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**STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS
AND PUBLIC DISTRIBUTION (2011-12)**

FIFTEENTH LOK SABHA

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION
(DEPARTMENT OF CONSUMER AFFAIRS)**

**FORWARD CONTRACTS (REGULATION)
AMENDMENT BILL, 2010**

FIFTEENTH REPORT



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2011/ Agrahayana, 1933 (Saka)

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AMENDMENT BILL, 2010**

Presented to Lok Sabha on 22.12.2011

Laid in Rajya Sabha on 22.12.2011



**LOK SABHA SECRETARIAT
NEW DELHI**

December, 2011/ Agrahayana, 1933 (Saka)

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COMPOSITION OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION – 2011-12.

Shri Vilas Muttemwar - Chairman

MEMBERS

LOK SABHA

2. Shri Tarachand Bhagora
3. Shri Shivraj Bhaiya
4. Shri Arvind Kumar Chaudhary
5. Shri Sanjay Dhotre
6. Dr. Ram Chandra Dome
7. Shri Abdul Mannan Hossain
8. Shri Lal Chand Kataria
9. Shri Marotrao Sainuji Kowase
10. Shri Gobinda Chandra Naskar
11. Shri Prabodh Panda
12. Shri Sohan Potai
13. Shri Purnmasi Ram
14. Shri Ramkishun
15. Shri Chandulal Sahu (Chandu Bhaiya)
16. Dr. Naramalli Sivaprasad
17. Vacant
18. Vacant
19. Vacant
20. Vacant
21. Vacant

RAJYA SABHA

22. Smt. T. Ratna Bai
23. Dr. M.S. Gill
24. Shri P. Kannan
25. Shri Lalhming Liana
26. Shri Kanjibhai Patel
27. Shri Rajniti Prasad
28. Shri Sanjay Raut
29. Dr. T.N. Seema
30. Shri Veer Singh
31. Shri Kaptan Singh Solanki

SECRETARIAT

1. Shri P.K. Misra - Joint Secretary
2. Smt. Veena Sharma - Director

INTRODUCTION

I, the Chairman of the Standing Committee on Food, Consumer Affairs and Public Distribution (2011-12) having been authorized by the Committee to submit the Report on their behalf, present this Fifteenth Report on “The Forward Contracts (Regulation) Amendment Bill, 2010” pertaining to the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs).

2. The Forward Contracts (Regulation) Amendment Bill, 2010 was introduced in Lok Sabha on 6th December, 2010. Hon'ble Speaker referred the Bill to the Standing Committee on Food, Consumer Affairs and Public Distribution under Rule 331E of the Rules of Procedure and Conduct of Business in Lok Sabha on 16 December, 2010 for examination and report within three months. The Committee invited the views/suggestions of the Individuals/Institutions/Stakeholders etc. on the various provisions of the Bill through the Print and Electronic Media including the LSTV. The views/suggestions of the Ministry of Finance and Planning Commission were also obtained. The Committee heard the views/suggestions of the representatives of the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Sarthak Advocates and Solicitors and PRS Legislative Research on the Bill at its sitting held on 25th March, 2011. The Committee also discussed the Bill with the officials of the State Governments of Rajasthan, Gujarat, Andhra Pradesh, Maharashtra, Tamil Nadu and West Bengal during their study visits to these States during the months of February and November, 2011. The Committee discussed the views/ suggestions on the various provisions of the Bill as received from the Ministries/Institutions/ Universities/General Public etc. at their sitting held on 26th July, 2011. The representatives of the Department of Consumer Affairs and the Forward Markets Commission tendered oral evidence and gave clarification on the various provisions of the Bill before the Committee at its sittings held on 21st January, 9th March 12th December and 16th December, 2011. The Committee considered and adopted the draft Report on the Bill at their sitting held on 19th December, 2011.

3. The Committee wish to express their thanks to the Ministry of Finance, Planning Commission and Officials of State Governments of (i) Rajasthan, (ii)

Gujarat, (iii) Andhra Pradesh, (iv) Maharashtra, (v) Tamil Nadu and (vi) West Bengal as well as the representatives of the National Commodity Exchanges such as Indian Commodities Exchange Ltd. (ICEX) National Multi-Commodities Exchange (NMCE), The National Board of Trade Ltd., Indore, Multi Commodity Exchange of India Ltd., Mumbai, National Commodity & Derivatives Exchange Ltd., Mumbai, Bombay Commodity Exchange Ltd., Mumbai, Indian Commodity Exchange Ltd., Mumbai, ACE Derivatives and Commodity Exchange Ltd., Mumbai and the East India Jute & Hessian Exchange Ltd., Kolkata. The Committee also express their thanks to the representatives of the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Sarthak Advocates & Solicitors, New Delhi and PRS Legislative Research, New Delhi for appearing before the Committee and also furnishing their views/suggestions to the Committee. The Committee also express their thanks to Individuals/Institutions/Organizations etc. who furnished their views/suggestions on the provisions of the Bill to the Committee.

4. The Committee also express their thanks to the representatives of Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) as well as the Forward Markets Commission for tendering evidence before the Committee and for furnishing the detailed information/material, desired in connection with the examination of the Bill.

5. For facility of reference and convenience, the observations/ recommendations of the Committee have been printed in bold letters in the body of the Report.

New Delhi
19 December, 2011
28 Agrahayana, 1933 (Saka)

VILAS MUTTEMWAR,
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution

CHAPTER – I

INTRODUCTORY

A. BACKGROUND

The Commodity Futures Market in India dates back to more than a century. The first organized futures market was established in 1875, under the name and style of 'Bombay Cotton Trade Association' to trade in cotton contracts, just 10 years after the establishment of Chicago Board of Trade (CBOT) in USA and thus became the 2nd oldest commodity exchange in the world. Subsequently, many regional exchanges like Gujarat Vyapar Mandali (1900) for oilseeds, Chamber of Commerce at Hapur (1913) and East India Jute Association Ltd. (1927) for raw jute etc. came into existence. By the 1930s, there were more than 300 commodity exchanges in the country dealing in commodities like turmeric, sugar, gur, pepper, cotton, oilseeds etc. This was followed by institutions for futures trading in oilseeds, foodgrains, etc. The futures market in India underwent rapid growth between the period of First and Second World Wars. As a result, before the outbreak of the Second World War, a large number of commodity exchanges trading futures contracts in several commodities like cotton, groundnut, groundnut oil, raw jute, jute goods, castorseed, wheat, rice, sugar, precious metals like gold and silver were flourishing throughout the country. Trading was conducted through both options and futures instruments. However, there was no market regulator and hence there was no uniformity in trading practices. Further, there was no structured clearing and settlement system.

1.2 During the second world war, the colonial government suspended forward trading in most of the major commodities as a part of its war mobilization efforts to contain rising price expectations. After the dawn of independence, the futures markets were put under the Central List of subjects under the Constitution of India. State governments were no more competent to regulate or intervene in futures trading. In its wake, the Forward Contracts (Regulation) Act, 1952 (FCR Act, 1952) was passed to regulate this market with Forward Markets Commission (FMC) being set up in 1953 at Mumbai as the regulator. However, options which were then

perceived to be risky instruments of trading, were totally banned under the Act itself. Futures trading started to gain momentum in many commodities. However, in the mid-1960s, the Government imposed a ban on the futures trading of most of the commodities on the assumption that this led to inflationary conditions.

B. Reopening of the Forward Markets

1.3 The Department of Consumer Affairs have stated that with substantial growth achieved in agriculture in the closing decades of the 20th century and India's strong emergence on the agri commodity marketing and export front, it was felt necessary to provide the farmers the benefit of price discovery and price risk management in marketing their produce and thereby to reverse the adverse terms of trade that they have been suffering for their produce. The restrictions on forward trading were accordingly lifted in April, 2003 and 3 national electronic commodity exchanges came into operation in the same year. Since then several changes have taken place in the Commodity Futures Market. While the Commodity Futures Market has been liberalized with effect from April, 2003 and modern institutional structures are in the process of being evolved, the Forward Markets Commission (FMC) the market Regulator, is broadly functioning in its traditional manner. Some of the existing provisions of the FCR Act have also become redundant in view of the rapid expansion of the Commodity Futures Market. Also, the Commodity Futures Market has been witnessing exponential growth in the last three years.

There are now 21 commodity Exchanges in the country including five National Multi-Commodity Exchanges, located at Mumbai (2), Ahmedabad (2) and Gurgaon. These five national Exchanges are state-of-the art, de-mutualized and corporatized trading platforms with professional management from the beginning with facilities for on-line trading across the country. At present, 113 commodities have been notified for trading and more than 40 commodities are actively traded.

1.4 The current size of the Commodity Futures Market has crossed Rs. 100 lakh crore, registering a rapid Compound Annual Growth Rate (CAGR growth of 40%. The Commodity group-wise value of trade from 2003-04 to 2010-11 is given in the table below:

(In Rs. Crore)

Year	Bullion	Metals	Energy	Agri	Others	Total
2003-04	3315	2134	-	123914	-	1,29,363
2004-05	179053	618	1900	390188	-	5,71,759
2005-06	760675	18723	181883	1192227	1614	21,55,122
2006-07	1723348	405637	230712	1317125	104	36,76,926
2007-08	1725952	897714	500942	941283	98	40,65,989
2008-09	2973675	618776	1026442	627303	2760	52,48,956
2009-10	3164152	1801636	1577882	1217949	3135	77,64,754
2010-11	5493892	2687673	2310988	1456389	-	11948942
2011-12 (till 31.10.11)	6423687	1545332	1584446	1083495	1	10636961

1.5 As stated earlier, there was no regulator and hence, no uniformity in trading practices, therefore, after independence, the Forward Contract (Regulation) Act, 1952 was passed to regulate this market and the FMC was set up in 1953 as the regulator. A bill to amend Forward Contracts (Regulation) Act, 1952 was introduced in Rajya Sabha on 23rd December, 1998 and the same was referred to the Standing Committee on Food, Civil Supplies and Public Distribution for examination and report. The bill, after incorporating the recommendations of the Standing Committee was passed by Rajya Sabha on 15th December, 2003 but could not be passed by Lok Sabha due to its dissolution. The Forward Contracts (Regulation) Amendment Bill, 2006 was introduced in Lok Sabha on 21.03.2006 and the same was again referred to the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution for examination and report. The report of the Standing Committee was presented to Lok Sabha on 19.12.2006. The Department has informed the Committee that the recommendation of the Committee were examined and incorporated in a draft note for the cabinet for moving official amendments to the said Bill and was circulated to all concerned Departments. Their comments along with

the views of the Department were incorporated in the Cabinet Note which was considered by the Cabinet on 3.5.2007. However, the cabinet postponed the decision thereon and advised the Ministry to carry out wider consultations with all the stakeholders including the political parties and thereafter submit the revised note for approval. The Bill of 2006 was, however, withdrawn due to issuance of the Forward Contracts (Regulation) Ordinance and the Ministry of Law (Legislative Department) had advised that the Bill of 2008 required to be consequentially amended before it was considered for passing in Lok Sabha. Accordingly, a Cabinet Note for moving official amendments was sent to Cabinet which approved the proposal with the direction that a final decision regarding the definition of "commodity derivative" be taken by the Minister of Agriculture, Consumer Affairs, Food and Public Distribution and the Minister of Finance. However, the said Bill also lapsed upon the dissolution of the Fourteenth Lok Sabha on 17.05.2009.

1.6 The Forward Contracts (Regulation) Amendment Bill, 2010 as introduced in Lok Sabha on 6th December, 2010 has now again been referred to the Committee by the Hon'ble Speaker on 16th December, 2010 for examination and report.

C. PRESENT POSITION OF REGULATION OF FORWARD MARKET (TRADING)

1.7 There are three tiers of regulations of forward trading viz. The Central Government, Forward Markets Commission and the Recognised Commodity Exchanges/ Associations. The Central Government broadly determines the policy as to commodities in which futures/forward trading is to be permitted and the recognition of Exchange/Association through whom such trading is to be conducted. The Forward Markets Commission performs the role of approving the Rules and Regulations of the Exchange subject to which the trading is to be conducted, accord permission for commencement of trading in different contracts, monitor market conditions continuously and take remedial measures whenever the trading tends to go outside the permissible limits. The Recognised Exchange/Association provide the frame work of Rules and Regulations for conduct of trading, the place where the trading is to be conducted, reporting and recording of contracts, execution & settlement of contracts, forum for exchange of documents and payments, etc.

D. Regulatory measures

1.8 However, futures trading have the potential risk of being misused by unscrupulous elements. In order to safeguard the market against such elements, regulatory measures as under are prescribed by the Forward Markets Commission:-

- (a) Limit on open position of an individual operator, to prevent over-trading;
- (b) Limit on intra-day price fluctuation, to prevent abrupt upswing or downswing in prices (commonly referred to as circuit limits);
- (c) Special margin deposits to be collected on outstanding purchases and/or sales, to curb excessive speculative activity, through financial restraints (by reducing the leverage / ability of individual operators to hold large positions);
- (d) During times of extreme situations of shortages, the Commission may even take more stringent steps, viz., skipping trading in certain deliveries of the contract, closing the markets for a specified period or even closing out the contract, to overcome such emergency situations.

E. Economic functions of the futures markets

1.9 In a free market economy, futures trading performs two important economic functions, viz., price discovery and price risk management. Such trading in commodities is useful to all sectors of the economy. The forward prices give advance signals of an imbalance between demand and supply. This helps the government and the private sector with exposure to commodities and price volatility to make plans and arrangements in a shortage situation for timely imports, instead of having to rush in for such imports in a crisis-like situation when the prices are already high. This ensures availability of adequate supplies and averts spurt in prices. Similarly, in a situation of a bumper crop, the early price signals emitted by the futures market help the importers to defer or stagger their imports and exporters to plan exports, which protects the producers against unremunerative prices. At the same time, it enables the importers to hedge their position against commitments made for import and exporters to hedge their export commitments. As a result, the export competitiveness of the country improves.

1.10 When enquired as to what difficulties are being faced by Forward Market Commission at present which would be overcome by enactment of the proposed Amendment Bill, 2010, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) in a written note stated as under:-

- i) The Present Act does not confer upon FMC, the market regulator, various powers required for effective regulation of these markets. That is why the Government had to confer most of its powers (except for recognition, withdrawal of recognition, notifying the commodities for prohibition/regulation (under section 17, 15 and 18) and supersession of the Board of Directors of an Exchange) to the Forward Markets Commission through delegation. The proposed Amendment Bill (FCR Amendment Bill 2010) seeks to provide FMC with **original powers** for effective regulation of the markets.
- ii) The penal Provisions in the present Act are inadequate for regulating the markets effectively. The proposed amendments seek to provide for imposition of financial penalty, after adjudication, for various contraventions, such as failure to furnish information, return, etc; failure by any person to enter into agreement with clients, failure to redress clients' grievances, insider trading, adoption of fraudulent and unfair trade practices, default in case of an intermediary and failure to comply with the directives of FMC. Depending on the gravity of the offences, the financial penalty could be as high as Rs 25 lakh for certain offences. As per the proposed provision, the FMC will have original powers to impose financial penalties upto maximum of Rs 25 lakh (for some offences like insider trading, unfair practices etc. the penalty has also being linked to the profits made out of such transactions, etc.), whereas as per the present provisions, only a penalty of Rs 1,000/- can be imposed, that too by the competent court on conviction. No penalty can be imposed at present by the FMC directly on the members or their clients.
- iii) The present Act does not provide for a statutory power for registration of members (brokers) and other intermediaries. The registration of the intermediaries is essential for their effective monitoring and surveillance by the FMC to ensure compliance with regulatory provisions.

- iv) The present Act does not provide for corporatization and demutualization of the existing Commodity Exchanges. The proposed amendments seek to provide for corporatization and demutualization of the Commodity Exchanges which will usher in separation of trading interests from ownership and management of Exchanges.
- v) The present Act does not provide for an Appellate Authority. The proposed amendments seek to designate Securities Appellate Tribunal (SAT) as the Appellate Tribunal for the purposes of F.C(R) Act. The Amendment Bill provides for an appeal against the order of FMC and Adjudicating Officer before SAT and against the order of SAT before the Supreme Court.
- vi) The present Act prohibits options in goods. The proposed amendment seeks to introduce options in goods. This will provide the farmers with a better and more easily manageable risk management tool. In options, farmers are not required to monitor the futures prices on a day-to-day basis, nor do they have to keep paying or receiving margins to/from the exchanges, till the contract is settled. Besides, they can protect themselves against a fall in the prices without sacrificing the benefit from any potential upside.
- vii) Post-amendment, greater participation of banks will facilitate and accelerate their credit provisioning against forward sales by farmers as well as being aggregators for farmers' direct participation in forward trading.

1.11 The Act defines 'ready delivery contracts', 'forward contracts' and 'options' in goods.

1.12 Ready delivery contracts are contracts for supply of goods and payment thereof where both the delivery and payment is completed within 11 days from the date of the contract. Such contracts are outside the purview of the FCR Act.

1.13 Forward Contracts, on the other hand, are contracts for supply of goods and payment, where supply of goods or payment or both take place after 11 days from the date of contract or where delivery of goods is totally dispensed with, i.e., the contract is settled by payment of cash difference based on the movement in prices.

1.14 Forward contracts other than specific delivery contracts are what are generally known as 'futures contracts' though the Act does not specifically define the futures contracts. Such contracts can be performed either by delivery of goods and payment thereof or by entering into offsetting contracts and payment or receipt of amount based on the difference between the rate of entering into contract and the rate of offsetting contract. Futures contracts are usually standardized, contracts where the quantity, quality, date of maturity, place of delivery are all standardized and the parties to the contract only decide on the price and the number of units to be traded. Futures contracts are entered into through the Commodity Exchanges.

F. Objectives of the FC(R) Amendment Bill 2010

1.15 The main objectives of the FC(R) Amendment Bill 2010 are as follows:

- I. Strengthening of the regulatory framework including enforcement and penal provisions for the commodity derivatives markets.
- II. Functional and Financial Autonomy for the market regulator, the Forward Markets Commission (FMC) to better regulate the commodity derivatives market.
- III. Permitting new products, viz., options in the commodity derivative market which are more suitable for participants like farmers to cover their price-risks.

G. Important Amendments Proposed to the FC(R) Act 1952:

1.16 The Forward Contracts (Regulation) Amendment Bill, 2010, inter alia, seeks to make amendments to the Forward Contracts (Regulation) Act, 1952, in respect of the following:–

- (a) to redefine the expression “forward contract” so as to include therein “commodity derivative” and also to define new expressions such as “commodity derivative”, “corporatisation”, “demutualisation” and “intermediary” which have been used in the Bill;
- (b) to increase the maximum number of members of the Forward Markets Commission from four, as at present, to nine out of which at least three would be whole-time members besides the Chairman;
- (c) to confer power upon the Commission to levy fees;

- (d) to provide for constitution of a fund called the “Forward Markets Commission General Fund” to which all grants, fees and all sums received by the Commission except penalty shall be credited, and apply the funds for meeting its expenses;
- (e) to confer power upon the Central Government to issue directions to the Commission on matters of policy and to supersede it in certain extreme circumstances;
- (f) to make provisions for corporatisation and demutualisation of recognised associations in accordance with the scheme to be approved by the Commission;
- (g) to make provisions for registration of members and intermediaries;
- (h) to allow trading in options in goods and commodity derivatives;
- (i) to make provision for investigation, enforcement and penalty in case of contravention of the provisions of the Act;
- (j) to make provision for transfer of the duties and functions of a clearing house of an exchange to a clearing corporation;
- (k) to make provisions for exemption from payment of tax on wealth, income and profits or gains of the Commission; and
- (l) to make provision for appeals from the orders of the Forward Markets Commission and Adjudicating Officer to the Securities Appellate Tribunal for the purposes of the Act and from the order of the Securities Appellate Tribunal under the Forward Contracts (Regulation) Act, 1952 to the Supreme Court;
- (m) to make consequential changes in the Securities and Exchange Board of India Act, 1992.

1.17 (1) Up-dation of existing definition and insertion of new definitions

The Amendment Bill proposes to modify some of the existing definitions and also insert some new definitions so as to make the provisions of the FCR Act more relevant and useful in tune with the changes in the commodity derivatives market in the recent years. It provides for the amendment of the definition of the expression “forward contract” so as to include therein “commodity derivative” and also insert new expressions such as “commodity derivative”, “corporatization”, “demutualization”, “intermediary” etc which have been used in the Bill.

(2) Strengthening of Forward Markets Commission

The Amendment Bill proposes to restructure and strengthen FMC. Accordingly, the following changes in the composition and functioning of FMC are proposed:

- Increase in the number of Members from 4 to 9 with at least three whole-time Members and Chairman.
- Provisions relating to term of office and conditions of service of Chairman and Members of the FMC and its Officers and employees.
- Provisions to confer power upon the Commission to recruit its Officers and employees so as to provide flexibility in recruiting experts and professionals belonging to commodity derivatives market.
- Provisions to provide for constitution of 'FMC General Fund' to which all grants, fees and all sums received by the FMC shall be credited except penalties and apply the funds for meeting the expenses of FMC. The FMC will also have the powers to levy fees.

(3) Enhancement of the powers of the Forward Markets Commission

The Bill proposes to enhance the powers of the FMC by devolving most of the existing powers of the Central Government on the FMC, such as:

- Powers relating to recognition, withdrawal of recognition.
- Power to supersede governing body of the recognized associations.

Besides the Bill also proposes to confer upon the FMC additional powers, such as the following:

- (a) to regulate the business of associations and intermediaries;
- (b) to call for information from agencies;
- (c) to protect the interests of market participants;
- (d) to promote and regulate self-regulatory organizations;
- (e) to prohibit fraudulent and unfair trade practices;
- (f) to promote investor education and training of intermediaries;

(g) to prohibit insider trading;

(h) to adjudicate and make Regulations; and

(i) to investigate intermediary or person associated with the commodity derivatives market.

(4) Corporatisation and Demutualisation of the existing Commodity Exchanges

Provisions relating to corporatization and demutualization of the existing Commodity Exchanges in accordance with the scheme to be approved by the FMC, are proposed to be inserted on the lines of similar provisions contained in the Securities Contracts (Regulation) Act, 1956 (SCR Act).

(5) Provisions of Clearing Corporation

The Amendment Bill also proposes to make provision for Clearing Corporation to which all the clearing functions of the existing clearing houses of the Exchanges will be transferred in a time bound manner.

(6) Registration of Members and Intermediaries

The proposed Amendment Bill provides for registration of members and intermediaries associated with the commodity derivatives market. At present, there is no statutory provision for registration of brokers, sub-brokers/authorised representatives and other intermediaries with the FMC. The registration of the intermediaries will facilitate more effective monitoring of these intermediaries by the FMC. Provision relating to suspension or cancellation of certificate of registration has also been provided in the Bill.

(7) Enhancement of penal provisions

The existing penalty provisions in the FCR Act are grossly inadequate. In order to make the penalty provisions more effective and deterrent, the existing monetary limit of the penalty is proposed to be enhanced to a minimum of “rupees twenty five thousand” as against the existing provision of “rupees one thousand only”. New provisions are proposed to be inserted to provide for penalty, to be imposed after adjudication, of up to “rupees twenty five lakhs” covering

contraventions, such as failure to furnish information, return etc; failure by any person to enter into an agreement with clients; failure to redress clients' grievances; insider trading, fraudulent and unfair trade practices; default in case of an intermediary; and failure to comply with directives of the FMC.

(8) Provisions relating to the Appellate Tribunal and appeal to the Supreme Court

The Amendment Bill proposes to make provision for designating the Securities Appellate Tribunal (SAT) as the Appellate Tribunal for the purposes of FCR Act. The Amendment Bill provides for an appeal from the order of FMC and Adjudicating Officer to SAT and from SAT to Supreme Court under the FCR Act.

(9) Permitting trading in options in goods or commodity derivatives

Trading in options in goods is banned under the existing provisions of the FCR Act. The Amendment Bill proposes to make provisions for allowing trading in options in goods or commodity derivatives and for this purpose, Section 19 of the FCR Act is proposed to be amended. This will provide a new facility for risk management to market participants and other stakeholders, including farmers.

(10) Other provisions

The Amendment Bill also provides for certain other provisions, such as the following:

- a. Exemption of FMC from payment of tax on wealth, income and profits or gains on the lines of SEBI.
- b. Conferring powers upon the Central Government to issue directions on matters of policy to FMC and also to supersede it if so warranted.

H. Constitutional & Legal Frame Work

1.18 The subject "stock exchanges and futures markets" is under the Union List in Schedule VII of the Constitution of India, whereas the "Trade and Commerce" and "Agriculture" are the subjects within the jurisdiction of States. Therefore, the regulators of commodities Exchanges do not have jurisdiction over spot Markets even in non-Agricultural Commodities. Asked whether the regulator of Commodities

markets should have a mandate to regulate the spot markets in Commodities and the steps taken to resolve the issue, the Committee was informed by the Ministry that the proposed Bill does not seek to bring spot market and future market under the same regulatory framework. The Bill deals only with commodity derivatives contracts. However, since the spot markets and derivatives markets are closely linked, it is desirable that both the spot markets and derivatives market are under the purview of the same regulator.

1.19 The objective and functioning of futures and spot market are completely different. However, some of the national commodity Exchanges are taking initiatives to set up national level electronic Exchanges for spot transactions for agricultural commodities. Ideally, there should be convergence of spot and futures markets under a uniform regulatory framework for the optimization of the benefits of these reforms.

1.20 Thus, the legislation to be enacted by the Parliament for bringing spot trading within the purview of the Commodity Futures Regulator can cover both inter-state trading as well as intra-state spot trading in the aforesaid commodities. A Bill to provide for regulation of electronic spot trading in commodities as aforesaid is under consideration of the Department of Consumer Affairs.

