MASTER CIRCULAR ON PREVENTION OF MONEY LAUNDERING AND COMBATING FINANCING OF TERRORISM - OBLIGATIONS OF THE ASSOCIATIONS/EXCHANGES RECOGNIZED AND/OR REGISTERED UNDER THE FORWARD CONTRACTS (REGULATION) ACT, 1952, AND THEIR MEMBERS, AS LAID DOWN UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002 AND THE RULES MADE THERE UNDER

1. PURPOSE

1.1 This Master Circular is being issued as per the provisions of Rule 9 (14) of the PML Rules, 2005 and with a view to (a) **preventing money laundering** and (b) **combating financing of terrorism** in the commodity derivatives markets (**CDM**) in India. In order to achieve the aforesaid dual purposes, this Circular requires the recognized and the registered commodity exchanges, and their Members to comply with (i) the provisions of the Prevention of Money Laundering Act, 2002, and the Rules made there under, and also (ii) the provisions of the Unlawful Activities (Prevention) Act, 1967 relating to terrorist activities. This master circular is issued in supersession of earlier circulars/guidelines issued by the Commission on this subject and shall come into force with immediate effect.

2. INTRODUCTION

2.1 Commodity Exchanges recognized or registered under the Forward Contracts (Regulation) Act, 1952 and their members (for short **"the intermediaries"** as defined u/s 2(1)(n) of PMLA) have been brought under the ambit of the Prevention of Money Laundering Act, 2002 **(for short "the PML Act")** through an amendment to the said Act in 2012 (No.2 of 2013) **w.e.f. 15 February 2013.** Consequently, the Commission considered it necessary to issue this master

circular, which contains a general background and summary of the main provisions of the PML Act and the Rules made there under. This circular also contains guidance on and directives relating to implementation of the provisions of the PML Act, and the steps that the Commodity Exchanges and their Members are required to take (a) to prevent money laundering in the commodity derivatives markets (CDM) in India, and (b) to combat financing terrorism within the country and outside so that the objects of the PML Act are achieved. The guiding principle is that the intermediaries shall be able to satisfy themselves that the measures taken by them are adequate, appropriate, and they abide by the spirit of such measures and the requirements of the PML Act, and the Unlawful Activities (Prevention) Act, 1967 (for short **" the UAP Act"**) relating to terrorist activities.

3. BACKGROUND

3.1 Following the adoption of the Political Declaration by the United Nations General assembly in its Special Session held on 8th to 10th June, 1998 and in response to its call to the Member States to adopt national anti-money laundering legislation and programme, Parliament has enacted the PML Act with a view to preventing money laundering in India and to provide for confiscation of property derived from , or involved in, money laundering and for matters connected therewith or incidental thereto. The PML Act came into effect from 1st July 2005.

3.2 The Prevention of Money - Laundering (Amendment) Act, 2012 has brought the Commodity Exchanges recognized or registered under the Forward Contracts (Regulation) Act, 1952, and their Members, under the ambit of the PML Act by substitution of Clause (n) of Section 2(1) of the said Act to include, inter alia, the following in the term "intermediary":

"(ii) an association recognized or registered under the Forward Contracts (Regulation) Act, 1952 or any member of such association; "

An intermediary is a reporting entity as per Clause (wa) of Section 2(1) of the PML Act.

3.3 Commodity derivatives market intermediaries have adequate controls and procedures in place so that they know the customers with whom they are dealing. Adequate due diligence on new and existing customers is a key part of these controls. The Commodity Exchanges have a crucial role to play in this area. They shall ensure that the regulated entities follow these directives in letter and spirit. Without this due diligence, intermediaries can become subject to reputational, operational, and legal risks, which can result in significant damage and loss of reputation to the Commodity Derivatives Markets.

4. MAINTENANCE OF RECORDS OF TRANSACTIONS

4.1 As required by Rule 3 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (for short **"the PML Rules"**) as amended, the commodity derivatives markets intermediaries shall maintain the record of all transactions including, the record of—

A. all cash transactions of the value of ***more than ten lakh rupees*** or its equivalent in foreign currency;

B. all series of cash transactions integrally connected to each other which have been individually valued ***below rupees ten lakh*** or its equivalent in foreign currency where such series of transactions have taken place ***within a month*** and the monthly aggregate ***exceeds an amount of ten lakh rupees*** or its equivalent in foreign currency;

C. all cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine and where any forgery of a valuable security has taken place;

D. ***all suspicious transactions,*** whether or not made in cash, and by way of :

I. deposits and credits,

II. withdrawals into or from any accounts in whatsoever name they are referred to in any currency maintained by way of :

a. cheques including third party cheques, pay orders, demand drafts, cashiers cheques or any other instrument of payment of money including electronic receipts or credits and electronic payments or debits, or

b. Travellers cheques, or

c. transfer from one account within the same banking company, financial institution and intermediary, as the case may be, including from or to **Nostro and Vostro accounts**, or

d. Any other mode in whatsoever name it is referred to;

III. credits or debits into or from any non-monetary accounts such as d-mat account, security account in any currency maintained by the banking company, financial institution and intermediary, as the case may be;

