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तार : वायदायोग कालबादेवी
फैक्स : २२८१ २०८६

भारत सरकार
GOVERNMENT OF INDIA
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Annexure 1

FORWARD MARKETS COMMISSION

उपभोक्ता मामले , खाद्य और सार्वजनिक वितरण मंत्रालय

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(उपभोक्ता मामले विभाग)

(DEPARTMENT OF CONSUMER AFFAIRS)

'एवरेस्ट' , तीसरी मंज़िल,
'EVEREST', 3rd FLOOR,
१००, मरीन ड्राईव, मुंबई – ४०० ००२
100, MARINE DRIVE, MUMBAI – 400 002

No: 6/3/2008-MKT-I

Dt:28.07.2010

To,

The Managing Directors & CEO of
All National Commodity Exchanges

1. In order to streamline the regulation of intermediaries in the Commodity Futures Market, the Forward Markets Commission hereby directs the Commodity Derivative Exchanges to discontinue forthwith the system of sub-brokers by whatever named called. The Members of the National Commodity Exchanges will be allowed to provide access to their clients only through "Authorised Persons". The framework governing market access through "Authorised Persons" is enclosed hereto.

2. "Authorised Person" shall be such person or entity who has been appointed as "Authorized Person" by the Member of a recognized Commodity Derivative Exchange (hereinafter referred to as "Member") subject to the provisions of the bye-laws/rules/regulations of the respective Commodity Derivative Exchanges.

3. The Commodity Exchanges are, therefore, directed to suitably amend their bye-laws in accordance with the enclosed framework.

4. All appointments by whatever names being earlier made by the Commodity Exchanges shall be extinguished and the Exchanges are hereby advised to take appropriate steps to ensure smooth transition within a stipulated time frame which shall be not more than 60 days from the date of issue of this letter.

5. These guidelines are being issued in exercise of the powers conferred on the Commission under the provisions of the Forward Contracts (Regulation) Act, 1952.

6. The amended bye-laws shall be notified in accordance with the provisions of Forward Contracts (Regulation) Act, 1952 and the Forward Contracts (Regulation) Act Rules, 1954 and a copy of such notification shall be forwarded to the Commission.

Yours faithfully,

Anupam Mishra
Director

Encl: Regulatory framework for market access through Authorised Persons in Commodity Futures Market

REGULATORY FRAMEWORK FOR MARKET ACCESS THROUGH AUTHORISED PERSONS IN COMMODITY FUTURES MARKET

1. DEFINITION:

1.1 **"Authorised Person"** means and includes any person whether being an individual, (including proprietors), a partnership firm as defined under the Indian Partnership Act, 1942, a Limited Liability Partnership (LLP) or body corporate as defined under the Companies Act, 1952 – who is appointed as such by a Member of a recognised Commodity Derivative Exchange upon the approval of such Commodity Exchange, for providing access to the trading platform of a Commodity Derivative Exchange, as an agent of the Member of the Commodity Derivative Exchange.

1.2 **"Commodity Exchange"** means a Commodity Derivative Exchange as recognized under Section 6 of the Forward Contracts (Regulation) Act, 1952.

1.3 **"Commission"** means the Forward Markets Commission established under Section 3 of the Forward Contracts (Regulation) Act, 1952.

2. APPOINTMENT OF AUTHORISED PERSON

2.1 Member(s) of Commodity Exchange(s) may appoint one or more Authorised Persons after obtaining specific prior approval from the concerned Commodity Exchange.

2.2 The approval as well as the appointment shall be specific for each such Authorised person.

3. PROCEDURE FOR APPOINTMENT

3.1 A Member of a Commodity Exchange may apply to the Commodity Exchange, in such format as may be notified by the Commodity Exchange for appointment as "Authorized Person'.

3.2 On receipt of the application for approval of the appointment of an Authorised Person from its Member, the Commodity Exchange may:-

a) accord approval on satisfying itself that the person is eligible for appointment as Authorized person, or

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b) refuse approval on satisfying itself that the person is not eligible for appointment as Authorized person.

