

**ADDENDUM NO.1  
DATED 17.08.2015**

**TO**

**Expression of Interest inviting Bid for purchase of equity Shares of Indian  
Commodity Exchange Limited  
Dated 14.08.2015**

FMC letter No.1/1/2014-MD-I/B dated 6<sup>th</sup> May,2014 may also be treated as part of Information Memorandum.

All other terms and conditions of the EOI shall remain unchanged.

**No.1/1/2014-MD-I/B**

**Dated 6<sup>th</sup> May, 2014**

To,

(i) The Managing Director & CEO, Multi Commodity Exchange of India Ltd.,(MCX), Exchange Square, CTS No. 255, Suren Road, Andheri (East), Mumbai – 400093.

(ii) The Managing Director & CEO, National Commodity & Derivatives Exchange Ltd,(NCDEX), Akruti Corporate Park, LBS Road, Kanjur Marg (W), Mumbai – 400 078.

(iii) The Managing Director and CEO, National Multi Commodity Exchange of India Ltd.,(NMCE), 5, 4<sup>th</sup> Floor, H. K. House, B/h, Jivabhai Chambers, Ashram Road, Ahmedabad – 380 009.

(iv) The Chief Executive Officer, Indian Commodity Exchange Limited,(ICEX) Romell Technology Park, 8<sup>th</sup> Floor, Nirlon Compound, Western Express Highway, Goregoan East, Mumbai – 400 063.

(v) The Chief Executive Officer, ACE Derivatives and Commodity Exchange Limited, 401 B, 4<sup>th</sup> Floor, Building No.4, Infiniti IT Park, Gen. AK Vaidya Marg, Dindoshi, Malad (E), Mumbai – 400 097.

(vi) The Managing Director and CEO, Universal Commodity Exchange (UCX), Exchange House, Millennium Business Park, Mahape, Navi Mumbai-400710.

**Sub:** Directions under Section 10 of the Forward Contracts (Regulation) Act,1952 read with Rule 7(2) (II) of Forward Contracts (Regulation) Rules, 1954 Regarding Ownership, Net worth, Fit and Proper Criteria etc. of the Nationwide Multi Commodity Exchanges (NMCEs)

Sir,

The Government of India issued guidelines vide F.No 12/1/2007-IT dated 14<sup>th</sup> May 2008 (as amended vide F.No 12/1/2007-IT dated 17<sup>th</sup> May 2010) for recognition of new Association and guidelines vide F.No 12/1/2007-IT dated 29<sup>th</sup> July 2009 (as amended vide F.No 12/1/2007-IT dated 9<sup>th</sup> July 2010) on the ownership structure of the Nationwide Multi Commodity Exchanges after five years of operation.

2. Since the commodity derivative exchanges are Financial Market Infrastructure Institutions having an important regulatory role, there is a need to diversify their ownership structure and attract more institutional investors. Therefore, there is a need to revise the earlier guidelines to ensure the above.

3. In exercise of the powers conferred under Section 26 of the Forward Contracts (Regulation) Act, 1952, the Central Government has, vide S.O. No.1162 dated 4th May,

1960, delegated the powers under Section 10 of FCRA, 1952 to Forward Markets Commission. Accordingly, the Norms regarding Shareholding, Ownership, Net worth, Fit and Proper Criteria etc. of the Nationwide Multi Commodity Exchanges have been revised with the approval of the Central Government. The Revised norms as approved are placed as Annexure. Consequently, subject to second proviso of clause 7(2) of the Revised Norms, the existing guidelines on ownership structure of nationwide commodity exchange are superseded.

4. Therefore, in exercise of the powers delegated to it under Section 10 of FCRA read with Rule 7(2) (II) of Forward Contracts (Regulation) Rules, 1954, the Forward Markets Commission hereby directs all Nationwide Multi Commodity Exchanges to make/amend their rules which includes their memorandum and articles of association, so as to incorporate these Revised Norms regarding Shareholding, Ownership, Net worth, Fit and Proper Criteria etc. within a period of 45 days from the date of receipt of these directions. Compliance in this regard should be reported to the Commission by 23<sup>rd</sup> June, 2014.