IV. money transfer or remittances in favour of own clients or non-clients from India or abroad and to third party beneficiaries in India or abroad including transactions on its own account in any currency by any of the following:-

(a) Payment orders, or

(b) Cashiers cheques, or

(c) Demand drafts, or

(d) Telegraphic or wire transfers or electronic remittances or transfers, or

(e) Internet transfers, or

(f) Automated Clearing House remittances, or

(g) Lock box driven transfers or remittances, or

(h) Remittances for credit or loading to electronic cards, or

(i) Any other mode of money transfer by whatsoever name it is called;

V. Loans and advances including credit or loan substitutes, investments and contingent liability by way of:

i. subscription to debt instruments such as commercial paper, certificate of deposits, preferential shares, debentures, securitized participation, interbank participation or any other investments in securities or the like in whatever form and name it is referred to, or

ii. Purchase and negotiation of bills, cheques and other instruments, or

iii. foreign exchange contracts, currency, interest rate and commodity and any other derivative instrument in whatsoever name it is called, or

iv. Letters of credit, standby letters of credit, guarantees, comfort letters, solvency certificates and any other instrument for settlement and/or credit support;

VI. Collection services in any currency by way of collection of bills, cheques, instruments or any other mode of collection in whatsoever name it is referred to.

E. All cross border wire transfers of the value of ***more than five lakh rupees*** or its equivalent in foreign currency where either the origin or destination of fund is in India;

F. All purchase and sale by any person of immovable property valued at ***fifty lakh rupees or more*** that is registered by the reporting entity, as the case may be.".

5. INFORMATION TO BE MAINTAINED AND PRESERVED

As required by Rule 4 of the PML Rules, the intermediaries are required to maintain and preserve the following information in respect of transactions referred to in para 4.1 above.

(a) The nature of the transactions;

(b) The amount of the transaction, and the currency in which it is denominated;

(c) The date on which the transaction was conducted; and

(d) The parties to the transaction.

6. DESIGNATION OF "DESIGNATED DIRECTOR" AND "PRINCIPAL OFFICER":

6.1 As laid down in Rule 2(1) (ba) and (f) read with Rule 7 of the PML Rules, every intermediary shall designate a **"Designated Director"** and a **"Principal Officer"**, and shall communicate to **the Director, Financial Intelligence Unit (FIU), Department of Revenue, Ministry of Finance, India** the name, designation and address of the said Designated Director and the Principal Officer.

6.2 The Principal Officer shall furnish the information referred to in sub-paras (A), (B), (C), (D), (E) and (F) of para 4.1 above to the Director, FIU, on the basis of information available with the intermediary. A copy of such information shall be retained by the Principal Officer for the purposes of official record.

6.3 Every intermediary shall evolve an internal mechanism having regard to any guidelines issued by the Commission, for detecting the transactions referred to in sub-paras (A),(B), (C),(D), (E) and (F) of para 4.1 and for furnishing information about such transactions in such form as may be directed by the Commission.

6.4 It shall be the duty of every intermediary, its Designated Director, officers and employees to observe the procedure and the manner of furnishing information as specified by the Commission.

6.5 The Principal Officer shall be located at the head/corporate office and shall be responsible for monitoring and reporting of all transactions and sharing of information as required under the PML Act and the PML Rules. The Principal Officer will maintain close liaison with enforcement agencies, banks and any other institution which are involved in the fight against money laundering and combating financing of terrorism.

7. FURNISHING OF INFORMATION TO THE DIRECTOR.

As laid down in Rule 8 of the PML Rule, the Principal Officer of the intermediary shall furnish the information in respect of transactions referred to in sub-paras (A), (B), (C) and (E) of para 4.1 every month to the Director, FIU-IND, New Delhi by the 15th day of the succeeding month.

7.1 The Principal Officer of the intermediary shall furnish the information promptly in writing or by fax or by electronic mail to the Director, FIU-IND, New Delhi in respect of transactions referred to in sub-para (D) of para 4.1s not later than seven working days on being satisfied that the transaction is suspicious.

7.2 The Principal Officer of the intermediary shall furnish, the information in respect of transactions referred to in sub-para (F) of para 4.1, every quarter to the Director, FIU-IND, New Delhi by the 15th day of the month succeeding the quarter.

7.3 For the purpose of the aforesaid Rule, delay of each day in not reporting a transaction or delay of each day in rectifying a mis-reported transaction beyond the time limit as specified in the rule shall constitute a separate violation.

8. RECORD KEEPING

8.1 The intermediaries shall ensure compliance with the record keeping requirements contained in the FCRA and Rules made there-under and orders/directions/circulars issued by the Commission, PML Act, PML Rules as well as other relevant legislation, Rules, Regulations, Exchange Bye-laws and Circulars.

8.2 The Intermediaries shall maintain such records as are sufficient to permit reconstruction of individual transactions (including the amounts and types of currencies involved, if any) so as to provide, if necessary, evidence for prosecution of criminal behaviour.