1.21 Keeping in view the enormous importance of the Bill, especially for the farming community, the Committee sought the views/suggestions from institutions/individuals/stakeholders etc. on the provisions of the Bill through letters and press release which were published in leading newspapers. The Committee also held discussions with the State Governments of Rajasthan, Gujarat, Andhra Pradesh, Maharashtra, Tamil Nadu and West Bengal on the various provisions of the Bill and took oral evidence of the representatives of the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) in this regard. The Committee considered the views/suggestions furnished by various institutions /individuals/Cooperatives viz. Sethkari Sangathana; The Thodupuzha Taluk Co-operative Rubber Marketing Society Ltd.; and Consortium of Indian farmers Associations and took evidence to share the views of the representatives of the following Institutions/Organizations :-

- (i) Confederation of Indian Industry (CII),
- (ii) Federation of Indian Chambers of Commerce and Industry (FICCI),
- (iii) Sarthak Advocates and Solicitors and
- (iv) PRS Legislative Research.

1.22 The important points/suggestions brought out in the written Memoranda as well as during Oral evidence are given as under:-

Confederation of Indian Industry (CII) in their Memorandum submitted to the Committee stated that the Amendment bill proposes to permit options in commodities. Over a period of time, it has also been realized that options are better suited to Indian farmers than futures as explained further in their note. The FCRA Amendment Bill will further help the farmers and consumers by making available more convenient instruments such as options, derivatives on weather etc., these instruments are particularly useful for farmers and others who are risk averse. Options would prove very helpful to the farmers because it would give them Price protection down side and full opportunity to benefit from rising price. By entering into an option contracts, the farmers will get a right to sell but would not be bound to sell if the price falls. It will improve the quality of price discovery and price risk management through more effective regulation. They have also stated that one of the reasons for farmers to sell their produce at a lower price than the optimum price is insufficient price information. In order to help the farmers to get benefit from the futures market, it is imperative that futures prices are disseminated at the farm-gate. FMC and the national commodity exchanges hope to achieve this through the implementation of the price dissemination project.

Further, introduction of Newer Products/instruments such as option is also supported by **Ace Derivatives and Commodity Exchange Ltd.** as in the Memorandum submitted by them, it has been stated that with a small investment outlay, the farmers/Constituents would be able to hedge the price risk on their produce very efficiently. Availability of Option would give a simpler alternative to the farmers.

India Pepper and Spice Trade Association (IPSTA) in their Memorandum submitted to the Committee welcomed the passage of Bill since it would go a long

way in the overall development of the future trade. They have further supported the substitution of the new sections viz. 12 A & 12 B **for option** which will give impetus for trading as well as reduce the risk involved in it.

In a Memorandum submitted by **Kerala Agricultural University** it has been stated that Future Contracts are traded in the commodity bourses in India. Further contracts have the inherent weakness that they have unlimited potential for profit. It is high time that the **options** must be made available to the players in the commodity value chain to limit their cost of transaction. The introduction will also enhance greater participation by the stakeholders and infuse greater liquidity in the market.

Confederation of Indian Industry have also stated that the commodity futures Market has witnessed significant growth and its complexities have increased. It is imperative to increase the number of members including whole-time members of FMC to strengthen the regulatory framework of this market. Increase in the number of members of the Commission would enable FMC to involve professionals from areas relevant to commodity and financial market for development as well as regulation. Effective regulation is required to ensure that the markets are free from any kind of manipulation which leads to distorted price signals. They have also stated that for strengthening of FMC as a regulator and for effective regulations, FMC should have the powers to constitute and expend out of the 'FMC-General Fund' in order to give it adequate financial autonomy. Financial autonomy, on the lines of SEBI, is required by FMC for quicker and more effective implementation of its regulations, besides focusing on developmental activities such as awareness, dissemination of price information, connecting stakeholders to the markets through innovative models which are essential for delivering the benefits at the grass roots level. In the present commodity market, FMC needs to employ modern technological tools and professionals to meet the regulatory challenges. In order to do that, FMC needs to have independent sources of revenue by having General Fund and charge fee from the brokers. Therefore, they are of the view that such powers should be given to FMC. Since FMC does not have adequate financial and operational autonomy at present, it has to depend on the time-consuming Ministry's approval for taking regulatory decisions. FMC is highly short-staffed and not able to recruit appropriate personnel mainly due to non-availability of trained

personnel with specific qualifications and domain knowledge. Further, FMC can seek staff only on deputation basis from the government departments/semi-government agencies, from where either the relevant manpower is not available or they are not willing to join on short-term deputations/due to lower remuneration available in FMC vis-à-vis the market opportunities available for such personnel outside. Without financial autonomy, it is not able to upgrade its human and technical resources for effective regulation of the market.

It is also stated that the administrative and financial autonomy envisaged in the Amendment Bill will facilitate FMC in raising its own financial resources and induction of adequate skilled manpower to strengthen its regulatory oversight. Currently, efforts to take the benefits of Commodity Futures Market to the small producers are being made by cooperative federations such as NAFED, HAFED, Rubber Producers' Cooperatives, etc. Besides, FMC has also been trying to make the market more inclusive through aggregating small producers. With financial autonomy and operational independence, FMC will be able to undertake such market development efforts in a more effective manner. With financial autonomy, the ability of FMC to undertake such market development efforts will be enhanced. Besides, farmers will also be able to use options contracts to hedge their prices in simpler ways. Thus, by using futures prices at the time of selling the farmer can maximize his returns. The benefits of futures market can percolate to farmers if price discovery is proper and the prices so discovered are disseminated to farmers in such a way that farmers have easy access to such prices.

The **PHD Chamber of Commerce and Industry** in their memorandum have also stated that financial dependence on Govt. currently limits FMC's investment in infrastructure, technology, apart from human resources, which in turn adversely affects the quality of regulation. Regulatory autonomy is also needed for enforcing decision in a pro-active and quick manner. Hence, any element of regulatory failure would be perceived as a failure of the future market, which would dissuade participants in the real sector from availing this price risk instruments. Hence, there is an immediate requirements for the regulator to build its capacities and enhance its infrastructure for proper development and regulation of future market. They have also favoured new hedging products-Options and Weather derivatives, which can be tailored to the risk appetite of farmers to hedge against particular risks.

Geogit Credit (P) Ltd-Non Banking finance company registered with the RBI as an NBFC-ND in their Memorandum has stated that the enactment of the warehousing (Development and Regulation) Act of 2007 and its becoming law since October 2010 is a major step in the direction of improving food security and making available necessary funding to farmers. They have also stated that Commodity Futures Market helps for the larger participation by enabling farmers who have stock to avail finance and obviate distress sales.

1.22-A The Government of Rajasthan suggested that the edible commodities which are surplus in production should only be allowed for future trading. Future trading should be based upon the actual delivery, this will help to stabilize the prices during the year and minimize false scarcity of some commodity. In place of transaction of loss/ profit, there must be actual transaction of goods/ commodity between parties (order wise) in every forward contract. In the present system forward trade is being executed by NCDX and MCX but government does not have much to control or to regulate them. Although by this Amendment Bill, government is likely to control to a greater extent, as commission is being constituted including the members dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance and also one member from RBI.

Participation of Banks, Insurance Company and Mutual Funds

1.23 When asked by the Committee about the implication if the Government open to the financial players like Banks, Insurance Company and Mutual Funds, etc. the Department stated that in their written reply that active participation will also promote greater credit flow to farmers for post-harvest marketing.

During evidence, when asked by the Committee about participation of financial players like Banks, Insurance Companies and Mutual funds in FMC, the Secretary, Department of Consumer Affairs has stated that there is no legal restriction or any bar on Banks, Financial Institutions and Mutual Funds, etc. to be a Commodity participant so far Forward Contract Regulation Act is concerned. These Financial Institutions have their own regulators/controllers and they have to take permission from their controllers/regulators who will decide on the pros and cons of

the investment to be made by these Financial Institutions before they are given permission to join/invest in Future Markets.

1.24 The Memorandum submitted by **Department of Financial Studies, University of Delhi** stated that permitting Institutional players like Banks and Cooperative will not only provide more liquidity to the market but also provide better price-discovery.

During the study visit undertaken by the Committee, the Committee heard the views of some of the State Governments. The views expressed by the representatives of the State Governments before the Committee and through subsequent written communications are as under:-

1.24-A **The Government of Maharashtra** were of the view that the farmers may not get much benefit out of the Bill. However, the State Government in general supported the early passing of the Bill in Parliament while expressing the desire that certain issues such as representatives of State Governments be nominated on the Forward Market Commission (FMC) by rotation, the number of days of spot trading be increased to 30 days from 11 days at present, stock limit imposed on direct marketers be lifted in the interest of the farmers etc.

The Government of Tamil Nadu were unhappy that the State Governments were not consulted before the Bill was introduced in Parliament. They were of the view that the State Governments should have been given the opportunity to express their views while formulating the Bill. The State Government also felt that there was lack of awareness among the farmers and expressed the apprehension that too much of speculation could harm the farmers interest. The State Government further desired that a regular consultation mechanism between the FMC and State Governments need to be put in place.

I. Benefits to the farmers

1.25 When the Committee desired to know as to what type of risks are faced by farmers in the pre and post harvest seasons and how will the Bill help the farmers to

overcome those risks and to benefit them from the future markets, the Department of Consumer Affairs stated as under:-

1.26 Farmers and growers benefit through the price signals emitted by the futures markets even if they may not directly participate in the futures market. The futures markets lead to reduction in the amplitude of seasonal price variations and help the farmer realize somewhat better price at the time of harvest or to postpone the sale of his produce, in part or in full, thereby moderating market arrivals as well as the ability of the trade to monopolise price setting. This indirectly benefits consumers as well. This also helps the farmer in planning his cultivation in advance as well as to determine the kind of crop which he would prefer to raise, by taking advantage of the advance information of the future price trends of alternate crops, and probable supply and demand of various commodities in advance. By providing the manufacturers and the bulk consumers a mechanism for covering price-risks, the futures market induces them to pay higher price to the producers, as the need to pass on the price-risk to farmers is obviated. The manufacturers are able to hedge their requirement of the raw materials as also their finished products. This results in greater competition in the market and ensure viability of the manufacturing units.

When asked whether the present amendment to FCR Bill, 2010 will actually benefit the farmers and consumers, the Planning Commission in their written reply stated that as in the case of MSP for agricultural crops, the forward markets provide useful inputs to farmers at the time of sowing/harvesting with regard to the prices that can be expected in the spot markets. The proposed amendments to FCR Bill, 2010 would benefit farmers and consumers it seeks to introduce options in goods and commodity derivatives which are prohibited in the present bill. This is expected to provide farmers and consumers a better risk management tools. Through improved price discovery at the exchange, farmers may be benefited in terms of taking decisions for sowing crops which are economically more viable besides hedging their price risks.

The Planning Commission in their written reply has also informed that the Government set up an expert committee to go into the question in detail whether and to what extent futures trading has contributed to the price-rise in agricultural commodities in recent times. The Terms of Reference of the Committee were to

examine whether futures trading has affected the wholesale and retail prices of agricultural commodities and how to make futures markets accessible to farmers. On the issue of the effect of futures trade on wholesale and retail prices, if any, the factual position has been set out in the report. The Said Committee was unable to find any conclusive causal relationship between futures trading and inflation.

1.27 During briefing, when asked how does the Department create awareness among farmers, the Chairman, Forward Market Commission stated that to create awareness among farmers various schemes for awareness programmes have been sanctioned. Last year, they have conducted approximately 500 awareness programmes and this year there is plan for conducting about six hundred such programmes.

1.28 The Committee would deal with various provisions of the Bill which need comments, in the subsequent Chapters.

1.29 The Committee note that the futures trading in India started way back in the year 1875. However in the absence of a regulator, there was no uniformity in trading practices. To regulate this market, the Forward Contract (Regulation) Act, 1952 was passed and the Forward Market Commission (FMC) was set up in 1953 as the regulator. Since the Commodity Futures Markets had been witnessing exponential growth in the last many years, Bills to amend the Forward Contracts (Regulations) Act, 1952 were introduced twice in the past in the Parliament i.e. on 23 December, 1998 in the Rajya Sabha and on 21 March, 2006 in the Lok Sabha. Both the Bills were referred to the Standing Committee on Food, Consumer Affairs and Public Distribution. The Bill of 1998, after incorporating Standing Committee's recommendations was passed by Rajya Sabha on 15 December, 2003 but could not be passed by Lok Sabha due to its Dissolution. The Bill of 2006 was, however, withdrawn due to issuance of the Forward Contracts (Regulation) Ordinance and the Ministry of Law (Legislative Department) had advised that the Bill of 2008 required to be consequentially amended before it was considered for passing in Lok Sabha. Accordingly, a Cabinet Note for moving official amendments was sent to Cabinet which approved the proposal with the direction that a final decision regarding the definition of "commodity derivative" be taken by the Minister of Agriculture, Consumer Affairs, Food and Public Distribution and the Minister of Finance. However, the said Bill also lapsed upon the dissolution of the Fourteenth Lok Sabha on 17 May, 2009.

Again, the Forward Contracts (Regulation) Amendment Bill, 2010, as introduced in Lok Sabha on 6 December, 2010 has been referred to the Standing Committee on Food, Consumer Affairs and Public Distribution for examination and Report. Keeping in view the importance of forward and futures market in the country, the Committee recommend the passage of the Forward Contracts (Regulation) Amendment Bill, 2010 subject to their observations/ recommendations which are contained in the subsequent paras/chapters of the Report.

1.30 The Committee note that the Forward Contract (Regulation) Amendment Bill, 2010 *inter alia* proposes to strengthen and restructure FMC, amend definition of expression “Forward Contract” to include therein “commodity derivatives”; allow trading in options and make provision for constitution of Appellate Tribunal. The Committee note that in the mid-1960s, the Government imposed a ban on the futures trading of most of the commodities on the assumption that this led to inflationary conditions. However, in order to provide the farmers the benefit of price discovery and price risk management in marketing their produce and thereby to reverse adverse terms of trade, the restrictions on forward trading were lifted in 2003. The Committee observe that the Commodity future market has been witnessing exponential growth in the last three years. The current size of the Commodity future market has crossed Rs.100 lakh crores, registering a rapid Compound Annual Growth Rate (CAGR) growth of 40 per cent. The Committee also observe that forward trading has been regulated by the Government by imposing/lifting ban on trading in certain commodities. The Committee, however, feel that the intended benefit of commodity market has not been realized by farmers community, for whom the ban in forward trading was lifted. The Committee note that an Expert Committee under the Chairmanship of Prof. Abhijit Sen was set up in 2007 to study the impact of futures trading on Agricultural Commodity prices to go into the question in detail whether and to what extent futures trading has contributed to the price rise in agricultural commodities in recent times. This Committee was unable to find any conclusive causal relationship between futures trading and inflation.

While concurring with the views of the Abhijit Sen Committee, the Committee feel that the futures trading does not impact the prices of agricultural commodities. At the same time the Committee also note that the Union Government fixes Minimum Support Price (MSP) every year based on the report from CACP (Commission on Agricultural Cost and Prices). Further, State Governments are also entitled to use the mechanism of MIS(Market Intervention Scheme) particularly in case of perishable food items. Moreover, the Committee agrees with the views expressed by various cooperatives and farmers organizations which opined that the commodity futures market is useful to the real economy and the small/marginal farmers. Since the Central

Government determines the policy as to the commodities in which future/forward trading is to be permitted, the Committee recommend that Government should exercise its power with prudence by imposing/lifting the ban on trading on certain agricultural commodities especially the foodgrains taking into consideration the prevailing market situations and keeping in mind the interests of farmers and consumers

1.31 The Committee note that due to inadequate storage facility and holding capacity of the farmers, they sell their produce soon after harvest to local traders/middlemen, who store these goods and sell them at higher prices during the lean period. The Committee feel that the success of futures market depends upon existence of adequate infrastructure and the storage capacity/godowns. Accordingly, there is an immediate need to enhance the infrastructural facilities for storage for proper development and regulation of futures market. The Committee, therefore, desire that warehouses/storage facilities should be established at Block level so that farmers and traders may store their produce and against the receipt of warehouses, may forwardly sell their commodities at the best available price. With the help of warehousing, bank credit and regulated futures market, the farmers can space out their sales, thereby realizing better prices. At the same time, the Committee would like to emphasize the need of networking Agricultural Produce Market Committee (APMC) with rural markets, Haatts, Panchayats and commodity exchanges to upgrade the infrastructure.

1.32 The Committee note that the FCRA Bill proposes to permit new instruments viz. options in the commodity derivative market. As informed by the Department it will be more suitable for participants like farmers to cover their price risk and will help the farmers and consumers by making available more convenient instruments such as options, derivatives on weather – an instrument used by companies to hedge against the risk of weather-related losses, etc. The Committee feel that these instruments particularly the options, which are essentially similar to insurance products, will offer small producer a way to hedge against risk, their participation in large numbers will make the price discovery process more democratic and efficient. The Committee note that by entering into an option contract, the farmers will get a right to sell but would not be bound to sell if the price falls and it will be useful for farmers and others who are risk averse, by improving the quality of price discovery and price risk management through more effective regulation. This will allow farmers to hedge against fall in prices and at the same time resume their right to take advantage in case of rise in prices. The Committee, therefore, recommend that options in commodities should be allowed as it will be beneficial to the farmers and the term "the option in goods" should be clearly defined and be included in the definition of "Commodity Derivatives".

1.33 The Committee find that there has been lack of awareness and dissemination of information about the benefits of commodity markets. Due to insufficient price information, the farmers literally sell their produce at much lower rates than the optimum price of the commodity. Further, large size of standardized contract offered by exchanges also dissuade the farmers to go in for future/forward trading. Many times, small farmers are more confused in understanding the real price of the commodities and some time make losses by participating in these markets. The Committee feel that there is an urgent need to launch a massive awareness campaign to create awareness among the farmers about the benefits which can be accrued from commodity market. For this, it is imperative to make adequate publicity programs on the Commodity Futures Market for the benefit of farmers. These awareness programmes should cover all aspects of the Commodity Futures Market, especially those of specific relevance to the farmers. The Committee feel that once the farmers are familiar with the functioning of the and the use of price information in their sowing and selling decision, they can graduate to the next level of participation in the future market, for mitigating their price risk on the exchange platform. The consumers self-help groups, Co-operative societies, Cooperative marketing Federation, NGOs and the institutions of village Panchayats can also be used to create awareness.

The Forward Market Commission also has to ensure transparency in the price discovery process so that farmers have the knowledge before moving their produce to mandis for sale. The Committee in this context have been informed that Electronic Price ticker boards indicating spot and futures prices of commodities of importance to a locality are being installed in mandis, which will be expanded to cover other important places with the significant farmer footfall viz., village panchayat offices, rural post offices, etc. The Committee desire that apart from this the Government should also conduct capacity building programmes for cooperatives, agricultural universities and rural extension workers (Especially KVKs) in the area of Commodity Futures Market which would further transfer the knowledge about the Commodity Futures Market to the farmers at the grassroots level. Similarly, the other stakeholders like stockists, importers/exporters, warehouse entrepreneurs need also to be

educated. The Committee are of the view that the electronic media, especially local channels generally have more outreach to the viewers particularly in rural and remote areas and would be an effective medium to create awareness. Similarly, weekly and fortnightly publications in regional languages can also be utilized for spreading awareness. The Committee would like to be apprised about the steps taken in the direction of creating awareness.

1.34 The Committee note that the stock exchanges and futures market is a subject assigned under the Union List, in Schedule VII of the Constitution of India, whereas the 'Trade and Commerce' and "Agriculture" are the subjects within the jurisdiction of States. As such, the regulators of commodities exchanges do not have jurisdiction over spot markets, which are regulated by APMC Act, falling under the ambit of concerned State Governments. The Committee feel that for a healthy market, the spot market and future market need to be placed under the same regulator's framework. The Committee, recommend that in order to bring in better coordination and synergy between spot trading and future market, Government should find out ways and means to put spot and commodity market under one regulatory framework. The Government may consider amendment to the Constitution for the purpose, if necessary.

1.35 The Committee note that as per the existing provisions, the Banks, Insurance Companies and Mutual Funds, etc. can participate in the commodity derivatives market, subject to the permission granted by their respective regulators. However, the participation in the commodity derivatives is presently confined to retailers only. The Committee feel that the participation of Banks, Insurance Company and Mutual Funds, etc. would enable larger participation by professionals, which would improve the quality of price discovery, thereby leading to better price risk management. Banks themselves will be able to hedge their price risks arising out of their exposure to commodity traders and processors as a lender. The Committee further opine that participation of Banks/Financial Institution will also promote greater credit flow to farmers for post harvest marketing. Considering all these aspects, the Committee recommend that Banks, Insurance Companies and Mutual Funds, etc. should be allowed to participate in the Commodity Markets in the larger interest of the farmers community which not only will provide more liquidity to the markets but also provide better price discovery and lower volatility.

1.36 The Committee note that presently there is a minimum limit prescribed for the size of the transactions by the Commodity Exchanges, resulting in the exclusion of direct participation of the large number of small farmers/producers in the futures market. The Committee are of the considered view that market should be made more inclusive through aggregating small producers as the direct participation of small producers can make the futures market truly participative. The Committee, therefore, desire that the Government should explore ways and means to ensure that the exchanges fix a reasonable minimum limit on the transactions size. This should be taken care of while framing the rules/regulations in this regard.

CHAPTER II

CLAUSE 3 — Amendment of the definition of Commodity Derivative

The Clause (3) proposes to amend Section 2 of the Forward Commission Regulation Act, 1952 containing various definitions which are as under:-

Definition In this Act, unless the context otherwise requires, -

- (a) **“association”** means any body of individuals whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;
- (b) **“commission”** means the Forward Markets Commission established under sec. 3;
- (c) **“forward contract”** means a contract for the delivery of goods [2][* *] and which is not a ready delivery contract:
- (d) **“goods”** means every kind of movable property other than actionable claims, money and securities;
- (e) **“Government security”** means a Government security as defined in the Public Debt Act, 1944 (XVIII OF 1944);
- (f) **“non-transferable specific delivery contract”** means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are not transferable;
- (g) **“option in goods”** means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future and includes a teji, a mandi, a teji-mandi, a galli, a put, a call or a put, and call in goods;
- (h) **“prescribed”** means prescribed by rules made under this Act;
- (i) **“ready delivery contract”** means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the official Gazette, specify in respect of any goods, the period under such

contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

^{2[3]} [Provided that where any such contract is performed either wholly or in part:-

(1) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or

(2) by the realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract: or

(3) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full-price therefor is dispensed with then such contract shall not be deemed to be a ready delivery contract.

Explanation. - For the purpose of this clause. -

(i) “**bank**” includes any banking company as defined in the Banking Regulation Act, 1949 (110 of 1949), a co-operative bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934), the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(ii) “**commission agent**” means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract];

[4](j) “**recognised association**” means an association to which recognition for the time being has been granted by the Central Government under Sec. 6 in respect of goods or classes of goods specified in such recognition;

(jj) **“registered association”** means an association to which for the time being a certificate of registration has been granted by the Commission under Sec.14-B];

(k) **“rules”** with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association, its Memorandum and articles of association;

(l) **“securities”** includes shares, scripts, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also government securities:

(m) **“specific delivery contract”** means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned:

(n) **“transferable specific delivery contract”** means specific delivery contract which is not a non-transferable specific delivery contract [5][and which is subject to such conditions relating to its transferability as the Central Government may by notification in the official Gazette, specify in this behalf.

2.2 The Government have proposed to amend few existing definitions (e.g. “association”, “forward contract”, “ready delivery contract”, “specific delivery contract” and “securities”) and addition of various definitions (e.g “Chairman”, “commodity derivative”, “corporatization”, “demutualization”, “Fund”, “intermediary”, “member”, “notification” and “scheme”).

2.3 **Sarthak Advocates & Solicitor** in their written memorandum has suggested to include 'option in good' in the definition of Commodity Derivatives.

In this context, the Secretary, Department of Consumer Affairs while deposing before the Committee stated as under:-

"options in goods are option in commodity derivatives. They are of the same generic term, commodity derivatives includes option in goods".

2.4 The Committee note that clause 3 of the Bill intends to amend a few existing definitions under Section 2 of the Principal Act e.g. “association”, “forward contract”, “ready delivery contract”, “specific delivery contract” and “securities” while including various additional definitions such as, “Chairman”, “commodity derivative”, “corporatization”, “demutualization”, “Fund”, “intermediary”, “member”, “notification” and “scheme”. The Committee find that in the Bill, "Forward Contract", has been included in the definition of Commodity Derivative as appearing in Sub-Clause (1) however, "option in good" does not appear in the definition of Commodity Derivative. The term "Commodity Derivative" has been widely used in the Bill and Committee fail to understand the rationale of not including "option in good" in the definition of Commodity Derivative. The Committee, therefore, desire that "option in good" may be included in the definition of Commodity Derivative.

CHAPTER III

(A) CLAUSE 4 — ESTABLISHMENT & CONSTITUTION OF THE FORWARD MARKETS COMMISSION

The Clause 4 proposes to amend Section 3 of the Forward Contracts (Regulation) Act, 1952 which prescribes the procedure for Establishment and constitution of the Forward Markets Commission as under:—

1. The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.
2. The Commission shall consist of not less than two, but not exceeding four, members appointed by the Central Government one of them being nominated by the Central Government to be the Chairman thereof; and the Chairman and the other member or members shall be either whole-time as the Central Government may direct:

Provided that the members to be so appointed shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the commission.

3. No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to effect prejudicially his functions as a member of the commission, and every member shall, whenever required by the Central Government so do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

4. No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for re-appointment.

5. The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

3.2 The Government has proposed to delete sub sections (2), (3), (4) and (5) of Section 3 of the Principal Act and has proposed to substitute the following sub-section:—

“(2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power subject to the provisions of this Act, to acquire hold and dispose of property, both moveable and immovable, and to contract, and shall, by the said name, sue or be sued.”

Ministry in their written reply has informed that currently the Commodity market regulator functions as an attached office of the Department of Consumer Affairs.

