

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Section 12(3) of the Securities and Exchange Board of India Act, 1992 read with Regulation 27 of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

In respect of

Sr. No.	Name of the Noticee	SEBI Registration No.
1.	Joindre Commodities Ltd.	INZ000045333

In the matter of National Spot Exchange Limited (NSEL)

**BACKGROUND**

1. The present proceedings originate from the Enquiry Report dated June 20, 2019 (hereinafter referred to as “**Enquiry Report**”), submitted by the Designated Authority (hereinafter referred to as “**DA**”) in terms of regulation 27 of the SEBI (Intermediaries) Regulations, 2008 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 (hereinafter referred as “**Intermediaries Regulations**”), wherein the Designated Authority (hereinafter referred to as “**DA**”), based on various factual findings and observations so recorded in the said Enquiry Report, recommended that the registration of Joindre Commodities Ltd. (hereinafter referred to as “**Joindre Commodities**” or “**Noticee**”) as a stock broker may be cancelled. Pursuant to the same, a Post Enquiry Show Cause Notice dated June 28, 2019 (hereinafter referred to as “**SCN**”), along-with the copy of the aforesaid Enquiry Report was issued to the *Noticee*. Pursuant to that, a second show cause notice dated September 20, 2019 providing therewith the copies of letter dated December 30, 2014 of DEA, Ministry of Finance and a copy of the decision of the Hon’ble Bombay High Court dated August 22, 2014 was also issued to the *Noticee*. Subsequently, the personal hearing in the matter was concluded on August 18, 2021 before the Ld. Whole Time Member of SEBI (hereinafter referred to as “**WTM**”). After taking into consideration the written submissions made vide letter dated August 11, 2021 and the oral submissions made during the course of the hearing on August 18, 2021, the

Ld. WTM, vide order dated September 24, 2021, cancelled the Certificate of Registration granted to the Noticee.

2. While the aforesaid proceedings were pending, Securities and Exchange Board of India (hereinafter referred to as “SEBI”) has also passed five separate orders rejecting the applications filed by five other entities for registration as commodity brokers who were involved in NSEL matter during February 2019. Aggrieved by the said SEBI orders, the entities filed separate appeals before the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “Hon’ble SAT”). The Hon’ble SAT vide its common order dated June 9, 2022, remanded the aforesaid SEBI orders to SEBI to decide these matters afresh within six months from the date of the said SAT order. While remanding the aforesaid SEBI orders, the Hon’ble SAT *inter alia* held as under:

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

3. The Noticee also, aggrieved by the Order dated September 24, 2021, passed by the Ld. WTM, appealed to the Hon’ble SAT and the Hon’ble SAT vide its order dated July 20, 2022<sup>1</sup> remitted the matter back to SEBI for deciding the matter afresh in light of its observations made in the order dated June 9, 2022<sup>2</sup>, as noted above. The relevant excerpt from the decision of the Hon’ble SAT dated July 20, 2022 is hereunder:

*“Thus, for the reasons stated in our order dated June 9, 2022 in Appeal no. 214 of 2022 and other connected companion appeals, the impugned orders passed by the WTM against the brokers / appellants in the present appeals cannot be sustained and are quashed. The appeals of the brokers are allowed. The matters are remitted to the WTM to decide the matter afresh in the light of the observation made in our order dated June 9, 2022 in accordance with law after giving an opportunity of hearing to the brokers....”*

4. Thereafter, the competent authority of SEBI has allocated the present matter to me for further proceedings. In light of the aforesaid SAT orders, it was felt necessary to furnish

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1 Appeal No. 672 of 2021: [https://sat.gov.in/english/pdf/E2022\\_JO2021672\\_22PDF](https://sat.gov.in/english/pdf/E2022_JO2021672_22PDF)

2 Appeal No. 214 of 2019: [https://sat.gov.in/english/pdf/E2022\\_JO2019214.PDF](https://sat.gov.in/english/pdf/E2022_JO2019214.PDF)

certain additional documents/material to the *Noticee* and grant an opportunity of personal hearing, before concluding the present proceedings. Accordingly, SEBI vide Supplementary SCN dated October 11, 2022 (hereinafter referred to as “SSCN”) provided certain additional documents/material (as indicated in the SSCN) to the *Noticee* and advised it to submit its reply/comments/clarifications in addition to its earlier replies, if any, within 15 days of receipt of the SSCN. The *Noticee* was further informed that if no reply is received within 15 days of receipt of the SSCN, it shall be presumed that it has no additional comments/reply to submit and the matter would be proceeded in terms of the provisions contained in the Intermediaries Regulations. I note that the SSCN has been sent to the *Noticee* through *Speed Post Acknowledgement Due* (for short ‘SPAD’) vide letter dated October 11, 2022. Further, the scanned copy of the SSCN was also served upon the *Noticee* vide email dated October 17, 2022 and proof of delivery is available on record. In response to the said SSCN, the *Noticee* vide its letter dated November 21, 2022 filed a reply in the matter. In the interest of natural justice, an opportunity of personal hearing was granted to the *Noticee* on November 24, 2022.

5. On the scheduled date of hearing Mr. A.P. Shukla, along with Advocate Trushar Bhavsar appeared on behalf of the *Noticee* in person and made submissions on the lines of the replies submitted earlier. During the course of hearing, certain queries were raised to the *Noticee* and the *Noticee* was granted time till December 12, 2022 to submit response to the said queries along with the post hearing submissions, if any. Accordingly, the *Noticee* vide letter dated December 12, 2022 furnished its reply. The *Noticee* further requested for another opportunity of hearing in the matter which was granted to the *Noticee* and such hearing was held on February 9, 2023.
6. On the scheduled date, Mr. A. P. Shukla, President of the *Noticee* appeared in person and made oral submissions and submitted an affidavit that after proper investigation, EoW has filed the final charge-sheet in the matter and the *Noticee* has not been named in the same; rather, Mr. A.P. Shukla has been named as a witness in such charge-sheet. The hearing in the matter was accordingly completed.
7. In view of the above discussed facts and circumstances of the matter, I observe that the matter can be and is fit to be proceeded with on merit.
8. The written submissions filed by the *Noticee* vide letters dated August 11, 2021, November 21, 2022 and December 12, 2022 and the oral submissions made during the course of the personal hearings held on November 24, 2022 and February 9, 2023, are summarized hereunder:

- i. The details of the paired trades have not been provided to the *Noticee* and in the absence of the same, the *Noticee* cannot defend itself;
- ii. DA has not dealt with the reply of the *Noticee* in detail and has recommended for cancellation of certificate of registration which is highly disproportionate;
- iii. There are no specific provisions in the Securities Laws for paired trades;
- iv. The *Noticee* became a member of NSEL after doing the following due diligence:
  - a) NSEL was 100% subsidiary of Multi Commodity Exchange of India Limited (hereinafter referred to as “MCX”) and National Agricultural Cooperative Marketing Federation of India Ltd. (hereinafter referred to as “NAFED”) was a promoter of NSEL;
  - b) Bankers acting on NSEL were also clearing bank for capital market;
  - c) Trades were cleared by Professional Clearing Member / Self Clearing Members;
  - d) State level levies such as VAT, Stamp Duty etc were charged by respective state government authorities;
  - e) Income tax was applicable on the income generated;
- v. The *Noticee* was issued the Certificate of Registration on April 29, 2016 though the *Noticee* had neither applied for the registration, nor did the *Noticee* indulge in any activity of a Stock broker at any point of time either before or after grant of SEBI Registration;
- vi. Further, since the *Noticee* did not conduct a single trade in securities, it is amazing as to how could the activities of *Noticee* as a commodities broker be of any threat to the Securities Market;
- vii. The SCN issued to the *Noticee* is patently erroneous insofar it states that the Certificate of Registration was issued to the *Noticee* as a ‘Commodities Derivatives Broker’ as it is a matter of fact that the *Noticee* was granted the certificate as a ‘Stock Broker’;
- viii. The recommendation of the DA to cancel the Certificate of Registration of the *Noticee* is arbitrary, baseless and shows utter lack of sanity on the part of the DA;
- ix. The term ‘securities’ as defined under the SCRA does not cover commodities and therefore the trades of the *Noticee* in the Commodity Market cannot be detrimental in any way to the interests of the securities market as alleged in the Enquiry Report;

- x. The observations of the Hon'ble Supreme Court in the matter of *63 Moons Technology Limited & Ors. v. Union of India* do not pertain to the *Noticee* as the *Noticee* was not a party to the said case;
- xi. The trading in paired contracts were being conducted by NSEL since 2009 whereas the *Noticee* became part of NSEL in 2011 and further, the *Noticee* never advised or propagated the trading in the paired contracts;
- xii. The *Noticee* as a commodity broker merely executed the trades on behalf of its constituents and had no reason to believe that such trades were in contravention to the guidelines of FMC;
- xiii. If the regulator could not detect the alleged flouting of the directions by NSEL, how could the *Noticee* be held responsible for the same and be labeled with participation and facilitation of the alleged flouting of rules by NSEL
- xiv. There is no material/ information or court finding on paired contracts against the commodity brokers in general and *Noticee* in particular, who has acted *bona fide* as per trade derivative offered by NSEL;
- xv. The *Noticee* was not closely associated with NSEL and/ or facilitated trades in the paired contracts. The *Noticee* was not even remotely related to NSEL except as a commodity broker with NSEL;
- xvi. The *Noticee* has not traded in its proprietary account and meagre volume of transactions shows that the *Noticee* could not be a participant/ closely associated with NSEL in such trades. The trades were done by the *Noticee* during the normal course of business, as per rules laid down by NSEL;
- xvii. The fair conduct of the *Noticee*, its reputation/ competence and character has been held in high esteem amongst the constituents, business circle, Exchanges and even SEBI which is evident from the fact that there are no investor complaints, no financial default, no action for any misconduct from NSEL, MCX, NCDEX or SEBI against the *Noticee*. Further, no action has been taken against the *Noticee* by the EoW, Mumbai which investigated the matter and no FIR has been filed against the *Noticee* by the EoW;
- xviii. There is absolute generalization of the alleged violations in the show cause notice and the same is not backed by facts and figures. Further, in the Enquiry Report, there is mention of alleged claim of unsettled amount of Rs. 58, 24, 200/- as noted from the EoW Report but in fact, the *Noticee* is to receive this money from NSEL

which is due to only one client of the *Noticee*. As regard the said amount, the client has not filed any complaint before NSEL or any other forum which proves that the client was fully aware about the trades, obligations etc;

- xix. The *Noticee* has not financed a single contract to any of the clients;
- xx. The *Noticee* has not been provided with the documents relied upon and referred to in the instant matter due to which prejudice is being caused to the *Noticee*;
- xxi. If the *Noticee* was closely associated with NSEL, as alleged in the Enquiry Report, the *Noticee* would have taken the membership since inception of NSEL rather it became a member in 2011;
- xxii. The alleged violations pertain to a period when the activities of *Noticee* did not fall under the regulatory domain of SEBI rather the brokers were regulated by their respective stock exchanges;
- xxiii. The *Noticee* is unable to comprehend the exact violations committed by the *Noticee* for regulatory intervention after a period of nine years and the *Noticee* is unable to understand the exact nature of the securities law violations committed by the *Noticee* so as to attract the provisions of the Intermediaries Regulations which was not even applicable at the relevant point of time;
- xxiv. The SCNs issued to the *Noticee* and the SCN issued by the DA does not elucidate a reasonable ground as to why the same are being issued and under which provision of law;
- xxv. There is nothing to show that the *Noticee* was involved in any unethical practice, inducement, misrepresentation, false assurance or luring any client to trade in NSEL;
- xxvi. Enquiry Report selectively relies upon interim report of the EoW which has not been provided to the *Noticee* and a final report in this regard has not yet been submitted;
- xxvii. SEBI has not conducted any independent and separate investigation and hence in view of the fact that investigation by some agencies is still ongoing and complete fact finding is under progress, it is unbecoming on the part of the SEBI to proceed with the matter;
- xxviii. The SFIO report is not legally tenable and cannot be relied upon as the same is not a conclusion of proceedings but merely a report based on observations of the

concerned inspector. The contents of the SFIO report are yet to be verified before the court;

- xxix. The Competent Authority cannot traverse beyond the scope of the recommendation made by the DA and there has been no new enquiry or recommendation by the DA for issuance of the SSCN;
- xxx. The SSCN is issued on a fresh cause without any enquiry or recommendation made by the DA and the FIR sought to be made the base of the SSCN was available to the earlier Competent Authority, i.e., the WTM, when the order dated September 24, 2021 was passed;
- xxxi. The Hon'ble SAT while setting aside the order passed by the WTM of SEBI vide its order dated July 20, 2022 has rejected each and every reasoning and findings to arrive at the conclusion that the *Noticee* is not fit and proper;
- xxxii. The only issue open for determination in the instant proceedings are those not specifically dealt with by the Hon'ble SAT;
- xxxiii. The SSCN is issued in continuation of the earlier SCNs issued to the *Noticee* and the same is bad in law as the proceeding initiated under the earlier notices has reached finality on account of the SAT Order referred above, which has not been challenged before any appellate body;
- xxxiv. The final charge-sheet has been filed by EoW in the matter where Mr. A.P. Shukla, President of the *Noticee* has been made a witness on behalf of the *Noticee*.

