

FORWARD CONTRACTS (REGULATION) (INTERMEDIARIES)

DRAFT RULES, 2014

In exercise of the powers conferred by clause (g) of Sub-section 2 of section 28 of the Forward Contracts (Regulation) Act, 1952 (74 of 1952), in order to effectively regulate the functioning of the intermediaries in the commodities derivative markets, the Central Government hereby makes the following rules for the purposes of registration and regulation of the said intermediaries, namely:-

**CHAPTER -I
PRELIMINARY**

1. Short title and commencement.

- (1) These rules may be called the Forward Contracts (Regulation) (Intermediaries) Rules, 2014
- (2) These rules shall come into force on the date of their publication in the Official Gazette.

2. Definitions.

(1) In these rules, unless the context otherwise requires :—

- (a) “**Act**” means the Forward Contracts (Regulation) Act, 1952 (No.74 of 1952);
- (b) “**certificate of registration**” means a certificate of registration granted to an intermediary by the Commission under these rules;
- (c) “**Commission**” means the Forward Markets Commission established under section 3 of the Act;
- (d) “**intermediary**” means a member of recognised association, clearing member by whatever name called and any other person or entity which directly or indirectly deals with trading and/or settlement in commodity derivatives market as an intermediary and includes any other person or entity so named / designated by the Commission from time to time;
- (e) “**member**” for the purpose of these rules shall mean a member of a recognised association to which recognition for the time being has been granted by the Central Government under section 6 of the Act to deal in forward contracts in commodity derivatives market and shall include a trading member, or trading-cum-clearing member or any other entity/person functioning as a member of a recognised association, by whatever name called;
- (f) “**rules**”, unless expressly mentioned, means the Forward Contracts (Regulation) (Intermediaries) Rules, 2014.

(2) Words and expressions used and not defined in these rules but defined in the Forward Contracts (Regulation) Act, 1952, the Companies Act, 2013, the Securities and Exchange Board of India Act, 1992, Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996 or any rules or regulations made thereunder shall, unless specifically defined by the Commission in the respective guidelines/instrument, shall have the same meaning as is assigned to them in those Acts, rules or regulations or any statutory modification or re-enactment thereto, as the case may be.

**CHAPTER -II
Registration of Intermediaries**

3. Application for registration of Intermediary.

- (1) No person shall act as an intermediary without obtaining a certificate of registration from the Commission.

Provided further that any person who was acting as ‘intermediary’ immediately before the notification of these rules when no registration was necessary, may continue to act as such for a period of three months from the date of issuance of detailed registration and other procedural

requirements by the Commission or if it has made an application for such registration within the said period of three months, till the disposal of such application.

4. Procedure for registration and effect of refusal to grant registration.

- (1) An application for grant of certificate of registration by a member of a recognised association shall be made in such Form as may be specified by the Commission, through the concerned recognised association of which it is admitted as a member, and the application shall be in conformity with such criteria as may be specified by the Commission from time to time.
- (2) The recognised association shall, on receipt of an application, verify the information contained therein and shall also certify that the applicant is eligible for registration as per criteria specified by the Commission while forwarding the application to the Commission as early as possible, but not later than thirty days from the date of its receipt.
- (3) An intermediary shall furnish such information to the Commission as may be required for the consideration of the application for the grant of registration, within the time specified by the Commission.
- (4) Without prejudice to the provisions of the Act, the Commission shall prescribe detailed procedure for registration including the procedure for refusal to grant the registration and its effects.
- (5) The Commission shall also issue consequential directions and may also impose such conditions as may be necessary, in the interest of the clients of the said intermediary and commodity market, while communicating such refusal.

Provided that the Commission shall observe principles of natural justice before refusing to grant the registration.

- (6) The refusal to grant certificate of registration in respect of an existing intermediary shall not affect the validity of any contract entered into or made with or through such intermediary on or before the date when such refusal is communicated to such intermediary.

Provided that the Commission may make such provisions as it deems fit, in its order of refusal or in any subsequent order for closing out of any such pending contracts in commodity derivatives.

5. Intermediary of commodity exchanges to abide by the code of conduct.

An intermediary holding a registration certificate shall at all time abide by the code of conduct as may be specified by the Commission and also as may be specified in the rules and bye-laws of the recognised association of which it is a member.