Confederation of Indian Industry (CII) in their memorandum suggested that to re-structure and strengthen the FMC and confer upon it more statutory powers on the lines of SEBI is indeed a right step. It will enable FMC to play the role of an effective and strong regulator by ensuring that the commodity derivatives market has a healthy growth and the interests of various stakeholders in the commodity economy is served. With the help of a stronger regulator, a well regulated commodity derivatives market will attract participation from larger number of stakeholders, who will find this market a cheap and effective medium for hedging their risks. This will result in more accurate price signals. Thus, a strong regulator would also help the economy to prevent and manage potential crisis.

Planning Commission in their written reply has suggested that keeping in view the specialized nature of activity performed by FMC, there is a need to impart more autonomy to FMC to recruit professionals having familiarity with the commodities derivatives market (they need not necessarily belong to these markets). It may, therefore, be desirable to provide such flexibility to FMC.

Planning Commission has also suggested that there is need to upgrade the legal and regulatory system whereby FMC can discharge its role more effectively on the lines of similar measures taken for Securities and Exchange Board of India. Since the quality of regulation of markets plays an important role in reducing information asymmetry, promoting confidence among and protecting the participants from manipulative practices, amendments to FCR Act are deemed necessary.

Department of Financial Studies, University of Delhi in their Memorandum submitted to the Committee has suggested that the proposed restructuring of FMC shall provide the necessary autonomy and requisite teeth for effective regulation of the commodities market and shall go a long way in making them more efficient. It will help in speeding up the process of regulation and monitoring and make regulator more responsive to changing environment. With ever increasing integration of Indian Commodities Market with global markets, it is essential that our markets get regulatory environment that match with global standards and approaches.

Shetkari Sangathana in their Memorandum submitted to the Committee have appreciated the Government and the Ministry for making the Forward Market Commission (FMC) the kind of a regulator it is today but wish the regulator to have the strength to act independently and efficiently as an autonomous body with powers that are effective, which is essential for the further development of the Commodity Futures Market: to make it more and more useful to the real economy and small/marginal farmers.

In a Memorandum submitted by Kerala Agricultural University, it has been stated that for efficient functioning of a regulator like SEBI is *sine qua non*.

Ace Derivatives and Commodity Exchange Ltd. in its Memorandum submitted to the Committee have stated that legal framework under which Forward Market Commission, the Regulator, operates is grossly inadequate to enable it to continue to discharge its role as an effective regulator in the expanding commodities market place and therefore it is the need of the hour that underlying legal framework of the Commission be suitably strengthened at the earliest possible. They have also

stated that FMC can contribute to the healthy development of Indian Commodity Futures Market on par with the best in the world.

During the study visit of the Committee to Mumbai undertaken in November, 2011, the representatives of Ace Derivatives and Commodity Exchange Ltd., in reply to a query informed that the current regulatory framework does not provide adequate financial and operational autonomy. As per the current practice, FMC has to solely depend on the funds from the Central Government and administratively FMC functions as an extended arm of the Central Government. Due to lack of financial autonomy, FMC is unable to hire talent from the market and most of the senior staff is on deputation from different ministries which affects its overall efficiency. When the Committee pointed out that the Government proposed to amend sub Section 2,3,4 and 5 of Section 3 of the Act by substituting the new Section 3(2) to give FMC financial and administrative autonomy to meet the growing challenges in the future and enquired how the amendment of the Sub Section, will grant financial and administrative autonomy to FMC, the Committee were informed that with the proposed amendments in the bill, FMC would be able to have adequate manpower with requisite skill sets. Detailed provisions on appointment, terms of office, meetings, etc. entailed in the amendments would further increase the operational efficiency of the regulator. With the amendment Bill, constitution of a separate fund would provide the much needed financial autonomy to FMC.

The Multi Commodity Exchange of India Ltd. in this context stated that the size, growth and development mandate of the futures market warrant an autonomous and strong regulator. The regulator has to possess operational autonomy in order to become proactive in enforcing regulations. At the same time, financial autonomy of the regulator will improve its outreach efforts to further deepen the market. Financial dependence on government currently limits FMC's investment in Infrastructure, technology, apart from human resources, which in turn adversely affects the quality of regulation. When enquired whether the FMC be independent of Government like SEBI or not, representatives of the Bombay Commodity Exchange during interaction with the Committee informed that from operational point of view FMC should function independently. This will enable them to take all administrative decisions without referring the same to the Ministry, at the earliest.

3.3 During evidence, when enquired why autonomy is important for the market of regulator, the Representative of CII stated as under:-

"Autonomy is needed, because regulator needs domain specialization. They also need talent to be attracted from the market to really make it to this size. If you compare the nearest closure to stock exchange, current regulator, as department, has got roughly under 100 staff, whereas SEBI has 600 staff to control this. There are eight national exchanges; five are already live and three are going to come; whereas in stock exchange, there are three national level and few others."

National Commodity and Derivatives Exchange Ltd., Mumbai, in their written submission has also stated that since FMC is proposed to be an independent regulatory body, it will have to recruit professionals suited to its requirements, on a regular basis. The process of recruitment through UPSC is long and in the present dynamic commodity market, FMC may not be able to afford delays. Further, FMC could be in a better position to match the required skill and remuneration of the candidates. In the present commodity market, FMC needs to employ modern technological tools and professionals to meet the regulatory challenges. In order to do that, FMC need to have independent sources of revenue by having General Fund and powers to charge fee from the brokers. Therefore, they are of the view that such powers should be given to FMC and the proposed amendments will achieve the object of making FMC, an independent statutory body similar to SEBI.

In reply to a query as to why it was necessary to grant financial and functional autonomy to FMC, the Secretary, Department of Consumer Affairs during evidence stated that :-

"if functioning of the Commission is not up to the mark, the Government will have full right to issue instructions and whatever rules are made by the Commission will be subject to the approval of the Government."

The Chairman, FMC, has further supplemented as under:-

"We feel that a strong and autonomous regulator is essential for the since the market has grown manifold. If regulator is strong, the market participants will work according to rules".

3.4 The Committee find that Clause 4 of the Bill proposes to amend Section 3 of the FC(Regulation) Act, 1952 which prescribes the procedure for establishment and constitution of the Forward Markets Commission laying down general qualifications for appointment to the post of the Members, their term of office and other terms and conditions of service of Members of the Commission. The Committee note that at present FMC is an attached body of the Ministry of Consumer Affairs and Public Distribution and is financially assisted by Department of Consumer Affairs. The Government propose to amend Sub Section (2),(3),(4),and (5) by substituting new Section 3(2) to give FMC financial and functional autonomy to meet the growing challenges in the futures and Commodity derivative market. The Committee feel that there is a need to impart financial and operational autonomy to FMC so as to enable it to discharge its role in a more efficient manner. Effective market regulation needs empowered, autonomous and independent regulator with appropriate channel of accountability and the proposed amendment would address these effectively. While agreeing to the proposed amendment to grant financial and administrative autonomy to FMC, the Committee also desire that the provisions of sub sections (2),(3) and (4) should also be incorporated in the new Bill especially sub-section (4) which prescribes the term of office of the Members of the Commission. The Committee, therefore, recommend that Clause 4 should be suitably amended in the light of the above observation.

(B) CLAUSE 5 – MANAGEMENT OF COMMISSION

3.5 Section 3 of the Forward Contract (Regulation) Act, 1952 deals with the establishment and constitution of the Forward Market Commission. Government have proposed to insert new Sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H through the FC(R) Amendment Bill, 2010. It is proposed that after section 3 of the principal Act, the following sections shall be inserted, namely:—

“3A (1) The Commission shall consist of the following members, namely:—

(a) a Chairman;

(b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance;

(c) one member from amongst the officials of the Reserve Bank;

(d) five other members of whom at least three shall be the whole-time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall vest in a board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined, by regulations, the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all the acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members

referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce or economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission.

3.6 In Clause 5, the Government has also proposed to insert a new Clause 3C which provides that the Central Government shall remove a member from office if he—

- (a) is, or at any time has been, adjudicated as insolvent;
- (b) is of unsound mind and stands so declared by a competent court;
- (c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;
- (d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest;

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

- **3.7 Clause 5 of the Bill proposes to amend Section 3 of the Principal Act by inserting Sections 3A to 3H in the Principal Act. The Committee has examined Sub-Clause 3A(1) of Clause 5 of the Bill which provides the composition of FMC. As per the provisions, the FMC would consist of a Chairman, two Members from amongst officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance, one Member from RBI and 5 other Members of whom 3 shall be whole time Members. The Committee note that, as regulation is a highly technical activity especially in the case of commodity futures, the Chairman of the Commission needs to be a financial and technical expert with professional qualifications in the working of financial sector/commodity markets. He should have a proven track record of at least 10 years in high managerial regulatory position in the financial sector/commodity market. The Committee also desire that out of five Members to be nominated on the FMC as per Sub-Clause (d) of Section 3A, one Member from farmers organizations of national level/repute may also be associated. The Committee opine that parallel Dabba Market is too big and has very few staff for investigation and enforcement of rules. If autonomy to the Commission is granted, that deficiency will be made over. The Committee feel that keeping in view the specialized nature of activities performed by FMC, there is a need to recruit professionals having familiarity with the Commodities Derivatives Market. Recruitment of professionals with requisite expertise would enable the Commission to discharge its duties more effectively. The Committee also recommend that the retirement age of Chairman and Members of FMC should also be prescribed which should not be more than 60 years.**

3.8 The Committee further note that the Central Government has been empowered to appoint Chairman and other Members of the Commission *vide* sub-clause 4 of Clause 3A. The Committee are of the view that in order to impart transparency in the system, there is a need to include in the Bill on provision for the constitution of a Selection Committee which may recommend names for the post of Chairman and Members of the Commission. The Committee, therefore, desire that a broad based Selection Committee with Member of Planning Commission Incharge of Agriculture Sector as Chairman and representative of the Central Government Department dealing with Commodity Market and Ministry of Finance, not below the rank of Joint Secretary be nominated as Members of this Body.

3.9 The Committee further desire that in the event of any vacancy in the Commission, the Central Government should, within one month from the date of occurrence of vacancy or removal of Member of Forward Market Commission/Tribunal and six months before the superannuation or tenure of Membership of Forward Market Commission/Tribunal, make a reference to the Selection Committee for filling up of vacancy. This will ensure that for the reasons of vacancy, the work of the Commission/Appellate Tribunal, is not held up. The Committee also desire that the Selection Committee may finalize and make selection within three months from the date on which a reference is made.

(C) CLAUSE 9 — GRANTS BY CENTRAL GOVERNMENT ACCOUNTS AND AUDIT

3.10 Clause 9 of the Bill proposes to insert a new Chapter IIA after Chapter II of the Principal Act. Sub-clause 4F(4) of Chapter IIA of the Bill prescribes as under:—

“(4) The accounts of the Commission as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”

3.11 Clause 9 proposes to insert Chapter II A in the Principle Act regarding Grants by the Central Government. Under this Chapter, sub-sections 4(d), 4(e), and 4(f) are proposed to be inserted in the Principal Act. Under sub-clause 4(f), there is a provision that a certified account of the commission together with the C & AG Audit Report thereon has to be forwarded annually to the Central Government and the Government shall cause the same to be laid before each House of Parliament. The Committee note that no period has been prescribed for the laying of such reports. The Committee feel that the report should be laid before each House of Parliament within 3 months of its receipt by the Central Government. The Committee, therefore, desire that this clause should be suitably amended. The Committee also note that there is no provision in the Act regarding preparation of Annual Report of the Commission. The Committee desire that the Commission should prepare an Annual Report and the Central Government should lay it before each House of Parliament every year. This should be suitably provided for in the Act.

(D) CLAUSE 21 — REGISTRATION OF MEMBERS AND INTERMEDIARIES

3.12 Section 14A of the Forward Contract (Regulation) Act, 1952 deals with procedure regarding certificate of registration to be obtained by all associations. The Government have proposed to delete Chapter IIIA (Section 14A) from the Principal Act and have suggested to substitute a new Chapter IIIA (Section 14A) namely, “Registration of Members and Intermediaries”. As per sub-section (3) of Section 14A, no foreign participant or foreign intermediary associated with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Act.

3.13 Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately before the commencement of this Act, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealings or in case no such rules have been made until permitted as such by the Commission by notification.

3.14 The Amendment Bill also proposes to replace chapter –III A of the Act so as to provide for mandatory registration of members and intermediaries. This empowers the FMC to directly regulate the members/intermediaries, rather than leaving action on trade abuses, manipulation etc. of the members/intermediaries to the exchanges to the Economic offices wing of the respective State Law & Orders maintenance mechanism. Compulsory reservation of all market participant will restrict entry of undesirable entities into the commodity derivatives market.

CII in their Memorandum has stated that the Amendment Bill proposes to make registration of members of exchanges and other intermediaries mandatory. It also proposes to replace Chapter IIIA of the Act so as to provide for mandatory registration of members and intermediaries. The registration of

intermediaries/members is subject to the conditions stipulated in the certificate of registration. Presently, FMC does not have any statutory power for registration of members and other intermediaries and thus, does not have any direct power to penalise the wrongdoer. With the passing of the Act the members and other intermediaries will be regulated by FMC. Provision of registration of members and other intermediaries by FMC would empower the FMC to directly regulate the members/intermediaries, rather than leaving action on trade-abuses, manipulations etc. of the members/intermediaries to the Exchanges or to the State police authorities. Memorandum also states that this proposal is desirable in public interest as it will help bring about greater transparency and increase the confidence of market participants in the market. Besides, these are normal regulatory processes which are necessary for proper regulation of parties involved in the commodity market.

PHD Chamber of Commerce and Industry in their Memorandum submitted to the Committee has suggested that mandatory registration of intermediaries and members with the FMC would lead to greater transparency and increased confidence of market participants in the functioning of the commodity derivatives market. Compulsory registration of all market participants will restrict entry of undesirable entities into the commodity derivatives market, timely detection of unfair trade practices and levy of deterrent penalty by an empowered regulator would go a long way in improving market practices.

3.15 The Committee find that Government had imposed a ban on futures trading in most of the commodities, in mid-60s, to contain inflationary conditions. This ban was lifted in April, 2003 and the Forward Contracts in various Commodities were permitted. The Committee feel that the present Indian Commodity Market is still in nascent stage and needs protection. The Committee per se is not averse to competition thrown by foreign participants and foreign intermediaries. The Committee, however, feel that an orderly, mature and vibrant commodity market needs to be in place in order to meet the challenges and competition from foreign participants. The Committee feel that the time is yet not ripe to allow foreign participants/foreign intermediaries in Commodity Market. Taking a holistic view of the matter, the Committee are of the firm opinion that in the interest of Commodity Market, it will neither be desirable nor appropriate to allow foreign participants or foreign intermediaries in the Commodity Market. The Committee, therefore, desire that the foreign participants or foreign intermediaries should not be allowed to participate in the Commodity Market. Clause 21 of the Bill be thus suitably amended.

(E) CLAUSE 25 AND 26 - PENALTIES AND PROCEDURE

3.16 Sub-Section (i) and (ii) of Section 20(e) states that any person who enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) or subsection (3A) or sub-section (4) of section 15, section 17 or section 19, shall, on conviction, be punishable—

(i) for a first offence, with imprisonment which may extend to one year, or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence under clause(d) or under clause(e) [other than an offence in respect of a contravention of the provisions of sub-section (4) of section 15], with imprisonment which may extend to one year and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not be less than one month and the fine shall be not less than one thousand rupees.]

3.17 The Government has proposed the following amendments in Section 20(e) (i) and (ii) of the principal Act;—

(A) in clause(i), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted;

(B) in clause(ii),—

(i) for the words, brackets and letter “under clause (d)”, the words, brackets and letters “under clause (d) or under clause (da)” shall be substituted;

(ii) for the words “one thousand rupees”, the words “twenty five thousand rupees” shall be substituted.

3.18 Similarly in section 21(h) (i) and (ii) of the principal Act the Government has proposed as under,—

After the words “shall, on conviction, be punishable—” occurring below clause (h), in clauses (i) and (ii), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted.

3.19 The Confederation of Indian Industry (CII) in their written reply has stated that market has grown in volume and complexity since the FCRA, 1952 was enacted, there is a need to enhance the penal provisions too. The amendment bill proposes to empower FMC to investigate and punish any person resorting to insider trading. The proposed financial penalties are quite deterrent. Forward Markets Commission shall have to recruit efficient professionals and modern technology to check and investigate any untoward movement of prices and check any manipulation and insider trading. As per the proposed provision, FMC will have original powers to impose financial penalties up to a maximum of Rs. 25 lakh (for some offences such as insider trading, unfair practices etc. The penalty is also being linked to the profits made from such transactions). This is a welcome change from present provisions under which, a penalty of only Rs. 1,000/- can be imposed, that too through court orders. Besides, the enhanced amounts are on the line of penal provisions in SEBI Act (Section 15A to 15HB). It is further stated that the authority while imposing such penalties has to keep in mind the profits earned by the violator by the acts of violations. Amounts of penalties have been reasonably deterrent in security market.

3.20 Confederation of Indian Industry (CII) has also stated that passage of Bill will lead to effective monetary penalty structure for prevention of contravention, such as failure to furnish information, return etc., failure by one person to enter into agreement with client, failure to redress client grievances.

3.21 During the recent study visit of the Committee when enquired whether it would be desirable not to impose such a stiff penalty for the initial period of two three years, the representatives of Ace Derivative and Commodity Exchange Ltd. replied that FMC has been regulating the Commodity Futures Market for the last few years and

is now well versed in regulating the behavior of market intermediaries. FMC should be empowered to impose stiff penalties right from the development stage of the market such that undesirable intermediary behavior is snubbed and prevented rather than cured once established. It was stated by them that they supported the view that the penalty be imposed from day one.

3.22 The representatives of Indian Commodity Exchange in their submission has suggested that the purpose of penalty is to act as a deterrent and prevent deviant behavior. The purpose of a penalty is not to kill a business. Principle of natural justice requires that punishment be commensurate with the offence. They, therefore, favored a maximum penalty of Rs.10 lakhs. They felt that imposition of penalty should not be held in abeyance for the initial two to three years as it sends a wrong signal regarding regulators' seriousness in enforcing the rules.

3.23 Clause 25 of the Bill proposes to amend Section 20 of the Principal Act which provides for punishment on conviction. Under Clauses 1(i) and 2(i) of sub-clause (e), amount of fine is proposed to be increased from Rs. 1,000/- at present to Rs. 25,000/- which may extend upto Rs. 25 lakhs. During interaction with the representatives of various Commodity Exchanges, the Committee observed that they favoured the imposition of stiffer penalty right from the development stage of the market so that undesirable intermediary behavior is snubbed rather than cured, if once established. They also desired that imposition of penalty should not be held in abeyance for the initial two or three years as it sends a wrong signal regarding regulators seriousness in enforcing the rules. The Committee feel that the levy of deterrent penalty by an empowered regulator would go a long way in improving market practices. The Committee, therefore, strongly recommend that the minimum amount of fine should be Rs.5 lakhs which may extend upto Rs.50 lakhs in proportion to the gain earned by the offender. Provisions may also be made to increase the said limits of Rs.50 lakhs with the passage of time periodically, based on market needs. The Committee, therefore, desire that the provision relating to the amount of fine should be amended suitably. Requisite steps may also be taken to recruit efficient professionals and modern technology to check and investigate any untoward movement of prices and any manipulation and insider trading.

(F) CLAUSE 27 — INSIDER TRADING

3.24 Clause 27 – this Clause proposes to substitute section 21A of the Forward Contracts (Regulation) Act, 1952.

3.25 The Government has now proposed to insert new Sections 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21 K, in place of Section 21A of the Principal Act.

3.26 Proposed Section 21D states if any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information, shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

3.27 Section 21E. If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

3.28 When enquired as to what type of activities are considered as "Fraudulent and Unfair trade practices", the Department of Consumer Affairs stated in their written

reply that It is not practicable to exhaustively explain the term "fraudulent and Unfair Trade practices" in the Act itself to ensure that all unscrupulous market participants are booked under the Act and penalty imposed. Such practices and conduct can vary from case to case and from time to time. Therefore, it is necessary that the term needs to be specified in detail which may also require expansion of its scope in the Regulations.

3.29 The Committee note that the term "insider" has not been defined in the Bill. In absence of a clear definition of the term insider, it may not be possible to enforce the provision of the Act or to nail down the offenders. The Committee feel that it may be worthwhile to provide for a definition for the term "insider" in the Bill and desire that beside that, a suitable enabling provision may also be made to allow the Forward Market Commission to expand the scope of the term insider. The Committee also note that it has not been clearly indicated in the Bill as to what constitutes price sensitive information. The Committee feel that the clearly defined term of "price sensitive information" will help in affixing the criminal liability sought to be imposed by the proposed Section 21D. The Committee, therefore, desire that the term "price sensitive information" should be defined inclusively and illustratively in the Bill so that intent of the Bill is not diluted.

(G) CLAUSE 30 — INVESTIGATION

3.30 The Government have proposed that after Section 22B of the Principal Act, Section 22C (1) shall be inserted as under:-

“Where the Commission has reasonable grounds to believe that—

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder,

It may, at any time by order in writing, direct any person (hereinafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person associated with the commodities market and to report thereon to the Commission.”

3.31 During evidence, the Committee enquired whether any qualification has been prescribed for the investigating authority, the representative of the Department of Consumer Affairs stated that **Appointment of Investigating Authority under the proposed section 22C(1) is an operational issue. Qualifications for appointment of investigating authority will be included in the Rules to be made by the Government.**

3.32 In clause 30 of the Bill, the Government has proposed to insert a new Section 22-C(1) after section 22(B) of the Principal Act, and it has been provided in sub-Clause (b) of the proposed section that commission shall appoint an investigating authority who will report to the Commission about violation of any provision of the Act. The Committee are surprised to note that no qualification has been prescribed for the investigating authority. The Committee, therefore, hope that this aspect will be taken care of at the time of framing the Rules.

(H) CLAUSE 33 — APPEAL TO APPELLATE TRIBUNAL

3.33 The Government has proposed that after Chapter V of the Principal Act, a new Chapter VA may be inserted as under:—

Chapter VA

24B. (1) Save as provided in sub-section (2), any persons aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission or an adjudicated officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman of the Commission is received by and it shall be in such form and be accompanied by such fee as may be prescribed; Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

3.34 The Government has proposed *vide* Clause 3 of the Bill that the Appellate Tribunal shall be established under sub-section (l) of section 15K of the Securities and Exchange Board of India Act, 1992 for adjudicating offences relating to forward trading and future trading. Asked about the reasons for not having a separate Appellate Tribunal for the Forward Markets Commission, the Department informed that the provisions to designate Securities Appellate Tribunal (SAT) for the purposes of FCR Act have been made to ensure economy, exploit synergy and also to ensure consistency with other regulatory bodies such as the Securities and Exchange Board of India (SEBI). Strengthening of the FMC, in the wake of the present amendments,

will ensure better regulation of the markets, and the need for appeals against FMC orders may not be large. Hence, SAT can manage the resultant load of appeals.

3.35 The State Government of Gujarat has suggested that for speedy disposal of cases, pending with Appellate Tribunal, time limit for disposal of cases needs to be fixed. Asked whether any provision has been made in the Bill for disposal of cases in a prescribed time limit, the Ministry informed that the proposed amendments in the Act by way of insertion of Section 24B provides for appeal to the Appellate Authority against the order of the Adjudicating Officer and the sub Section (7) of Section 24B provides that the appeal shall be dealt with as expeditiously as possible and finally disposed of within six months from the date of receipt of the appeal.

3.36 Clause 33 of the Bill proposes to insert Chapter VA in the Principal Act providing for appeal to Appellate Tribunal, procedure to be followed and other related matters thereto. The Committee note that this is a new addition to 1952 Act whereby procedure for appeal to Appellate Tribunal has been laid down. Section 24B(i) provide that any person aggrieved by an order of the Commission or an Adjudicating Officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter. However, no further details have been given about Appellate Tribunal in this clause. The Committee further note that in Clause 3 term “Appellate Tribunal” has been defined as “the Securities Appellate Tribunal established under sub-section (i) of Section 15K of the Securities and Exchange Board of India Act, 1992”. The Committee find that an Appellate Tribunal constituted under the Securities and Exchange Board of India Act, 1992 is proposed to be authorized to deal with the appeals arising out of the matters dealt with by the Forward Markets Commission. The Committee feel that the Commodity Futures Market is at a nascent stage and has not entered into the realm of litigations and disputes yet. Therefore, at present it may be effective and economical to utilize the existing appellate structure for the purposes. Considering the rate of growth of forward market during the last two years, the Committee feel that it would be difficult for the Appellate Tribunal under the Securities and Exchange Board of India Act, 1992 to deal with the matters of forward trading in Commodity Market. The Committee, therefore, would like to emphasize that there is a need for further strengthening the Appellate Tribunal under the Securities and Exchange Board of India Act, 1992 to deal with matters of forward trading in Commodity Market. As the market matures and needs for separate appellate infrastructure is felt, Government may consider setting up of exclusive appellate body for commodity future trading. The Committee also desire that all the cases pending with the Appellate Tribunal should be decided at the earliest as far as possible and the maximum time limit be prescribed in which the cases will be settled and suitable provision be incorporated in the Bill itself in this regard.

(I) CLAUSE 35 — EXEMPTION FROM TAX ON WEALTH AND INCOME

3.37 Section 27 of the Forward Contract (Regulation) Act, 1952 deals with power to exempt and states that the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

3.38 The Government has proposed that after Section 27 A of the Principal Act, Section 27B shall be inserted:-

“27 B. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.”

3.39 When asked as to why the FMC has been exempted from payment of Tax on Wealth, Income and prepaid and others, the Committee was informed that Presently, it is a part of the Government. After the amendment, it would be a regulatory body like SEBI and not a commercial enterprise. SEBI has been exempted from payment of wealth-tax, Income-tax or any other tax in respect of its wealth, income, profits or gains derived (section 25 of SEBI Act, 1992).