3.3 The Exchange will have the discretion to refuse or withdraw permission if any, granted/to be granted to any Authorised Person at any time without assigning any reason, if the Exchange, in its absolute discretion, considers such refusal or withdrawal to be in the interest of the market.

4. ELIGIBILITY CRITERIA

4.1 Individuals

An individual is eligible to be appointed as "Authorised Person" if he:

a) is a citizen of India;
b) is not less than 18 years of age;
c) has not been convicted of any offence involving fraud or dishonesty;
d) has not been suspended or barred by any Stock or Commodity Exchange for a period of more than six continuous calendar months;
e) has a good reputation and character;
f) has passed at least 10th standard or equivalent examination from an institution recognized by the Central Government/ State Government; and
g) possesses such certification that may be prescribed by the Commodity Derivative Exchange, as approved by the Commission from time to time.

4.2 A partnership firm, LLP or a body corporate

A partnership firm, LLP or a body corporate is eligible to be appointed as Authorized person:

a) if all the partners or directors, as the case may be, comply with the requirements contained in clause 4.1 above
b) the object clause of the partnership deed or of the Memorandum of Association contains a clause permitting the person to deal in commodities derivatives contracts.

4.3 **INFRASTRUCTURE**

The Authorised person must have necessary infrastructure, viz., adequate office space, equipment, manpower and such other infrastructural facilities, which the Exchange may prescribe from time to time, to effectively discharge the activities on behalf of the Member.

5. CONDITIONS OF APPOINTMENT

5.1 On being appointed as an "Authorised Person" of a Member for a particular Commodity Exchange, such person or entity shall not, during continuation of being an Authorised Person of such Member, qualify for becoming Authorised Person of any other Member of that Exchange.

5.2 No director of a Member (if Member is a company under the Companies Act) or a partner of the Member (if Member is a partnership firm or a LLP) shall be eligible to become an "Authorised Person" of any other Member of that Commodity Exchange in which its company, partnership firm or LLP, as the case may be, is a Member.

5.3 The Authorised person shall not receive or pay any money or deal in deliveries of commodities in its own name or account. All receipts and payments of money and dealings in commodities shall be in the name or account of the concerned Member.

5.4 The Authorised person shall receive his remuneration - fees, charges, commission, salary, etc. - for his services only from the Member of which it is an "Authorised Person" and he shall not charge any amount under whatever head from the clients of the Member.

5.5 All acts of omission and commission of the Authorized person shall be deemed to be those of the Member.

5.6 The Member and the "Authorised person" shall enter into written agreement(s) in the form(s) specified by the concerned Commodity Exchange. The agreement shall, interalia, cover scope of the activities, responsibilities, confidentiality of information, conditions for appointment as "Authorised Persons" as prescribed in these guidelines, particulars of remuneration (whether by way of salary, commission, allowance or otherwise), termination clause, etc.

5.7 The permission granted by the Exchange for any Authorised Person is only to facilitate the Members to trade on the Exchange platform through persons authorised by them and such permission shall not be construed in any manner whatsoever to waive, reduce or affect the liability and responsibility of the Member in such matter.

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6. WITHDRAWAL OF APPROVAL

Approval given to an Authorised person may be withdrawn by the Commodity Exchange:

6.1 on receipt of a request to that effect from the Member or the Authorised Person concerned, subject to compliance with the requirements that may be prescribed by the Commodity Exchange;

6.2 on being satisfied that the continuation of the Authorised person is detrimental to the interests of investors or the commodities market.

6.3 on becoming ineligible under clause 4 of these guidelines at a subsequent date.

6.4 Upon the directions of the Commission.

7. OBLIGATIONS OF THE MEMBER

7.1 The Member shall enter into an agreement prescribed by the Exchange with each of such Authorised persons after receipt of communication of acceptance of such Authorised person by the Exchange.