8.3 In case there is any suspected drug related or other laundered money or terrorist property, the competent investigating authorities would need to trace through the audit trail for reconstructing a financial profile of the suspect account. To enable this reconstruction, the intermediaries shall retain the following information for the accounts of their clients in order to maintain a satisfactory audit trail:

(a) The beneficial owner of the account;

(b) The volume of the funds flowing through the account; and

(c) For selected transactions:

i. The origin of the funds;

ii. The form in which the funds were offered or withdrawn, e.g. cheques, demand drafts etc.

iii. The identity of the person undertaking the transaction;

iv. The destination of the funds;

v. The form of instruction and authority.

8.4 The Intermediaries shall ensure that all client and transaction records and information are available on a timely basis to the competent investigating authorities. Where required by the investigating authority, they shall retain certain records, e.g. client identification, account files, and business correspondence, for periods which may exceed those required under the FCR Act and Rules framed there-under and orders/directions/circulars issued by the Commission, PML Act, PML Rules other relevant legislations, Rules and Regulations or Exchange bye-laws or circulars.

8.5 The intermediaries shall put in place a system of maintaining proper record of transactions prescribed under Rule 3 of PML Rules as mentioned below:

(i) All cash transactions of the value of more than ten lakh rupees or its equivalent in foreign currency;

(ii) All series of cash transactions integrally connected to each other which have been individually valued below rupees ten lakh or its equivalent in foreign currency where such series of transactions have taken place within a month and the monthly aggregate exceeds an amount of ten lakh rupees or its equivalent in foreign currency;

(iii) All cash transactions where forged or counterfeit currency notes or bank notes have been used as genuine or where any forgery of a valuable security or document has taken place facilitating the transactions;

(iv) All suspicious transactions whether or not made in cash and by way of as mentioned in the said Rules.

9. POLICIES AND PROCEDURES TO COMBAT MONEY LAUNDERING (ML) AND TERRORIST FINANCING (TF).

9.1 Essential Principles

9.1.1 These Directives have taken into account the requirements of the PML Act as applicable to the intermediaries in the CDM in India. Each intermediary shall consider carefully the specific nature of its business, organizational structure, type of client and transaction, etc. to satisfy itself that the measures taken by it are adequate and appropriate and follow the spirit of the measures suggested in this Circular and the requirements as laid down in the PML Act.

9.2 Obligation to establish policies and procedures

9.2.1 Global measures taken to combat drug trafficking, terrorism and other organized and serious crimes have all emphasized the need for financial institutions, including the intermediaries in the CDM, to establish internal procedures that effectively serve to prevent and impede money laundering and terrorist financing. The PML Act is in line with these measures and mandates that all intermediaries ensure the fulfilment of the aforementioned obligations.

9.2.2 To be in compliance with these obligations, the senior management of a registered intermediary shall be fully committed to establishing appropriate policies and procedures for the prevention of money laundering (ML) and terrorist financing (TF) and ensuring their effectiveness and compliance with all relevant legal and regulatory requirements. The Intermediaries shall:

a. Issue a statement of policies and procedures, on a group basis where applicable, for dealing with ML and TF reflecting the current statutory and regulatory requirements;

b. Ensure that the contents of this Circular are understood by all staff members;

c. Regularly review the policies and procedures on the prevention of ML and TF to ensure their effectiveness. Further, in order to ensure the effectiveness of policies and procedures, the person doing such a review shall be different from the one who has framed such policies and procedures;

d. Adopt client acceptance policies and procedures which are sensitive to the risk of ML and TF;

e. Undertake client due diligence (**"CDD"**) measures to an extent that is sensitive to the risk of ML and TF depending on the type of client, business relationship or transaction;

f. Have a system in place for identifying, monitoring and reporting suspected ML or TF transactions to the law enforcement authorities (FIU, Ministry of Finance); and

g. Develop staff members' awareness and vigilance to guard against ML and TF.

9.2.3 Policies and procedures to combat ML shall cover:

i. Communication of group policies relating to prevention of ML and TF to all management and relevant staff that handle account information, securities transactions, money and client records etc. whether in branches, departments or subsidiaries;

ii. Client acceptance policy and client due diligence measures, including requirements for proper identification;

iii. Maintenance of records;

a. Compliance with relevant statutory and regulatory requirements;

b. Co-operation with the relevant law enforcement authorities, including the timely disclosure of information; and

c. Role of internal audit or compliance function to ensure compliance with the policies, procedures, and controls relating to the prevention of ML and TF, including the testing of the system for detecting suspected money laundering transactions, evaluating and checking the adequacy of exception reports generated on large and/or irregular transactions, the quality of reporting of suspicious transactions and the level of awareness of front line staff, and their responsibilities in this regard. The internal audit function shall be independent, adequately resourced and commensurate with the size of the business and operations, organization structure, number of clients and other such factors.