#### **CONSIDERATION OF ISSUE AND FINDINGS**

9. I have carefully perused the SCN including the Enquiry Report issued to the *Noticee*, the replies dated August 11, 2021, November 21, 2022 and December 12, 2022, the oral submissions made by the *Noticee* during the personal hearings held on November 24, 2022 and February 9, 2023 and other materials/information as available in the public domain and also made available to the *Noticee* vide SSCN dated October 11, 2022. After considering the allegations made/charges levelled against the *Noticee* in the instant matter as spelt out in the SCN/SSCN, the issue which arises for my consideration in the present proceedings is whether the *Noticee* satisfies the '*fit and proper person*' criteria as laid down under Schedule II of the Intermediaries Regulations.
10. At this juncture, I note that the *Noticee* in its reply dated August 11, 2021 has stated that SEBI issued a Certificate of Registration bearing no. INZ000045333 dated April 29, 2016 to the *Noticee* without the *Noticee* applying for such registration. The *Noticee* has further

stated that SEBI has also not issued any Certificate of Registration to the *Noticee*. Admittedly, prior to the merger of FMC with SEBI (w.e.f. September 28, 2015), the *Noticee* was not required to be registered under the FCRA or any other regulation to be a commodity derivatives broker. However, after the merger of FMC with SEBI, a commodity derivatives broker is required to mandatorily have a certificate of registration from SEBI in case it is desirous to remain associated with the Securities Market as a commodity derivatives broker. It is seen that the Finance Act, 2015 (as notified on May 14, 2015) conferred the power of regulation over intermediaries dealing in commodity derivatives to SEBI and also mandated regulation of commodity derivatives brokers by SEBI, which included their registration as commodity derivatives broker with SEBI. In this regard, vide Section 131B of the Finance Act, 2015, a transitory period of 3 months was provided to all the intermediaries which were associated with commodity derivatives market under the erstwhile FCRA, 1952 but did not require a registration certificate earlier, to continue to deal in commodity derivatives as a commodity derivatives broker, provided it made an application of registration to the SEBI within 3 months from September 28, 2015. As per records, I note that the *Noticee* has been granted a Certificate of Registration as a stock broker w.e.f. April 29, 2016 and since then it has been acting as a market intermediary registered with the SEBI.

11. In this regard, I note from the records that National Commodity & Derivatives Exchange Limited (hereinafter referred to as “NCDEX”), vide letter dated December 21, 2015 had forwarded the duly filled in application dated November 5, 2015 along with requisite enclosures submitted by the *Noticee* for the Certificate of Registration as a stock broker with SEBI. Pursuant to the receipt of the same, SEBI has granted the abovementioned Certificate of Registration to the *Noticee*. From the records, I also note that SEBI vide its letter dated April 29, 2016 had forwarded the aforesaid Certificate of Registration to the *Noticee* and the same was also acknowledged by the *Noticee*. In view of same, I find that the contention made by the *Noticee* is misleading and incorrect, and hence its contention in this behalf are rejected.
12. Before I proceed to examine the charges vis-à-vis the evidences available on record, it would be appropriate at this stage to refer to the relevant provisions of the laws, which are alleged to have been violated by the *Noticee* and/or are referred to in the present proceedings. The same are reproduced below for ease of reference:

**THE SEBI ACT, 1992**

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



12.(3) The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations:

Provided that no order under this sub-section shall be made unless the person concerned has been given a reasonable opportunity of being heard.

### **THE STOCK BROKERS REGULATIONS, 1992**

#### ***Consideration of application for grant of registration.***

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

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

#### ***Conditions of registration.***

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

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

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

### **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.

(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.

#### ***Liability for action under the Enquiry Proceeding Regulations.***

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;

### **THE INTERMEDIARIES REGULATIONS, 2008**

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

[See regulation 7]

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

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

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

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

*Provided that in case of an unlisted applicant or intermediary, any person holding twenty percent or more voting rights, irrespective of whether they hold controlling interest or exercise control, shall be required to fulfil the 'fit and proper person' criteria.*

**Explanation** –*For the purpose of this sub-clause, the expressions “controlling interest” and “control” in case of an applicant or intermediary, shall be construed with reference to the respective regulations applicable to the applicant or intermediary.*

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

- (a) integrity, honesty, ethical behaviour, reputation, fairness and character of the person;*
- (b) the person not incurring any of the following disqualifications:*
  - (i) criminal complaint or information under section 154 of the Code of Criminal Procedure, 1973 (2 of 1974) has been filed against such person by the Board and which is pending;*
  - (ii) charge sheet has been filed against such person by any enforcement agency in matters concerning economic offences and is pending;*
  - (iii) an order of restraint, prohibition or debarment has been passed against such person by the Board or any other regulatory authority or enforcement agency in any matter concerning securities laws or financial markets and such order is in force;*
  - (iv) recovery proceedings have been initiated by the Board against such person and are pending;*

- (v) *an order of conviction has been passed against such person by a court for any offence involving moral turpitude;*
  - (vi) *any winding up proceedings have been initiated or an order for winding up has been passed against such person;*
  - (vii) *such person has been declared insolvent and not discharged;*
  - (viii) *such person has been found to be of unsound mind by a court of competent jurisdiction and the finding is in force;*
  - (ix) *such person has been categorized as a wilful defaulter;*
  - (x) *such person has been declared a fugitive economic offender; or*
  - (xi) *any other disqualification as may be specified by the Board from time to time.*
- (4) *Where any person has been declared as not 'fit and proper person' by an order of the Board, such a person shall not be eligible to apply for any registration during the period provided in the said order or for a period of five years from the date of effect of the order, if no such period is specified in the order.*
- (5) *At the time of filing of an application for registration as an intermediary, if any notice to show cause has been issued for proceedings under these regulations or under section 11(4) or section 11B of the Act against the applicant or any other person referred in clause (2), then such an application shall not be considered for grant of registration for a period of one year from the date of issuance of such notice or until the conclusion of the proceedings, whichever is earlier.*
- (6) *Any disqualification of an associate or group entity of the applicant or intermediary of the nature as referred in sub -clause (b) of clause (3), shall not have any bearing on the 'fit and proper person' criteria of the applicant or intermediary unless the applicant or intermediary or any other person referred in clause (2), is also found to incur the same disqualification in the said matter:*

*Provided that if any person as referred in sub-clause (b) of clause (2) fails to satisfy the 'fit and proper person' criteria, the intermediary shall replace such person within thirty days from the date of such disqualification failing which the 'fit and proper person' criteria may be invoked against the intermediary:*

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

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

**Recommendation of action**

26. (1) After considering the material available on record and the reply, if any, the designated authority may by way of a report, recommend the following measures, –

- (i) disposing of the proceedings without any adverse action;
- (ii) cancellation of the certificate of registration;
- (iii) suspension of the certificate of registration for a specified period;
- (iv) prohibition of the noticee from taking up any new assignment or contract or launching a new scheme for such the period as may be specified;
- (v) debarment of an officer of the noticee from being employed or associated with any registered intermediary or other person associated with the securities market for such period as may be specified;
- (vi) debarment of a branch or an office of the noticee from carrying out activities for such period as may be specified;
- (vii) issuance of a regulatory censure to the noticee:

Provided that in respect of the same certificate of registration, not more than five regulatory censures under these regulations may be recommended to be issued, thereafter, the action as detailed in clause (ii) to (vi) of this sub-regulation may be considered.

