time, the Noticee had submitted itself to the scrutiny of fit and proper at the time of obtaining its certificate of registration and, in any event, the amendment to Schedule II of the Intermediaries Regulation came into effect only from November 17, 2021, and therefore, cannot be applied to the Noticee where FIR is dated 2018 i.e. prior to the amendment.
- l. The Noticee had no role, involvement or association with conduct of NSEL. It was acting in the capacity of a broker and providing service to its clients. It should not be made responsible for any lack of compliance to exemption requirements which was incumbent on NSEL.
- m. The Noticee was providing commodity broking services not just as member of NSEL but was also registered with MCX and NCDEX. In 2011-2012, out of its total clients of 4540 only 24 i.e. 0.53% of its total clients were trading on NSEL. In 2012-13, Out of 6024 clients only 489 i.e. 8.12 % clients were trading on NSEL. In 2013-14, Out of 6332 clients only 439 i.e. 6.93% were trading on NSEL. In 2011-12, 2012-13 and 2013-14, trading on NSEL represented merely 0.02% i.e. 17 Crore, 0.64% i.e. 549 Crore and 0.43% i.e. 371 Crore of the total turnover of the Noticee in the respective financial years. Total brokerage earned by

the Noticee in the financial year 2011-12, 2012-13 and 2013-14 on NSEL amounted to Rs.0.69 Crore.

25. The submissions made by the Noticee vide letter dated June 26, 2023 are as follows: -

- a. The charge sheet cannot be relied upon as it has been issued after initiation of proceeding in the present matter.
- b. The Noticee`s name appear in the charge sheet but it has no bearing upon the current proceedings as present proceedings are independent of proceedings initiated by the EOW.
- c. The relevant authorities have not taken cognizance of the matter subsequent to filing of the charge sheet. The Noticee is taking appropriate action in the EOW proceedings including making application for quashing of the charge sheet.
- d. The matter wherein the charge sheet has been filed is still pending.
- e. The SCNs, the DA Report and the supplementary SCN fails to make out any case for violation of any securities laws under the Intermediaries Regulations.

26. The submission made by the Noticee vide letter dated July 12, 2023 are as follows: -

- a. Ventura Securities Ltd., (**VSL**) has filed Writ Petition (L) No. 18199 of 2023 before the Hon`ble Bombay High Court challenging notice bearing no. SEBI/HO/MIRSD-SEC5/2023/OW/24999 dated June 19, 2023, issued by Market Intermediaries Regulation and Supervision Department of SEBI. Similar Writ Petitions are filed by other brokers too. In the said Writ Petitions, the constitutional validity of provisions of Schedule II of the Intermediaries Regulations, including Clause 3(a),

3(b)(i), 3(b)(ii), 3(b)(iii), 3(b)(iv), 3(b)(vi)(part), 3(b)(viii) and Clause 6 of the said Schedule II, were challenged.

- b. When the group of said Writ Petitions were heard before the Hon`ble Bombay High Court, the Learned Counsel appearing on behalf of SEBI made a statement that *“given the pendency of the matters before the Court and the challenges that are raised, SEBI is not presently insisting on compliance within 15 days with the requirements of paragraph 4 of the notice at page 122 in Writ Petition (Lodging) No. 18014 of 2023”*. Hon`ble High Court was pleased to note and record such statement in its order dated July 6, 2023, in the said group of Writ Petitions.
- c. Supplementary SCN and email notice issued upon the Noticee have been issued on the basis of provisions of Schedule II of Intermediaries Regulations, whose constitutional validity is currently under challenge and pending determination before the Hon`ble Bombay High Court. Considering that (i) the outcome of the proceedings in the Group of Writ Petitions before the Hon`ble Bombay High Court directly impacts the present proceedings issued under the SCN-2, and further, (ii) noting the statement made by SEBI and recorded by the Bombay HC, proceedings in the present matter be kept in abeyance till the conclusion of the proceedings before the Hon`ble Bombay High Court and refrain from taking any action qua the Noticee.

CONSIDERATION

- 27. I have considered the SCNs issued in the instant matter, the Enquiry Report submitted by the DA, Noticee`s reply and post hearing written submissions and other material available on record.
- 28. It is alleged that the Noticee has violated Regulation 9(b) and (f) read with Clause A(1), A(2) and A(5) of the Schedule II of the Broker Regulations and Regulation 5(e) of the Broker Regulations read with Schedule II of the

Intermediaries Regulations. The relevant provisions are reproduced hereunder: -

Provisions of Broker 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

SCHEDULE II

Securities and Exchange Board of India (Stock Brokers) Regulations, 1992

CODE OF CONDUCT FOR STOCK BROKERS

[Regulation 9]

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.