10. WRITTEN ANTI MONEY LAUNDERING PROCEDURES

10.1 Each intermediary shall formulate written procedures to implement the anti-money laundering provisions as envisaged under the PML Act. Such procedures shall include, inter alia, the following three specific parameters which are related to the overall **'Client Due Diligence Process'**:

a. Policy for acceptance of clients

b. Procedure for identifying the clients

c. Transaction monitoring and reporting, especially Suspicious Transactions Reporting **(STR).**

10.2 Client Due Diligence (CDD)

10.2 (a) Every recognised associations and every member thereof which is a reporting entity under the PMLA shall for the purpose of identifying and registering clients adhere to the CDD provisions laid down under sub rule (1) to (13) of Rule 9 of the PMLA rules as amended . The said provisions of Rule 9 are given below:

" (1) Every reporting entity shall-

(a) at the time of commencement of an account-based relationship -

(i) identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and

(ii) determine whether a client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner: Provided that where the Regulator is of the view that money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business, the Regulator may permit the reporting entity to complete the verification as soon as reasonably practicable following the establishment of the relationship; and

(b) in all other cases, verify identity while carrying out-

(i) transaction of an amount equal to or exceeding rupees fifty thousand, whether conducted as

a single transaction or several transactions that appear to be connected, or

(ii) any international money transfer operations.

(2) For the purpose of clause (a) of sub-rule (1), a reporting entity may rely on a third party subject to the conditions that-

(a) the reporting entity immediately obtains necessary information of such client due diligence carried out by the third party;

(b) the reporting entity takes adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the client due diligence requirements will be made available from the third party upon request without delay;

(c) the reporting entity is satisfied that such third party is regulated, supervised or monitored for, and has measures in place for compliance with client due diligence and record-keeping requirements in line with the requirements and obligations under the Act;

(d) the third party is not based in a country or jurisdiction assessed as high risk;

(e) the reporting entity is ultimately responsible for client due diligence and undertaking enhanced due diligence measures, as applicable; and

(f) where a reporting entity relies on a third party that is part of the same financial group, the Regulator may issue guidelines to consider any relaxation in the conditions (a) to (d).

(3) The beneficial owner for the purpose of sub-rule (1) shall be determined as under –

(a) where the client is a company, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has a controlling ownership interest or who exercises control through other means.

Explanation.- For the purpose of this sub-clause-

1. "Controlling ownership interest" means ownership of or entitlement to more than

twenty-five percent of shares or capital or profits of the company;

2. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their shareholding or management rights or shareholders agreements or voting agreements;

(b) where the client is a partnership firm, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of/entitlement to more than fifteen percent of capital or profits of the partnership;

(c) where the client is an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;

(d) where no natural person is identified under (a) or (b) or (c) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;

(e) where the client is a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership; and

(f) where the client or the owner of the controlling interest is a company listed on a stock exchange, or is a subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies.

(4) Where the client is an individual, he shall for the purpose of sub-rule (1), submit to the reporting entity, one certified copy of an 'officially valid document' containing

details of his identity and address, one recent photograph and such other documents including in respect of the nature of business and financial status of the client as may be required by the reporting entity :

Provided that photograph need not be submitted by a client falling under clause (b) of sub-rule (1).

(5) Notwithstanding anything contained in sub-rule (4), an individual who desires to open a small account in a banking company may be allowed to open such an account on production of a self-attested photograph and affixation of signature or thumb print, as the case may be, on the form for opening the account:

Provided that-

(i) the designated officer of the banking company, while opening the small account, certifies under his signature that the person opening the account has affixed his signature or thumb print, as the case may be, in his presence;

(ii) a small account shall be opened only at Core Banking Solution linked banking company branches or in a branch where it is possible to manually monitor and ensure that foreign remittances are not credited to a small account and that the stipulated limits on monthly and annual aggregate of transactions and balance in such accounts are not breached, before a transaction is allowed to take place;

(iii) a small account shall remain operational initially for a period of twelve months, and thereafter for a further period of twelve months if the holder of such an account provides evidence before the banking company of having applied for any of the officially valid documents within twelve months of the opening of the said account, with the entire relaxation provisions to be reviewed in respect of the said account after twenty four months;

(iv) a small account shall be monitored and when there is suspicion of money laundering or financing of terrorism or other high risk scenarios, the identity of client shall be established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9; and

(v) foreign remittance shall not be allowed to be credited into a small account unless the identity of the client is fully established through the production of officially valid documents, as referred to in sub-rule (4) of rule 9.

(6) Where the client is a company, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-

(i) Certificate of incorporation;

(ii) Memorandum and Articles of Association;

(iii) A resolution from the Board of Directors and power of attorney granted to its managers, officers or employees to transact on its behalf; and

(iv) an officially valid document in respect of managers, officers or employees holding an attorney to transact on its behalf.

(7) Where the client is a partnership firm, it shall for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-

(i) registration certificate;

(ii) partnership deed; and

(iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

(8) Where the client is a trust, it shall, for the purposes of sub-rule (1) submit to the reporting entity one certified copy of the following documents:-

(i) registration certificate;

(ii) trust deed; and

(iii) an officially valid document in respect of the person holding an attorney to transact on its behalf.

(9) Where the client is an unincorporated association or a body of individuals, it shall submit to the reporting entity one certified copy of the following documents:-

(i) resolution of the managing body of such association or body of individuals;

(ii) power of attorney granted to him to transact on its behalf;

(iii) an officially valid document in respect of the person holding an attorney to transact on its behalf; and

(iv) such information as may be required by the reporting entity to collectively establish the legal existence of such an association or body of individuals.