**Order.**

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

**Scope of the present proceedings vis-à-vis orders passed by the Hon'ble SAT on June 09, 2022 and July 20, 2022**

13. As noted above, taking cognizance of the orders passed by the Hon'ble SAT on June 09 2022 (hereinafter referred to as “**SAT Order**”) and July 20, 2022, in NSEL matters, a SSCN dated October 11, 2022, *inter alia*, enclosing a copy of the SAT Order was issued to the *Noticee* calling upon the *Noticee* to show cause as to why the following information/material along with the Enquiry Report dated June 20, 2019 should not be considered against it for determining whether the *Noticee* satisfies ‘*fit and proper person*’ criteria as laid down under Schedule II of the Intermediaries Regulations:
- a. SEBI complaint dated September 24, 2018 filed with Economic Offence Wing (‘**EOW**’);
  - b. First Information Report (‘**FIR**’) dated September 28, 2018; and
  - c. Amended Schedule II of the Intermediaries Regulations.

14. In this regard, I find it apposite to encapsulate and list the grounds on which the SEBI orders were set aside by the Hon'ble SAT which consequently led to issuance of the aforesaid SSCN to the *Noticee* in the present matter:

- a. The observations of the Hon'ble Bombay High Court in the matter of *63 Moons vs. Union of India*<sup>3</sup> cannot be relied upon as the said judgement has been set aside in appeal<sup>4</sup> by the Hon'ble Supreme Court vide judgment dated April 30, 2019.
- b. The observation from the Order dismissing the Writ Petition filed by NSEL against the invocation of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short "MPID Act") (*NSEL vs. State of Maharashtra*<sup>5</sup>) cannot be relied upon, as in a subsequent Writ Petition<sup>6</sup> moved by 63 Moons, a Division Bench of the Hon'ble Bombay High Court has allowed the prayer and held that NSEL is not a financial establishment and therefore the provisions of the MPID Act are not applicable. The Division Bench also observed that the *prima facie* observations made by the single bench while dismissing NSEL petition could not be relied upon as they were preliminary observations and such observations do not foreclose the issue about the applicability of the provisions of the MPID Act. The Hon'ble Tribunal, I note, was of the opinion that *prima facie* observations cannot be utilized to judge the reputation, character or integrity of NSEL.
- c. The observations in the bail rejection order dated August 22, 2014, passed by the Hon'ble Bombay High Court in the matter of *Jignesh Prakash Shah vs. The State of Maharashtra*<sup>7</sup>, cannot also be relied upon as the observations made in a bail order were limited to the fact as to whether the bail should be granted or not.
- d. Reliance on the SFIO Report, the Tribunal has held, was misplaced. The report only directs EOW/Police to initiate appropriate proceedings against NSEL and its directors/promoters. Based on the SFIO Report, the Special Sessions Judge took cognizance of the matter by an Order dated July 29, 2019. But this Order was challenged by NSEL and two other accused and has since been stayed by the

<sup>3</sup> Writ Petition No. 2743 of 2014, Also available at - <https://indiankanoon.org/doc/66704740/>

<sup>4</sup> (2019) 18 SCC 401, Also available at - <https://indiankanoon.org/doc/169098295/>

<sup>5</sup> Writ Petition No. 1403 of 2015, Also available at - <https://bombayhighcourt.nic.in/generatenewauth.php?bhcpair=cGF0aD0uL3dyaXRlcmVhZGRhdGEvZGF0YS9qdWRnZW1lbnRzLzIwMTUvJmZuYW11PUNSV1AxNDZMTUucGRmJnNtZmxhZz10JnJqdWRkYXRIPSz1cGxvYWVhZD0wMS8xMC8yMDE1JnNwYXNzcGhyYXNlPTA5MDIyMzEyMzU0Ng==>

<sup>6</sup> MANU/MH/2309/2019, Also available at - <https://indiankanoon.org/doc/178307788/>

<sup>7</sup> Criminal Bail Application No.1263 Of 2014, Also available at - <http://www.nationalspotexchange.com/HC-order.pdf>

Hon'ble Bombay High Court. Also, no complaint yet has been filed against the Appellants pursuant to the SFIO Report.

- e. Effect of SFIO Report under the Code of Criminal Procedure, 1973, as to whether such report could be treated as evidence, was not considered by SEBI.
- f. Reliance placed on decisions of the Hon'ble Tribunal in the matter of ***Jermyn Capital vs. SEBI***<sup>8</sup> and ***Mukesh Babu Securities vs. SEBI***<sup>9</sup> is misplaced as decisions in the said matters are distinguishable on facts. Jermyn Capital was held to be in relation to an Interim Order passed by SEBI, and the Tribunal was of the view that the criteria for passing an Ad Interim Order are based on a different criterion, namely *prima facie* case, the balance of convenience and irreparable injury which are distinct and different while considering an application for grant of Certificate of Registration. The decision in the matter of *Mukesh Babu Securities* was distinguished by the Hon'ble Tribunal on the basis that in the matter a criminal complaint was filed against the Chairman of the Company. The Hon'ble Tribunal noted that there is no evidence to show that any proceedings have yet been initiated against the appellants in the matter under consideration.
- g. Reputation of the applicant cannot be lightly considered based on observations which are not directly related to the applicant.
- h. Grant Thornton Forensic report commissioned by SEBI does not find any close connection between applicant and NSEL. This was overlooked by SEBI.
- i. SEBI Order does not state for how long the rejection of application will continue. The Hon'ble Tribunal was of the view that the rejection cannot continue indefinitely, and in such cases, a time period should be provided during which the applicant will become ineligible to seek fresh registration.

15. It is also noted from the SAT Order that the matter was remanded back to SEBI, taking into consideration the contention made by the counsel appearing on behalf of SEBI that there was additional material available, which had come into existence after the SEBI orders, based on which the findings in the said order could be sustained. The Hon'ble Tribunal, taking into consideration the submissions made on behalf of SEBI, held that:

*"It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a*

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<sup>8</sup> Appeal No. 26 of 2006, decided on September 06, 2006, Also available at - <https://indiankanoon.org/doc/1511076/>

<sup>9</sup> Appeal No. 53 of 2007, decided on December 10, 2007, Also available at- <https://indiankanoon.org/doc/129504/>

*supplementary show cause notice. It will also be open to SEBI if it considers necessary, to conduct an independent enquiry proceeding against the connected entities and persons associated with the brokers against whom evidence is available.”*

16. Before moving forward to consider the matter on merits and test the compliance of the Noticee with the ‘fit and proper person’ criteria, on the basis of the additional material that has been brought on record post the SEBI order (as detailed at paragraph 13 above), the background facts necessary for the present proceedings are narrated in brief, hereunder:
- i. The Noticee, Joindre Commodities Limited, is a commodity derivatives broker registered with SEBI having Registration No. INZ000045333 with effect from April 29, 2016 and is currently a member of the MCX, National Commodity & Derivatives Exchange Clearing Corporation (hereinafter referred to as “NCDECC”), Multi Commodity Exchange of India Clearing Corporation (hereinafter referred to as “MCXCCL”) and NCDEX.
  - ii. NSEL was incorporated in May 2005 as a Spot Exchange *inter alia* with a 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 its 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, *inter alia* including “no short sale by the members of the exchange shall be allowed” and “all outstanding positions of the trades at the end of the day shall result in delivery”.
  - iii. 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 buy and sell in same commodity through two different contracts at two different prices on the exchange platform wherein the investors could buy a short duration contract and sell a long duration contract and vice versa at the same time and at a pre-determined price. The trades for the Buy contract (T+2 / T+3) and the Sell contract (T+25/ T+36) used to happen on 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.
  - iv. On February 06, 2012, the erstwhile Forward Markets Commission (hereinafter referred to as “FMC”) was appointed by the Department of Consumer Affairs,