7.2 The Member shall permit the Authorised person to admit or introduce clients and accept orders from the clients on their behalf only after execution of the Agreement as stated at clause 7.1 above.

7.3 The Member shall be responsible for all acts of omission and commission of his Authorised person and/or their employees, including liabilities arising therefrom.

7.4 If any trading terminal is provided by the Member to an "Authorized person" the place where such trading terminal is located shall be treated as branch office of the Member.

7.5 The Member shall display at each such branch office, additional information such as, particulars of Authorised person in charge of that branch, terms ad conditions of his appointment, time lines for dealing through Authorised person, etc., as may be specified by the Commodity Exchange.

7.6 The Member shall notify changes, if any, in the Authorised person to all registered clients of that branch at least thirty days before the change.

7.7 The Member shall conduct periodic inspection of the branches assigned to Authorised Persons and records of the operations carried out by them, as prescribed by the Exchange.

7.8 It shall be the responsibility of the Member to audit the records of its Authorised person to ensure that they comply with the Rules, Bye Laws and Regulations of the Exchange.

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7.9 The client dealing through an Authorised person shall be registered with the Member only. The funds, monies commodities or warehouse receipts, as the case may be, of the clients shall be settled directly between the Member and client. No fund or commodities of the clients shall be transferred/ deposited/credited into any account of an Authorized person.

7.10 All documents like contract notes, statement of funds and commodities etc would be issued by the Member to the client. Authorised person may provide administrative assistance in procurement of documents and settlement, but shall not issue any document to client in its own name.

7.11 On noticing irregularities, if any, in the operations of an Authorised person, the Member shall forthwith seek withdrawal of approval, withhold all moneys due to Authorised Person till resolution of client grievances, alert clients in the location where Authorised person operates, file a complaint with the police, and take all measures as may be required to protect the interest of its clients and the market.

7.12 Members shall ensure that no orders are executed at the Authorised Person's end before all documents as prescribed by the Exchange or the Commission, as the case may be, including Member and Constituent Agreement, Client Registration Form and Risk Disclosure Document are obtained from each such client.

7.13 Uploading of details pertaining to the Unique Client Code shall be the responsibility of the Member and the Authorized person cannot create or allot Unique Client Code to any client.

7.14 All documents as mentioned in clause 7.12 and 7.13 above should be available with the Member for audit and inspection as and when required by the Exchange or the Commission.

8. OBLIGATIONS OF THE EXCHANGE

8.1 The Commodity Exchange shall maintain a database of all the Authorized persons, which shall include the following:

a) PAN number of Authorised Person and in case of partnership or body corporate, PAN number of all the partners or directors as the case may be along with photographs.

b) Details of the Member with whom the Authorised person is registered.

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c) Locations of the branch assigned to the Authorised person.

d) Number of terminals and their details, given to each Authorised person.

e) Withdrawal of approval of an Authorised person.

f) Change in the status or constitution of Authorised person.

g) Disciplinary action taken by the Exchange against any Member for violations of the Forward Contracts (Regulation) Act,1952, Bye-laws, Rules, Regulations and directions of the Commission or the Exchange, as the case may be, by the authorized person.

All the above details, except (a) above, shall be made available on the web site of the Commodity Exchange.

8.2 While conducting the inspection of the Member, the Commodity Exchange shall also conduct inspection of the branches where the terminals of Authorised Persons are located and records of the operations carried out by them.

8.3 Any dispute between a client and an Authorised Person shall be treated as a dispute between the client and the Member and the same shall be redressed by the concerned Commodity Exchange accordingly.

8.4 In case of withdrawal of approval of an Authorised person due to disciplinary action or upon the regulatory directive, the Commodity Exchange shall issue a press release and disseminate the names of such Authorised persons on its website citing the reason for withdrawal or cancellation of approval.

Anupam Mishra
Director
28.07.2010

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