3.40 Clause 35 of the Bill provides for grant of exemption to the Commission from Wealth tax and Income tax or any other tax in respect of income, profits or gains etc. The reasons for exemption as adduced by the Ministry are to make FMC self-sufficient so that it may not depend on Government assistance. The Committee note that this is a new insertion in the Act. The Committee feel that the Commission may be exempted from the Wealth Tax and Income Tax concession for the initial five years as the sum realized by way of fee may not be adequate to meet its operational expenditure but in the long run, the situation is going to be entirely different since the growth of the Forward Market has been many fold. The Government can reassess the entire situation after five years. The Committee, therefore, recommend that the Commission may be exempted from payment of Wealth Tax, Income Tax, etc., for the initial five years and thereafter if the FMC is found to be well established and self sufficient, the Government may consider withdrawing the tax concessions to the Commission, keeping in view the fact that the Ministry of Finance is trying to widen its tax net in the larger national interest.

(J) CLAUSE 37 — POWER TO MAKE RULES AND REGULATIONS

3.41 The Government have proposed *vide* clause 37 of the Bill that after section 28A of the principal Act, the following sections shall be inserted, namely:—

“28A. (1) The Commission may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act”.

3.42 Clause 37 seeks to insert new Section 28A relating to power to make regulations after Section 28A. The Committee feel that this should read as Section 28 and not 28A. This should, therefore, be amended suitably.

**NEW DELHI
19 December, 2011
28 Agrahayana, 1933(Saka)**

**VILAS MUTTEMWAR,
Chairman,
Standing Committee on Food,
Consumer Affairs and Public Distribution**

APPENDIX-I (A)

NOTE OF DISSENT

Shri Probodh Panda, MP

I have gone through the Draft document of the subject 'Forward Contracts (Regulation) Amendment Bill, 2010' for adoption. However, I find that the deliberations on the subject are more required and needs to be more examined all the aspects related to agriculture marketing.

In course of discussion with some officials of the State Governments, it is observed that the views of the State Governments in this regard have not been invited by the Union Government. What is done, is done only putting the Bill in website. But the fact is that the subject is enlisted in Concurrent List as well as in the State List in case of the provision 33 in the Constitution.

It is learnt that an expert Committee has been set up under the Chairmanship of Abhijeet Sen to study the subject and make the recommendations. The views of the said Committee need to be examined and discussed. They should be invited to make their presentations before the Committee.

We have to appreciate that the Union Government are used to fix MSP (Minimum Support Price) every year based on the report from CACP. Besides that, National Commission on Farmers under the Chairmanship of Dr. M.S. Swaminathan expressed their concrete views regarding procurement price. State Government also are entitled to use the mechanism of MIS (Market Intervention Scheme), particularly in case of perishable food items. In addition to MSP, State Governments are putting bonus in case of procurement. All these aspects are linked with the agriculture marketing. Moreover, there is also Cooperative Sector. They are playing a very effective role in agriculture marketing in some State. In the question of registration of intermediaries to get registered their opinions need to be examined.

So in this juncture hurriedly, we should not complete the process. The imposition of a ban on forward trading of some food items should be continued and

also that should be extended to other food products, particularly the items covering under CACP.

I would be obliged if my above views are well taken in the draft. If not, please take it as my note of dissent.

-Sd-

(PRABODH PANDA)
MP (LS)
Member, Standing Committee on FCA&PD

APPENDIX- I (B)

NOTE OF DISSENT

Dr. Ramchandra Dome, MP

The Standing Committee on Food, Consumer Affairs & Public Distribution in its December, 2006 Report on the Forward Contracts (Regulation) Amendment Bill, 2006 had recommended:

'The Committee recommend that agricultural commodity especially foodgrains including coarsegrains, pulses, and sugar need not be permitted to be traded in the commodity markets including forward/future contract derivatives and options, (Para 1.31, page 20)'

It is to be noted that the Government had imposed a ban on futures trading in some food articles like rice, wheat, tur dal and urad dal in 2007 and sugar in 2009. Subsequently the ban on wheat and sugar futures has been lifted. Futures trading in potatoes, chana and soya oil was also banned but the ban was lifted after six months. This shows that the recommendation of the Standing Committee has not been followed properly. The government has not been consistent with its policy vis-à-vis allowing futures trading in essential commodities.

Para 1.30 of the present Report leaves it to the Government to "Exercise its power with prudence by imposing/lifting the ban on trading on the commodities especially the foodgrains, keeping in mind the interests of the farmers and consumers". In view of its track record, this cannot be left to the government. The recommendation of the Standing Committee to prohibit futures trading in essential commodities like foodgrains, pulses and sugar needs to be reiterated.

Para 1.31 notes the shortage of storage and warehousing infrastructure. India's foodgrains storage capacity is only around 50 million tons, which is less than 25% of annual foodgrains production. Over 95% of the cold storage capacity in India is in the private sector. Lack of modern storage and warehousing infrastructure is a major reason for low procurement and wastage.

In the absence of such infrastructure and given the Indian realities where 80% of Indian farmers are small and marginal peasants tilling less than

2 hectares of land, the assertions made in Para 1.31, 1.32 and 1.33 regarding farmers benefiting from trading in futures and options are totally misleading.

Indian farmers need subsidized inputs and assured procurement at remunerative support prices. They do not need the speculative commodity futures market to dictate prices to them.

Para 1.35 recommends banks, insurance companies and mutual funds to invest in the commodity futures market. This is justified in the name of promoting credit flow to farmers. Mutual funds are not known to be lending to farmers. Yet they are going to be allowed to trade in futures.

In view of this, I request you to record my dissent to the recommendations of this Report.

Regards,

-Sd-

(RAMACHANDRA DOME)
MP (LS)
Member, Standing Committee on FCA&PD

APPENDIX-I (C)

NOTE OF DISSENT

Dr. T.N. Seema, MP

The Standing Committee on Food, Consumer Affairs & Public Distribution in its December, 2006 Report on the Forward Contracts (Regulation) Amendment Bill, 2006 had recommended:

'The Committee recommend that agricultural commodity especially foodgrains including coarsegrains, pulses, and sugar need not be permitted to be traded in the commodity markets including forward/future contract derivatives and options, (Para 1.31, page 20)'

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In the absence of such infrastructure and given the Indian realities where 80% of Indian farmers are small and marginal peasants tilling less than 2 hectares of land, the assertions made in Para 1.31, 1.32 and 1.33 regarding farmers benefiting from trading in futures and options are totally misleading. Indian

farmers need subsidized inputs and assured procurement at remunerative support prices. They do not need the speculative commodity futures market to dictate prices to them.

Para 1.35 recommends banks, insurance companies and mutual funds to invest in the commodity futures market. This is justified in the name of promoting credit flow to farmers. Mutual funds are not known to be lending to farmers. Yet they are going to be allowed to trade in futures.

In view of this, I request you to record my dissent to the recommendations of this Report.

Regards,

-Sd-

(T.N. SEEMA)
MP (RS)

Member, Standing Committee on FCA&PD

APPENDIX- II

THE FORWARD CONTRACTS (REGULATION) AMENDMENT BILL, 2010

A

BILL

further to amend the Forward Contracts (Regulation) Act, 1952 and the Securities and Exchange Board of India Act, 1992.

BE it enacted by Parliament in the Sixty-first Year of the Republic of India as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Forward Contracts (Regulation) Amendment Act, 2010.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENTS TO THE FORWARD CONTRACTS (REGULATION) ACT, 1952

74 of 1952. 2. In the Forward Contracts (Regulation) Act, 1952 Amendment of (hereafter in this Chapter referred to as the principal long title.

Act), in the long title, for the words “the prohibition of options in goods”, the words “and to promote the development of, and to regulate, the commodity derivatives market” shall be substituted.

3. In section 2 of the principal Act,—

Amendment
of section 2.

(i) for clause (a), the following clauses shall be substituted, namely:—

'(a) "Appellate Tribunal" means the Securities Appellate Tribunal established under sub-section (1) of section 15K of the Securities and Exchange Board of India Act, 1992;

15 of 1992.

(aa) "association" means any body of individuals, whether incorporated or not, constituted for the purposes of regulating and controlling the business of the sale or purchase of any goods and commodity derivative;

(ab) "Chairman" means the Chairman of the Commission referred to in clause (a) of sub-section (1) of section 3A;';

(ii) after clause (b), the following clauses shall be inserted, namely:—

'(ba) “commodity derivative” means –

(i) a contract for delivery of goods, which is not a ready delivery contract, or

(ii) a contract for differences which

derives its value from prices or indices of prices –

(a) of such underlying goods, or

(b) of related services and rights, such as warehousing and freight; or

(c) weather and similar events and activities, having a bearing on the commodity sector.”

(bb) “corporatisation” means the succession of a recognised association, being a body of individuals or a society registered under the Societies Registration Act, 1860, by another association, being a company incorporated for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in goods or commodity derivatives carried on by such individuals or society; 21 of 1860.

(bc) “demutualization” means the segregation of ownership and management from the trading rights of the members of a recognised association in accordance with a scheme approved by the Commission;’;

(iii) in clause (c), after the words “delivery contract”, the words “and includes contract for commodity derivative” shall be inserted;

(iv) after clause (c), the following clause shall be inserted, namely:—

‘(ca) “Fund” means the Forward Markets Commission General Fund constituted under sub-section (1) of section 4E;’;

(v) after clause (e), the following clauses shall be inserted, namely:—

‘(ea) “intermediary” means a member of the association, and includes a collateral manager, a clearing house, or such other person who is associated with the commodity derivatives market and is specified as such by the Central Government for the purposes of this Act;

(eb) “member” means a whole-time or part-time member of the Commission and includes the Chairman;’;

(vi) after clause (f), the following clauses shall be inserted, namely:—

‘(fa) “notification” means a notification published in the Official Gazette and the expression “notify” shall be construed accordingly;

(fb) “option in commodity derivative” means an agreement, by whatever name called, for trading in a commodity derivative and includes *a teji*, *a mandi*, *a*

teji-mandi, a gali, a put, a call or a put and call in commodity derivative;';

(vii) in clause (i),—

(A) for the words “eleven days”, the words “thirty days” shall be substituted;

(B) in the Explanation, in clause (i), after the word and figures “Act, 1970”, the words, figures and brackets “or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980” shall be inserted;

40 of 1980

(viii) in clause (j), for the words and figure “the Central Government under section 6 in respect of goods or classes of goods”, the words and figure “the Commission under section 6 in respect of goods or classes of goods or commodity derivatives or classes of commodity derivatives with respect to which forward contract or classes of forward contracts or options” shall be substituted;

(ix) for clause (jj), the following clause shall be substituted, namely:—

‘(jj) “regulations” means the regulations made by the Commission under this Act;’;

(x) after clause (k), the following

clause shall be inserted, namely:—

‘(ka) “scheme” means a scheme for corporatisation or demutualisation of a recognised association which may provide for—

(A) the issue of shares for a lawful consideration and provision for trading rights in lieu of membership cards of members of a recognised association;

(B) the restrictions on voting rights;

(C) the transfer of property, business, assets, rights, liabilities, recognitions, contracts of the recognised association, legal proceedings by, or against, the recognised association, whether in the name of the recognised association or any trustee or otherwise and any permission given to, or by, the recognised association;

(D) the transfer of employees of a recognised association to another recognised association;

(E) any other matter required for the purpose of, or in connection with, the corporatisation or demutualisation, as the case may be, of the recognised association;’;

(xi) in clause (m), for the words “forward contract which provides for”, the words “forward contract which provides for, and is

performed by,” shall be substituted.

Amendment of section 3. 4. In section 3 of the principal Act, for sub-sections (2), (3), (4) and (5), the following sub-section shall be substituted, namely:—

“(2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.”.

Insertion of new sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H. 5. After section 3 of the principal Act, the following sections shall be inserted, namely:—

Management of Commission.

“3A. (1) The Commission shall consist of the following members, namely:—

(a) a Chairman;

(b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance;

(c) one member from amongst the officials of the Reserve Bank of India;

(d) five other members of whom at least three shall be the whole-time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall

vest in a board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined by regulations, the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce or economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission:

Provided that every person appointed as Chairman and every other person appointed as member of the Commission and holding office as such immediately before the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, shall, notwithstanding any order for their appointment made under sub-section (2) of section 3 as it stood before the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, shall hold office till the Chairman or other member has been appointed in

accordance with this section after such commencement and no person shall be entitled to claim any compensation for the premature termination of the term of his office or of any contract of service.

3B. (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 3A shall be such as may be prescribed.

Term of office and conditions of service of Chairman and members of Commission.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 3A, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months' salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

3C. The Central Government shall remove a member from office if he—

Removal of member from office.

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in

the opinion of the Central Government, involves a moral turpitude;

(d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest:

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

3D. (1) The Commission shall meet at such times and places, and shall observe such rules of procedure in regard to the transaction of business at its meetings including quorum at such meetings as may be provided by regulations. Meetings of Commission.

(2) The Chairman or, if for any reason he is unable to attend the meeting of the Commission, any other member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Commission shall be decided by a majority of votes of the members of the Commission present and voting, and in the event of an equality of votes, the Chairman or in his absence the member presiding, shall have a second or casting vote.

3E. No act or proceeding of the Commission shall be invalid merely by reason of— Vacancies, etc., not to

(a) any vacancy in, or any defect in the constitution of, the Commission; or invalidate proceedings of

(b) any defect in the appointment of a person Commission.
acting as a member of the Commission; or

(c) any irregularity in the procedure of the
Commission not affecting the merits of the case.

3F. Any member, who is a director of a company and Member not to
who as such director has any direct or indirect pecuniary participate in
interest in any matter coming up for consideration at a meetings in
meeting of the Commission, shall, as soon as possible after certain cases.
relevant circumstances have come to his knowledge,
disclose the nature of his interest at such meeting and
such disclosure shall be recorded in the proceedings of
the Commission, and the member shall not take any
part in any deliberation or decision of the Commission
with respect to that matter.

Bar on future
employment
of members.

3G. The Chairman and the whole-time members shall
not, for a period of two years from the date on which
they cease to hold office as such, except with the
previous approval of the Central Government, accept
any employment with any person dealing with the
commodities derivatives or with any intermediary.

**Officers and
other
employees
of
Commission**

**3H. (1) The Commission may appoint such officers
and other employees as it considers necessary for
the efficient discharge of its functions under this
Act.**

**(2) The terms and conditions of service of the
officers and other employees of the Commission
appointed under sub-section (1) shall be such as may
be determined by regulations:**

**Provided that every officer and other employee
holding any office under the Commission, before the**

commencement of the Forward Contracts (Regulation) Amendment Act, 2010, shall continue to hold his office as such after such commencement for the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the said Act had not come into force and shall continue to do so as an officer or other employee of the Commission until the regulations are made under this sub-section or the expiry of one year from the date of such commencement or till the date on which such officer or other employee opts not to be the officer or other employee of the Commission, whichever is earlier.”.

Amendment
of section 4.

6. In section 4 of the principal Act,—

(a) for clause (a), the following clauses shall be substituted, namely:—

“(a) to advise the Central Government in respect of matters arising out of the administration of this Act;

(aa) to grant or withdraw recognition of any association;”;

(b) in clause (e), for the words “registered association or any member of such association”, the words “any member of such association or any intermediary” shall be substituted;

(c) for clause (f), the following clauses shall be substituted, namely:—

“(f) to regulate the business of the associations;

(g) to regulate the functioning of members of

the associations, clearing houses, warehouses and intermediaries;

(h) to levy fees for carrying out the purposes of this Act;

(i) to conduct research for the purpose of development and regulation of commodity derivatives market;

(j) to call from or furnishing to any such agencies, as may be specified by the Commission, such information as may be considered necessary by it for the efficient discharge of its functions;

(k) to protect the interests of the market participants in commodity derivatives markets;

(l) to promote and regulate self-regulatory organisations;

(m) to prohibit fraudulent and unfair trade practices relating to commodity derivatives markets;

(n) to promote investors' education and training of intermediaries;

(o) to prohibit insider trading in commodity derivative;

(p) to advise the Central Government as to the goods in respect of which forward contract or option in goods or option in commodity derivative may be notified;

(q) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.”.

7. In section 4A of the principal Act, in sub-section (3), – Amendment of section 4A.

5 of 1898. (a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;
2 of 1974.

(b) for the word and figures "section 482", the word and figures "section 346" shall be substituted.

8. After section 4A of the principal Act, the following sections shall be inserted, namely:— Insertion of new sections 4B and 4C.

“4B. Save as otherwise provided in section 4, if after making or causing to be made an inquiry, the Commission is satisfied that it is necessary, in the interest of trade and orderly development of commodity derivatives market, it may issue directions to any intermediary or association. Power to issue directions by Commission.

4C. If the Commission finds, after causing an inquiry to be made, that any person has violated, or is likely to violate any provisions of this Act or any rules or regulations made thereunder, the Commission may pass an order requiring such person to cease and desist from committing or causing such violations.”. Cease and desist proceedings.

9. After Chapter II of the principal Act, the following Chapter shall be inserted, namely:— Insertion of new Chapter IIA.

“CHAPTER IIA
FINANCE, ACCOUNTS AND
AUDIT

4D. The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Commission grants of such sums of money as that Government may think fit for being utilised for the purposes of this Act.

Grants by
Central
Government.

4E. (1) There shall be constituted a Fund to be called the Forward Markets Commission General Fund and there shall be credited thereto—

Fund.

(i) all grants and fees received by the Commission under this Act;

(ii) all sums received by the Commission from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—

(i) the salaries, allowances and other remuneration of the members, officers and other employees of the Commission;

(ii) the expenses of the Commission in the discharge of its functions under section 4;

(iii) the expenses on objects and for purposes authorised by this Act:

Provided that the sums authorised to be paid and applied from and out of the Consolidated Fund of India and appropriated by law made by Parliament for the services and purposes of the Commission shall continue to be paid and applied for such services and purposes of the Commission till the Fund is constituted under this section.

4F. (1) The Commission shall maintain proper accounts and other relevant records and prepare an annual statement

Accounts and
audit.

of accounts in such form and manner as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Commission shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Commission to the Comptroller and Auditor-General of India.

(3) The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Commission shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts, and in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Commission.

(4) The accounts of the Commission as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”.

Amendme
nt of
section 5.

10. In section 5 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted;

- (i) for the words “Central Government”, the word “Commission” shall be substituted;
- (b) in sub-section (2),-

(i) for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted;

(ii) the following proviso shall be inserted at the end, namely:—

“Provided that the applications made to the Central Government, on or before the commencement of the Forward Contracts (Regulation) Amendment Act, 2010 and pending with the Central Government on such date, shall be transferred to the Commission and thereafter the Commission shall dispose of such applications in accordance with the provisions of this Act.”.

Amendment
of section 6.

11. In section 6 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “Central Government”, the word “Commission” shall be substituted;

(ii) for the words “the goods or classes of goods with respect to which forward contracts may be entered”, the words “the goods or classes of goods or commodity derivative or classes of commodity derivatives with respect to which forward contracts or options may be entered” shall be substituted;

(b) in sub-section (2),—

(i) for the words “Central Government”, at both the places where they occur, the word “Commission” shall be substituted;

(ii) in clause (b), for the words “of not more than three persons”, the words “such number of persons as the Commission may, having regard to the interest of trade in commodities and commodities derivatives, specify,” shall be substituted;

(c) in sub-section (3), for the words “Central Government”, the word “Commission” shall be substituted;

(d) after sub-section (4), the following proviso shall be inserted, namely:—

“Provided that the recognition granted by the Central Government, before the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, shall be deemed to have been granted by the Commission in accordance with the provisions of this Act.”.

Substitution
of new
section for
section 7.

12. For section 7 of the principal Act, the following sections shall be substituted, namely:—

Withdrawal of
recognition.

‘7.(1) If the Commission is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Commission may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification, the recognition granted to the said association:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contract

outstanding on that date.

(2) Where the recognised association has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-section (1) of section 7B within the specified time therefor or the scheme has been rejected by the Commission under sub-section (5) of section 7B, the recognition granted to such association under section 6, shall, notwithstanding anything contained contrary to any other provision of this Act, stand withdrawn and the Commission shall publish, by notification, such withdrawal of recognition:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Commission may, after consultation with the association, make such provisions as it deems fit, in the order rejecting the scheme published in the Official Gazette under sub-section (5) of section 7B.

7A. On and from the appointed date, all recognized associations (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in section 7B:

Corporatisation
and
demutualisation
of associations.

Provided that different appointed dates may be appointed for different recognised associations:

Provided further that the Commission may, if it is satisfied that any recognised association was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, extend the appointed date specified in respect of that recognised association and such recognised association may continue as such before such appointed date.

Explanation.— For the purposes of this section, “appointed date” means the date which the Commission may, by notification, appoint.

7B. (1) All recognised associations referred to in section 7A shall, within such time as may be specified by the Commission, submit a scheme for corporatisation and demutualisation for its approval:

Procedure for corporatisation and demutualization.

Provided that the Commission may, by notification, specify name of the recognised association, which had already been corporatised and demutualised, and such association shall not be required to submit the scheme under this section.

(2) On receipt of the scheme referred to in sub-section (1), the Commission may, after making such inquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade in goods or commodity derivatives and also in the public interest, approve the scheme with or without modification.

(3) No scheme under sub-section (2) shall be approved by the Commission if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised association or payment of dividends to members have been proposed out of any reserves or assets of that association.

(4) Where the scheme is approved under sub-

section (2), the scheme so approved shall be published immediately by—

(a) the Commission in the Official Gazette;

(b) the recognised association in such two daily newspapers circulating in India, as may be specified by the Commission,

and upon such publication, notwithstanding anything contained contrary to any other provision of this Act or in any other law for the time being in force or any agreement, award, judgment, decree or other instrument for the time being in force, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised association and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised association or its members.

(5) Where the Commission is satisfied that it would not be in the interest of the trade in goods or commodity derivatives and also in the public interest to approve the scheme under sub-section (2), it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette:

Provided that the Commission shall give a reasonable opportunity of being heard to all the persons concerned and the recognised association concerned before passing an order rejecting the scheme.

(6) The Commission may, while approving the scheme under sub-section (2), by an order in writing, restrict—

(a) the voting rights of the shareholders who are also members of the recognised association;

(b) the right of shareholders or a member of the recognised association to appoint the representatives on the governing board of the association;

(c) the maximum number of representatives of the members of the recognized association to be appointed on the governing board of the association, which shall not exceed one-fourth of the total strength of the governing board.

(7) The order made under sub-section (6) shall be published in the Official Gazette and on the publication thereof, the order shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, or in any other law for the time being in force, have full effect. 1 of 1956.

(8) Every recognised association, in respect of which the scheme for corporatisation or demutualisation has been approved under sub-section (2) shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the Commission, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order under

sub-section (7), by the public other than shareholders having trading rights:

Provided that the Commission may, on sufficient cause being shown to it and in the public interest, extend the said period by another twelve months.’

Amendment
of section
8.

13. In section 8 of the principal Act,—

(a) in sub-sections (1) and (2), for the words “Central Government” wherever they occur, the words “Central Government or Commission” shall respectively be substituted;

(b) in sub-section (2), in clause (c), for the words “direct the Commission”, the words “direct any agency or any of its officers” shall be substituted;

(c) in sub-section (3), for the word “inquiry”, wherever it occurs, the words “inquiry or inspection” shall be substituted.

14. In section 9A of the principal Act, in sub-section (2),—

Amendment of
section 9A.

(a) for the words "Central Government", wherever they occur, the words "Central Government or Commission" shall be substituted;

(b) for the words “that Government”, the words “that Government or Commission” shall be substituted.

15. For section 10 of the principal Act, the following sections shall be substituted, namely:—

Substitution
of new
sections for

section 10.

“10. (1) Whenever the Commission considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

Power of Commission to direct rules to be made or to make rules.

(2) If any recognised association, against whom an order is issued by the Commission under sub-section (1), fails or neglects to comply with such order within the specified period, the Commission may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Commission may think fit.

(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rules so made or amended shall be published in the Official Gazette, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 or any other law for the time being in force, as if they had been made or amended by the recognised association concerned.

1 of 1956.

10A. (1) A recognised association may, with the prior approval of the Commission, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purposes of—

Clearing corporation.

1 of 1956.

(a) the periodical settlement of contracts and differences thereunder;

(b) the delivery of, and payment for, goods;

(c) any other matter incidental to, or connected

with, such transfer.

(2) Every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-section (1), make bye-laws and submit the same to the Commission for its approval.

(3) The Commission may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-section (2) and approve transfer of the duties and functions of clearing house to a clearing corporation referred to in sub-section (1).

(4) The provisions of sections 4, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 12B and 13 shall, as far as may be, apply to a clearing corporation referred to in sub-section (1) as they apply in relation to a recognised association.”.

16. In section 11 of the principal Act,—

Amendment of
section 11.

(a) in sub-section (1),—

(i) for the words “Central Government”, the word “Commission” shall be substituted;

(ii) for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted;

(b) in sub-section (2), after the word “goods”, wherever it occurs, the words “or forward contracts or option in goods or option in commodity derivative” shall

be inserted;

(c) in sub-section (3), in clause (aa), for the brackets, figure and letter “(3A)”, the brackets and figure “(4)” shall be substituted;

(d) in sub-section (4) and the proviso, for the words “Central Government”, at both the places where they occur, the word “Commission” shall be substituted.

Substitution of new sections for sections 12 and 12A. Power of Commission to make or amend bye-laws of recognised association .

17. For sections 12 and 12A of the principal Act, the following sections shall be substituted, namely:—

“12. (1) The Commission may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Official Gazette and shall thereupon have effect as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised association objects to any bye-laws made or amended under this section by the Commission on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Commission for a revision thereof, and the Commission may, after

giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or amendment or revision of any bye-laws under this section shall in all cases be subject to such conditions in regard to the previous publications as may be prescribed:

Provided that the Commission may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication.

Application of amendment of bye-laws to existing forward contracts or option in goods or option in commodity derivative.

12A. Any amendment of a bye-law made under section 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under section 12 shall also apply to all forward contracts or option in goods or option in commodity derivative entered into before the date of its approval by the Commission or before the date of its publication in the Official Gazette, as the case may be, and remaining to be performed on or after the said date.”.

18. In section 12B of the principal Act,—

(a) in sub-section (1),—

(i) for the words “forward contract”, the words “forward contract or option in goods or option in commodity derivative” shall be substituted;

Amendment of section 12B.