Government of India 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. The FMC had accordingly called for the trade data from different Spot Exchanges, including NSEL in the prescribed reporting formats. After analyzing the trade data received from NSEL, the FMC passed Order No. 4/5/2013-MKT-1/B dated December 17, 2013 in the matter (hereinafter referred to as "**FMC Order**") wherein it was *inter alia* observed that 55 contracts offered for trade on NSEL platform were in violation of the relevant provisions of the FCRA and that the condition of 'no short sale by members of the exchange shall be allowed' was being not complied with by NSEL and its members. FMC further observed that the '*paired contracts*' offered for trading on NSEL platform were in violation of the provisions of the FCRA and also in violations of the conditions specified by the Government of India in its 2007 Exemption Notification, while granting exemptions to the one day forwards contract for sale and purchase of commodities traded on NSEL, from the purview of the FCRA.

17. From the perusal of the FMC Order in respect of the '*paired contracts*', which were traded on NSEL platform during the relevant period, I note that the FMC had *inter alia*, observed that the following conditions stipulated in the 2007 Exemption Notification were violated:

**a. Short Sale**

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

**b. Contracts with Settlement Period going beyond 11 days**

Some of the contracts offered for trade on NSEL had settlement periods exceeding 11 days and therefore, such contracts were "*non-transferable specific delivery*" contracts under the FCRA. As per the FCRA, the "*ready delivery contracts*" were required to be settled within 11 days of the trade and hence, the contracts traded on NSEL, which provided settlement schedule for a period exceeding 11 days were not allowed and were in violation of 2007 Exemption Notification.

18. Thus, I note that NSEL was granted conditional exemption from the provisions of the FCRA by the Department of Consumer Affairs, Ministry of Consumer Affairs (for short



“MCA”), Food and Public Distribution, Government of India, vide Gazette Notification No. S0906(E) dated June 05, 2007, in exercise of the powers conferred under Section 27 of the FCRA, for (i) forward contracts, (ii) for sale and purchase of the commodities, of one-day duration traded on NSEL subject to certain conditions which, *inter alia*, included that ‘no short sale by members of the NSEL shall be allowed’ and that all ‘outstanding positions of the trade at the end of the day shall result in delivery’. It was also stipulated that all information or returns relating to the trade as and when asked for shall be provided to the Central Government or its designated agency. The spot exchanges were envisaged as a platform for providing transparent and secure trading in commodities with a view to boost the agriculture sector in the country. Thereafter, NSEL commenced operations in October 2008.

19. In this regard, the relevant observations of the FMC as recorded in its Order dated December 17, 2013 and also captured in the SCN are reproduced as under:

*“...a large number of NSEL exchange trades were carried out with paired back-to-back contracts. Investors simultaneously entered into a “short term buy contract” (e.g. T+2, i.e. 2 day settlement) and a “long term sell contract” (e.g. T + 25 i.e. 25day settlement). The contracts were taken by the same parties at a pre-determined price and always registering a profit on the long-term positions. Thus, there existed a financing business where a fixed rate of return was guaranteed on investing in certain products on the NSEL. ”*

*NSEL conducted its business not in accordance with the conditions stipulated in the notification dated 05.06.2007 granting it exemption from the operation of FCRA, 1952, with regard to the one-day forward contracts to be traded on its exchange platform. As noted in the SCN, the condition of ‘no short-sell’ and ‘compulsory delivery of outstanding position at the end of the day’ stipulated in the notification were violated by NSEL. NSEL Board allowed launching of paired back-to-back contracts on its exchange platform comprising a short-term buy contract (T+2 settlement) and a long-term sell contract (T+25 settlement) with predetermined price and profit for the buyer and seller, which violated the very concept of spot market of commodities and the transactions ultimately were in the nature of financial transactions” (emphasis supplied)*

20. It is therefore, clear that NSEL was given permission to setup as a spot exchange for trading in commodities. It was essentially meant to only offer forward contracts having one-day duration as per 2007 Exemption Notification. I note from the FMC Order that FMC had observed that the 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. I further note from the FMC Order that under the FCRA, a “forward

contract” is defined as a “contract for delivery of goods and which is not a ready delivery contract”. A ‘ready delivery contract’ is defined as “a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days”. Given the said definition contained in FCRA, FMC, I note, 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*. It is therefore, noted that even though MCA had stipulated in the 2007 Exemption Notification that only contracts of one-day duration were permitted to be offered on NSEL, FMC, in its Order, relying on the definition of “forward contract” under FCRA held that NSEL was allowed to only trade in one-day forward contracts and was obliged to ensure delivery and settlement within 11 days. Therefore, even going by the interpretation adopted by FMC, what is beyond doubt is that NSEL had permitted 55 contracts of various commodities having duration longer than 11 days and these contracts were *ex facie* in contravention of the exemption granted to NSEL.

21. At this stage, it is also pertinent to refer to the judgment of the Hon’ble Supreme Court of India passed in the matter of *63 Moons Technologies Ltd. (formerly known as Financial Technologies India Ltd.) & Ors. v. Union of India & Others*<sup>10</sup> (Civil Appeal No. 4476 of 2019 decided on April 30, 2019), 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”.

22. It is further pertinent to refer to the 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.*<sup>11</sup> (hereinafter referred to as “**MPID matter**”), wherein 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

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<sup>10</sup> (2019)18 SCC 401. Also available at <https://indiankanoon.org/doc/169098295/>

<sup>11</sup> Civil Appeal No. 2748-49 of 2022. Also available at <https://indiankanoon.org/doc/184205229/>

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.” (emphasis supplied)

23. I, therefore, note that the Hon’ble Supreme Court has already commented on the nature of the ‘paired contracts’ offered on NSEL platform. In the merger petition (*63 Moons Technologies Ltd. vs. UOI*), it was held that these contracts were in the nature of financing transactions. In the MPID matter (*The State of Maharashtra vs. 63 Moons Technologies Ltd.*), the Hon’ble Supreme Court has held that such transactions come within the definition of ‘deposits’ under the MPID Act.
24. It is further noted that the Hon’ble Supreme Court in the MPID matter, had extensively referred to the claims made on the website of NSEL and the contents of the publicity material and other investor resources. In this regard, it can be noted that NSEL was advertising a uniform return of 16% p.a. for the ‘paired contracts’ traded on its platform. The return offered was the same across commodities. The return remained the same irrespective of the duration of the contract. For example, a T+2 & T+25 paired contract in steel had the same offered return as a T+ 2 & T + 35 paired contract in castor oil. The ‘paired contracts’, it is noted, were being marketed as an alternative to fixed deposits.
25. I note that the FMC Order and both judgments of the Hon’ble Supreme Court go into abundant detail regarding NSEL permitting short sales, i.e., permitting sellers to offer contract for sale of commodities on its platform without ensuring that requisite amount of commodity is available in the warehouse. It is further noted from the judgement of the Hon’ble Supreme Court in the MPID matter that the overwhelming majority of the sale leg of the ‘paired contracts’ which were executed were short sales – and naked short sales at that - the commodities to back such sales were not available at the designated warehouses of NSEL.
26. Considering the deliberations and discussions recorded above, it essentially leads to the moot question as to whether the *Noticee* while facilitating such transactions for its clients was under the *bona fide* belief that the ‘paired contracts’ were actually spot contracts in commodities. Or can it be said that the very fact that ‘paired contracts’ were offered meant that NSEL was offering contracts which were not resulting in compulsory delivery and, therefore, the *Noticee* should have been aware that such a product was far removed from