(10) Where the client is a juridical person, the reporting entity shall verify that any person purporting to act on behalf of such client is so authorized and verify the identity of that person.

(11) No reporting entity shall allow the opening of or keep any anonymous account or account in fictitious names or account on behalf of other persons whose identity has not been disclosed or cannot be verified.

(12) (i) Every reporting entity shall exercise ongoing due diligence with respect to the business relationship with every client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the client, his business and risk profile and where necessary, the source of funds.

(ii) When there are suspicions of money laundering or financing of the activities relating to terrorism or where there are doubts about the adequacy or veracity of previously obtained client identification data, the reporting entity shall review the due diligence measures including verifying again the identity of the client and obtaining

information on the purpose and intended nature of the business relationship, as the case may be.

(iii) The reporting entity shall apply client due diligence measures also to existing clients on the basis of materiality and risk, and conduct due diligence on such existing relationships at appropriate times or as may be specified by the regulator, taking into account whether and when client due diligence measures have previously been undertaken and the adequacy of data obtained.

(13) (i) Every reporting entity shall carry out risk assessment to identify, assess and take effective measures to mitigate its money laundering and terrorist financing risk for clients, countries or geographic areas, and products, services, transactions or delivery channels that is consistent with any national risk assessment conducted by a body or authority duly notified by the Central Government.

(ii) The risk assessment mentioned in clause (i) shall -

(a) be documented;

(b) consider all the relevant risk factors before determining the level of overall risk and the appropriate level and type of mitigation to be applied;

(c) be kept up to date; and

(d) be available to competent authorities and self-regulating bodies."

10.2.1 Policy for acceptance of Clients

10.2.1.1 The Intermediaries should develop clear client/customer acceptance policies and procedures, including a description of the types of customers that are likely to pose a higher than normal risk to them. In preparing such policies, factors such as customers' background, origin, public position, related accounts, business activities or other risk indicators should be considered. The Intermediaries should develop graduated customer acceptance policies and procedures that require more extensive due diligence for higher risk customers. For example, the policies may require the fundamental account-opening requirements for a working individual with a small CDM transaction. It is, however, important that the customer acceptance policy is not so restrictive that it results in a denial of access to the market participants, especially the targeted beneficiaries like farmers. On the other hand, quite extensive due diligence would be essential for an individual with a high net worth whose source of funds is unclear. Decisions to enter into business relationships with high risk customers, such as politically exposed persons, should be taken exclusively at senior management level.

10.2.1.2 By establishing such policies and procedures, they will be in a better position to apply client due diligence on a risk sensitive basis depending on the type of client business relationship or transaction. **In a nutshell, the following safeguards are to be followed while accepting the clients:**

a) No account is opened in a fictitious / benami name, or on an anonymous basis.

b) Factors of risk perception (in terms of monitoring suspicious transactions) of the client are clearly defined having regard to clients' location (registered office address, correspondence addresses and other addresses if applicable),

nature of business activity, trading turnover etc. and manner of making payment for transactions undertaken. The parameters shall enable classification of clients into low, medium and high risk type. Clients of **special category (as given below)** may, if necessary, be classified even higher. Such clients require higher degree of due diligence and regular update of Know Your Client (**KYC**) profile.

c) Documentation requirements and other information to be collected in respect of different classes of clients depending on the perceived risk and having regard to the requirements of Rule 9 of the PML Rules, Directives and Circulars issued by FMC from time to time.

d) Ensuring that an account is not opened where the intermediary is unable to apply appropriate CDD measures / KYC policies. This shall be applicable in cases where it is not possible to ascertain the identity of the client, or the information provided to the intermediary is suspected to be non-genuine, or there is perceived non co-operation of the client in providing full and complete information. The intermediary shall not continue to do business with such a person and file a suspicious activity report. It shall also evaluate whether there is suspicious trading in determining whether to freeze or close the account. The intermediary shall be cautious to ensure that it does not return securities of money that may be from suspicious trades. However, the intermediary shall consult the relevant authorities in determining what action it shall take when it suspects suspicious trading.

e) The circumstances under which the client is permitted to act on behalf of another person / entity shall be clearly laid down. It shall be specified in what manner the account shall be operated, transaction limits for the operation,

additional authority required for transactions exceeding a specified quantity/value and other appropriate details. Further, the rights and responsibilities of both the persons i.e. the agent- client registered with the intermediary, as well as the person on whose behalf the agent is acting, shall be clearly laid down. Adequate verification of a person's authority to act on behalf of the client shall also be carried out.

f) Necessary checks and balance to be put in place before opening an account so as to ensure that the identity of the client does not match with any person having known criminal background or is not banned in any other manner, whether in terms of criminal or civil proceedings by any enforcement agency worldwide.

(g) The CDD process shall necessarily be revisited when there are suspicions of money laundering or financing of terrorism (ML/FT).