(3).....

(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.

Provisions of Intermediaries Regulations:
“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 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."

I- CONSIDERATION OF PRELIMINARY SUBMISSIONS: -

29. From the submissions made by the Noticee, I note that two preliminary issues i.e. inspection of documents and prayer to keep proceedings in abeyance arise for consideration. Accordingly, I now proceed to deal with the said preliminary issues.

(i) ISSUE OF INSPECTION OF DOCUMENTS

30. I note that the Noticee has contended that during the course of enquiry, it was not provided with inspection of documents. In minutes of inspection dated November 24, 2022, the Noticee has stated that further steps, if any, regarding SEBI complaint has not been provided by SEBI. Further, SEBI did not provide it with SFIO report stating that said report was for 5 entities. Further, it is stated that the Noticee was not provided with any material pertaining to violation of securities laws or violation of any condition of registration by the Noticee.
31. I note that the SCN dated September 25, 2018 was duly served to the Noticee. From the sequence of events post the issuance of SCN dated September 25, 2018, narrated at paragraphs 13 to 18 above, I note that the DA vide letters dated June 26, 2019 and July 11, 2019 provided additional documents i.e. relevant FMC Order along with Annexures; Grant Thornton Report with Annexures; notification dated June 05, 2007, issued by the Ministry of Consumer Affairs; documents explaining specifications of 'paired contracts'; list of Trading Members/Fund name and Clearing Member name and amount mentioned against their names in the Economic Offence Wing ("**EOW**") interim report dated April 04, 2015; fortnightly reports submitted by NSEL to FMC; details of members against whom NSEL had pay-out obligations on September 19, 2013; registration documents of 299 members and annual return documents of 234 members, to the Noticee. Further, the DA vide email dated June 18, 2020 provided to the Noticee details of its trades.
32. Vide SCN-1, the Noticee was provided enquiry report; letter dated December 30, 2014 of MoF, DEA, addressed to the Chairman, FMC; copy of Order dated August 22, 2014 of Hon`ble Bombay High Court in the matter of *Jignesh*

Prakash Shah Vs. The State of Maharashtra, Criminal Bail Application No. 1263 of 2014. Subsequently, in light of the Hon`ble SAT Order dated June 09, 2022, SCN-2 (dated October 07, 2022) was issued, whereby, additional documents viz. SEBI's complaint dated September 24, 2018 to EOW, FIR dated September 28, 2018 filed by SEBI and amended Schedule II of the Intermediaries Regulations were furnished to the Noticee. Thereafter, the Noticee was granted further inspection of documents on November 24, 2022.

33. I note that EOW registered FIR dated September 28, 2018 pursuant to SEBI complaint dated September 24, 2018 which has been provided to the Noticee. I also note that no reliance is being placed on SFIO report. In view of the above, I find that all documents - relevant and relied upon, for the purpose of the present proceedings, have been provided to the Noticee. Further, the Noticee has also been provided with inspection of the relevant and/or relied upon documents. Accordingly, I close the issue of inspection.

(ii) PRAYER TO KEEP INSTANT PROCEEDINGS IN ABEYANCE

34. The Noticee vide letter dated July 12, 2023 has submitted that VSL has filed Writ Petition (L) No. 18199 of 2023 before the Hon`ble Bombay High Court against notice bearing no. SEBI/HO/MIRSD-SEC5/2023/OW/24999 dated June 19, 2023, issued by Market Intermediaries Regulation and Supervision Department of SEBI. Similar Writ Petitions have been filed by other brokers. The said Writ Petitions involve issue of the constitutional validity of provisions of Schedule II of the Intermediaries Regulations, including Clause 3(a), 3(b)(i), 3(b)(ii), 3(b)(iii), 3(b)(iv), 3(b)(vi)(part), 3(b)(viii) and Clause 6. The Noticee has submitted that the present proceedings be kept in abeyance till conclusion of proceedings in group of Writ Petitions including Writ Petition (L) No. 18199 of 2023.