6. Surrender of Certificate of Registration.

- (1) An intermediary may surrender his registration and the Commission may cancel the registration upon such surrender forthwith, subject to the following:
 - (i) that there are no enforcement proceedings contemplated or pending against such intermediary;
 - (ii) that there are no outstanding trade positions to be settled at the recognised association of which it is a member;
 - (iii) that the recognised association concerned has no objection to such surrender and cancellation.
- (2) While disposing a request under this rule, the Commission may require the concerned intermediary to satisfy the Commission the factors as it deems fit, including but not limited to the following -

- (a) the arrangements made by the Intermediary for maintenance and preservation of records and other documents required to be maintained under the relevant regulations;
 - (b) redressal of investor grievances;
 - (c) transfer of records, funds or commodities of its clients;
 - (d) the arrangements made by it for ensuring continuity of service to the clients;
 - (e) defaults or pending action, if any.
- (3) While accepting surrender, the Commission may impose such conditions upon the intermediary or its officials as it deems fit for protection of the interest of investors or its clients or the commodities market and such intermediary and its officials shall comply with such conditions.
- (4) On and from the date of cancellation under sub-regulation (1) above, the intermediary shall cease to trade or deal in or clear and settle any contracts in commodity derivatives as an intermediary and the provisions of rule 13 of these rules shall apply to such intermediary with immediate effect.

CHAPTER –III **Obligations and Responsibilities**

7. General Obligations and Responsibilities.

- (1) Every intermediary shall comply with such general obligations and responsibilities including the code of conduct, as may be specified by the Commission and shall maintain, preserve and present to the Commission such books of accounts, documents and records as may be specified by the Commission.
- (2) Every intermediary shall appoint a compliance officer and any other responsible officer, as may be specified by the Commission for ensuring compliances of the statutory requirements by the intermediary.
- (3) The office appointed under sub rule (2) shall immediately and independently report to the Commission, as soon as he observes any non –compliance by such intermediary.

CHAPTER -IV **Inspection and Disciplinary Actions**

8. Commission's right to inspect.

- (1) Without prejudice to the relevant provisions of the Act, the Commission may appoint one or more persons including a qualified auditor, as inspecting authority to undertake inspection of the books, accounts, records including telephone records and electronic records and documents of an intermediary inter alia to verify as to whether the affairs of the intermediaries are being conducted in accordance with the provisions of Act, rules, regulations, bye-laws, guidelines, instructions and directions issued thereunder.
- (2) For the purposes of said inspections, the Commission shall prescribe details procedure adhering generally to the principles of natural justice.
- (3) It shall be the duty of an intermediary and its directors, partners, officers, employees, agents/authorized persons to extend full cooperation to the inspecting authority, during the said inspection.

9. Submission of Inspection Report and Action thereon.

- (1) The inspecting authority shall, within such time as may be specified by the Commission, submit an inspection report to the Commission.
- (2) The Commission after consideration of inspection report shall take such action as it may deem fit and appropriate.

10. Cancellation or suspension of registration and other actions.

Where any intermediary who has been granted a certificate of registration under these rules –

- (a) fails to comply with any conditions subject to which a certificate of registration has been granted to it;
- (b) contravenes any of the provisions of the Act, rules made thereunder, directions, guidelines, instructions or circulars issued thereunder;

the Commission may, without prejudice to any action under the Act, by order take such action as it may deem fit including-

- (i) cancellation of registration;
- (j) suspension of registration;
- (ii) prohibition of the intermediary from taking up any new assignment or contract or launch a new scheme for the period specified in the order;
- (iii) debarment of the principal officer of the intermediary from being employed or associated with any registered intermediary for the period specified in the order;
- (v) debarment of intermediary from carrying out any activity in the commodity derivative market, for the specified period;
- (vi) warning.

11. Intimation and service of the order.

Every order passed by the Commission shall be served upon the intermediary, the recognised association to which it is a member and also be put on the web site of the Commission.

12. Effect of debarment, suspension, cancellation or surrender.

(1) On and from the date of debarment or suspension of the certificate, the concerned intermediary shall observe such conditions as may be specified by the Commission for the protection of the interest of the investors or the clients of the intermediary.

(2) On and from the date of surrender or cancellation of the certificate of registration, the concerned intermediary shall return the certificate of registration so cancelled to the Commission, cease to carry on such activity for which the certificate has been cancelled and shall also observe such conditions as may be specified by the Commission for the protection of the interest of the investors or the clients of such intermediary.

CHAPTER – V Miscellaneous

13. Power of Commission to remove difficulties, specify procedures etc. and issue clarifications.

In order to remove any difficulties in the application or interpretation of these rules, and also for the purpose of implementation of these rules and matters related thereto, the Commission shall have the power to specify norms, procedures, processes and to issue necessary directions, clarifications and guidelines, consistent with these rules, which shall be binding on the intermediaries and also on the persons associated with the commodity derivative market including the recognised associations.