(ii) the words “of any goods or class of goods” shall be omitted;

(iii) after the words “any such contract”, the words “or option in goods or option in commodity derivatives” shall be inserted;

(b) in sub-section (3), for the words “forward contract”, at both the places where they occur, the words “forward contract or option in goods or option in commodity derivative” shall be substituted.

19. For section 13 of the principal Act, the following section shall be substituted, namely:—

Substitution
of new
section

“13. (1) Without prejudice to any other powers vested in the Commission under this Act, where the Commission is of the opinion that the governing body of any recognised association should be superseded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Commission may, after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed, may appoint one of such persons to be the chairman and another of such persons to be the vice-chairman.

for section 13.

Power of
Commission
to supersede
governing
body of
recognised
association.

(2) On the publication of a notification under sub-section (1), the following consequences shall ensue, namely:—

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purposes of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Commission may, from time to time, by like notification, vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section, the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1), shall, notwithstanding anything contained in sub-section (1), continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall vest or re-vest, as the case may be, in the governing body so reconstituted.”.

Amendment of section 14. **20.** In section 14 of the principal Act, for the words “Central Government”, at both the places where they occur, the word “Commission” shall be substituted.

Substitution of new Chapter for Chapter IIIA. **21.** For Chapter IIIA of the principal Act, the following Chapter shall be substituted, namely:—

**“CHAPTER IIIA
REGISTRATION OF MEMBERS AND
INTERMEDIARIES**

Registration of members and intermediaries. **14A.** (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, no person intending to act as a member or intermediary shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration granted by the Commission in accordance with the regulations made under this Act.

(2) A person, who in his capacity as a member or intermediary intends to deal in forward contract or option in goods or option in commodity derivative shall make an application for a certificate of registration to the Commission in such form along with such fee and containing such particulars as may be provided by regulations:

Provided that a person who was acting as a member or intermediary, before the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, may continue to do so for a period of six months from the date of such commencement if he has made an application for registration within the said period of six months, till the disposal of such application, whichever is later:

Provided further that the Commission may, by regulations, specify different fees for a class or classes of members or intermediaries on the basis of turnover of the business of such members or intermediaries.

(3) No foreign participant or foreign intermediary associated with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Act:

Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately

before the commencement of this Act, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealings or in case no such rules have been made until permitted as such by the Commission by notification.

(4) On receipt of an application under sub-section (2), the Commission may, after making such inquiry as it considers necessary in this behalf, by order in writing, grant a certificate of registration on such terms and conditions as may be specified by regulations or refuse to grant such certificate:

Provided that, before refusing to grant such certificate, the person making the application shall be given an opportunity of being heard in the matter.

14B. The Commission may, by order, suspend or cancel the certificate of registration in such manner as may be provided by regulations:

Suspension or cancellation of certificate of registration.

Provided that no order under this section shall be made unless the person concerned has been given an opportunity of being heard in the matter.”.

22. For sections 15, 16 and 17 of the principal Act, the following sections shall be substituted, namely:—

Substitution of new sections for sections 15, 16 and 17.

“15. (1) Subject to the provisions contained in sections 17 and 18, every forward contract, entered

Forward contracts

into otherwise than between members of a recognised association or through or with any such member, shall be illegal. illegal or void in certain circumstances

(2) Any forward contract entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of section 11 shall be void—

(a) as respects the rights of any member of the recognised association who has entered into contract in contravention of any such bye-law; and

(b) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall affect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section (3) of section 11.

(4) Any forward contract entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section (3) of section 11 shall be illegal.

(5) No member of a recognised association shall

enter into any contract on his own account with any person other than a member of the recognised association, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he has bought or sold the forward contract, as the case may be, on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws, the outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, forward contract or option in goods or option in commodity derivative, as the case may be, on his own account.

Consequences of contravention of section 15.

16. Notwithstanding anything contained in any other law for the time being in force or in any custom, usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract,—

(a) every forward contract entered into on or before the date of commencement of the Forward

Contracts (Regulation) Amendment Act, 2010, and remaining to be performed after the said date and which is not in conformity with the provisions of section 15, shall be deemed to be closed out at such rate as the Commission may fix in this behalf and different rates may be fixed for different classes of such contracts;

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

Power to prohibit forward contract or options in goods or option in commodity derivative.

17. (1) The Central Government may, by notification, declare that no person shall, save with the permission of the Central Government, deal in any forward contract or option in goods or option in commodity derivative specified in the notification, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts or options in goods or options in commodity derivative in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of section 16 shall, in the absence of anything to the contrary in the notification, apply to all forward contracts and options in goods for the sale or purchase of any goods specified in the notification (entered into on or before the date of the notification) and remaining to be performed after

the said date.”.

Amendment
of
section 18.

23. In section 18 of the principal Act,—

(a) in sub-section (1),—

(i) for the words “non-transferable specific delivery contracts”, the words and brackets “specific delivery contracts (both transferable and non-transferable)” shall be substituted;

(ii) in the proviso, for the words “non-transferable specific delivery contract”, the words and brackets “specific delivery contracts (both transferable and non-transferable)” shall be substituted;

(b) sub-section (2) shall be omitted;

(c) in sub-section (3), for the words “non-transferable specific delivery contracts”, at both the places where they occur, the words and brackets “specific delivery contracts (both transferable and non-transferable)” shall be substituted.

Substitution
of new
section for
section 19.
Option in
goods
or option in
commodity
derivative
illegal

24. For section 19 of the principal Act, the following section shall be substituted, namely:—

“19. (1) Any option in goods or option in commodity derivative which has been entered into on or after the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, otherwise than between members of a recognised association or through or with

in certain
circumstances

any such member shall be illegal.

(2) The provisions of sub-sections (2), (3), (4) and (5) of section 15 shall apply to options in goods or option in commodity derivative as they apply in relation to a forward contract.”.

25. In section 20 of the principal Act,—

Amendment of
section 20.

(i) in clause (a), in sub-clause (iii), for the words “forward contract”, the words “forward contract or option in goods or option in commodity derivative" shall be substituted;

(ii) clause (b) shall be omitted;

(iii) in clause (c), for the words “forward contract”, the words “forward contract or option in goods or option in commodity derivative" shall be substituted;

(iv) after clause (d), the following clause shall be inserted, namely:—

“(da) fails to make or accept delivery of goods covered by non-transferable specific delivery contracts or by transferable specific contracts where rights and obligations have not been transferred, as the case may be; or”;

(v) for clause (e), the following clause shall be substituted, namely:—

“(e) enters into any forward contract or option in goods or option in commodity derivative in contravention of any of the provisions contained in

sub-section (1) or sub-section (4) or sub-section (5) of section 15 or section 17 or section 19,”;

(vi) after the words “shall, on conviction, be punishable—” occurring below clause (e),—

(A) in clause (i), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted;

(B) in clause (ii),—

(I) for the words, brackets and letter “under clause (d)”, the words, brackets and letters “under clause (d) or under clause (da)” shall be substituted;

(II) for the words “one thousand rupees”, the words “twenty-five thousand rupees” shall be substituted.

26. In section 21 of the principal Act,—

Amendment
of section 21.

(i) in clauses (a) to (f), for the words “forward contracts”, wherever they occur, the words “forward contract or option in goods or option in commodity derivative” shall be substituted;

(ii) in clause (g), for the words and figures “in respect of goods to which the provisions of section 15 have been made applicable”, the words “in respect of goods or option in goods or option in commodity derivative” shall be substituted;

(iii) for clause (h), the following clause shall be substituted, namely:—

“(h) manipulates or attempts to manipulate prices in respect of forward

contracts or option in goods or option in commodity derivative;”;

(iv) after the words “shall, on conviction, be punishable—” occurring below clause (h), in clauses (i) and (ii), for the words "one thousand rupees", the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted.

Substitution of new sections for section 21A.

27. For section 21A of the principal Act, the following sections shall be substituted, namely:—

Penalty for failure to furnish information, return, etc.

“21A. (1) If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Commission, fails to furnish the same, he shall be liable to a penalty of twenty thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty of ten thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less.

(2) If any person who was in charge of, and was responsible to, an association for the conduct of the

business of the association, obstructs any officer of the Commission or any other person authorised by it to conduct inspection or to discharge any other function assigned by the Commission, such person as well as the association shall be liable to a fine of one lakh rupees for every occasion of such obstruction.

Penalty for failure by any person to enter into an agreement with clients.

21B. If any person, who is registered as a member or an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of twenty thousand rupees for each such failure during which such failure continues or five lakh rupees, whichever is less.

Penalty for failure to redress clients' grievances.

21C. If any person, who is registered as a member or an intermediary, after having been called upon by the Commission in writing to redress the grievances of clients, fails to redress such grievances within the time specified by the Commission, he shall be liable to a penalty not exceeding two thousand rupees for each day during which such failure continues or five lakh rupees, whichever is less.

Penalty for insider trading.

21D. If any insider who,—
(i) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or
(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in

the ordinary course of business or under any law;
or

(iii) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for fraudulent and unfair trade practices.

21E. If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

21F. If any person, who is registered as an intermediary under this Act or any regulations made thereunder,—

Penalty for default in case of an Intermediary.

(a) fails to issue contract notes in the form and manner specified by the association of which such intermediary is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that intermediary;

(b) fails to deliver any goods or fails to make payment of the amount due to the client or in the manner or within the period specified in the regulations, he shall be liable to a penalty not

exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified by the association,

he shall be liable to a penalty of five thousand rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

21G. Any person, who fails to comply with the directions issued by the Commission under section 4B, shall be liable to a penalty not exceeding two lakh rupees for each day during which such failure continues which may extend to five lakh rupees.

Penalty for failure to comply with directions of Commission.

21H. (1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention any of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Consequences of failure to pay penalty.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine or with both.

21-I. (1) For the purposes of adjudging under sections 21A to 21G, the Commission shall appoint any of its officers not below the rank of a Division Chief to be an

Power to adjudicate.

adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.

(2) While holding an inquiry, the adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

21J. While adjudging the quantum of penalty under section 21-I, the adjudicating officer shall have due regard to the following factors, namely:—

Factors to be taken into account by adjudicating officer.

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to a client or group of clients as a result of the default;

(c) the repetitive nature of the default.

Crediting sums realised by way of penalties to Consolidated

21K. All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Fund of India.

Power of court to order forfeiture of property.

21L. Any court trying an offence punishable under this Act, may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government.

Explanation.—For the purposes of this section, property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.”.

Amendment of section 22A.

28. In section 22A of the principal Act,—

(a) in sub-section (1),—

(i) after the words "forward contracts or options in goods", the words "or option in commodity derivative" shall be inserted;

(ii) after the words "forward contract or option in goods", the words "or option in commodity derivative" shall be inserted;

(b) for sub-section (2), the following sub-sections shall be substituted, namely:—

“(2) The provisions of the Code of Criminal Procedure, 1973, shall, so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under section 94 of the said Code. 2 of 1974.

(3) The Commission may, notwithstanding anything contained in this Act, file cases in respect of offences committed under this Act, directly to the courts having jurisdiction in respect of such offences.”.

Amendment
of
section 22B.

29. In section 22B of the principal Act, in sub-section (1), after the words “or option in goods”, the words “or option in commodity derivative” shall be inserted.

Insertion of
new
section 22C.

30. After section 22B of the principal Act, the following section shall be inserted, namely:—

Investigation.

“22C. (1) Where the Commission has reasonable grounds to believe that—

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder, it may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person associated with the commodities market and to report thereon to the Commission.

(2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, it shall be the duty 1 of 1956.

of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 14A, every person associated with the commodities market to preserve and to produce to the Investigating Authority or any person authorised by him in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) The Investigating Authority may require any intermediary or any person associated with commodities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by him in this behalf as he may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) for six months and thereafter shall return the same to any intermediary or any person associated with commodities market by whom or on whose behalf the books, registers, other documents and record are produced:

Provided that the Investigating Authority may call for any books, registers, other documents and record if they are needed again:

Provided further that if the person on whose

behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(5) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with commodities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before him personally.

(6) If any person fails without reasonable cause or refuses—

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one lakh rupees, or with both, and also with a further fine which may extend to twenty thousand rupees for every day after the first during which the failure or refusal continues.

(7) Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(8) Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with commodities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorise the Investigating Authority—

- (a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;
- (b) to search that place or those places in the manner specified in the order; and
- (c) to seize books, registers, other documents and record, as it considers necessary for the purposes of the investigation.

(10) The Investigating Authority shall keep in its

custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973, relating to searches or seizures made under that Code.”. 2 of 1974.

Amendment of section 23.

31. In section 23 of the principal Act, after clause (d), the following clause shall be inserted, namely:—

“(e) an offence falling under section 21H.”.

Insertion of new section 24A.

32. In Chapter V of the principal Act, after section 24, the following section shall be inserted, namely:—

Civil court not to have jurisdiction.

“24A. No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”.

Insertion of
new Chapter
VA.

33. After Chapter V of the principal Act, the following Chapter shall be inserted, namely:—

‘CHAPTER VA
JURISDICTION AND AUTHORITY OF APPELLATE
TRIBUNAL

Appeal to
Appellate
Tribunal.

24B. (1) Save as provided in sub-section (2), any person aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Act, 2010, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission or an adjudicating officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman of the Commission is received by the aggrieved person and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

(5) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(6) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned authority whose order has been appealed against.

(7) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

24C. The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal. Right to legal representation .

Explanation.—For the purposes of this section,—

38 of 1949. (a) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

56 of 1980. (b) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

23 of 1959. (c) "cost accountant" means a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;

(d) "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice.

36 of 1963. 24D. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to the Appellate Tribunal. Limitation.

24E. Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order: Appeal to Supreme Court.

Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.”.

Insertion of new sections 26A, 26B, 26C, 26D 26E and 26F.

34. After section 26 of the principal Act, the following sections shall be inserted, namely:—

Power of Central

“26A. (1) Without prejudice to the foregoing provisions of this Act, the Commission shall, in exercise of its powers or performance of its functions under this Act, be bound by such directions on questions of policy as

Government to issue directions.

the Central Government may give in writing to it from time to time:

Provided that the Commission shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government, whether a question is one of policy or not, shall be final.

Power of Central Government to supersede Commission.

26B. (1) If at any time the Central Government is of the opinion—

(a) that on account of grave emergency, the Commission is unable to discharge the functions and perform the duties imposed on it by or under the provisions of this Act; or

(b) that the Commission has persistently made wilful default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and perform the duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Commission or the administration of the Commission has deteriorated; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification, supersede the Commission for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Commission,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Commission shall, until the Commission is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and

(c) all property owned or controlled by the Commission shall, until the Commission is reconstituted, vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Commission by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), shall not be deemed disqualified for such appointment:

Provided that the Central Government may, at any time before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

26C. (1) The Commission shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the commodities market, as the Central Government may, from time to time, require.

Returns and reports.

(2) Without prejudice to the provisions of subsection (1), the Commission shall, within ninety days, after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) A copy of the report received under subsection (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

26D. The Commission may, by general or special order in writing, delegate to any member or officer of the Commission or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 28) as it may deem necessary.

Delegation.

26E. No order passed by the Commission or the adjudicating officer under this Act shall be appealable except as provided in section 24B and no civil court shall have jurisdiction in respect of any matter which

Bar of jurisdiction.

the Commission or the adjudicating officer is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Commission or the adjudicating officer by, or under, this Act.

45 of 1860. 26F. All members, officers and other employees of the Commission shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.”. Members, officers and employees of Commission to be public servants.

35. After section 27A of the principal Act, the following section shall be inserted, namely:— Insertion of new section 27B.

27 of 1957. 43 of 1961. “27B. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.”. Exemption from tax on wealth and income.

36. In section 28 of the principal Act, in sub-section (2),— Amendment of section 28.

(i) clause (cc) shall be omitted;
(ii) for clause (g), the following clauses shall be substituted, namely:—

“(g) the duties and powers which may be performed or exercised by the Commission under clause (q) of section 4;

- (h) the form and manner in which the annual statement of accounts shall be maintained under sub-section (1) of section 4F;
- (i) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14A;
- (j) the manner in which an inquiry shall be held under sub-section (1) of section 21-I;
- (k) the form in which an appeal may be filed before the Appellate Tribunal under sub-section (4) of section 24B and the fees payable in respect of such appeal;
- (l) the form and the manner in which returns and report to be made to the Central Government under section 26C;
- (m) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.”.

Insertion of new sections 28A and 28B.

37. After section 28 of the principal Act, the following sections shall be inserted, namely:—

Power to make regulations.

“28A. (1) The Commission may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

(a) the time and places of meetings of the Commission and the procedure to be followed

at such meetings under section 3D including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3H;

(c) the manner in which the fresh issue of equity shares shall be made to the public under sub-section (8) of section 7B;

(d) the conditions of certificate of registration to act as a member or intermediary to deal with forward contract or option in goods or option in commodity derivative under sub-section (1) of section 14A;

(e) the fee for a class or classes of member or intermediary under the second proviso to sub-section (2) of section 14A;

(f) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14A;

(g) the manner in which the certificate of registration may be suspended or cancelled under section 14B;

(h) any other matter relating to trading, clearing, settlement, and delivery of goods, forward contract, option in goods or option in commodity derivative.

(3) Every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the

expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation.

Application
of other
laws not
barred.

28B. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”.

CHAPTER III
AMENDMENT TO THE SECURITIES AND EXCHANGE
BOARD OF INDIA ACT, 1992

38. In section 15U of the Securities and Exchange Board of India Act, 1992, in sub-section (2), for the words “under this Act”, the words “under this Act or any other law for the time being in force” shall be substituted.

Amendment of
section 15U of
Act 15 of 1992.

APPENDIX- III

FORWARD CONTRACT (REGULATION) ACT, 1952.

(Act No. 74 of 1952)

CHAPTER I

Preliminary

1. Short title, extent and commencement.
2. Definition

CHAPTER II

Forward Markets Commission

3. Establishment and constitution of the Forward Markets Commission.
4. Functions of the Commission.
- 4-A Powers of the Commission.

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CHAPTER III

Recognised Associations

5. Applications for recognition of association.
6. Grant of recognition to association.
7. Withdrawal of recognition.
8. Power of Central Government to call for periodical returns or direct inquiries to be made.
9. Furnishing of annual reports to the Central Government by recognised association.
- 9-A Power of recognised associations to make rules respecting grouping of members, restricting voting rights, etc in special cases.
- 10 Power of Central Government to direct rules to be made or to make rules.
- 11 Power of recognised association to make bye-laws.
- 12 Power of Central Government to make, or amend bye-laws of recognised associations.
- 12-A Application of amendment of bye-laws to existing forward contract.

- 12-B Power of Commission to suspend member of recognised association or to prohibit him from trading
- 13 Power of Central Government to suspend governing body of recognised association.
- 14 Power to suspend business of recognised associations.

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CHAPTER III-A

Registered Associations

- 14-A Certificate of registration to be obtained by all associations.
- 14-B Grant or refusal of certificate of registration.
- 14-C Application of Sections 8 and 12-B to registered associations.

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CHAPTER IV

Forward contracts & Options in Goods

- 15. Forward contracts in notified goods illegal or void in certain circumstances.
- 16 Consequences of notification under Sec. 15.
- 17. Power to prohibit forward contracts in certain cases.
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CHAPTER V

Penalties and Procedures

- 20 Penalty for contravention of certain provisions of Chapter IV.
- 21 Penalty for owning or keeping place used for entering into forward contracts in goods.
- 21A Power of Court to order forfeiture of property.
- 22 Offences by companies.
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CHAPTER VI

Miscellaneous

- 25. Advisory Committee.
- 26. Power to delegate.
- 27. Power to exempt.
- 27 A Protection of action taken in good faith.
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- 29 Repeal and savings.

FORWARD CONTRACTS (REGULATION) ACT, 1952.

(Act No. 74 of 1952)

An act to provide for the regulation of certain matters relating to forward contracts, the prohibition of options in goods and for matters connected therewith.

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CHAPTER I

Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Forward Contracts (Regulation) Act, 1952.

(2) It extends to the whole of India ^{1[1]} [* * *].

(3) Chapter I shall come into force at once, and the remaining provisions shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act, for different States or areas, and for different goods or classes of goods.

2. **Definition** In this Act, unless the context otherwise requires, -

(a) “**association**” means any body of individuals whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;

(b) “**commission**” means the Forward Markets Commission established under sec. 3;

(c) “**forward contract**” means a contract for the delivery of goods^{2[2][* * *]} and which is not a ready delivery contract:

(d) “**goods**” means every kind of movable property other than actionable claims, money and securities;

(e) (e) “**Government security**” means a Government security as defined in the Public Debt Act, 1944 (XVIII OF 1944);

(f) “**non-transferable specific delivery contract**” means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are not transferable;

(g) “**option in goods**” means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future and includes a *teji*, a *mandi*, a *teji-mandi*, a *galli*, a *put*, a call or a *put*, and call in goods;

(h) “**prescribed**” means prescribed by rules made under this Act;

(i) “**ready delivery contract**” means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the official Gazette, specify in respect of any goods, the period

under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

^{3[3]} [Provided that where any such contract is performed either wholly or in part:-

(1) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or

(2) by the realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract: or

(3) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full-price therefor is dispensed with

then such contract shall not be deemed to be a ready delivery contract.

Explanation. - For the purpose of this clause. -

(i) "**bank**" includes any banking company as defined in the Banking Regulation Act, 1949 (110 of 1949), a co-operative bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934), the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);

(ii) "**commission agent**" means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract];

^{4[4]}(j) “**recognised association**” means an association to which recognition for the time being has been granted by the Central Government under Sec. 6 in respect of goods or classes of goods specified in such recognition;

(jj) “**registered association**” means an association to which for the time being a certificate of registration has been granted by the Commission under Sec. 14-B];

(k) “**rules**” with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association, its memorandum and articles of association;

(l) “**securities**” includes shares, scripts, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also government securities:

(m) “**specific delivery contract**” means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned:

(n) “**transferable specific delivery contract**” means specific delivery contract which is not a non-transferable specific delivery contract ^{5[5]}[and which is subject to such conditions relating to its transferability as the Central Government may by notification in the official Gazette, specify in this behalf.

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CHAPTER II

Forward Markets Commission

3. Establishment and constitution of the Forward Markets Commission.--

(1) The Central Government may, by notification in the official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.

(2) The Commission shall consist of not less than two, ^{6[6]}[but not exceeding four] members appointed by the Central Government ^{7[7]}[one of them being nominated by the Central Government to be the Chairman thereof; and the Chairman and the other member or members shall be either whole-time or part-time as the Central Government may direct]:

^{8[8]}[Provided that the members to be so appointed shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the Commission.]

(3) No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to affect prejudicially his functions as a member of the Commission, and every member shall, whenever required by the Central Government so to do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

(4) No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for re-appointment.

(5) The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

4. Functions of the Commission.- The functions of the Commission shall be

(a) to advise the Central Government in respect of the recognition of or the withdrawal of recognition from any association or in respect of any other matter arising out of the administration of this Act;

^{9[9]}(b) to keep forward markets under observation and to take such action in relation to them as it may consider necessary, in exercise of the powers assigned to it by or under this Act;]

(c) to collect and whenever the Commission thinks it necessary publish information regarding the trading conditions in respect of goods to which any of the provisions of this Act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government periodical reports on the operation of this Act and on the working of forward markets relating to such goods;

(d) to make recommendations generally with a view to improving the organisation and working of forward markets;

(e) to undertake the inspection of the accounts and other documents of ^{10[10]}[any recognised association or registered association or any member of such association] whenever it considers it necessary; and

(f) to perform such other duties and exercise such other powers as may be assigned to the Commission by or under this Act, or as may be prescribed.

¹ **[4 A Powers of the Commission. -**

(1) The Commission shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

- (a) Summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any office;
- (e) (e) any other matters which may be prescribed.

(2) The Commission shall have the power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as in the opinion of the Commission may be useful for, or relevant to any matter under the consideration of the Commission and any person so required shall be deemed to be legally bound to furnish such information within the meaning of Sec. 176 of the Indian Penal code, 1860 (45 of 1860).

(3) The Commission shall be deemed to be a civil court and when any offence described in Sections. 175, 178, 179, 180 or Sec. 228 of the Indian Penal Code, 1860 (45 of 1860), is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, 1898 (5 of 1898)^{11[11]} forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under Section 482 of the said Code^{12[12]}.

(4) Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of Sections. 193 and 228 of the Indian Penal Code, 1860 (45 of 1860).

Explanation.- For the purpose of enforcing the attendance of witnesses, the

local limits of the Commission's jurisdiction shall be the limits of the territory of India.]

CHAPTER III

Recognised Associations

5. Application for recognition of associations.

(1) Any association concerned with the regulation and control of forward contracts which is desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

(2) Every application made under sub-section (1) shall contain such particulars as may be prescribed and shall be accompanied by a copy of the bye-laws for the regulation and control of forward contracts and also a copy of the rules relating in general to the constitution of the association, and, in particular to--

(a) the governing body of such association, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office-bearers of the association;

(c) the admission into the association of various class of members, the qualifications of members, and the exclusion, suspension, expulsion and re-admission of members therefrom or therein to;

(d) the procedure for registration of partnerships as members of the association and the nomination and appointment of authorised representatives and clerks.

6 Grant of recognition to association.-

(1) If the Central Government, after making such enquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require, is satisfied that it would be in the interest of the trade and also in

the public interest to grant recognition to the association which has made an application under Sec. 5, it may grant recognition in such form and subject to such conditions as may be prescribed or specified, and shall specify in such recognition the goods or classes of goods with respect to which forward contracts may be entered into between members of such association or through or with any such member.

(2) Before granting recognition under sub-section (1), the Central Government may, by order, direct, -

(a) that there shall be no limitation on the number of members of the association or that there shall be such limitation on the number of members as may be specified;

(b) that the association shall provide for the appointment by the Central Government of a person, whether a member of the association or not as representative on, and of not more than three persons representing interests not directly represented through membership of the association as member or members of the governing body of such association and may require the association to incorporate in its rules any such direction and the conditions, if any, accompanying it.