35. I note that Writ Petition (L) No. 18180 of 2023 has been filed by Ventura Securities Limited & Anr. Vs. Securities and Exchange Board of India, which is a different legal entity. Further, I note that Writ Petition (L) No. 18180 of 2023

has been filed against the notice bearing no. SEBI/HO/MIRSD-SEC5/2023/OW/24999 dated June 19, 2023, issued by Market Intermediaries Regulation and Supervision Department of SEBI ("MIRSD") and is not with respect to the subject SCN in the instant proceedings. I, however, agree with the contention that the constitutional validity of the provisions contained in Schedule II of the Intermediaries Regulations including certain provisions that are alleged in the SCN have been challenged in the writ petitions. I take note of the fact that the instant adjudication proceedings and the proceedings initiated vide MIRSD letter dated June 19, 2023 are different and independent of each other. Further, the Noticee has not challenged the instant proceedings before the Hon`ble High Court and cannot seek an abeyance of these proceedings indirectly.

36. I also note that para nos. 1 and 2 of the Hon`ble Bombay High Court order dated July 06, 2023 reads as follows: -

"1. All these Petitioners are much aggrieved by a set of notices issued by the Securities and Exchange Board of India ("SEBI") under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008.

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

At the same time and on the other hand, I note that the Hon`ble Bombay High Court vide order dated October 06, 2022, in Writ Petition No. 3477 of 2022, titled as Ashok Gupta Vs. SEBI, (wherein SEBI`s alleged inaction against the Brokers whose names were there in the FIR was challenged), has recorded the submission of SEBI`s counsel as shown below: -

"Be that as it may, the action has been initiated by SEBI. In 129 cases, SEBI did not find any prima-facie material to proceed against them and take action of cancellation of license and as far as 156 cases are concerned, are pending. The learned senior counsel for the respondent submits that it would take sometime to complete the adjudication in

respect of these 156 licenses. However, on instructions, it is assured that the adjudication shall be concluded against them by end of December 2023. Statement is accepted as an undertaking to the Court.”

37. I find that since the instant proceedings relate to the adjudication that has been undertaken by SEBI to be completed before December 2023, I am inclined to proceed with the consideration of the issues on merits and conclude the adjudication, as assured.

CONSIDERATION ON MERITS

38. I note that the SCN -1 mentioned observations made by the Hon`ble Supreme Court in its order dated April 30, 2019, in the matter of 63 Moons Technologies Limited (Formerly known as 'Financial Technologies India Limited) & Ors. Vs. Union of India & Ors, Civil Appeal No. 4476 of 2019. Further, the SCN-1, inter-alia, enclosed Order dated August 22, 2014, passed by the Hon`ble Bombay High Court in the matter of Jignesh Prakash Shah vs. The State of Maharashtra and the Noticee was called upon to show cause as to why information/material brought therein should not be considered along with Enquiry Report. I note that the Hon`ble SAT, in its order dated June 09, 2022, in respect of the applications of five other entities for registration as commodity brokers, has held that the observations in the bail rejection order of the Hon`ble Bombay High Court cannot be relied upon as the observations therein are limited to the fact as to whether the bail should be granted or not. I note that the Hon`ble Bombay High Court Judgment dated December 12, 2017 in 63 Moons Technologies Ltd. & Ors Vs. Union of India & Ors was set aside by the Hon`ble Supreme Court vide its judgment dated April 30, 2019, in the matter titled as 63 Moons Technologies Ltd. Vs. Union of India & Ors, Civil Appeal No. 4476 of 2019. Accordingly, I find that Order dated August 22, 2014, passed by the Hon`ble Bombay High Court in the matter of Jignesh Prakash Shah vs. The State of Maharashtra, and Hon`ble Bombay High Court Judgment dated December 12, 2017 in 63 Moons Technologies Ltd. & Ors Vs. Union of India & Ors are not

relevant for consideration in the present matter, even though the same were sought to be relied upon at post- enquiry SCN stage.