5. The Revised Norms will be applicable with immediate effect.

Yours sincerely,

  
(P.N. Tiwari)  
Director

**FORWARD MARKETS COMMISSION  
DEPARTMENT OF ECONOMIC AFFAIRS  
MINISTRY OF FINANCE  
GOVERNMENT OF INDIA**

No.1/1/2014-MD-I/B

Date: 6<sup>th</sup> May, 2014

**Revised Norms Regarding Shareholding, Ownership, Net worth, Fit and Proper  
Criteria etc. of the Nationwide Multi Commodity Exchanges (NMCEs)**

**Preamble**

Government of India issued guidelines vide F.No 12/1/2007-IT dated 14<sup>th</sup> May 2008 as amended vide F.No 12/1/2007-IT dated 17<sup>th</sup> May 2010 and guidelines vide F.No 12/1/2007-IT dated 29<sup>th</sup> July 2009 (as amended vide F.No 12/1/2007-IT dated 9<sup>th</sup> July 2010) for recognition of new Association (hereinafter referred to as 'Commodity Exchange') and the ownership structure of the Nationwide Multi Commodity Exchanges after five years of operation. At present the Government has recognized six Nationwide Multi Commodity Exchanges (NMCEs) out of which three NMCEs viz., Multi Commodity Exchange of India Ltd. (MCX), National Commodity and Derivatives Exchange Limited (NCDEX) and National Multi Commodity Exchange of India Ltd. (NMCE) have completed five years of their operations in the Commodity Derivatives Market (CDM). The Forward Markets Commission (hereinafter referred to as 'FMC' or 'Commission') has been issuing, from time to time, guidelines and directions aimed at better governance, transparency and investor confidence in the CDM.

However, considering that the commodity derivative exchanges are Market Infrastructure Institutions having regulatory role, there is a need to diversify the ownership structure and to attract more institutional investors. The earlier guidelines also need to be revisited to provide for adequate development of the market. In view of the above, subject to second proviso of clause 7(2) of these directions, the existing guidelines on ownership structure of national multi commodity exchange are superseded and the FMC in exercise of the powers delegated to it by Government of India vide Notification S.O. No. 1162 dated 4<sup>th</sup> May, 1960 read with Rule 7(2) (II) of Forward Contracts (Regulation) Rules, 1954 issues the following directions:

**1. Definitions**

For the purposes of these directions:

- a) "banking company" shall have the same meaning as assigned to it in clause (c) of



section 5 of the Banking Regulation Act, 1949 (10 of 1949);

- b) "clearing member" means a trading cum clearing member or an institutional clearing member of a recognised exchange who has the right to clear transactions in contracts that are executed in the trading system of the exchange;
- c) "depository" means a company formed and registered under the Companies Act, 1956 (1 of 1956) and which has been granted a certificate of registration under sub-section (1A) of section 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- d) "insurance company" shall have the same meaning as assigned to it in sub-section (8) of section 2 of the Insurance Act, 1938 (4 of 1938);
- e) "National Commodity Exchange" means a demutualised commodity derivative exchange with an independent professional management, an electronic trading platform, all India operations and recognized under section 6 of the Forward Contracts (Regulation) Act, 1952 for trading in all commodities notified u/s 15 or otherwise not prohibited for trading u/s 17 of the said Act;
- f) "persons acting in concert" in the context of acquisition or holding of shares or voting rights or control shall mutatis mutandis have the same meaning as assigned to it in clause (q) of sub- regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial acquisition of Shares and Takeovers) Regulations, 2011 or any modification thereof;
- g) "person resident in India" shall have the same meaning as assigned to it in clause (v) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
- h) "person resident outside India" shall have the same meaning as assigned to it in clause (w) of section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999).
- i) "public" includes any member or section of the public but does not include any trading member or clearing member or their associates and agents:

Provided that a public sector bank, public financial institution, an insurance company, mutual fund and alternative investment fund in public sector, that has associate(s) as trading members or clearing members, shall be deemed as public for the purposes of these directions;

- j) "trading member" means a person having trading rights as members of any recognised commodity exchange;

k) 'trading-cum-clearing member' means a person who is admitted by the exchange as a member of the exchange conferring a right to trade and clear through the clearing house of the exchange as a clearing member.

