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

1. DEFINITION :

1.1 **"Authorized Person"** means and includes any person whether being an individual, (including proprietors), a partnership firm as defined under the Indian Partnership Act, 1932, a Limited Liability Partnership (LLP), as defined under the Limited Liability Partnership Act, 2008, body corporate as defined under the Companies Act, 1956 or a Co-operative Society as defined under the Co-operative Societies Act, 1912/ Multi State Co-operative Societies Act, 2002 / any other respective State/UT Co-operative Society Act (including federations of such co-operative societies), who is appointed as such by a Member of a recognized 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 Authorized 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 Authorized 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 Authorized 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

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 Authorized 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 "Authorized 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) if he has been suspended or barred by any Stock or Commodity Exchange for a period of more than six continuous calendar months, a period of three years must elapse from the date of completion of the period of suspension before he is considered for a reappointment as an Authorized Person.
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 A co-operative society shall be eligible to be appointed as an "Authorized Person";

a) if all the Members / Directors by whatever name called, of the Managing Committee / Governing Body comply with the requirements contained in clause 4.1 above. However, in respect of clause at 4.1(f) above, the Exchanges may at their discretion relax the criteria of educational qualifications.
b) if the object clause of the Memorandum of Association of the co-operative society contains a clause permitting the co-operative society to deal in commodity derivatives contracts.

4.4 Infrastructure

The Authorized 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 "Authorized Person" of a Member for a particular Commodity Exchange, such person or entity shall not, during continuation of being an Authorized Person of such Member, qualify for becoming Authorized 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) or a Member/Director of the Managing Committee/Governing Body of a Member (if the Member is a co-operative society) shall be eligible to become an "Authorized Person" of any other Member of that Commodity Exchange in which its company, partnership firm, LLP or co-operative society as the case may be, is a Member.

5.3 The Authorized 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 Authorized Person shall receive his remuneration – fees, charges, commission, salary, etc. – for his services only from the Member of which it is an "Authorized 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 "Authorized 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 "Authorized 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 Authorized Person is only to facilitate the Members to trade on the Exchange platform through persons authorized 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.

6. WITHDRAWAL OF APPROVAL

Approval given to an Authorized Person may be withdrawn by the Commodity Exchange:

6.1 on receipt of a request to that effect from the Member or the Authorized 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 Authorized 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 Authorized Persons after receipt of communication of acceptance of such Authorized Person by the Exchange.

7.2 The Member shall permit the Authorized 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 Authorized 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 Authorized Person in charge of that branch, terms and conditions of his appointment, time lines for dealing through Authorized Person, etc. as may be specified by the Commodity Exchange.

7.6 The Members shall notify changes, if any, in the Authorized Person to all registered clients of that branch atleast 15 days before the change.

7.7 The Member shall conduct periodic inspection of the branches assigned to Authorized 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 Authorized Person to ensure that they comply with the Rules, Bye-Laws and Regulations of the Exchange.

7.9 The client dealing through an Authorized 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. Authorized 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 Authorized Person, the Member shall forthwith seek withdrawal of approval, withhold all moneys due to Authorized Person till resolution of client grievances, alert clients in the location where Authorized 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 Authorized Person's end before all documents as prescribed by the Exchange or the Commission, as the case

may be, including Member and Constituents 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 Authorized Person and in case of partnership or body corporate, PAN number of all the partners or directors as the case may be alongwith photographs, PAN number of all the Members/Directors by whatever name called of the Managing Committee / Governing Body of a co-operative society alongwith photographs.
b) Details of the Member with whom the Authorized Person is registered.
c) Locations of the branch assigned to the Authorized Person.
d) Number of terminals and their details, given to each Authorized Person.
e) Withdrawal of approval of an Authorized Person.
f) Change in the status or constitution of Authorized 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 may, also conduct an inspection of the branches where the terminals of Authorized Persons are located and records of the operation carried out by them.

8.3 Any dispute between a client and an Authorized 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 Authorized Person due to disciplinary action or upon the regulatory directive, the Commodity Exchange shall issue a press release and disseminate the names of such Authorized Persons on its website citing the reason for withdrawal or cancellation of approval.

Usha Suresh