M&A Hotline

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COMMODITY EXCHANGES GET A BREATHER!

The Department of Industrial Policy and Promotion (“**DIPP**”) has through its recent Press Note 5 of 2009 provided the commodity exchanges and its foreign investors much needed breathing space by extending the deadline for compliance with the new foreign investment norms up to September 30, 2009.

BACKGROUND:

Previously, DIPP in order to regulate the foreign investment in commodity exchanges through Press Note 2 of 2008 (“**PN2**”). PN2, introduced on March 12, 2008, provided for a composite ceiling of 49% for foreign investments in commodities exchanges. Such foreign investments were fettered with the following additional conditions:

1. Investments by Foreign Institutional Investors (FIIs) under the Portfolio Investment Scheme would be limited to an aggregate of 23%;
2. Investment under the Foreign Direct Investment (FDI) will be within 26% and would require prior Government approval; and
3. The aggregate equity holding of a single foreign investor / entity including persons-acting-in-concert[1] should not exceed 5%.

EXTENSION:

DIPP had acknowledged that at the time of introduction of PN2, many commodities exchanges had received foreign investment above the specified limit. Taking into account the difficulties in regularizing the said foreign investments, DIPP had *vide* its Press Note 8 (2008) (“**PN8**”) permitted the concerned commodities exchanges to comply with the new investment norms by June 30, 2009. However, considering the continuing difficulties experienced by the commodity exchanges and its foreign investors in divesting the shareholding in accordance with the new regime, DIPP has now extended the time line for complying with PN2 provisions, to September 30, 2009. Further, reiterating the position in PN8, all commodity exchanges are required to furnish a compliance report to DIPP indicating their revised foreign equity position as on September 30, 2009.

One of the main concerns with PN 2 seems to be the compliance with the 5% cap for a single foreign investor. Even with the present extension, maximum benefit seems to be to the foreign investors who are required to reduce their existing shareholding in commodity exchanges below the prescribed threshold of 5%. This move by the DIPP, considering the current global market situation, would indeed provide some relief to foreign investors like Fidelity and Goldman Sachs which are currently holding more than 5% equity in Multi Commodity Exchange of India Limited (MCX) and the National Commodity and Derivatives Exchange Limited (NCDEX), respectively.

- **Yamini Dwarkanath** & **Vaidhyanadhan Iyer**

1. The term “person acting in concert” has not been defined under the above mentioned press notes. We may therefore, refer to the definition attributed to the term under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

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