(2) Words and expressions used and not defined in these directions but defined in the Forward Contracts (Regulation) Act, 1952 (FCRA), the Companies Act, 1956, the Securities and Exchange Board of India Act, 1992 (SEBI Act), Securities Contracts (Regulation) Act, 1956 (SCRA), the Depositories Act, 1996 or any rules or regulations made thereunder shall have the same meaning respectively assigned to them in those Acts, rules or regulations made thereunder or any statutory modification or re-enactment thereto, as the case may be.

## **2. Net worth requirements:**

(1) Every recognised commodity exchange shall have a minimum networth of one hundred crore rupees at all times:

Provided that a recognised commodity exchange having a lesser networth as on the date of commencement of these directions shall achieve a minimum networth of one hundred crore rupees within a period of three years from the date of issue of these directions.

(2) A recognised commodity exchange shall not distribute profits in any manner to its shareholders until the networth specified above is achieved.

(3) Every recognised commodity exchange shall submit an audited networth certificate from the statutory auditor on a yearly basis by the thirtieth day of September of every year for the preceding financial year.

*Explanation* : For the purposes of this regulation, 'networth of a commodity exchange' means the aggregate value of paid up equity share capital plus free reserves (excluding statutory funds, benefit funds and reserves created out of revaluation) reduced by the investments in business, whether related or unrelated, aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off.

## **3. Shareholding in a recognised commodity exchange.**

(1) Atleast **fifty one per cent** of the paid up equity share capital of a recognised Commodity Exchange shall be held by public.

(2) No person resident in India shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than **five per cent** of the paid-up equity share capital in a recognised commodity exchange:



provided that, -

- (i) a commodity exchange;
- (ii) a stock exchange;
- (iii) a depository;
- (iv) a banking company;
- (v) an insurance company; and
- (vi) a public financial institution,

may acquire or hold, either directly or indirectly, either individually or together with persons acting in concert, **upto fifteen per cent** of the paid-up equity share capital of a recognised commodity exchange.

(3) No person resident outside India, directly or indirectly, either individually or together with persons acting in concert, shall acquire or hold more than five per cent of the paid-up equity share capital in a recognised Commodity Exchange.

(4) The combined holding of all persons resident outside India in the paid up equity share capital of a recognised commodity exchange shall not exceed, at any time, forty-nine per cent of its total paid up equity share capital, subject to the following:-

- (a) the combined holding of such persons acquired through the foreign direct investment route shall not exceed twenty six per cent of the total paid up equity share capital, at any time.
- (b) the combined holding of foreign institutional investors shall not exceed twenty three percent of the total paid up equity share capital, at any time
- (c) no foreign institutional investors shall acquire shares of a recognised commodity exchange otherwise than through secondary market.

Explanation: For the purposes of clause (c), the acquisition of shares in a recognised commodity exchange through secondary market shall be construed as follows:-

*I.* If the recognised commodity exchange is not listed, a foreign institutional investor may acquire its shares through transactions outside of a recognised stock exchange provided it is not an initial allotment of shares;

*II.* If the recognised commodity exchange is listed, the transactions by a foreign institutional investor shall be done through the recognised stock exchange where such shares are listed.

(5) No clearing corporation shall hold any right, stake or interest of whatsoever nature, in any recognised commodity exchange.

#### **4. Governance of Nationwide Commodity Exchanges:**

- (1) No trading member or clearing member or trading-cum-clearing member, or their associates and agents may be appointed on the governing board of any recognised commodity exchange.
- (2) No foreign institutional investor shall have any representation in the governing board of a recognised commodity exchange.

#### **5. Fit and proper person criteria.**

(1) For the purposes of these directions, a person shall be deemed to be a fit and proper person if -

(a) such person has a general reputation and record of fairness and integrity, including but not limited to –

- (i) financial integrity;
- (ii) good reputation and character; and
- (iii) honesty;

(b) such person has not incurred any of the following dis-qualifications ---

(i) the person or any of its whole time directors or managing partners has been convicted by a Court for any offence involving moral turpitude or any economic offence, or any offence against the securities laws;

(ii) an order for winding up has been passed against the person;

(iii) the person or any of its whole time directors or managing partners has been declared insolvent and has not been discharged;

(iv) an order, restraining, prohibiting or debarring the person, or any of its whole time directors or managing partners from dealing in commodity derivatives or securities or from accessing the commodity derivative or securities market, has been passed by the Commission or any other regulatory authority, and a period of three years from the date of the expiry of the period specified in the order has not elapsed;

(v) any other order against the person, or any of its whole time directors or managing partners, which has a bearing on the commodity derivatives or securities market, has been passed by the Commission or any other regulatory authority and a period of three years from the date of the order has not elapsed;



(vi) the person has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; and

(vii) the person is financially not sound.

