CIRCULAR

CIR/CDMRD/DEA/01/2016 **January 11, 2016**

To,
The Managing Directors / Chief Executive Officers
of all Commodity Derivatives Exchanges

Dear Sir / Madam,

Sub.: Mandatory requirements / Exit Policy for Commodity Derivatives Exchanges

1. In terms of Finance Act, 2015, the associations recognized under the erstwhile Forward Contracts (Regulation) Act, 1952 as on 28th September, 2015 are deemed to be recognized stock exchanges under the Securities Contracts (Regulation) Act, 1956. This circular applies to all such commodity derivatives exchanges as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2015.

2. **The Ministry of Finance, vide Gazette Notification S.O.2630 (E), dated September 24, 2015 has delegated the powers exercisable by it, *inter alia*, under section 7 of Forward Contracts (Regulation) Act, 1952 to SEBI.**

3. The erstwhile Forward Markets Commission (FMC), vide its Circular No. 9/1/2014-MKT-I (Vol-II), dated May 19, 2015, had directed commodity derivatives exchanges, who have suspended their trading operations, to refund clients margin money, resolve client disputes, refund members' deposits and in case any exchange fails to revive their trading operations within 12 months from the date of suspension of trading, FMC had specified the steps that shall be initiated to cancel their registration and lead to withdrawal of recognition of such exchanges.

4. SEBI has reviewed the said circular and has decided that, if there is no trading operation on the platform of any commodity derivatives exchanges for more than twelve months, then in terms of the above circular, such exchange shall be liable to exit.

5. In addition to the above, henceforth, all National Commodity Derivative Exchanges shall continuously meet the turnover criteria of Rs. 1000 crores per annum. The Regional Commodity Exchanges shall ensure that they have at least 5% of the nation-wide market share of the commodity, which is principally traded on their platform. In case the National and Regional Commodity Exchanges fail to meet the above criteria for 2 consecutive years, they shall be liable to exit.

6. In the event a recognized commodity derivatives exchange, for any reason suspends its trading operations, it shall resume its trading only after ensuring that adequate and effective trading systems, clearing and settlement systems, monitoring and surveillance mechanisms, risk management systems are put in place and only after complying with all other regulatory requirements stipulated by SEBI from time to time. Further, such recognized commodity derivatives exchanges shall resume trading operations only after obtaining prior approval from SEBI.

7. In case any commodity derivatives exchange proposes to surrender its recognition voluntarily or whose recognition is proposed to be withdrawn by SEBI, the concerned Exchange shall be directed to comply with the following:

7.1 The concerned commodity derivatives exchange shall not alienate any assets of the exchange without taking prior approval of SEBI.

7.2 Treatment of the assets of de-recognized exchange:

7.2.1 The concerned commodity derivatives exchange shall be permitted to distribute its assets subject to certain conditions as laid down in this circular as well as other guidelines that may be issued by SEBI, Government, or any other statutory authority, from time to time.

7.2.2 For the purpose of valuation of the assets of the commodity derivative exchange, a valuation agency shall be appointed by SEBI. All the valuation charges shall be paid by the concerned exchange.

7.2.3 The quantum of assets for distribution will be available after payment of statutory dues including income tax, transfer of funds as specified in para 7.3, payment of dues as specified in para 7.4, refund of deposit (refundable) to the stock brokers / clearing members including their initial contribution / deposit to Settlement Guarantee Fund/ Trade Guarantee Fund (SGF/TGF) and contribution to SEBI as specified in para 7.5.4

7.3 The concerned exchange shall transfer the Investor Protection Fund or any such fund to the SEBI Investor Protection and Education Fund.

7.4 The concerned exchange shall pay following dues to SEBI:

7.4.1 The dues outstanding to SEBI and the annual regulatory fee.

7.4.2 The outstanding registration fees of brokers/trading members of such de-recognised stock exchanges as specified in the SEBI (Stock Brokers and Sub Brokers) Regulations, 1992 till the date of such de-recognition.

7.4.2.1 Dues of the brokers to SEBI shall be recovered by the exchange out of the brokers' deposits / capital / share of sale proceeds / winding up proceeds dividend payable, etc. available with the exchange.

7.4.2.2 The exchange will be liable to make good any shortfall in collection of dues of the brokers to SEBI.

7.5 Other Conditions:

7.5.1 In case any commodity derivatives exchange, after de-recognition, continues as corporate entity under the Companies Act, 2013, it shall not use the expression 'stock exchange' , 'commodity derivative exchange' or 'exchange' or any variant in its name or in its subsidiaries name so as to avoid any representation of present or past affiliation with the exchange.

7.5.2 The Sale / distribution / transfer of assets / winding up of such exchanges / companies shall be subject to the applicable laws in force.

7.5.3 The concerned commodity derivatives exchange shall set aside sufficient funds in order to provide for settlement of any claims, pertaining to pending arbitration cases, arbitration awards, not implemented, if any, liabilities/claims of contingent nature, if any, and unresolved investors complaints/ grievances lying with the exchange.

7.5.4 In case of de-recognition and exit, the stock exchange shall contribute up to 20% of its assets (after tax) towards SEBI Investor Protection and Education Fund (IPEF) for investor protection and in order to cover future liabilities, if any. The contribution may be decided by SEBI taking into account, inter alia, the governance standards of the commodity derivatives exchange and estimation of future liabilities.

8. SEBI may impose additional conditions as deemed fit in the interest of trade or in the public interest including securities market.

9. This circular shall come into force with immediate effect.

10. This circular is issued in exercise of powers conferred under Section 11(1) and 11(2) (j) of the Securities and Exchange Board of India Act, 1992, read with Section 5 of the Securities Contracts (Regulation) Act, 1956, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.

11. This circular is available on SEBI website at www.sebi.gov.in.

Yours faithfully,

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