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

27. In the undeniable background that there was a settlement default at NSEL, it is clear that there were enough red flags which should have alerted the *Noticee* when these products were first offered by NSEL. With the material on record, especially those summarized at paragraphs 23, 24 and 25, it is further clear that any prudent person (including the *Noticee*) would have come to the conclusion that what was being offered were not spot contracts in commodities and rather had a trappings of a financial product which offered fixed and assured returns, as the Hon'ble Supreme Court has already held.
28. As recorded in the SSCN, it is not in dispute that SEBI has filed a complaint dated September 24, 2018, against brokers who facilitated access to '*paired contracts*' traded on NSEL, including the *Noticee*, with EOW, Mumbai. On the basis of this complaint, subsequently, an FIR dated September 28, 2018 came to be registered with the MIDC Police Station, Mumbai, against the *Noticee*, which is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*.
29. In the background of the aforesaid discussion pertaining to '*paired contract*' 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 under Schedule II of the Intermediaries Regulations.
30. In this context, as per replies of the *Noticee*, I note that it is an admitted position that the *Noticee* has indulged in trading of '*paired contracts*' on behalf of its clients. The *Noticee* in its reply dated August 11, 2021 has, *inter alia*, submitted that "*Noticee as Commodity Broker, merely executed such trades on behalf of its constituents, and had no reasons to believe that such trades were in contravention to the guidelines of FMC...*". The *Noticee* has further stated that "...*It is reiterated the trades by Noticee were done during the normal course of business, as per rules laid down by NSEL.*". Thus, as per the admissions of the *Noticee* in its reply, it is clear that the *Noticee* has indulged into trading in '*paired contracts*' on behalf of its clients. In the circumstance, the contention that the details of the paired trades have not been provided to the *Noticee* or that applicable laws do not deal with paired trades is rejected.
31. 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 participating/facilitating in 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 October 11, 2022, 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 31, 2019, the *Noticee* is no longer a 'fit and proper person' for holding the Certificate of Registration being in violation of regulation 5(e) of the Stock Brokers Regulations read with Schedule II of the Intermediaries Regulations.

32. I note that regulation 5(e) of the Stock Brokers Regulations provides that for the purpose of grant of Certificate of Registration, the applicant has to be a 'fit and proper person' in terms of Schedule II of the Intermediaries Regulations. I further note that the 'fit and proper person' criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008, was amended vide SEBI(Intermediaries)(Third Amendment) Regulations, 2021 with effect from November 17, 2021.
33. In this context, as noted above, I note that the *Noticee* is holding a Certificate of Registration No. INZ000045333 granted by SEBI on April 29, 2016. In order to continue to hold such Certificate of Registration from SEBI, the *Noticee* is also required to satisfy the conditions of eligibility, which *inter alia* include, continuance of its status as a 'fit and proper person'. The above condition to be a fit and proper person is not a onetime condition applicable only at the time of seeking registration. Rather, the provisions governing the criteria show that this is a condition which each and every registered intermediary is required to fulfil on a continuous basis as long as the entity remains associated with the Securities Market as a registered intermediary.
34. Therefore, the criteria of 'fit and proper person', is an ongoing requirement throughout the period during which the *Noticee* remains operational in the Securities Market as a registered intermediary. In case, pursuant to the grant of registration by SEBI, any evidence comes

to the notice of SEBI that casts a doubt on the integrity, reputation and character of the registered intermediary, SEBI is well within the powers to examine the '*fit and proper*' status of such entity based on various parameters. Therefore, even if the *Noticee* was found to have fulfilled the '*fit and proper person*' criteria while granting the Certificate of Registration, in 2016, such an intermediary can still be assessed on being *fit and proper* at a later date. Furthermore, as and when the '*fit and proper*' criteria changes, the *Noticee* will be required to comply with the revised criteria, and in this instance criteria as revised vide the amendments in November 2021. It is noted that parameters provided under paragraph 3(b) of the amended criteria of Schedule II of the Intermediaries Regulations lays down a list of disqualifications which, *inter alia*, includes the following:

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

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

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

35. As already recorded in SSCN and captured above, an FIR has been registered with the MIDC Police Station, Mumbai, against the *Noticee* under section 154 of the Code of Criminal Procedure, 1973 ('CrPC') on September 28, 2018 and the same is pending as on date and is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. It is, therefore, noted that the disqualification provided in paragraph 3(b) (i) under the amended Schedule II of the Intermediaries Regulations is also triggered vis-à-vis the *Noticee*.
36. In this regard, it is noted that the *Noticee* has admittedly traded in '*paired contracts*' on behalf of its clients. I note that the *Noticee*, as a broker and as a member of NSEL, represented NSEL to the regular investors. The execution of the trades in '*paired contracts*' by the *Noticee* shows the participation of the *Noticee* in the said scheme perpetrated by NSEL to provide its platform for trading in '*paired contract*' that were not permitted under the 2007 Exemption Notification and were purely financial contracts promising assured returns under the garb of spot trading in commodities. Therefore, the *Noticee* by its conduct and as a member of NSEL has acted as an instrument of NSEL in promoting and/or dealing in '*paired contracts*' which were in the nature of financing transaction (as held by the Hon'ble Supreme Court of India to be so as noted above). The *Noticee*, by providing access for taking exposure to '*paired contracts*' has exposed its clients to the risk involved in trading in a product that did not have regulatory approval and also undertaking such exposure itself on account of its proprietary trades thereby raises doubts on the competence of the *Noticee*

to act as a registered Securities Market intermediary. Thus, I am of the view that the trading activities of the *Noticee* in 'paired contracts' for its clients on NSEL platform have serious ingredients amounting jeopardizing the reputation, belief in competence, fairness, honesty, integrity and character of the *Noticee* in the Securities Market.