(2) If any question arises as to whether a person is a fit and proper person, the decision of the Forward Markets Commission in this behalf shall be final.

#### **6. Consequences of ceasing to be a “fit and proper person”:**

In the event of any person ceasing to be a ‘fit and proper person’ or being declared so by the Commission, such person shall forthwith divest his shareholding. Further, pending divestment of shares, the voting rights of such person shall stand extinguished and any corporate benefit in lieu of such holding shall be kept in abeyance /withheld by exchange. The exchange shall take necessary steps as it may deem fit so as to ensure that the shareholding of such person is divested forthwith.

#### **7. General conditions.**

- (1) Save as otherwise provided in these directions, the shareholding or voting rights of any person in a recognised commodity exchange shall not exceed the limits specified in these directions at any point of time.
- (2) The shareholding as specified in these directions shall include any instrument owned or controlled, directly or indirectly, that provides for entitlement to equity or rights over equity at any future date.

Provided that any equity or rights over equity, arising from such instruments in excess of limit of shareholding specified in these directions on the date of commencement of these directions, shall be reduced to the specified limit within a period of five years from the date of these directions.

Provided further that the shareholding in an existing commodity exchange shall be first reduced as per the limits prescribed under the existing guidelines within the timeframe prescribed therein. This shall however not affect the requirement of reducing the shareholding as per the overall limits prescribed in these directions within a period of five years from the date of these directions.

#### **8. Eligibility for acquiring or holding shares**

- (1) No person shall, directly or indirectly, acquire or hold equity shares of a Commodity Exchange unless he is a fit and proper person.

- (2) Any person who, directly or indirectly, either individually or together with persons acting in concert, acquire equity shares such that his shareholding exceeds two per cent. of the paid up equity share capital of recognised commodity exchange shall seek approval of the Commission within fifteen days of the acquisition.
- (3) Any person eligible to acquire or hold more than five per cent. of the paid up equity share capital under sub-clause (2) of clause 3 above (shareholding in a recognised commodity exchange), may acquire or hold more than five percent of the paid up equity share capital of recognised commodity exchange only if he has obtained prior approval of the Commission.
- (4) Any person holding more than two per cent. of the paid up equity share capital of the recognised commodity exchange on the date of issuance of these directions, shall ensure compliance with these directions within a period of ninety days from the date of such issuance.
- (5) If approval under sub-clauses (2) or (3) is not granted by the Commission to any person, such person shall forthwith divest his excess shareholding.
- (6) Any person holding more than two per cent. of the paid up equity share capital in a recognised commodity exchange shall file a declaration within fifteen days from the end of every financial year to the recognised commodity exchange that he complies with the fit and proper criteria provided in these directions.

#### **9. Disclosure of shareholding.**

- (1) Without prejudice to the provisions of FCRA, rules made thereunder and these directions, the recognised commodity exchange(s) shall disclose to the Commission, in the format specified by the Commission, their shareholding pattern on a quarterly basis within fifteen days from the end of each quarter, including therein the following:-
  - (a) The names of the ten largest shareholders along with the number and percentage of shares held by them;
  - (b) The names of the shareholders falling under clause 4 above, who had acquired shares in that quarter.

(2) A recognised commodity exchange shall monitor and ensure compliance with these requirements at all times.

**10. Record keeping.**

In addition to the requirements under other laws in force, a recognised commodity exchange shall maintain and preserve all the books, registers, other documents and records relating to the issue or transfer of its securities for a period of not less than ten years.

**11.** In the cases of extreme exigencies and genuine cases, the Commission may relax these conditions for the reasons to be recorded in writing.



**(P. N. Tiwari)**  
**Director**