(3) No rules of a recognised association shall be amended except with the approval of the Central Government.

(4) Every grant of recognition under this section shall be published in the Gazette of India and also in the Gazette of the State in which the principal office of the recognised association is situated, and such recognition shall have effect as from the date of its publication in the Gazette of India.

7. Withdrawal of recognition. -- If the Central Government is of opinion that any recognition granted to an association under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the

Central Government may, after giving a reasonable opportunity to the association to be heard in the matter, withdraw, by notification in the official Gazette, the recognition granted to the said association:

Provided that no such withdrawal shall effect the validity of any contract entered into or made before the date of the notification, and the Central Government may make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contract outstanding on that date.

8. Power of Central Government to call for periodical returns or direct inquiries to be made. --

¹³[¹³](1) Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs or its members, or his affairs, as the case may be, as may be prescribed.

(2) Without prejudice to the provisions contained in sub-section (1) where the Central Government considers it expedient so to do, it may by order in writing, ---

(a) call upon a recognised association to ¹⁴[¹⁴][or a member thereof] furnish in writing such information or explanation relating to its affairs or the affairs of any of its members ¹⁵[¹⁵][or his affairs, as the case may be] as the Central Government may require, or

(b) appoint one or more persons to make an enquiry in relation to the affairs of such association or the affairs or any of its members and submit a report of the result of such inquiry to the Central Government within such time as may be specified in the order or, in the alternative, direct the inquiry to be made, and the report to be submitted, by the governing body of such association acting jointly with one or more representative of the Central

Government; and

(c) direct the Commission to inspect the accounts and other documents of any recognised association or of any of its members and submit its report thereon to the Central Government.

(3) Where an inquiry in relation to the affairs of a recognised association or the affairs of any of its members has been undertaken under sub-section (2) -

(a) every director, manager, secretary or other officer of such association;

(b) every member of such association;

(c) if the member of the association is a firm, every partner, manager, secretary or other officer of the firm; and

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clause (a), (b) and (c),

shall be bound to produce before the authority making the inquiry, all such books, accounts, correspondence and other documents in his custody or power relating to, or having a bearing on the subject matter of, such inquiry and also to furnish the authority with any such statement or information relating thereto as may be required of him, within such time as may be specified.

^{16[16]}[(4) Every recognised association and every member thereof shall maintain such books of accounts and other documents as the Commission may specify and the books of account and other documents so specified shall be preserved for a period not exceeding three years as the Commission may specify and shall be subject to inspection at all reasonable times by the Commission.]

9. Furnishing of annual reports to the Central Government by

recognised association. --

^{17[17]} [(1) Every recognised association shall furnish to the Commission three copies of its annual report.]

(2) Such annual report shall contain such particulars as may be prescribed.

^{18[18]} **9 A Power of recognised association to make rules respecting grouping of members, restricting voting rights, etc in special cases. --**

(1) A recognised association may make rules or amend any rules made by it to provide for all or any of the following matters, namely:

^{19[19]} [(a) The admission of a firm or a Hindu undivided family as a member:]

^{20[20]} [(b) the grouping of the members of the association according to functional or local interests, reservation of seats on its governing body for members belonging to each group and appointment of members to such reserved seats---

(i) by election exclusively by the members belonging to the group concerned,

(ii) by election by all the members of the association,

(iii) by election by all the members of the association from among person chosen by the members belonging to the group concerned for the purposes;

^{21[21]} [(c)] the restriction of voting rights in respect of any matter placed before the association at any meeting to those members only who, by reason of their functional or local interests, are actually interested in such matter;

²²[²²(d)] the regulation of voting rights in respect of any matter placed before the association at any meeting so that each member may, be entitled to have one vote only, irrespective of his share of the paid up equity capital of the association;]

²³[²³(e)] the restriction on the rights of a member to appoint another person as his proxy to attend and vote at a meeting of the association;

²⁴[²⁴(f)] the retirement at every annual general meeting of all directors or such number or proportion of their total number as may be specified in the rules;

²⁵[²⁵(g)] such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in ²⁶[²⁶Clauses (a) to (f)].

(2) No rules of a recognised association made or amended in relation to any matter referred to in ²⁷[²⁷Clause (a) to (g) of] sub-section (1) shall have effect until they have been approved by the Central Government and published by that Government in the official Gazette and, in approving the rules so made or amended, the Central Government may make such modification therein as it thinks fit, and on such publication, the rules approved by the Central Government shall be deemed to have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956.

(3) Where, before the commencement of the Forward Contracts (Regulation) Act, 1952, any rules have been made or amended in relation to any matter referred to in ²⁸[²⁸clauses (b) to (e) and (g) of] sub-section (1), the rules so made or amended shall not be deemed to be invalid or ever to have been

invalid merely by reason of the fact that the rules so made or amended are repugnant to any of the provisions of the Companies Act, 1956.]

10 Power of Central Government to direct rules to be made or to make rules.

(1) Whenever the Central Government considers it expedient so to do, it may, by order in writing, direct any recognised association to make any rules or to amend any rules made by the recognised association within such period as it may specify in this behalf.

(2) If any recognised association, against whom an order is issued by the Central Government under sub-section (1), fails or neglects to comply with such order within the specified period, the Central Government may make the rules or amend the rules made by the recognised association, as the case may be, either in the form specified in the order or with such modification thereof as the Central Government may think fit.

^{29[29]} [(3) Where, in pursuance of sub-section (2), any rules have been made or amended, the rule so made or amended shall be published in the Gazette of India, and shall, thereupon, have effect notwithstanding anything to the contrary contained in the Companies Act, 1956 (1 of 1956), or any other law for the time being in force, as if they had been made or amended by the recognised association concerned.]

11 Power of recognised association to make bye-laws. --

(1) Any recognised association may, subject to the previous approval of the Central Government, make bye-laws for the regulation and control of forward contracts.

(2) In particular, and without prejudice to the generality of the foregoing

power, such bye-laws may provide for ----

- (a) the opening and closing of markets and the regulation of the hours of trade;
- (b) a clearing-house for the periodical settlement of contracts and differences thereunder, the delivery of, and payment for, goods, the passing on of delivery orders and for the regulation and maintainance of such clearing house;
- (c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;
- (d) fixing, altering or postponing days for settlement;
- (e) determining and declaring market rates; including opening, closing, highest and lowest rates for goods;
- (f) the terms, conditions and incidents of contracts including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contract in writing;
- (g) regulating the entering into, making performances, rescission and termination of contracts, including contracts between members or between a commission agent and his constituent, or between a broker and his constituent, or between a member of the recognised association and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents and brokers who are not parties to such contracts;
- (h) the admission and prohibition of specific classes or types of goods or of dealings in goods by a member of the recognised association;
- (i) the method and procedure for the settlement of claims or disputes including the settlement thereof by arbitration;
- (j) the levy and recovery of fees, fines and penalties;
- (k) the regulation of the course of business between parties to contracts in any capacity;
- (l) the fixing of scale of brokerage and other charges;

- (m) the making, comparing, settling and closing of bargains;
- (n) the regulation of fluctuations in rates and prices;
- (o) the emergencies in trade which may arise and the exercise of powers in such emergencies including the power to fix maximum and minimum prices;
- (p) the regulation of dealings by members for their own account;
- (q) the limitations on the volume of trade done by any individual member;
- (r) the obligation of members to supply such information or explanation and to produce such books relating to their business as the governing body may require.

(3) The bye-laws made under this section may -

(a) specify the bye-laws the contravention of any of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (2) of Section 15;

^{30[30]}[(aa) specify the bye-laws the contravention of any of which shall make a forward contract entered otherwise than in accordance with bye-laws illegal under sub-section (3 A) of Section 15;]

(b) provide that the contravention of any of the bye-laws shall --

- (i) render the member concerned liable to fine; or
- (ii) render the member concerned liable to expulsion or suspension from the recognised association or to any penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and when approved by the Central Government, shall be published in the Gazette of India ^{31[31]}[* * *];

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing, dispense with the condition of previous publication in any case.

12 Power of Central Government to make, or amend bye-laws of recognised association.

(1) The Central Government may, either on a request in writing received by it in this behalf from the governing body of a recognised association, or if in its opinion it is expedient so to do, make bye-laws for all or any of the matters specified in Section 11 or amend any bye-laws made by such association under that section.

(2) Where, in pursuance of this section, any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India, ^{32[32]}[and shall thereupon have effect] as if they had been made or amended by the recognised association.

(3) Notwithstanding anything contained in this section where the governing body of a recognised association objects to any bye-law made or amended under this section by the Central Government on its own motion, it may, within six months of the publication thereof under sub-section (2), apply to the Central Government for a revision thereof, and the Central Government may, after giving a reasonable opportunity to the governing body of the association to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or the amendment or revision of any bye-laws under this section shall in cases be ^{33[33]}[subject to such conditions in regard to previous publication as may be prescribed]:

Provided that the Central Government may, in the interest of the trade or in the public interest, by order in writing dispense with the condition of previous publication.

^{34[34]}**12 A Application of amendment of bye-laws to existing forward contract.--**

Any amendment of a bye-law under Sec. 11 other than an amendment made in pursuance of clause (a) or clause (aa) of sub-section (3) of that section or under Section 12 shall also apply to all forward contracts entered into before the date of its approval by the Central Government or before the date of its publication in the Gazette of India, as the case may be, and remaining to be performed on or after the said date.

12 B Power of Commission to suspend member of recognised association or to prohibit him from trading.--

(1) If, in the interest of trade or in the public interest, the Commission considers it necessary to suspend a member from his membership of any recognised association or to prohibit such members from entering into any forward contract for the sale or purchase in his own name or through another member of a recognised association of any goods or class of goods, then, notwithstanding anything contained in any law for time being in force or in the rules or bye-laws of a recognised association, the Commission may after giving an opportunity to the member concerned of being heard, by order, suspend his membership of any association or prohibit him from entering into any such contract.

(2) An order made under sub-section (1) shall specify the period for which the suspension or prohibition is to have effect and such period may be extended from time to time but so as not to exceed three years in the aggregate.

(3) No order made under sub-section (1) in respect of any member of a recognised association shall affect the validity of any forward contract entered into or made by with or through such member on or before the date of such order and remaining to be performed on or after the said date; but the Commission may make such provision as it deems fit in such order or in any subsequent order for the closing out of any such forward contract.]

13 Power of Central Government to supercede governing body of recognised association.--

(1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised association should be superceded, then, notwithstanding anything contained in this Act or in any other law for the time being in force, the Central Government may, after giving a reasonable opportunity to the governing body of the recognised association concerned to show cause why it should not be superseded, by notification in the official Gazette, declare the governing body of such association to be superseded for such period not exceeding six months as may be specified in the notification, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and where more persons than one are appointed may appoint one of such persons to be Chairman and another of such person to be the Vice-Chairman.

(2) On the publication of a notification in the official Gazette under sub-section (1), the following consequences shall ensue, namely:

(a) the members of the governing body which has been superseded

shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised association as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry out the purpose of this Act, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the association whose governing body is superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may, from time to time by like notification, vary such period.

(4) On the determination of the period of office of any person or persons appointed under this section the recognised association shall forthwith reconstitute a governing body in accordance with its rules:

Provided that until a governing body is so reconstituted, the person or persons appointed under sub-section (1) shall notwithstanding anything contained in sub-section (1) continue to exercise and perform their powers and duties.

(5) On the reconstitution of a governing body under sub-section (4), all the property of the recognised association which had vested in, or was in the possession of, the person or persons appointed under sub-section (1) shall vest or re-vest, as the case may be, in the governing body so reconstituted.

14 Power to suspend business of recognised associations.---

If in the interest of the trade or in the public interest the Central Government considers it expedient so to do, it may by notification in the official Gazette, direct a recognised association to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and may if, in the opinion of the Central Government, the interest of the trade or the public interest so requires by like notification extend the said period from time to time.

Provided that where the period of suspension is likely to exceed one month, no notification extending the suspension beyond such period shall be issued, unless the governing body of the recognised association has been given an opportunity of being heard in the matter.

^{35[35]}**CHAPTER III-A**

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Registered Associations

14A Certificate of registration to be obtained by all associations.---

(1) No association concerned with the regulation and control of business relating to forward contracts shall after the commencement of the Forward Contracts (Regulation) Amendment Act, 1960 (62 of 1960) (hereinafter referred to as such commencement), carry on such business except under, and in accordance with, the conditions of a certificate of registration granted under this Act by the Commission.

(2) Every association referred to in sub-section (1) which is in existence at

such commencement, before the expiry of six months from such commencement, and every association referred to in sub-section (1) which is not in existence at such commencement, before commencing such business, shall make an application for a certificate of registration to the Commission in such form and containing such particulars as may be prescribed:

Provided that the Commission may in its discretion extend from time to time the period of six months aforesaid up to one year in the aggregate.

(3) Nothing in this section shall be deemed ---

(a) to prohibit an association in existence at such commencement from carrying on its business until the disposal of the application made by it under sub-section (2); or

(b) to require a recognised association in existence at such commencement to make an application under sub-section (2); and every such association shall, as soon as may be after such commencement, be granted free of cost by the Commission a certificate of registration.

14-B Grant or refusal of certificate of registration. ---

On receipt of an application under Section 14-A the Commission, after making such enquiry as it considers necessary in this behalf, may by order in writing grant a certificate of registration or refuse to grant it:

Provided that before refusing to grant such certificate, the association shall be given an opportunity of being heard in the matter.

14-C Application of Sections 8 and 12-B to registered associations.--

The provisions of Sections 8 and 12 B shall apply in relation to a registered association as they apply in relation to a recognised association with the substitution of ---

(i) references to the registered association, for references to the recognised association; and

(ii) the words "two years", for the words "three years" in sub-section (2)

of Section 12-B.]

CHAPTER IV

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Forward contracts & Options in Goods

15. Forward contracts in notified goods illegal or void in certain circumstances.--

(1) The Central Government may, by notification in the official Gazette, declare this section to apply to such goods or class of goods and in such areas as may be specified in the notification, and thereupon, subject to the provisions contained in Section 18, every forward contract for the sale or purchase of any goods specified in the notification which is entered into in the area specified therein otherwise than between members of a recognised association or through or with any such member shall be illegal.

(2) Any forward contract in goods entered into in pursuance of sub-section (1) which is in contravention of any of the bye-laws specified in this behalf under clause (a) of sub-section (3) of Section 11 shall be void-

(i) as respects the rights of any member of the recognised association who has entered into such contract in contravention of any such bye-law and also,

(ii) as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

(3) Nothing in sub-section (2) shall effect the right of any person other than a member of the recognised association to enforce any such contract or to recover any sum under or in respect of such contract:

Provided that such person had no knowledge that such transaction was in contravention of any of the bye-laws specified under clause (a) of sub-section

(3) of Section 11.

^{36[36]}[(3A) Any forward contract in goods entered into in pursuance of sub-section (1) which at the date of the contract is in contravention of any of the bye-laws specified in this behalf under clause (aa) of sub-section 3 of Section 11 shall be illegal.]

(4) No member of a recognised association shall, in respect of any goods specified in the notification under sub-section (1), enter into any contract on his own account with any person other than a member of the recognised association unless he has secured the consent or authority of such person and disclose in the note, memorandum or agreement of sale or purchase that he has bought or sold the goods, as the case may be, on his own account:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure a written confirmation by such person of such consent or authority within three days from the date of such contract:

Provided further that in respect of any outstanding contract entered into by a member with a person other than a member of the recognised association, no consent or authority of such person shall be necessary for closing out in accordance with the bye-laws for outstanding contract, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he has bought or sold the goods, as the case may be, on his own account.

16 Consequences of notification under Sec. 15.-

Where a notification has been issued under Section 15, then notwithstanding anything contained in any other law for the time being in force or in any custom,

usage or practice of the trade or the terms of any contract or the bye-laws of any association concerned relating to any contract--

(a) every forward contract for the sale or purchase of any goods specified in the notification, ^{37[37]}[entered into on or before the date of the notification] and remaining to be performed after the said date and which is not in conformity with the provisions of Section 15, shall be deemed to be closed out at such rate as the Central Government may fix in this behalf and different rates may be fixed for different classes of such contracts:

(b) all differences arising out of any contract so deemed to be closed out shall be payable on the basis of the rate fixed under clause (a) and the seller shall not be bound to give and the buyer shall not be bound to take delivery of the goods.

17. Power to prohibit forward contracts in certain cases.---

(1) The Central Government may, by notification in the official Gazette, declare that no person shall save with the permission of the Central Government, enter into any forward contract for the sale or purchase of any goods or class of goods specified in the notification and to which provisions of Section 15 have not been made applicable, except to the extent and in the manner, if any, as may be specified in the notification.

(2) All forward contracts in contravention of the provisions of sub-section (1) entered into after the date of publication of the notification thereunder shall be illegal.

(3) Where a notification has been issued under sub-section (1), the provisions of Section 16 shall in the absence of anything to the contrary in the notification, apply to all forward contracts for the sale or purchase of any goods specified in the notification ^{38[38]}[entered into on or before the date of notification]

and remaining to be performed after the said date as they apply to all forward contract for the sale or purchase or any goods specified in the notification under Section 15.

18 Special provisions respecting certain kinds of forward contract.--

(1) Nothing contained in Chapter III or Chapter IV shall apply to non-transferrable specific delivery contracts for the sale or purchase of any goods:

Provided that no person shall organise or assist in organising or be a member of any association in any area to which the provisions of Sec. 15 have been made applicable (other than a recognised association) which provides facilities for the performance of any non-transferable specific delivery contract by any party thereto without having to make or receive actual delivery to or from the other party to the contract or to or from any other party named in the contract.

(2) Where in respect of any area the provisions of Section 15 have been made applicable in relation to forward contracts for the sale or purchase of any goods or class of goods, the Central Government may, by a like notification, declare that in the said area or any part thereof as may be specified in the notification all or any of the provisions of Chapter III or Chapter IV shall not apply to transferable specific delivery contracts for the sale or purchase of the said goods or class of goods either generally, or to any class of such contracts in particular.

(3) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control non-transferable specific delivery contracts in any area, it may, by notification in the official Gazette, declare that all or any of the provisions of Chapters III and IV shall apply to such class or classes of non-transferable specific delivery contracts in such area in respect of such goods or class of goods as may be specified in the notification, and may

also specify the manner in which and the extent to which all or any of the said provisions shall so apply.

19 Prohibition of options in goods.--

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in goods entered into after the date on which this section comes into force shall be illegal.

(2) Any option in goods which has been entered into before the date on which this section comes into force and which remains to be performed, whether wholly or in part, after the said date shall, to that extent become void.

CHAPTER V
Penalties and Procedures

^{39[39]} **[20 Penalty for contravention of certain provisions of Chapter IV.**

---- Any person who --

(a) (i) in any return, statement or other document required by or under this Act, makes a statement which is false in any material particular, knowing it to be false, or wilfully omits to make a material statement; or

(ii) without reasonable excuse (the burden of proving which shall be on him) fails to furnish any return, statement or other document or any information or to answer any question or to comply with any requisition made under this Act or any rules made thereunder; or

(iii) enters into any forward contract during the period of suspension of business of a recognised association in pursuance of a notification under Section 14; or

(b) is a member of any association, other than a recognised association, to which a certificate of registration has not been granted under

this Act; or

(c) publishes or circulates information relating to the rate at which any forward contract has been entered into in contravention of any of the bye-laws of a recognised organisation, or

(d) organises or assists in organising, or is a member of any association in contravention of the provisions contained in the proviso to sub-section (1) of Section 18; or

(e) enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) or sub-section (3-A) or sub-section (4) of Section 15, Section 17 or Section 19;

shall on conviction be punishable ---

(i) for a first offence, with imprisonment which may extend to one year or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence under clause (d), or under clause (e) [other than an offence in respect of contravention of the provisions of sub-section (4) of Section 15] with imprisonment which may extend to one year and also with fine; provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgement of the Court, the imprisonment shall be not less than one month and the fine shall not be less than one thousand rupees.]

21 Penalty for owning or keeping place used for entering into forward contracts in goods.--

Any person who --

(a) owns or keeps a place other than of a recognised association which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes, or

(b) without the permission of the Central Government organises, or

assists in organising, or becomes a member of any association, other than a recognised association, for the purpose of assisting in entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(c) manages, controls or assists in keeping any place other than that of a recognised association, which is used for the purpose of entering into or making or performing, whether wholly or in part, any forward contract in contravention of any of the provisions of this Act or at which such contracts are recorded or adjusted, or rights or liabilities arising out of such forward contracts are adjusted, regulated or enforced in any manner whatsoever, or

(d) not being a member of a recognised association, wilfully represents to, or induces, any person to believe that he is a member of a recognised association or that forward contracts can be entered into or made or performed, whether wholly or in part, under this Act through him,

(e) not being a member of a recognised association or his agent authorised as such under the rules or bye-laws of such association, canvasses, advertises or touts in any manner, either for himself or on behalf of any other person, for any business connected with forward contracts in contravention of any of the provisions of this Act, or

(f) (f) joins, gathers, or assists in gathering at any place, other than the place of business specified in the bye-laws of a recognised association, any person or persons for making bids or offers or for entering into or making or performing, whether wholly or in part, any forward contracts in contravention of any of the provisions of this Act, or

(g) makes, publishes or circulates any statement or information which is false and which he either knows or believes to be false, affecting or tending to affect the course of business in forward contracts in respect of goods to which the provisions of Section 15 have been made applicable, ^{40[40]}[or]

^{41[41]}(h) manipulates or attempts to manipulate prices in respect of forward contracts for the sale or purchase of any goods specified in any notification under Section 15, in any area specified in that notification,]

^{42[42]}[shall on conviction be punishable --

(i) for a first offence, with imprisonment which may extend to two years or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence, with imprisonment which may extend to two years and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, the imprisonment shall not be less than one month and the fine shall not be less than one thousand rupees.]

^{43[43]}**[21A Power of Court to order forfeiture of property.--** Any court trying an offence punishable under Section 20 or Section 21 may, if it thinks fit and in addition to any sentence which it may impose for such offence, direct that any money, goods or other property in respect of which the offence has been committed, shall be forfeited to the Central Government.

Explanation. -- For the purpose of this section property in respect of which an offence has been committed, shall include deposits in a bank where the said property is converted into such deposits.]

22 Offences by companies.--

(1) Where an offence has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.-For the purpose of this Section -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

^{44[44]}**22A. Power to search and seize books of account or other documents.---**

(1) Any presidency Magistrate or a Magistrate of the first class may, by warrant, authorise any police officer not below the rank of sub-inspector to enter upon and search any place where books of account or other documents relating to forward contracts or options in goods entered into in contravention of the provisions of this Act, may be reasonably suspected to be, and such police officer may seize any such books or documents, if in his opinion, it relates to any such forward contract or option in goods.

(2) The provisions of the Code of Criminal Procedure, 1898 (5 of 1898)^{45[45]}, shall so far as may be, apply to search or seizure made under sub-section (1) as they apply to any search or seizure made under the authority of a warrant issued under Section 98 of the said Code.

22-B. Presumption to be drawn in certain cases.-

(1) Where any books of account or documents are seized from any place and there are entries therein making reference to quantity, quotations, rates, months of delivery, receipt or payment of differences or sale or purchase of goods or options in goods, such books of accounts or other documents shall be admitted in evidence without witnesses having to appear to prove the same; and such entries shall be *prima-facie* evidence of matters, transactions and accounts purported to be therein recorded.

(2) In any trial for an offence punishable under Section 21, it shall be presumed, until the contrary is proved that the place in which the books of account or other documents referred to in sub-section (1) were seized, was used, and that the persons found therein were present, for the purpose of the said offence.

23. Certain offences to be cognizable.---

Notwithstanding anything contained in the Code of Criminal Procedure, ^{46[46]}[the following offences shall be deemed to be cognizable within the meaning of that Code, namely:

(a) an offence falling under sub-clause (ii) of clause (a) of Section 20 in so far as it relates to the failure to comply with any requisition made under sub-section (3) of Section 8;

(b) an offence falling under clause (d) of Section 20;

(c) an offence falling under clause (e) of Section 20 other than a contravention of the provisions of sub-section (3-A) or sub-section (4) of Section 15;

(d) an offence falling under Section 21.]

24 Jurisdiction to try offence under this Act.--

No court inferior to that of a Presidency Magistrate or a Magistrate of the

first class shall take cognizance of or try any offence punishable under this Act.

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CHAPTER VI
Miscellaneous

25. Advisory Committee.-- For the purpose of advising the Central Government in relation to any matter concerning the operation of this Act, the Central Government may establish an advisory committee consisting of such number of persons as may be prescribed.

26. Power to delegate.-- The Central Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act may, in such circumstances and subject to such conditions, if any, as may be specified by such officers or authority, including any State Government or officers or authorities thereof as may be specified in the direction.

27. Power to exempt.-- The Central Government may, by notification in the official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification any contract or class of contracts from the operation of all or any of the provisions of this Act.

^{47[47]}**[27 A Protection of action taken in good faith.-**

(1) No suit or other legal proceeding shall lie in any Court against the Central Government or any member, officer or servant of the Commission for anything which is in good faith done or intended to be done under this Act, or any rule or bye-law made thereunder.

(2) No suit or other legal proceeding shall lie in any Court against the governing body or any member, office-bearer or servant of any recognised association or against any person appointed under sub-section (1) of Section 13 for anything which is in good faith done or intended to be done with the

approval, at the instance, of the Commission and in pursuance of this Act, or of any rule or bye-law made thereunder.]

28. Power to make rules.--

(1) The Central Government may, by notification in the official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,--

(a) the terms and conditions of service of members of the Commission;

(b) the manner in which applications for recognition may be made under Section 5 and levy of fees in respect thereof;

(c) the manner in which any inquiry for the purpose of recognising any association may be made and the form in which recognition shall be granted;

^{48[48]}[(cc) the manner in which the application for certificates of registration may be made under Section 14A and the levy of fees in respect of such application;]

(d) the particulars to be contained in the annual reports of recognised associations;

(e) the manner in which bye-laws to be made, amended or revised under this Act shall, before being so made, amended or revised, be published for criticism;

(f) the constitution of the advisory committee established under Section 25, the terms of office of and the manner of filling vacancies among members of the committee; the interval within which meetings of the advisory committee may be held and the procedure to be followed at such meetings; and the matters which may be referred by the Central Government to the advisory committee for advice;

(g) any other matter which is to be or may be prescribed.