37. Therefore, looking holistically I find that the said conduct of the *Noticee* is detrimental to the Securities Market being not in conformity with the applicable code of conduct. It may also be noted that the scope of the instant proceeding is not to analyze the actual impact and consequences of the conduct of the *Noticee* but to examine as to whether or not, the *Noticee* has acted in a manner expected of a market intermediary and the answer to the same manifestly goes against the *Noticee*. In my considered view, it is immaterial if the *Noticee* has no outstanding investor complaints or if the *Noticee* has not traded through its proprietary account. The fact that is undeniably clear before me is that the involvement of the *Noticee* in trading/facilitation of trading in 'paired contracts' on NSEL is certainly a conduct which was not permitted by the 2007 Exemption Notification nor by any of the applicable provisions of the FCRA and therefore, such a conduct as has been displayed by the *Noticee* in its trading on NSEL platform is detrimental to the interest of the Securities Market.
38. Further, as noted above, the *Noticee* has also earned disqualification under 3(b)(i) of the amended Schedule II of the Intermediaries Regulations on account of the FIR registered against the *Noticee*. In this regard it is pertinent to note that the said FIR is validly subsisting and has not been challenged, quashed or stayed by any competent court qua the *Noticee*. In this context, as observed above, I note that being a 'fit and proper person' is a continuing 'eligibility criteria' which must be satisfied by the *Noticee* including the amended criteria. I am of the considered view that the due presumption on the constitutional and legal validity of the said amended Schedule II hold the field which are binding upon me, and arguments, if any, to the contrary are not maintainable.
39. Here, I deem it important to deal with the submission of the *Noticee* that Mr. A.P. Shukla, President of Joindre Commodities has been named as a witness in the eleventh and the final charge-sheet filed by the EoW in the matter. In this regard, from perusal of the said charge-sheet filed by EoW, I observe that the same did not originate from the complaint filed by SEBI or the FIR dated September 28, 2018 filed with the MIDC Police Station. Further, the genesis of the charge-sheets filed by EoW appears to be based on the FIR filed by one Mr. Pankaj Saraf on September 30, 2013. Accordingly, I am of the view that the employee of the *Noticee* being made a witness in the charge-sheet filed pursuant to a different FIR filed by an individual is of no consequence to the present proceedings. As

noted above, the FIR dated September 28, 2018 is validly subsisting against the *Noticee* as on date.

40. At this juncture, I note that the *Noticee* has contended that SEBI is not empowered to investigate into the alleged violations of FCRA and the said power to investigate vests with the police authorities under CrPC. With respect to the same, I note that, SEBI had filed a complaint dated September 24, 2018 with the concerned police authorities for initiating appropriate action for the violations of the FCRA *inter alia* alleged to have been committed by the *Noticee* within the stipulated time as specified under section 29A(2)(e). I also note from the records that on the basis of the said complaint of SEBI, a FIR dated September 28, 2018 was registered with MIDC Police Station, Mumbai and the same, as noted above, is validly subsisting.
41. I note that the present proceedings have been initiated to adjudge whether the *Noticee* satisfies the criteria for '*fit and proper person*' as specified in the Broker Regulations and the Intermediaries Regulations. The *Noticee* is obliged to maintain the '*fit and proper person*' criteria on a continuous basis and it is well within SEBI's jurisdiction and powers to adjudge the said fit and proper status of the market intermediaries in the interest of securities market. I therefore find no merit in the said submission of the *Noticee*.
42. I am also aware that recently SEBI has passed 5 separate orders<sup>12</sup> in the related NSEL matters where the noticees therein have been debarred from making a fresh application seeking registration for a specified period from the date of the said order or till acquittal of the said noticee by Courts pursuant to the charge sheet and FIR filed by/with EOW, whichever is earlier. I find that present matter at hand is different from that of those 5 cases as in the extant matter the *Noticee* is already holding a Certificate of Registration whereas in those 5 cases, the entities had filed applications seeking certificate of registration. Therefore, I am of the measured opinion that the present case stands at a different footing than that of those 5 cases where the applications for grant of certificate

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<sup>12</sup> Orders dated November 29, 2022 in respect of Motilal Oswal Commodities Brokers Pvt. Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-respect-of-motilal-oswal-commodities-broker-pvt-ltd-65602.html>), Anand Rathi Commodities Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-anand-rathi-commodities-ltd-65604.html>), Geofin Comtrade Limited (previously known as Geojit Comtrade Limited) (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-geofin-comtrade-limited-previously-known-as-geojit-comtrade-limited-65597.html>), India Infoline Commodities Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-india-infoline-commodities-ltd-65595.html>) and Phillip Commodities India Pvt. Ltd. (at <https://www.sebi.gov.in/enforcement/orders/nov-2022/order-in-the-matter-of-phillip-commodities-india-pvt-ltd-65593.html>) in the matter of NSEL.



of registration were pending at the time of passing those orders whereas in the extant matter the Noticee is already having registration with SEBI. Further, I note that the Hon'ble SAT in its order dated June 09, 2022 (pertaining to entities whose application for registration was rejected) has observed that the period for which the noticees cannot apply for registration needs to be specified by SEBI. Having noted the aforesaid observation of the Hon'ble SAT, I am of the view that since the recommendation in the present matter is of cancellation of registration, and not of rejection of the application, the necessity of specifying a period of time may not arise in this order (as did arise in the case of entities desiring to be registered as market intermediaries), as this forum cannot presume whether such entity wishes to reapply to be a market intermediary or not. If it chooses to do so, it will have to be assessed at such point of time if it is fit and proper as per the extant and applicable regulations. If it chooses not to, such issue becomes moot.

43. I would also like to address the objection of the *Noticee* with respect to issuance of the SSCN dated October 11, 2022 which was issued pursuant to and on the basis of the SAT Order on account of the fact that pursuant to the SAT Order dated July 20, 2022, there are no pending proceedings against the *Noticee* and the SSCN issued to the *Noticee* is misplaced insofar it alleges to stem from earlier SCNs issued to the *Noticee*. In this regard, I find that the said objection, is totally misplaced as the Hon'ble SAT while remanding the matters to SEBI had issued the directions to adjudge the matters in light of the decision of the Hon'ble SAT in order dated June 9, 2022. The Hon'ble SAT while remanding the present matter back to SEBI has, *inter alia*, observed as under:

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

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

*"...It will be open to the WTM to rely upon other material such as the complaint letters of NSEL, EOW report, EOW charge sheet, etc. provided such copies are provided to the brokers and opportunity is given to rebut the allegations. Such additional documents relied upon by the respondent should form part of the show cause notice for which purpose, it will be open to the WTM to issue a supplementary show cause notice..."*