10.2.2 Risk-based Approach to Acceptance of Clients

10.2.2.1 It is generally recognized that certain clients may be of a higher or lower risk category depending on the circumstances, such as the client's background, type of business relationship or transaction etc. As such, the intermediaries shall apply each of the client due diligence measures on a risk sensitive basis. The basic principle enshrined in this approach is that the intermediaries shall adopt an enhanced client due diligence process for higher risk categories of clients. Conversely, a simplified client due diligence process may be adopted for lower risk categories of clients. In line with the risk-based approach, the type and amount of identification information and documents that intermediaries shall obtain necessarily depend on the risk category of a particular client. Further, low risk provisions shall not apply when there are

suspicions of ML/FT or when other factors give rise to a belief that the customer does not in fact pose a low risk.

10.2.3 Special Category Clients (SCC)

10.2.3.1 Such clients include the following.

i. Non-resident clients;

ii. High net-worth clients ;

iii. Trust, Charities, Non-Governmental Organizations (NGOs) and organizations receiving donations;

iv. Companies having close family shareholdings or beneficial ownership;

v. Politically Exposed Persons **(PEP)** are individuals who are or have been entrusted with prominent public functions in a foreign country, e.g., Heads of States or of Governments, senior politicians, senior government/judicial/military officers, senior executives of state-owned corporations, important political party officials, etc. The additional norms applicable to PEP as contained in the subsequent para of this circular shall also be applied to the accounts of the family members or close relatives of PEPs.

vi. Companies offering foreign exchange offerings;

vii. High risk countries are those where the existence / effectiveness of money laundering controls is suspect, where there is unusual banking secrecy, countries active in narcotics production, countries where corruption (as per Transparency International Corruption Perception Index) is highly prevalent, countries against which government sanctions are applied, countries reputed to be any of the following – Havens/ sponsors of international terrorism, offshore financial centres, tax havens, countries

where fraud is highly prevalent. While dealing with clients in those, high risk countries where the existence/effectiveness of money laundering control is suspect, intermediaries apart from being guided by the Financial Action Task Force (FATF) statements that identify countries that do not or insufficiently apply the FATF Recommendations, published by the FATF on its website (www.fatf- gafi.org), shall also independently access and consider other publicly available information.

viii. Non face to face clients;

ix. Clients with dubious reputation as per public information available etc.

The above mentioned list is only illustrative, and the intermediary shall exercise independent judgment to ascertain whether any other set of clients shall be classified as Clients of special category (CSC) or not.

10.2.4 Maintenance of the records of the identity of clients: The provisions of Rule 10 of the PML Rules as given below shall be complied with by the intermediaries:

"10. Maintenance of the records of the identity of clients.– (1) Every reporting entity shall maintain the records of the identity of its clients obtained in accordance with rule 9.

(2) The records of the identity of clients shall be maintained in a manner as may be specified by its regulators from time to time.

(3) Where the reporting entity does not have records of the identity of its existing clients, it shall obtain the records within the period specified by the regulator, failing which the reporting entity shall close the account of the clients after giving due notice to the client.

Explanation. - For the purpose of this rule, the expression "records of the identity of clients" shall include updated records of the identification data, account files and business correspondence."

10.2.5 The client identifying procedure

i. In order to identify persons who beneficially own or control the trading account, sufficient information may be obtained. Whenever it is apparent that the positions acquired or maintained through an account are beneficially owned by a party other than the client, that party shall be identified using client identification and verification procedures. The beneficial owner is the natural person or persons who ultimately own, control or influence a client and/or persons on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or arrangement.

ii. Verify the client's identity using reliable, independent source documents, data or information.

iii. Verify the identity of the beneficial owner of the client and/or the person on whose behalf a transaction is being conducted.

iv. Understand the ownership and control structure of the client.

v. Conduct ongoing due diligence and scrutiny, i.e. perform ongoing scrutiny of the transactions and account throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the intermediary's knowledge of the client, its business and risk profile, taking into account, where necessary, the client's source of funds; and

vi. The intermediaries shall periodically (i.e. as and when required) update all documents, data or information of all clients and beneficial owners collected under the CDD process.

10.2.6 Further, the following procedure shall be followed in identifying the clients. The KYC policy of the intermediaries shall clearly spell out the client identification procedure to be carried out at different stages i.e. while establishing the intermediary – client relationship, while carrying out transactions for the client or when the intermediary has doubts regarding the veracity or the adequacy of previously obtained client identification data. Intermediaries shall be in compliance with the following requirements while putting in place a **Client Identification Procedure (CIP)**:

i. All intermediaries shall proactively put in place appropriate risk management systems to determine whether their client or potential client or the beneficial owner of such client is a **politically exposed person (PEP).** Such procedures shall include seeking relevant information from the client, referring to publicly available information or accessing the commercial electronic databases of PEPS. Further, the enhanced CDD measures as outlined above shall also be applicable where the beneficial owner of a client is a PEP.

ii. All intermediaries are required to obtain senior management approval for establishing business relationships with PEPs. Where a client has been accepted and the client or beneficial owner is subsequently found to be, or subsequently becomes a PEP, registered intermediaries shall obtain senior management approval to continue the business relationship.

iii. The intermediaries shall also take reasonable measures to verify the sources of funds as well as the wealth of clients and beneficial owners identified as **PEP.**

iv. The client shall be identified by the intermediary by using reliable sources including documents / information. The intermediary shall obtain adequate information to satisfactorily establish the identity of each new client and the purpose of the intended nature of the relationship.

v. The information must be adequate enough to satisfy the competent authorities (regulatory / enforcement authorities) in future that due diligence was observed by the intermediary in compliance with the directives contained in this Circular. **Each original document shall be seen prior to acceptance of a copy.**

vi. Failure by prospective client to provide satisfactory evidence of identity shall be noted and reported to the higher authority within the intermediary.