^{49[49]}[(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

29 Repeal and savings.---

If immediately before the date on which this Act or any provision contained therein is made applicable to any goods or classes of goods in any State, there is in force in that State, any law corresponding to this Act or, as the case may be, to any provision contained therein which is applicable to those goods or classes of goods, that law shall stand repealed on the said date.

Provided that the repeal shall not affect--

- (a) the previous operation of any law so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

Provided further that, subject to the preceding proviso, anything done or any action taken (including any appointment made, notification or order issued, rule,

regulation, form or bye-law framed, or recognition granted) under any such law shall be deemed to have been done or taken under the corresponding provisions of this Act, and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

CHAPTER – I

INTRODUCTORY

B. BACKGROUND

The Commodity Futures Market in India dates back to more than a century. The first organized futures market was established in 1875, under the name and style of 'Bombay Cotton Trade Association' to trade in cotton contracts, just 10 years after the establishment of Chicago Board of Trade (CBOT) in USA and thus became the 2nd oldest commodity exchange in the world. Subsequently, many regional exchanges like Gujarat Vyapar Mandali (1900) for oilseeds, Chamber of Commerce at Hapur (1913) and East India Jute Association Ltd. (1927) for raw jute etc. came into existence. By the 1930s, there were more than 300 commodity exchanges in the country dealing in commodities like turmeric, sugar, gur, pepper, cotton, oilseeds etc. This was followed by institutions for futures trading in oilseeds, foodgrains, etc. The futures market in India underwent rapid growth between the period of First and Second World Wars. As a result, before the outbreak of the Second World War, a large number of commodity exchanges trading futures contracts in several commodities like cotton, groundnut, groundnut oil, raw jute, jute goods, castorseed, wheat, rice, sugar, precious metals like gold and silver were flourishing throughout the country. Trading was conducted through both options and futures instruments. However, there was no market regulator and hence there was no uniformity in trading practices. Further, there was no structured clearing and settlement system.

1.2 During the second world war, the colonial government suspended forward trading in most of the major commodities as a part of its war mobilization efforts to contain rising price expectations. After the dawn of independence, the futures markets were put under the Central List of subjects under the Constitution of India. State governments were no more competent to regulate or intervene in futures trading. In its wake, the Forward Contracts (Regulation) Act, 1952 (FCR Act, 1952) was passed to regulate this market with Forward Markets Commission (FMC) being set up in 1953 at Mumbai as the regulator. However, options which were then perceived to be risky instruments of

trading, were totally banned under the Act itself. Futures trading started to gain momentum in many commodities. However, in the mid-1960s, the Government imposed a ban on the futures trading of most of the commodities on the assumption that this led to inflationary conditions.

B. Reopening of the Forward Markets

1.3 The Department of Consumer Affairs have stated that with substantial growth achieved in agriculture in the closing decades of the 20th century and India's strong emergence on the agri commodity marketing and export front, it was felt necessary to provide the farmers the benefit of price discovery and price risk management in marketing their produce and thereby to reverse the adverse terms of trade that they have been suffering for their produce. The restrictions on forward trading were accordingly lifted in April, 2003 and 3 national electronic commodity exchanges came into operation in the same year. Since then several changes have taken place in the Commodity Futures Market. While the Commodity Futures Market has been liberalized with effect from April, 2003 and modern institutional structures are in the process of being evolved, the Forward Markets Commission (FMC) the market Regulator, is broadly functioning in its traditional manner. Some of the existing provisions of the FCR Act have also become redundant in view of the rapid expansion of the Commodity Futures Market. Also, the Commodity Futures Market has been witnessing exponential growth in the last three years.

There are now 21 commodity Exchanges in the country including five National Multi-Commodity Exchanges, located at Mumbai (2), Ahmedabad (2) and Gurgaon. These five national Exchanges are state-of-the art, de-mutualized and corporatized trading platforms with professional management from the beginning with facilities for on-line trading across the country. At present, 113 commodities have been notified for trading and more than 40 commodities are actively traded.

1.4 The current size of the Commodity Futures Market has crossed Rs. 100 lakh crore, registering a rapid Compound Annual Growth Rate (CAGR growth of 40%. The Commodity group-wise value of trade from 2003-04 to 2010-11 (till 31st Jan., 2011) is given in the table below:

(In Rs. Crore)

Year	Bullion	Metals	Energy	Agri	Others	Total
2003-04	3315	2134	-	123914	-	1,29,363
2004-05	179053	618	1900	390188	-	5,71,759
2005-06	760675	18723	181883	1192227	1614	21,55,122
2006-07	1723348	405637	230712	1317125	104	36,76,926
2007-08	1725952	897714	500942	941283	98	40,65,989
2008-09	2973675	618776	1026442	627303	2760	52,48,956
2009-10	3164152	1801636	1577882	1217949	3135	77,64,754
2010-11 (till 31st Jan., 2011)	4291058	2182205	1838000	1114310	28	94,25,601

1.5 As stated earlier, there was no regulator and hence, no uniformity in trading practices, therefore, after independence, the Forward Contract (Regulation) Act, 1952 was passed to regulate this market and the FMC was set up in 1953 as the regulator. A bill to amend Forward Contracts (Regulation) Act, 1952 was introduced in Rajya Sabha on 23rd December, 1998 and the same was referred to the Standing Committee on Food, Civil Supplies and Public Distribution for examination and report. The bill, after incorporating the recommendations of the Standing Committee was passed by Rajya Sabha on 15th December, 2003 but could not be passed by Lok Sabha due to its dissolution. The Forward Contracts (Regulation) Amendment Bill, 2006 was introduced in Lok Sabha on 21.03.2006 and the same was again referred to the Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution for examination and report. The report of the Standing Committee was presented to Lok Sabha on 19.12.2006. The Department has informed the Committee that the recommendation of the Committee were examined and incorporated in a draft note for the cabinet for moving official amendments to the said Bill and was circulated to all concerned Departments. Their comments along with the views of the Department were incorporated in the Cabinet Note which was considered by the Cabinet on 3.5.2007.

However, the cabinet postponed the decision thereon and advised the Ministry to carry out wider consultations with all the stakeholders including the political parties and thereafter submit the revised note for approval. The Bill of 2006 was, however, withdrawn due to issuance of the Forward Contracts (Regulation) Ordinance and the Ministry of Law (Legislative Department) had advised that the Bill of 2008 required to be consequentially amended before it was considered for passing in Lok Sabha. Accordingly, a Cabinet Note for moving official amendments was sent to Cabinet which approved the proposal with the direction that a final decision regarding the definition of "commodity derivative" be taken by the Minister of Agriculture, Consumer Affairs, Food and Public Distribution and the Minister of Finance. However, the said Bill also lapsed upon the dissolution of the Fourteenth Lok Sabha on 17.05.2009.

1.6 The Forward Contracts (Regulation) Amendment Bill, 2010 as introduced in Lok Sabha on 6th December, 2010 has now again been referred to the Committee by the Hon'ble Speaker on 16th December, 2010 for examination and report.

C. PRESENT POSITION OF REGULATION OF FORWARD MARKET (TRADING)

1.7 There are three tiers of regulations of forward trading viz. The Central Government, Forward Markets Commission and the Recognised Commodity Exchanges/ Associations. The Central Government broadly determines the policy as to commodities in which futures/forward trading is to be permitted and the recognition of Exchange/Association through whom such trading is to be permitted. The Forward Markets Commission performs the role of approving the Rules and Regulations of the Exchange subject to which the trading is to be conducted, accord permission for commencement of trading in different contracts, monitor market conditions continuously and take remedial measures whenever the trading tends to go outside the permissible limits. The Recognised Exchange/Association provide the frame work of Rules and Regulations for conduct of trading, the place where the trading is to be conducted, reporting and recording of contracts, execution & settlement of contracts, forum for exchange of documents and payments, etc.

D. Regulatory measures

1.8 However, futures trading have the potential risk of being misused by unscrupulous elements. In order to safeguard the market against such elements, regulatory measures as under are prescribed by the Forward Markets Commission:-

- (e) Limit on open position of an individual operator, to prevent over-trading;
- (f) Limit on intra-day price fluctuation, to prevent abrupt upswing or downswing in prices (commonly referred to as circuit limits);
- (g) Special margin deposits to be collected on outstanding purchases and/or sales, to curb excessive speculative activity, through financial restraints (by reducing the leverage / ability of individual operators to hold large positions);
- (h) During times of extreme situations of shortages, the Commission may even take more stringent steps, viz., skipping trading in certain deliveries of the contract, closing the markets for a specified period or even closing out the contract, to overcome such emergency situations.

E. Economic functions of the futures markets

1.9 In a free market economy, futures trading performs two important economic functions, viz., price discovery and price risk management. Such trading in commodities is useful to all sectors of the economy. The forward prices give advance signals of an imbalance between demand and supply. This helps the government and the private sector with exposure to commodities and price volatility to make plans and arrangements in a shortage situation for timely imports, instead of having to rush in for such imports in a crisis-like situation when the prices are already high. This ensures availability of adequate supplies and averts spurt in prices. Similarly, in a situation of a bumper crop, the early price signals emitted by the futures market help the importers to defer or stagger their imports and exporters to plan exports, which protects the producers against

unremunerative prices. At the same time, it enables the importers to hedge their position against commitments made for import and exporters to hedge their export commitments. As a result, the export competitiveness of the country improves.

1.10 When enquired as to what difficulties are being faced by Forward Market Commission at present which would be overcome by enactment of the proposed Amendment Bill, 2010, the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) in a written note stated as under:-

- viii) The Present Act does not confer upon FMC, the market regulator, various powers required for effective regulation of these markets. That is why the Government had to confer most of its powers (except for recognition, withdrawal of recognition, notifying the commodities for prohibition/regulation (under section 17, 15 and 18) and supersession of the Board of Directors of an Exchange) to the Forward Markets Commission through delegation. The proposed Amendment Bill (FCR Amendment Bill 2010) seeks to provide FMC with **original powers** for effective regulation of the markets.
- ix) The penal Provisions in the present Act are inadequate for regulating the markets effectively. The proposed amendments seek to provide for imposition of financial penalty, after adjudication, for various contraventions, such as failure to furnish information, return, etc; failure by any person to enter into agreement with clients, failure to redress clients' grievances, insider trading, adoption of fraudulent and unfair trade practices, default in case of an intermediary and failure to comply with the directives of FMC. Depending on the gravity of the offences, the financial penalty could be as high as Rs 25 lakh for certain offences. As per the proposed provision, the FMC will have original powers to impose financial penalties upto maximum of Rs 25 lakh (for some offences like insider trading, unfair practices etc. the penalty has also being linked to the profits made out of such transactions, etc.), whereas as per the present provisions, only a penalty of Rs 1,000/- can be imposed, that too by the

competent court on conviction. No penalty can be imposed at present by the FMC directly on the members or their clients.

- x) The present Act does not provide for a statutory power for registration of members (brokers) and other intermediaries. The registration of the intermediaries is essential for their effective monitoring and surveillance by the FMC to ensure compliance with regulatory provisions.
- xi) The present Act does not provide for corporatization and demutualization of the existing Commodity Exchanges. The proposed amendments seek to provide for corporatization and demutualization of the Commodity Exchanges which will usher in separation of trading interests from ownership and management of Exchanges.
- xii) The present Act does not provide for an Appellate Authority. The proposed amendments seek to designate Securities Appellate Tribunal (SAT) as the Appellate Tribunal for the purposes of F.C(R) Act. The Amendment Bill provides for an appeal against the order of FMC and Adjudicating Officer before SAT and against the order of SAT before the Supreme Court.
- xiii) The present Act prohibits options in goods. The proposed amendment seeks to introduce options in goods. This will provide the farmers with a better and more easily manageable risk management tool. In options, farmers are not required to monitor the futures prices on a day-to-day basis, nor do they have to keep paying or receiving margins to/from the exchanges, till the contract is settled. Besides, they can protect themselves against a fall in the prices without sacrificing the benefit from any potential upside.
- xiv) Post-amendment, greater participation of banks will facilitate and accelerate their credit provisioning against forward sales by farmers as well as being aggregators for farmers' direct participation in forward trading.

1.11 The Act defines 'ready delivery contracts', 'forward contracts' and 'options' in goods.

1.12 Ready delivery contracts are contracts for supply of goods and payment thereof where both the delivery and payment is completed within 11 days from the date of the contract. Such contracts are outside the purview of the FCR Act.

1.13 Forward Contracts, on the other hand, are contracts for supply of goods and payment, where supply of goods or payment or both take place after 11 days from the date of contract or where delivery of goods is totally dispensed with, i.e., the contract is settled by payment of cash difference based on the movement in prices.

1.14 Forward contracts other than specific delivery contracts are what are generally known as 'futures contracts' though the Act does not specifically define the futures contracts. Such contracts can be performed either by delivery of goods and payment thereof or by entering into offsetting contracts and payment or receipt of amount based on the difference between the rate of entering into contract and the rate of offsetting contract. Futures contracts are usually standardized, contracts where the quantity, quality, date of maturity, place of delivery are all standardized and the parties to the contract only decide on the price and the number of units to be traded. Futures contracts are entered into through the Commodity Exchanges.

F. Objectives of the FC(R) Amendment Bill 2010

1.15 The main objectives of the FC(R) Amendment Bill 2010 are as follows:

- IV. Strengthening of the regulatory framework including enforcement and penal provisions for the commodity derivatives markets.
- V. Functional and Financial Autonomy for the market regulator, the Forward Markets Commission (FMC) to better regulate the commodity derivatives market.
- VI. Permitting new products, viz., options in the commodity derivative market which are more suitable for participants like farmers to cover their price-risks.

G. Important Amendments Proposed to the FC(R) Act 1952:

1.16 The Forward Contracts (Regulation) Amendment Bill, 2010, inter alia, seeks to make amendments to the Forward Contracts (Regulation) Act, 1952, in respect of the following:–

- (a) to redefine the expression “forward contract” so as to include therein “commodity derivative” and also to define new expressions such as “commodity derivative”, “corporatisation”, “demutualisation” and “intermediary” which have been used in the Bill;
- (b) to increase the maximum number of members of the Forward Markets Commission from four, as at present, to nine out of which at least three would be whole-time members besides the Chairman;
- (c) to confer power upon the Commission to levy fees;
- (d) to provide for constitution of a fund called the “Forward Markets Commission General Fund” to which all grants, fees and all sums received by the Commission except penalty shall be credited, and apply the funds for meeting its expenses;
- (e) to confer power upon the Central Government to issue directions to the Commission on matters of policy and to supersede it in certain extreme circumstances;
- (f) to make provisions for corporatisation and demutualisation of recognised associations in accordance with the scheme to be approved by the Commission;
- (g) to make provisions for registration of members and intermediaries;
- (h) to allow trading in options in goods and commodity derivatives;
- (i) to make provision for investigation, enforcement and penalty in case of contravention of the provisions of the Act;
- (j) to make provision for transfer of the duties and functions of a clearing house of an exchange to a clearing corporation;
- (k) to make provisions for exemption from payment of tax on wealth, income and profits or gains of the Commission; and
- (l) to make provision for appeals from the orders of the Forward Markets Commission and Adjudicating Officer to the Securities Appellate Tribunal for the purposes of the Act and from the order of the Securities Appellate Tribunal under

the Forward Contracts (Regulation) Act, 1952 to the Supreme Court;

- (m) to make consequential changes in the Securities and Exchange Board of India Act, 1992.

1.17 (1) Up-dation of existing definition and insertion of new definitions

The Amendment Bill proposes to modify some of the existing definitions and also insert some new definitions so as to make the provisions of the FCR Act more relevant and useful in tune with the changes in the commodity derivatives market in the recent years. It provides for the amendment of the definition of the expression “forward contract” so as to include therein “commodity derivative” and also insert new expressions such as “commodity derivative”, “corporatization”, “demutualization”, “intermediary” etc which have been used in the Bill.

(2) Strengthening of Forward Markets Commission

The Amendment Bill proposes to restructure and strengthen FMC. Accordingly, the following changes in the composition and functioning of FMC are proposed:

- Increase in the number of Members from 4 to 9 with at least three whole-time Members and Chairman.
- Provisions relating to term of office and conditions of service of Chairman and Members of the FMC and its Officers and employees.
- Provisions to confer power upon the Commission to recruit its Officers and employees so as to provide flexibility in recruiting experts and professionals belonging to commodity derivatives market.
- Provisions to provide for constitution of ‘FMC General Fund’ to which all grants, fees and all sums received by the FMC shall be credited except penalties and apply the funds for meeting the expenses of FMC. The FMC will also have the powers to levy fees.

(3) Enhancement of the powers of the Forward Markets Commission

The Bill proposes to enhance the powers of the FMC by devolving most of the existing powers of the Central Government on the FMC, such as:

- Powers relating to recognition, withdrawal of recognition.
- Power to supersede governing body of the recognized associations.

Besides the Bill also proposes to confer upon the FMC additional powers, such as the following:

- (j) to regulate the business of associations and intermediaries;
- (k) to call for information from agencies;
- (l) to protect the interests of market participants;
- (m) to promote and regulate self-regulatory organizations;
- (n) to prohibit fraudulent and unfair trade practices;
- (o) to promote investor education and training of intermediaries;
- (p) to prohibit insider trading;
- (q) to adjudicate and make Regulations; and
- (r) to investigate intermediary or person associated with the commodity derivatives market.

(4) Corporatisation and Demutualisation of the existing Commodity Exchanges

Provisions relating to corporatization and demutualization of the existing Commodity Exchanges in accordance with the scheme to be approved by the FMC, are proposed to be inserted on the lines of similar provisions contained in the Securities Contracts (Regulation) Act, 1956 (SCR Act).

(5) Provisions of Clearing Corporation

The Amendment Bill also proposes to make provision for Clearing Corporation to which all the clearing functions of the existing clearing houses of the Exchanges will be transferred in a time bound manner.

(6) Registration of Members and Intermediaries

The proposed Amendment Bill provides for registration of members and intermediaries associated with the commodity derivatives market. At present, there is no statutory provision for registration of brokers, sub-brokers/authorised representatives and other intermediaries with the FMC. The registration of the intermediaries will facilitate more effective monitoring of these intermediaries by the FMC. Provision relating to suspension or cancellation of certificate of registration has also been provided in the Bill.

(7) Enhancement of penal provisions

The existing penalty provisions in the FCR Act are grossly inadequate. In order to make the penalty provisions more effective and deterrent, the existing monetary limit of the penalty is proposed to be enhanced to a minimum of “rupees twenty five thousand” as against the existing provision of “rupees one thousand only”. New provisions are proposed to be inserted to provide for penalty, to be imposed after adjudication, of up to “rupees twenty five lakhs” covering contraventions, such as failure to furnish information, return etc; failure by any person to enter into an agreement with clients; failure to redress clients’ grievances; insider trading, fraudulent and unfair trade practices; default in case of an intermediary; and failure to comply with directives of the FMC.

(8) Provisions relating to the Appellate Tribunal and appeal to the Supreme Court

The Amendment Bill proposes to make provision for designating the Securities Appellate Tribunal (SAT) as the Appellate Tribunal for the purposes of FCR Act. The

Amendment Bill provides for an appeal from the order of FMC and Adjudicating Officer to SAT and from SAT to Supreme Court under the FCR Act.

(9) Permitting trading in options in goods or commodity derivatives

Trading in options in goods is banned under the existing provisions of the FCR Act. The Amendment Bill proposes to make provisions for allowing trading in options in goods or commodity derivatives and for this purpose, Section 19 of the FCR Act is proposed to be amended. This will provide a new facility for risk management to market participants and other stakeholders, including farmers.

(10) Other provisions

The Amendment Bill also provides for certain other provisions, such as the following:

- c. Exemption of FMC from payment of tax on wealth, income and profits or gains on the lines of SEBI.
- d. Conferring powers upon the Central Government to issue directions on matters of policy to FMC and also to supersede it if so warranted.

H. Constitutional & Legal Frame Work

1.18 The subject “stock exchanges and futures markets” is under the Union List in Schedule VII of the Constitution of India, whereas the “Trade and Commerce” and “Agriculture” are the subjects within the jurisdiction of States. Therefore, the regulators of commodities Exchanges do not have jurisdiction over spot Markets even in non-Agricultural Commodities. Asked whether the regulator of Commodities markets should have a mandate to regulate the spot markets in Commodities and the steps taken to resolve the issue, the Committee was informed by the Ministry that the proposed Bill does not seek to bring spot market and future market under the same regulatory framework. The Bill deals only with commodity derivatives contracts. However, since the spot markets and derivatives markets are closely linked, it is desirable that both the spot markets and derivatives market are under the purview of the same regulator.

1.19 The objective and functioning of futures and spot market are completely different. However, some of the national commodity Exchanges are taking initiatives to set up national level electronic Exchanges for spot transactions for agricultural commodities. Ideally, there should be convergence of spot and futures markets under a uniform regulatory framework for the optimization of the benefits of these reforms.

1.20 Thus, the legislation to be enacted by the Parliament for bringing spot trading within the purview of the Commodity Futures Regulator can cover both inter-state trading as well as intra-state spot trading in the aforesaid commodities. A Bill to provide for regulation of electronic spot trading in commodities as aforesaid is under consideration of the Department of Consumer Affairs.

1.21 Keeping in view the enormous importance of the Bill, especially for the farming community, the Committee sought the views/suggestions from institutions/individuals/stakeholders etc. on the provisions of the Bill through letters and press release which were published in leading newspapers. The Committee also held discussions with the State Governments of Rajasthan, Gujarat, Andhra Pradesh, Maharashtra, Tamil Nadu and West Bengal on the various provisions of the Bill and took oral evidence of the representatives of the Ministry of Consumer Affairs, Food & Public Distribution (Department of Consumer Affairs) in this regard. The Committee considered the views/suggestions furnished by various institutions /individuals and took evidence to share the views of the representatives of the following Institutions/Organizations :-

- (i) Confederation of Indian Industry (CII),
- (ii) Federation of Indian Chambers of Commerce and Industry (FICCI),
- (iii) Sarthak Advocates and Solicitors and
- (iv) PRS Legislative Research.

1.22 The important points/suggestions brought out in the written Memoranda as well as during Oral evidence are given as under:-

Confederation of Indian Industry (CII) in their Memorandum submitted to the Committee stated that the Amendment bill proposes to permit options in commodities. Over a period of time, it has also been realized that options are better suited to Indian farmers than futures as explained further in their note. The FCRA Amendment Bill will further help the farmers and consumers by making available more convenient instruments such as options, derivatives on weather etc., these instruments are particularly useful for farmers and others who are risk averse. Options would prove very helpful to the farmers because it would give them Price protection down side and full opportunity to benefit from rising price. By entering into an option contracts, the farmers will get a right to sell but would not be bound to sell if the price falls. It will improve the quality of price discovery and price risk management through more effective regulation. They have also stated that one of the reasons for farmers to sell their produce at a lower price than the optimum price is insufficient price information. In order to help the farmers to get benefit from the futures market, it is imperative that futures prices are disseminated at the farm-gate. FMC and the national commodity exchanges hope to achieve this through the implementation of the price dissemination project.

Further, introduction of Newer Products/instruments such as option is also supported by **Ace Derivatives and Commodity Exchange Ltd.** as in the Memorandum submitted by them, it has been stated that with a small investment outlay, the farmers/Constituents would be able to hedge the price risk on their produce very efficiently. Availability of Option would give a simpler alternative to the farmers.

India Pepper and Spice Trade Association (IPSTA) in their Memorandum submitted to the Committee welcomed the passage of Bill since it would go a long way in the overall development of the future trade. They have further supported the substitution of the new sections viz. 12 A & 12 B **for option** which will give impetus for trading as well as reduce the risk involved in it.

In a Memorandum submitted by **Kerala Agricultural University** it has been stated that Future Contracts are traded in the commodity bourses in India. Further

contracts have the inherent weakness that they have unlimited potential for profit. It is high time that the **options** must be made available to the players in the commodity value chain to limit their cost of transaction. The introduction will also enhance greater participation by the stakeholders and infuse greater liquidity in the market.

Confederation of Indian Industry have also stated that the commodity futures Market has witnessed significant growth and its complexities have increased. It is imperative to increase the number of members including whole-time members of FMC to strengthen the regulatory framework of this market. Increase in the number of members of the Commission would enable FMC to involve professionals from areas relevant to commodity and financial market for development as well as regulation. Effective regulation is required to ensure that the markets are free from any kind of manipulation which leads to distorted price signals. They have also stated that for strengthening of FMC as a regulator and for effective regulations, FMC should have the powers to constitute and expend out of the 'FMC-General Fund' in order to give it adequate financial autonomy. Financial autonomy, on the lines of SEBI, is required by FMC for quicker and more effective implementation of its regulations, besides focusing on developmental activities such as awareness, dissemination of price information, connecting stakeholders to the markets through innovative models which are essential for delivering the benefits at the grass roots level. In the present commodity market, FMC needs to employ modern technological tools and professionals to meet the regulatory challenges. In order to do that, FMC needs to have independent sources of revenue by having General Fund and charge fee from the brokers. Therefore, they are of the view that such powers should be given to FMC. Since FMC does not have adequate financial and operational autonomy at present, it has to depend on the time-consuming Ministry's approval for taking regulatory decisions. FMC is highly short-staffed and not able to recruit appropriate personnel mainly due to non-availability of trained personnel with specific qualifications and domain knowledge. Further, FMC can seek staff only on deputation basis from the government departments/semi-government agencies, from where either the relevant manpower is not available or they are not willing to join on short-term deputations/due to lower remuneration available in FMC vis-

à-vis the market opportunities available for such personnel outside. Without financial autonomy, it is not able to upgrade its human and technical resources for effective regulation of the market.