39. On merits of the case, I note that the Noticee in its reply has not disputed that paired contracts were illegal. The Noticee has admitted that it facilitated its clients to participate in the paired contracts. The Noticee has contended that number of its clients who participated in trading at NSEL represented 0.53%, 8.12%, 6.93% of its total number of clients during the FY 2011-12, 2012-13 and 2013-14. Trading on NSEL represented less than 1% of its total turnover. During the said financial years, the Noticee earned total brokerage of Rs.0.69 Crores from its trading services on NSEL.
40. I note that the Noticee has submitted that the Hon`ble SAT order dated June 09, 2022 has vitiated the findings of the DA, therefore, information and material relied upon by SEBI therein are no longer to be relied upon by SEBI to arrive at any conclusion against the Noticee. I note that the Noticee has stated that the DA report is premised on background facts pertaining to NSEL and orders passed by the Hon`ble Supreme Court in the case of 63 moon technologies Ltd. and the Hon`ble Bombay High Court order in Jignesh Prakash Shah. By virtue of the Hon`ble SAT order dated June 09, 2022, SEBI cannot rely on documents of these nature to arrive at finding of fit and proper status of a broker.
41. In this connection, I note that para 34 of the Hon`ble SAT Order dated June 09, 2022 held as follows: -
- “34. It was urged by the learned senior counsel for the respondent that in spite of the orders of the Hon`ble Bombay High Court being set aside, there are still other materials before this Tribunal which if considered would support the findings given by the WTM. It was contended that this Tribunal can consider the observations / findings given in the EOW report, EOW charge sheet, the complaint letters given by NSEL and the observations against the appellant in SFIO report and consequently contended that based on these observations the impugned order can be sustained..... In any case, in our opinion, the WTM is required to consider these documents and arrive at its own opinion as to whether these documents are germane to the issue or not and whether the*

observations / finding could bring any conclusion on the reputation, integrity and character of the appellant. Thus, it is neither feasible nor advisable for this Tribunal to delve into the observations and findings given in these reports / charge sheets.

42. I note that the Hon`ble SAT vide order dated June 09, 2022 held that SEBI cannot rely on the Hon`ble Bombay High Court order dated Decembr 04, 2017 in Writ Petition No. 2743 of 2014, and order dated October 01, 2015 in Writ Petition No. 1403 of 2015; for reasons stated therein. However, SEBI was granted liberty to place reliance on other material including EOW report, EOW charge sheet, etc., provided such copies are given to the brokers and opportunity is given to rebut the allegations. Vide SCN-2 dated October 07, 2022, the Noticee was given, inter-alia, copy of SEBI complaint dated September 24, 2018 and FIR dated September 28, 2018. Subsequently, SEBI vide email dated March 09, 2023 forwarded final charge sheet, filed by EOW before the Special Court under MPID Act, Sessions Court, Mumbai, wherein the Noticee is arraigned as an accused person and called upon the Noticee to file its reply/additional submissions in relation to it. Accordingly, I find that the SEBI complaint dated September 24, 2018, FIR dated September 28, 2018 and developments subsequent thereto are material and material events that can be relied upon for determining 'fit and proper' criteria.
43. The Noticee has stated that Supplementary SCN and annexures thereto do not contain material particulars about any wrong doing or violation by the Noticee. I note that SCN-2 mentioned that it is in continuation to the SCN dated January 20, 2021. SCN-2 alleged that in light of criminal complaint and information under Section 154 of the Code of Criminal Procedure, 1973 filed against the Noticee by the SEBI as well as observations against the Noticee, in the Enquiry Report, the Noticee is no longer fit and proper person for holding the certification of registration under the Broker Regulations and the Noticee is in violation of Regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations. Further, amended Schedule II of the Intermediaries Regulation was also served on the Noticee vide the SCN-2. In view of the above, I find that the SCN-1 and SCN-2 and the supporting

documents shared with the Noticee, (except the observations in the two orders of the Hon`ble Bombay High Court, discussed in the preceding paragraph), brings out the alleged violation of provisions of law for which the present proceedings have been initiated against the Noticee.

44. The Noticee initially submitted that the present case is different from case of Mukesh Babu Vs. SEBI decided by the Hon`ble SAT on December 10, 2007 as there was charge sheet, however, in the present case no charge sheet naming the Noticee has been filed by EOW. However, when it came to light that the Noticee`s name is contained in the final charge sheet of EOW i.e. charge sheet no. 11, filed before the Court of Special Court under MPID Act, Sessions Court, Mumbai in FIR No. 89 of 2013 dated September 30, 2013, as Accused No.16, the Noticee shifted its stance. It contended that the charge sheet cannot be relied upon as it was issued after the initiation of the instant proceedings; that the proceedings in the charge sheet have no bearing upon the current proceedings; that the relevant authorities have not yet taken cognizance of the matter; that steps to quash the same are underway, etc. I do not find any merit in the submissions of the Noticee.

45. I note that Schedule II of the Intermediaries Regulations was amended vide SEBI(Intermediaries) (Third Amendment) Regulations, 2021, w.e.f. 17.11.2021 and following disqualifications have been included with respect to the eligibility of an intermediary to act so, namely: -

- (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;

46. I note that the charge sheet of EOW cannot be said to be independent of the trades of the Noticee, either executed/facilitated on NSEL, as the same are also the underlying cause for the present show cause proceedings. Moreover, the expression "charge sheet filed by any enforcement agency in matters

concerning economic offences and is pending” would indicate that such violation need not necessarily have a bearing on the laws administered by SEBI. Further, even when the charge sheet is pending the trial, disqualification continues.