10.2.7 The Commission has prescribed the minimum requirements relating to KYC for certain classes of registered members from time to time. Taking into account the basic principles enshrined in the KYC norms which have already been prescribed or which may be prescribed by the Commission from time to time, all intermediaries shall frame their own internal directives based on their experience in dealing with their clients and legal requirements as per the established practices. Further, the intermediary shall conduct ongoing due diligence where it notices inconsistencies in the information provided. The underlying objective shall be to follow the requirements enshrined in the PML Act, FCRA and Rules, directives and circulars issued thereunder so that the intermediary is aware of the clients on whose behalf it is dealing.

10.2.8 Every intermediary shall formulate and implement a CIP which shall incorporate the requirements of the PML Rules notified by **Notification No. 9/2005 dated**

July 01, 2005 and as amended from time to time, which notifies rules for maintenance of records of the nature and value of transactions, the procedure and manner of maintaining and time for furnishing of information and verification of records of the identity of the clients and such other additional requirements that it considers appropriate to enable it to determine the true identity of its clients.

10.2.9 It may be noted that irrespective of the amount of investment made by clients, no minimum threshold or exemption is available to intermediaries from obtaining the minimum information/documents from clients as stipulated in the PML Rules. Further, no exemption from carrying out CDD exists in respect of any category of clients. In other words, there shall be no minimum investment threshold/ category-wise exemption available for carrying out CDD measures by the intermediaries. This shall be strictly implemented by all intermediaries and non-compliance shall attract appropriate sanctions.

11. MONITORING OF TRANSACTIONS

11.1 Regular monitoring of transactions is vital for ensuring effectiveness of the AML procedures. This is possible only if the intermediary has an understanding of the normal activity of the client so that it can identify deviations in transactions / activities.

11.2 The intermediary shall pay special attention to all complex, unusually large transactions / patterns which appear to have no economic purpose. The intermediary may specify internal threshold limits for each class of client accounts and pay special attention to transactions which exceeds these limits. The background including all documents/office records /memorandums/clarifications sought pertaining to such transactions and purpose thereof shall also be examined

carefully and findings shall be recorded in writing. Further, such findings, records and related documents shall be made available to auditors and also to FMC/Exchanges/FIUIND/ other relevant Authorities, during audit, inspection or as and when required. These records are required to be preserved for five (5) years as is required under the PMLA as amended in 2013.

11.3 The intermediary shall ensure that a record of the transactions is preserved and maintained in terms of Section 12 of the PMLA and that transactions of a suspicious nature or any other transactions notified under Section 12 of the Act are reported to the Director, FIU-IND. Suspicious transactions shall also be regularly reported to the higher authorities within the intermediary.

11.4 Further, the compliance cell of the intermediary shall randomly examine a selection of transactions undertaken by clients to comment on their nature i.e. whether they are in the nature of suspicious transactions or not.

12. SUSPICIOUS TRANSACTION MONITORING AND REPORTING

12.1 Intermediaries shall ensure that appropriate steps are taken to enable suspicious transactions to be recognized and have appropriate procedures for reporting suspicious transactions. While determining suspicious transactions, intermediaries shall be guided by the definition of a suspicious transaction contained in PML Rules as amended from time to time.

12.2 A list of circumstances which may be in the nature of suspicious transactions is given below. This list is only illustrative and whether a particular transaction is suspicious or not will depend upon the background, details of the transactions and other facts and circumstances:

i. Clients whose identity verification seems difficult or clients that appear not to cooperate.

ii. Asset management services for clients where the source of the funds is not clear or not in keeping with clients apparent standing /business activity;

iii. Clients based in high risk jurisdictions;

iv. Substantial increases in business without apparent cause;Clients transferring large sums of money to or from overseas locations with instructions for payment in cash;

v. Attempted transfer of investment proceeds to apparently unrelated third parties;

vi. Unusual transactions by CSCs and businesses undertaken by offshore banks/financial services, businesses reported to be in the nature of export- import of small items.

12.3 Any suspicious transaction shall be immediately notified to the Money Laundering Control Officer or any other designated officer within the intermediary. The notification may be done in the form of a detailed report with specific reference to the clients, transactions and the nature /reason of suspicion. However, it shall be ensured that there is continuity in dealing with the client as normal until told otherwise and the client shall not be told of the report/suspicion. In exceptional circumstances, consent may not be given to continue to operate the account, and transactions may be suspended, in one or more jurisdictions concerned in the transaction, or other action taken. The Principal Officer/Money Laundering Control Officer and other appropriate compliance, risk management and related staff members shall have timely access to client identification data and CDD information, transaction records and other relevant information.