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

44. In view of the above observations and admission of the *Noticee* having traded in these 'paired contracts' on NSEL, I have no hesitation in holding that the *Noticee* has participated/facilitated in the trading in 'paired contracts' on NSEL platform during the relevant period as a Trading Member/Clearing Member and has violated the conditions of the 2007 Exemption Notification and also the provisions of the FCRA. Further, as noted above, the *Noticee* has also attracted disqualifications under point 3(b)(i) of Schedule II and the act of *Noticee* in offering access to 'paired contracts', as detailed above, also seriously calls into question the integrity, honesty and lack of ethical behavior on its part. These contracts, as stated earlier, were *ex facie* offered in violation of the 2007 Exemption Notification issued by MCA and far removed from the spot contracts in commodities which were permitted to be traded on NSEL. Here it is pertinent to note that the principle of '*ignorantia juris non excusat*' or '*ignorantia legis neminem excusat*' or '*ignorance of law is no excuse*' also becomes applicable in the situation since trading in 'paired contracts' was in violation of the 2007 Exemption Notification and ignorance of the conditions of the said Exemption Notification cannot be claimed. The 'paired contracts' were nothing but financing transactions which were portrayed as spot contracts in commodities. Therefore, giving go-by to the terms of the 2007 Exemption Notification and attempting to camouflage the nature of the transactions brings into question, the appropriateness and suitability of the continuance of the registration of the *Noticee*, as a broker. Equally, any argument deflecting the responsibility to NSEL, MCA or FMC is misplaced and hereby rejected, as the primary onus of diligence enjoined on an intermediary, which diligence any reasonable or prudent person would also perform, has not been undertaken by the *Noticee*. Clearly, the actions of the *Noticee* has been and could be detrimental to the interest of the Securities Market and accordingly the *Noticee* can no longer be called a '*fit and proper person*' for holding the Certificate of Registration as a broker in the Securities Market, which is one of the conditions for continuance of registration as specified in regulation 5(e) of the Stock Brokers Regulations read with the provisions of Schedule II of the Intermediaries Regulations.
45. In the context of Securities Market, I note that the role of a registered intermediary including a broker is not only sensitive and predominantly fiduciary in nature but also demands from it honesty, transparency, fairness and integrity which are essentially the hallmarks of such market intermediaries. Given the fact that one of the avowed objects of the SEBI Act is the protection of interest of investors apart from promotion and development of the Securities Market, the legislature through enactment, empowers SEBI to grant registration to several class of entities including brokers, which are not only

required to act as an intermediary simplicitor i.e., a bridge or a connector between the markets and investors, but also have a very important role to play in creating an ecosystem of trust and fairness so as to provide a fair and secure market to the investors as any deviation from the above noted objective could have a cascading adverse impact on the development of the Securities Market and interests of investors. Thus, undisputedly a broker is obligated to act in a transparent manner and comply with all applicable regulatory requirements which are in the best interests of its clients and which will uphold the integrity of the Securities Market.

46. It would not be material for the *Noticee* to submit that there is no loss caused to the investors on account of its trades since the limited scope of the present proceeding is to examine the conduct of the *Noticee* in the background of its active participation in the trading platform of NSEL in contraventions of the 2007 Exemption Notification and provisions of the FCRA and also attracting disqualification under amended Schedule II of the Intermediaries Regulations so as to decide on its continuing role in the Securities Market. From the above, it is evident that the *Noticee* was part of a scheme that was contrary to the permissible activities prescribed by the Central Government. Under the garb of 'paired contracts' the *Noticee* had indulged in facilitating impermissible financing transactions, and such illegal activities as well as participation of the *Noticee* therein are certainly detrimental to the interest of the promotion and development of the Securities Market.
47. It is a trite law that when provisions of law prescribe certain acts to be done in a particular manner, the same is required to be honored in letter and spirit. Law does not provide any exception to anyone to perform such acts as per his whims and fancies that is not permissible under an extant legal framework. Therefore, if an exemption is granted in respect of all forward contracts of one-day duration for the sale and purchase of commodities traded on NSEL from operations of the provisions of the FCRA subject to compliance with certain conditions then it is obligatory on the part of a market intermediary to execute forward contracts of one-day duration only, subject to strict compliance with the said conditions. As noted above, the principle of '*ignorantia juris non excusat*' or that '*ignorance of law is no excuse*' becomes squarely applicable.
48. It further needs appreciation that the issue under consideration is not to gauge the profit/loss incurred or likely to be incurred by an individual, but the limited scope of the present proceedings is to see whether the indulgence, engagement and promotion of such activities could be held to be beneficial to the development of Securities Market or the same contain elements that are potentially dangerous and detrimental to the interest,

integrity, safety and security of the Securities Market. In this respect, the undisputed fact that the scheme of 'paired contracts' traded on NSEL ultimately has caused loss to the market to the extent of INR 5,500 Crore itself casts serious aspersion on the conduct, integrity and reputation of, *inter alia*, the *Noticee* who participated in or facilitated such 'paired contracts' and therefore, its continuing role in the Securities Market cannot be viewed as good and congenial for the interest of the investors or of the Securities Market.

49. Under the circumstances, I therefore note that there were enough red flags for a reasonable or prudent person to come to the conclusion that what was being offered as 'paired contracts' on NSEL were not spot contracts in commodities. Given the above discussions and deliberations, I am constrained to conclude that the *Noticee*, presumably driven by its desire to earn brokerage and/or profit, provided access to its clients to participate in a product which raises serious questions on the ability of the *Noticee* to conduct proper and effective due diligence regarding the product itself. Further, as per findings recorded above, the *Noticee* also attracts the disqualification provided in clause 3(b) (i) under the amended Schedule II of the Intermediaries Regulations insofar an FIR against the *Noticee* under section 154 of CrPC has been registered with the MIDC Police Station, Mumbai and the same is validly subsisting/pending as on date. Further, it is also not the case of the *Noticee* that the aforesaid FIR is either stayed or quashed by any competent court qua the *Noticee* or otherwise. In view of the above, I hold that the *Noticee* does not satisfy the 'fit and proper person' criteria specified in Schedule II of the Intermediaries Regulations and hence, the continuance of the *Noticee* as a broker will be detrimental to the interest of the Securities Market. Therefore, such activities of the *Noticee* as a registered broker cannot be condoned and deserve appropriate remedial measure to prevent such wrong doings from recurring to the detriment of the interest of the Securities Market.
50. Having examined and dealt with the contentions raised by the *Noticee* in the preceding paragraphs, I concur with the recommendation made by the DA.

### **ORDER**

51. In view of the foregoing discussions, in exercise of powers conferred upon me under Section 12 (3) and Section 19 of the SEBI Act, 1992 read with regulation 27 of the SEBI (Intermediaries) Regulations, 2008 and upon considering the gravity of the violations committed by the *Noticee* viz. Joindre Commodities Limited, Certificate of Registration

(bearing No. INZ000045333) of the *Noticee* i.e., Joindre Commodities Limited, is hereby cancelled.

52. The *Noticee* shall, after receipt of this order, immediately inform its existing clients, if any, about the aforesaid direction in paragraph 51 above.
53. Notwithstanding the direction at paragraph 51 above, the *Noticee* shall allow its existing clients, if any to withdraw or transfer their securities or funds held in its custody, within 15 days from the date of this order. In case of failure of any clients to withdraw or transfer their securities or funds within the said 15 days, the *Noticee* shall transfer the funds and securities of such clients to another broker within a period of next 15 days thereon, under advise to the said clients.
54. The Order shall come into force with the immediate effect.
55. It is clarified that in view of the amendment made *w.e.f.* January 21, 2021 in the Intermediaries Regulations, 2008, powers that were exercised under regulation 28 of the Intermediaries Regulations, 2008 are now being exercised under regulation 27 of the Intermediaries Regulations, 2008. It is also noted that the above Order is without prejudice to the criminal complaint filed by SEBI in NSEL matter and/or any proceedings pending before any authority in respect of similar matter concerning the *Noticee* or other relevant persons.
56. A copy of this order shall be served upon the *Noticee* and the recognized Market Infrastructure Institutions for necessary compliance.

**DATE: APRIL 10 , 2023**  
**PLACE: MUMBAI**

**Sd/-**  
**PRAMOD RAO**  
**EXECUTIVE DIRECTOR**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**