47. The Noticee has submitted that amendment to Schedule II of Intermediaries Regulations came into effect from November 17, 2021 and therefore, it cannot be applied to the Noticee as FIR is dated 2018. I note that Schedule II of the Intermediaries Regulations was amended w.e.f. November 17, 2021, inter-alia, providing that pendency of criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974), filed by the Board or filing of charge sheet by any enforcement agency shall be a disqualification. A plain reading of clause 3 of Schedule II of the Intermediaries Regulations indicates that pendency of criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 on or after November 17, 2021 will be a disqualification even if the said criminal complaint or information was filed by the Board prior to November 17, 2021. Further, it is reiterated that pendency of charge sheet, filed by any enforcement agency in an FIR registered prior to November 17, 2021, and in this case by EOW will also act as a disqualification in terms of clause 3 (b) (ii) of Schedule II of the Intermediaries Regulations.
48. It is pertinent to note that ‘fit and proper person’ criteria is a requirement that has to be satisfied by the intermediary at the time of registration with SEBI and also throughout the time it holds a valid registration with SEBI. Therefore, the Noticee would be required to comply with the revised criteria post the amendments carried out in 2021.
49. I note that SEBI had filed complaint dated September 24, 2018 with Economic Offence Wing (EOW), wherein, the name of the Noticee is mentioned therein at serial no. 254. Pursuant thereto, FIR No. Spl LAC No. 110/2018 has been filed by MIDC Police Station, Mumbai and it is pending. I also note that EOW has filed several charge sheets in FIR No. 89 of 2013 dated September 30, 2013. In 11th Charge sheet, filed by EOW before the Court of Special Court under MPID Act, Sessions Court, Mumbai, the Noticee has been included as

Accused No.16. In view thereof, I note that disqualifications contained in paragraph 3(b) (i) and (ii) are attracted against the Noticee. Moreover, the Noticee has admitted to the execution of trades on NSEL platform during 2011-12, on behalf of 24 clients; in 2012-13, on behalf of 489 clients; and in 2013-14, on behalf of 439 clients, as narrated in sub para m of paragraph 24 above. The value of trades was Rs.17 Crore for 2011-12, Rs.549 Crore for 2012-13 and Rs.371 Crore for 2013-14. The total brokerage earned by the Noticee for the said three financial years amounted to Rs.0.69 Crore.

50. When the pendency of a criminal complaint or FIR filed by SEBI or filing of charge sheet by any enforcement agency is prescribed as a negative criterion/disqualification from eligibility under Schedule II of the Intermediaries Regulations, it is imperative for me to consider the same while adjudging the eligibility of the Noticee to continue to hold the authorization granted. In my view, the amendment of Schedule II of the Intermediaries Regulations merely encapsulates the criteria in the form of distinctly identifiable parameters, which would apply uniformly to all intermediaries. To reiterate, the fact that SEBI has filed a complaint and FIR has been registered against the Noticee and EOW has also filed a charge sheet which contains the name of the Noticee, which in itself constitutes a disqualification from satisfaction of eligibility criteria to function as an intermediary.

51. The evaluation of the facts and legal provisions, as brought out above, shows that the Noticee had carried out and/or acted as broker for the illegal paired trades substantially during 2011-2014 and in view of the disqualifications contained in Schedule II of the Intermediaries Regulations, I find that the Noticee is not a 'fit and proper' person and hence ineligible to continue its business as a stock broker in commodity derivative segment using the certificate of registration no. INZ000030132 granted by SEBI.

Order

52. I, therefore, in exercise of powers conferred upon me under Section 19 read with Section 12(3) of the SEBI Act, 1992, Regulation 23 and 27 of the

Intermediaries Regulations, 2008, and cancel the Noticee`s certificate no. INZ000030132 as stock broker in commodity derivative segment.

53. The Order shall come into force with the immediate effect.

54. A copy of this order shall be served upon the Noticee and the recognized Stock Exchanges, Depositories and Clearing Corporations for necessary compliance.

Date: November 03, 2023

Place: Mumbai

Sd/-

GEETHA G

CHIEF GENERAL MANAGER

SECURITIES AND EXCHANGE BOARD OF INDIA