12.4 It is likely that in some cases transactions are abandoned or aborted by clients on being asked to give some details or to provide documents. It is clarified that intermediaries shall report all such attempted transactions in STRs, even if not completed by clients, irrespective of the amount of the transaction.

12.5 Para 10.2.3 (vii) of this Master Circular categorizes clients of high risk countries, including countries where existence and effectiveness of money laundering controls is suspect or which do not or insufficiently apply FATF standards, as 'CSC'. Intermediaries are directed that such clients shall also be subject to appropriate counter measures. These measures may include a further enhanced scrutiny of transactions, enhanced relevant reporting mechanisms or systematic reporting of financial transactions, and applying enhanced due diligence while expanding business relationships with the identified country or persons in that country etc.

13. LIST OF DESIGNATED INDIVIDUALS/ENTITIES

13.1 An updated list of individuals and entities which are subject to various sanction measures such as freezing of assets/accounts, denial of financial services etc., as approved by the Security Council Committee established pursuant to various United Nations Security Council Resolutions (UNSCRs) can be accessed at its website at http://www.un.org/sc/committees/1267/consolist.shtml. Registered intermediaries are directed to ensure that accounts are not opened in the name of anyone whose name appears in said list. Registered intermediaries shall continuously scan all existing accounts to ensure that no account is held by or linked to any of the entities or individuals included in the list. Full details of

accounts bearing resemblance with any of the individuals/entities in the list shall immediately be intimated to FMC and FIU-IND.

14. PROCEDURE FOR FREEZING OF FUNDS, FINANCIAL ASSETS OR ECONOMIC RESOURCES OR RELATED SERVICES UNDER THE UAP ACT

14.1 Section 51A, of the Unlawful Activities (Prevention) Act, 1967 **(UAPA),** relating to the purpose of prevention of, and for coping with terrorist activities was brought into effect through UAPA Amendment Act, 2008. In this regard, the Central Government has issued an Order dated August 27, 2009 detailing the procedure for the implementation of section 51A of the UAPA. Under the aforementioned Section, the Central Government is empowered to freeze, seize or attach funds and other financial assets or economic resources held by, on behalf of, or at the direction of the individuals or entities listed in the Schedule to the Order, or any other person engaged in or suspected to be engaged in terrorist activities. The Government is also further empowered to prohibit any individual or entity from making any funds, financial assets or economic resources or related services available for the benefit of the individuals or entities listed in the Schedule to the Order or any other person engaged in or suspected to be engaged in terrorist activities. The obligations to be followed by intermediaries to ensure the effective and expeditious implementation of said Order are contained in the circular, which is being issued separately by FMC, which needs to be complied with scrupulously.

15. HIRING AND TRAINING OF EMPLOYEES

15.1 The registered intermediaries shall have adequate screening procedures in place to ensure high standards when hiring employees. They shall identify the key positions within their own organization structures having regard to the risk of money laundering and terrorist financing and the size of their business and shall ensure that the employees taking up such key positions ***understand the objects of the PML Act clearly and are suitable and competent to perform their duties adequately.***

15.2 Intermediaries must have an ongoing employee training programme so that the members of the staff are adequately trained in AML and CFT procedures. Training programmes shall have specific focuses for frontline staff, back office staff, compliance staff, risk management staff and staff dealing with new clients. It is crucial that all those concerned fully understand the rationale behind these directives, obligations and requirements; implement them consistently and are sensitive to the risks of their systems being misused by unscrupulous elements.

16. INVESTOR EDUCATION

16.1 Implementation of AML/CFT measures requires intermediaries to demand certain information from investors, which may be of personal nature or has hitherto never been called for. Such information can include documents evidencing source of funds/income tax returns/bank records etc. This can sometimes lead to raising of questions by the client with regard to the motive and purpose of collecting such information. There is, therefore, a need for intermediaries to sensitize their clients about these requirements as the ones emanating from AML and CFT framework. Intermediaries shall prepare specific literature/ pamphlets etc. so as to educate the

clients on the objectives of the AML/CFT programme to comply with the aforesaid requirements.

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Annexure

List of Abbreviations

AML	:	Anti-Money Laundering
CDD	:	Client Due Diligence
CDM	:	Commodity Derivatives Markets
CIP	:	Client Identification Procedure
CFT	:	Combating Financing of Terrorism
CSC	:	Clients of Special Category
FATF	:	Financial Action Task Force
FMC	:	Forward Market Commission
FC(R)A	:	Forward Contracts (Regulation) Act, 1952
FIU	:	Financial Intelligence Unit
KYC	:	Know Your Client
ML	:	Money Laundering
PEP	:	Politically Exposed Persons

PML Act	:	The Prevention of Money Laundering Act, 2002
PML Rules	:	The Prevention of Money-Laundering (Maintenance of Records) Rules, 2005
SROS	:	Self-Regulatory Organisations
STR	:	Suspicious Transactions Reporting
TF	:	Terrorist Financing
UAPA	:	The Unlawful Activities (Prevention) Act, 1967
UNSCRs	:	United Nations Security Council Resolutions