It is also stated that the administrative and financial autonomy envisaged in the Amendment Bill will facilitate FMC in raising its own financial resources and induction of adequate skilled manpower to strengthen its regulatory oversight. Currently, efforts to take the benefits of Commodity Futures Market to the small producers are being made by cooperative federations such as NAFED, HAFED, Rubber Producers' Cooperatives, etc. Besides, FMC has also been trying to make the market more inclusive through aggregating small producers. With financial autonomy and operational independence, FMC will be able to undertake such market development efforts in a more effective manner. With financial autonomy, the ability of FMC to undertake such market development efforts will be enhanced. Besides, farmers will also be able to use options contracts to hedge their prices in simpler ways. Thus, by using futures prices at the time of selling the farmer can maximize his returns. The benefits of futures market can percolate to farmers if price discovery is proper and the prices so discovered are disseminated to farmers in such a way that farmers have easy access to such prices.

The **PHD Chamber of Commerce and Industry** in their memorandum have also stated that financial dependence on Govt. currently limits FMC's investment in infrastructure, technology, apart from human resources, which in turn adversely affects the quality of regulation. Regulatory autonomy is also needed for enforcing decision in a pro-active and quick manner. Hence, any element of regulatory failure would be perceived as a failure of the future market, which would dissuade participants in the real sector from availing this price risk instruments. Hence, there is an immediate requirements for the regulator to build its capacities and enhance its infrastructure for proper development and regulation of future market. They have also favoured new hedging products-Options and Weather derivatives, which can be tailored to the risk appetite of farmers to hedge against particular risks.

Geogit Credit (P) Ltd-Non Banking finance company registered with the RBI as an NBFC-ND in their Memorandum has stated that the enactment of the warehousing (Development and Regulation) Act of 2007 and its becoming law since October 2010 is a major step in the direction of improving food security and making available necessary funding to farmers. They have also stated that Commodity Futures Market helps for the larger participation by enabling farmers who have stock to avail finance and obviate distress sales.

The Government of Rajasthan suggested that the edible commodities which are surplus in production should only be allowed for future trading. Future trading should be based upon the actual delivery, this will help to stabilize the prices during the year and minimize false scarcity of some commodity. In place of transaction of loss/ profit, there must be actual transaction of goods/ commodity between parties (order wise) in every forward contract. In the present system forward trade is being executed by NCDX and MCX but government does not have much to control or to regulate them. Although by this Amendment Bill, government is likely to control to a greater extent, as commission is being constituted including the members dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance and also one member from RBI.

Participation of Banks, Insurance Company and Mutual Funds

1.23 When asked by the Committee about the implication if the Government open to the financial players like Banks, Insurance Company and Mutual Funds, etc. the Department stated that in their written reply that active participation will also promote greater credit flow to farmers for post-harvest marketing.

During evidence, when asked by the Committee about participation of financial players like Banks, Insurance Companies and Mutual funds in FMC, the Secretary, Department of Consumer Affairs has stated that there is no legal restriction or any bar on Banks, Financial Institutions and Mutual Funds, etc. to be a Member of FMC so far Forward Control Regulation Act is concerned. As per the Act, these financial players can become Member and very well be associated in the activities of FMC. These

Financial Institutions have their own regulators/controllers and they just have to take permission from their controllers/regulators who will decide on the pros and cons of the investment to be made by these Financial Institutions in s, before they are given permission to join/invest in Future Markets.

1.24 The Memorandum submitted by **Department of Financial Studies, University of Delhi stated** that permitting Institutional players like Banks and Cooperative will not only provide more liquidity to the market but also provide better price-discovery.

During the study visit undertaken by the Committee, the Committee heard the views of some of the State Governments. The views expressed by the representatives of the State Governments before the Committee and through subsequent written communications are as under:-

The Government of Maharashtra were of the view that the farmers may not get much benefit out of the Bill. However, the State Government in general supported the early passing of the Bill in Parliament while expressing the desire that certain issues such as representatives of State Governments be nominated on the Forward Market Commission (FMC) by rotation, the number of days of spot trading be increased to 30 days from 11 days at present, stock limit imposed on direct marketers be lifted in the interest of the farmers etc.

The Government of Tamil Nadu were unhappy that the State Governments were not consulted before the Bill was introduced in Parliament. They were of the view that the State Governments should have been given the opportunity to express their views while formulating the Bill. The State Government also felt that there was lack of awareness among the farmers and expressed the apprehension that too much of speculation could harm the farmers interest. The State Government further desired that a regular consultation mechanism between the FMC and State Governments need to be put in place.

I. Benefits to the farmers

1.25 When the Committee desired to know as to what type of risks are faced by farmers in the pre and post harvest seasons and how will the Bill help the farmers to overcome those risks and to benefit them from the future markets, the Department of Consumer Affairs stated as under:-

1.26 Farmers and growers benefit through the price signals emitted by the futures markets even if they may not directly participate in the futures market. The futures markets lead to reduction in the amplitude of seasonal price variations and help the farmer realize somewhat better price at the time of harvest or to postpone the sale of his produce, in part or in full, thereby moderating market arrivals as well as the ability of the trade to monopolise price setting. This indirectly benefits consumers as well. This also helps the farmer in planning his cultivation in advance as well as to determine the kind of crop which he would prefer to raise, by taking advantage of the advance information of the future price trends of alternate crops, and probable supply and demand of various commodities in advance. By providing the manufacturers and the bulk consumers a mechanism for covering price-risks, the futures market induces them to pay higher price to the producers, as the need to pass on the price-risk to farmers is obviated. The manufacturers are able to hedge their requirement of the raw materials as also their finished products. This results in greater competition in the market and ensure viability of the manufacturing units.

1.27 During briefing, when asked how does the Department create awareness among farmers, the Chairman, Forward Market Commission stated that to create awareness among farmers various schemes for awareness programmes have been sanctioned. Last year, they have conducted approximately 500 awareness programmes and this year there is plan for conducting about six hundred such programmes.

1.28 The Committee would deal with various provisions of the Bill which need comments, in the subsequent Chapters.

CHAPTER II

CLAUSE 3 — Amendment of the definition of Commodity Derivative

The Clause (3) proposes to amend Section 2 of the Forward Commission Regulation Act, 1952 containing various definitions which are as under:-

Definition In this Act, unless the context otherwise requires, -

- (a) **“association”** means any body of individuals whether incorporated or not, constituted for the purpose of regulating and controlling the business of the sale or purchase of any goods;
- (b) **“commission”** means the Forward Markets Commission established under sec. 3;
- (c) **“forward contract”** means a contract for the delivery of goods [2][* * *] and which is not a ready delivery contract;
- (d) **“goods”** means every kind of movable property other than actionable claims, money and securities;
- (e) **“Government security”** means a Government security as defined in the Public Debt Act, 1944 (XVIII OF 1944);
- (f) **“non-transferable specific delivery contract”** means a specific delivery contract, the rights or liabilities under which or under any delivery order, railway receipt, bill of lading, warehouse receipt or any other documents of title relating thereto are not transferable;
- (g) **“option in goods”** means an agreement, by whatever name called, for the purchase or sale of a right to buy or sell, or a right to buy and sell, goods in future and includes a teji, a mandi, a teji-mandi, a galli, a put, a call or a put, and call in goods;
- (h) **“prescribed”** means prescribed by rules made under this Act;
- (i) **“ready delivery contract”** means a contract which provides for the delivery of goods and the payment of a price therefor, either immediately or

within such period not exceeding eleven days after the date of the contract and subject to such conditions as the Central Government may, by notification in the official Gazette, specify in respect of any goods, the period under such contract not being capable of extension by the mutual consent of the parties thereto or otherwise;

^{2[3]} [Provided that where any such contract is performed either wholly or in part:-

- (1) by tendering of the documents of title to the goods covered by the contract by any party thereto (not being a commission agent or a bank) who has acquired ownership of the said documents by purchase, exchange or otherwise, to any other person (including a commission agent but not including a bank); or
- (2) by the realisation of any sum of money being the difference between the contract rate and the settlement rate or clearing rate or the rate of any offsetting contract: or
- (3) by any other means whatsoever, and as a result of which the actual tendering of the goods covered by the contract or payment of the full-price therefor is dispensed with then such contract shall not be deemed to be a ready delivery contract.

Explanation. - For the purpose of this clause. -

- (i) **“bank”** includes any banking company as defined in the Banking Regulation Act, 1949 (110 of 1949), a co-operative bank as defined in the Reserve Bank of India Act, 1934 (2 of 1934), the State Bank of India and any of its subsidiaries and any corresponding new bank constituted under Sec. 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);
- (ii) **“commission agent”** means a person who, in the ordinary course of business, makes contract for the sale or purchase of goods for others for a remuneration (whether known as commission or otherwise) which is determined in the contract itself or determinable from the terms of the contract in either case, only with reference to the quantity of goods or to the price therefor as stipulated in the contract];

[4](j) **“recognised association”** means an association to which recognition for the time being has been granted by the Central Government under Sec. 6 in respect of goods or classes of goods specified in such recognition;

(jj) **“registered association”** means an association to which for the time being a certificate of registration has been granted by the Commission under Sec.14-B];

(k) **“rules”** with reference to the rules relating in general to the constitution and management of an association, includes in the case of an incorporated association, its Memorandum and articles of association;

(l) **“securities”** includes shares, scripts, stocks, bonds, debentures, debenture-stocks, or other marketable securities of a like nature in or of any incorporated company or other body corporate and also government securities:

(m) **“specific delivery contract”** means a forward contract which provides for the actual delivery of specific qualities or types of goods during a specified future period at a price fixed thereby or to be fixed in the manner thereby agreed and in which the names of both the buyer and the seller are mentioned:

(n) **“transferable specific delivery contract”** means specific delivery contract which is not a non-transferable specific delivery contract [5][and which is subject to such conditions relating to its transferability as the Central Government may by notification in the official Gazette, specify in this behalf.

2.2 The Government have proposed to amend few existing definitions (e.g. “association”, “forward contract”, “ready delivery contract”, “specific delivery contract” and “securities”) and addition of various definitions (e.g “Chairman”, “commodity derivative”, “corporatization”, “demutualization”, “Fund”, “intermediary”, “member”, “notification” and “scheme”).

2.3 **Sarthak Advocates & Solicitor** in their written memorandum has suggested to include 'option in good' in the definition of Commodity Derivatives.

In this context, the Secretary, Department of Consumer Affairs while deposing before the Committee stated as under:-

"options in goods are option in commodity derivatives. They are of the same generic term, commodity derivatives includes option in goods".

CHAPTER III

(A) CLAUSE 4 — ESTABLISHMENT & CONSTITUTION OF THE FORWARD MARKETS COMMISSION

The Clause 4 proposes to amend Section 3 of the Forward Contracts (Regulation) Act, 1952 which prescribes the procedure for Establishment and constitution of the Forward Markets Commission as under:—

1. The Central Government may, by notification in the Official Gazette, establish a Commission to be called the Forward Markets Commission for the purpose of exercising such functions and discharging such duties as may be assigned to the Commission by or under this Act.
2. The Commission shall consist of not less than two, but not exceeding four, members appointed by the Central Government one of them being nominated by the Central Government to be the Chairman thereof; and the Chairman and the other member or members shall be either whole-time as the Central Government may direct:

Provided that the members to be so appointed shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commerce or commodity markets, or in administration or who have special knowledge or practical experience in any matter which renders them suitable for appointment on the commission.

3. No person shall be qualified for appointment as, or for continuing to be, a member of the Commission if he has, directly or indirectly, any such financial or other interest as is likely to effect prejudicially his functions as a member of the commission, and every member shall, whenever required by the Central

Government so do, furnish to it such information as it may require for the purpose of securing compliance with the provisions of this sub-section.

4. No member of the Commission shall hold office for a period of more than three years from the date of his appointment, and a member relinquishing his office on the expiry of his term shall be eligible for re-appointment.

5. The other terms and conditions of service of members of the Commission shall be such as may be prescribed.

3.2 The Government has proposed to delete sub sections (2), (3), (4) and (5) of Section 3 of the Principal Act and has proposed to substitute the following sub-section:—

“(2) The Commission shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power subject to the provisions of this Act, to acquire hold and dispose of property, both moveable and immovable, and to contract, and shall, by the said name, sue or be sued.”

Ministry in their written reply has informed that currently the Commodity market regulator functions as an attached office of the Department of Consumer Affairs.

Confederation of Indian Industry (CII) in their memorandum suggested that to re-structure and strengthen the FMC and confer upon it more statutory powers on the lines of SEBI is indeed a right step. It will enable FMC to play the role of an effective and strong regulator by ensuring that the commodity derivatives market has a healthy growth and the interests of various stakeholders in the commodity economy is served. With the help of a stronger regulator, a well regulated commodity derivatives market will attract participation from larger number of stakeholders, who will find this market a cheap and effective medium for hedging their risks. This will result in more accurate price signals. Thus, a strong regulator would also help the economy to prevent and manage potential crisis.

Planning Commission in their written reply has suggested that keeping in view the specialized nature of activity performed by FMC, there is a need to impart more autonomy to FMC to recruit professionals having familiarity with the commodities derivatives market (they need not necessarily belong to these markets). It may, therefore, be desirable to provide such flexibility to FMC.

Planning Commission has also suggested that there is need to upgrade the legal and regulatory system whereby FMC can discharge its role more effectively on the lines of similar measures taken for Securities and Exchange Board of India. Since the quality of regulation of markets plays an important role in reducing information asymmetry, promoting confidence among and protecting the participants from manipulative practices, amendments to FCR Act are deemed necessary.

Department of Financial Studies, University of Delhi in their Memorandum submitted to the Committee has suggested that the proposed restructuring of FMC shall provide the necessary autonomy and requisite teeth for effective regulation of the commodities market and shall go a long way in making them more efficient. It will help in speeding up the process of regulation and monitoring and make regulator more responsive to changing environment. With ever increasing integration of Indian Commodities Market with global markets, it is essential that our markets get regulatory environment that match with global standards and approaches.

Shetkari Sangathana in their Memorandum submitted to the Committee have appreciated the Government and the Ministry for making the Forward Market Commission (FMC) the kind of a regulator it is today but wish the regulator to have the strength to act independently and efficiently as an autonomous body with powers that are effective, which is essential for the further development of the Commodity Futures Market: to make it more and more useful to the real economy and small/marginal farmers.

In a Memorandum submitted by Kerala Agricultural University, it has been stated that for efficient functioning of a regulator like SEBI is *sine qua non*.

Ace Derivatives and Commodity Exchange Ltd. in its Memorandum submitted to the Committee have stated that legal framework under which Forward Market Commission, the Regulator, operates is grossly inadequate to enable it to continue to discharge its role as an effective regulator in the expanding commodities market place and therefore it is the need of the hour that underlying legal framework of the Commission be suitably strengthened at the earliest possible. They have also stated that FMC can contribute to the healthy development of Indian Commodity Futures Market on par with the best in the world.

During the study visit of the Committee to Mumbai undertaken in November, 2011, the representatives of Ace Derivatives and Commodity Exchange Ltd., in reply to a query informed that the current regulatory framework does not provide adequate financial and operational autonomy. As per the current practice, FMC has to solely depend on the funds from the Central Government and administratively FMC functions as an extended arm of the Central Government. Due to lack of financial autonomy, FMC is unable to hire talent from the market and most of the senior staff is on deputation from different ministries which affects its overall efficiency. When the Committee pointed out that the Government proposed to amend sub Section 2,3,4 and 5 of Section 3 of the Act by substituting the new Section 3(2) to give FMC financial and administrative autonomy to meet the growing challenges in the future and enquired how the amendment of the Sub Section, will grant financial and administrative autonomy to FMC, the Committee were informed that with the proposed amendments in the bill, FMC would be able to have adequate manpower with requisite skill sets. Detailed provisions on appointment, terms of office, meetings, etc. entailed in the amendments would further increase the operational efficiency of the regulator. With the amendment Bill, constitution of a separate fund would provide the much needed financial autonomy to FMC.

The Multi Commodity Exchange of India Ltd. in this context stated that the size, growth and development mandate of the futures market warrant an autonomous and strong regulator. The regulator has to possess operational autonomy in order to become proactive in enforcing regulations. At the same time, financial autonomy of the regulator will improve its outreach efforts to further deepen the market. Financial dependence on government currently limits FMC's investment in Infrastructure, technology, apart from human resources, which in turn adversely affects the quality of regulation. When enquired whether the FMC be independent of Government like SEBI or not, representatives of the Bombay Commodity Exchange during interaction with the Committee informed that from operational point of view FMC should function independently. This will enable them to take all administrative decisions without referring the same to the Ministry, at the earliest.

3.3 During evidence, when enquired why autonomy is important for the market of regulator, the Representative of CII stated as under:-

"Autonomy is needed, because regulator needs domain specialization. They also need talent to be attracted from the market to really make it to this size. If you compare the nearest closure to stock exchange, current regulator, as department, has got roughly under 100 staff, whereas SEBI has 600 staff to control this. There are eight national exchanges; five are already live and three are going to come; whereas in stock exchange, there are three national level and few others."

National Commodity and Derivatives Exchange Ltd., Mumbai, in their written submission has also stated that since FMC is proposed to be an independent regulatory body, it will have to recruit professionals suited to its requirements, on a regular basis. The process of recruitment through UPSC is long and in the present dynamic commodity market, FMC may not be able to afford delays. Further, FMC could be in a better position to match the required skill and remuneration of the candidates. In the present commodity market, FMC needs to employ modern technological tools and professionals to meet the regulatory challenges. In order to do that, FMC need to have

independent sources of revenue by having General Fund and powers to charge fee from the brokers. Therefore, they are of the view that such powers should be given to FMC and the proposed amendments will achieve the object of making FMC, an independent statutory body similar to SEBI.

In reply to a query as to why it was necessary to grant financial and functional autonomy to FMC, the Secretary, Department of Consumer Affairs during evidence stated that :-

"if functioning of the Commission is not up to the mark, the Government will have full right to issue instructions and whatever rules are made by the Commission will be subjected to the approval of the Government."

The Chairman, FMC, has further supplemented as under:-

"We feel that a strong and autonomous regulator is essential for the since the market has grown manifold. If regulator is strong, the market participants will work according to rules".

(B) CLAUSE 5 – MANAGEMENT OF COMMISSION

3.5 Section 3 of the Forward Contract (Regulation) Act, 1952 deals with the establishment and constitution of the Forward Market Commission. Government have proposed to insert new Sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H through the FC(R) Amendment Bill, 2010. It is proposed that after section 3 of the principal Act, the following sections shall be inserted, namely:—

“3A (1) The Commission shall consist of the following members, namely:—

(a) a Chairman;

(b) two members from amongst the officials of the Ministries or Departments of the Central Government dealing with Consumer Affairs, Commodity Derivatives, Food and Public Distribution, Agriculture or Finance;

(c) one member from amongst the officials of the Reserve Bank;

(d) five other members of whom at least three shall be the whole-time members.

(2) The general superintendence, direction and management of the affairs of the Commission shall vest in a board of members, which may exercise all powers and do all acts and things which may be exercised or done by the Commission.

(3) Save as otherwise determined, by regulations, the Chairman shall have powers of general superintendence and direction of the affairs of the Commission and may also exercise all powers and do all the acts and things which may be exercised or done by the Commission.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the Reserve Bank, respectively.

(5) The Chairman and other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to commodity markets or who have special knowledge or experience of commerce or economics or law or finance or in administration or have practical experience in any matter which renders them suitable for appointment on the Commission.

3.6 In Clause 5, the Government has also proposed to insert a new Clause 3C which provides that the Central Government shall remove a member from office if he—

(a) is, or at any time has been, adjudicated as insolvent;

(b) is of unsound mind and stands so declared by a competent court;

(c) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude;

(d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest;

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

(C) CLAUSE 9 — GRANTS BY CENTRAL GOVERNMENT ACCOUNTS AND AUDIT

3.10 Clause 9 of the Bill proposes to insert a new Chapter IIA after Chapter II of the Principal Act. Sub-clause 4F(4) of Chapter IIA of the Bill prescribes as under:—

“(4) The accounts of the Commission as certified by the Comptroller and Auditor General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.”

(D) CLAUSE 21 — REGISTRATION OF MEMBERS AND INTERMEDIARIES

3.12 Section 14A of the Forward Contract (Regulation) Act, 1952 deals with procedure regarding certificate of registration to be obtained by all associations. The Government have proposed to delete Chapter IIIA (Section 14A) from the Principal Act and have suggested to substitute a new Chapter IIIA (Section 14A) namely, “Registration of Members and Intermediaries”. As per sub-section (3) of Section 14A, no foreign participant or foreign intermediary associated with the commodity derivatives market, as the Commission may, by notification in this behalf, specify, shall deal in forward contract or option in goods or option in commodity derivative except under and in accordance with the conditions of a certificate of registration obtained from the Commission in accordance with the regulations made under this Act.

3.13 Provided that a foreign participant or foreign intermediary dealing in forward contract or option in goods or option in commodity derivative immediately before the commencement of this Act, for which no certificate of registration was required prior to such commencement, may continue to deal in forward contract or option in goods until such time as rules may be made by the Central Government for such dealings or in case no such rules have been made until permitted as such by the Commission by notification.

3.14 The Amendment Bill also proposes to replace chapter –III A of the Act so as to provide for mandatory registration of members and intermediaries. This empowers the FMC to directly regulate the members/intermediaries, rather than leaving action on trade abuses, manipulation etc. of the members/intermediaries to the exchanges to the Economic offices wing of the respective State Law & Orders maintenance mechanism. Compulsory reservation of all market participant will restrict entry of undesirable entities into the commodity derivatives market.

CII in their Memorandum has stated that the Amendment Bill proposes to make registration of members of exchanges and other intermediaries mandatory. It also proposes to replace Chapter IIIA of the Act so as to provide for mandatory registration of members and intermediaries, instead of that of associations. The registration of intermediaries/members is subjected to the conditions stipulated in the certificate of registration. Presently, FMC does not have any statutory power for registration of members and other intermediaries and thus, does not have any direct power to penalise the wrongdoer. With the passing of the Act the members and other intermediaries will be regulated by FMC. Provision of registration of members and other intermediaries by FMC would empower the FMC to directly regulate the members/intermediaries, rather than leaving action on trade-abuses, manipulations etc. of the members/intermediaries to the Exchanges or to the State police authorities. Memorandum also states that this proposal is desirable in public interest as it will help bring about greater transparency and increase the confidence of market participants in the market. Besides, these are

normal regulatory processes which are necessary for proper regulation of parties involved in the commodity market.

PHD Chamber of Commerce and Industry in their Memorandum submitted to the Committee has suggested that mandatory registration of intermediaries and members with the FMC would lead to greater transparency and increased confidence of market participants in the functioning of the commodity derivatives market. Compulsory registration of all market participants will restrict entry of undesirable entities into the commodity derivatives market, timely detection of unfair trade practices and levy of deterrent penalty by an empowered regulator would go a long way in improving market practices.

(E) CLAUSE 25 AND 26 - PENALTIES AND PROCEDURE

3.16 Sub-Section (i) and (ii) of Section 20(e) states that any person who enters into any forward contract or any option in goods in contravention of any of the provisions contained in sub-section (1) or subsection (3A) or sub-section (4) of section 15, section 17 or section 19, shall, on conviction, be punishable—

(i) for a first offence, with imprisonment which may extent to one year, or with a fine of not less than one thousand rupees, or with both;

(ii) for a second or subsequent offence under clause(d) or under clause(e) [other than an offence in respect of a contravention of the provisions of sub-section (4) of section 15], with imprisonment which may extend to one year and also with fine: provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, the imprisonment shall be not be less than one month and the fine shall be not less than one thousand rupees.]

3.17 The Government has proposed the following amendments in Section 20(e) (i) and (ii) of the principal Act;—

(A) in clause(i), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted;

(B) in clause(ii),—

(i) for the words, brackets and letter “under clause (d)”, the words, brackets and letters “under clause (d) or under clause (da)” shall be substituted;

(ii) for the words “one thousand rupees”, the words “twenty five thousand rupees” shall be substituted.

3.18 Similarly in section 21(h) (i) and (ii) of the principal Act the Government has proposed as under,—

After the words “shall, on conviction, be punishable—” occurring below clause (h), in clauses (i) and (ii), for the words “one thousand rupees”, the words “twenty-five thousand rupees but which may extend to twenty-five lakh rupees” shall be substituted.

3.19 The Confederation of Indian Industry (CII) in their written reply has stated that market has grown in volume and complexity since the FCRA, 1952 was enacted, there is a need to enhance the penal provisions too. The amendment bill proposes to empower FMC to investigate and punish any person resorting to insider trading. The proposed financial penalties are quite deterrent. Forward Market Commission shall have to recruit efficient professionals and modern technology to check and investigate any untoward movement of prices and check any manipulation and insider trading. As per the proposed provision, FMC will have original powers to impose financial penalties up to a maximum of Rs. 25 lakh (for some offences such as insider trading, unfair practices etc. The penalty is also being linked to the profits made from such transactions). This

is a welcome change from present provisions under which, a penalty of only Rs. 1,000/- can be imposed, that too through court orders. Besides, the enhanced amounts are on the line of penal provisions in SEBI Act (Section 15A to 15HB). It is further stated that the authority while imposing such penalties has to keep in mind the profits earned by the violator by the acts of violations. Amounts of penalties have been reasonably deterrent in security market.

3.20 Confederation of Indian Industry (CII) has also stated that passage of Bill will lead to effective monetary penalty structure for prevention of contravention, such as failure to furnish information, return etc., failure by one person to enter into agreement with client, failure to redress client grievances.

3.21 During the recent study visit of the Committee when enquired whether it would be desirable not to impose such a stiff penalty for the initial period of two three years, the representatives of Ace Derivative and Commodity Exchange Ltd. replied that FMC has been regulating the Commodity Futures Market for the last few years and is now well versed in regulating the behavior of market intermediaries. FMC should be empowered to impose stiff penalties right from the development stage of the market such that undesirable intermediary behavior is snubbed and prevented rather than cured once established. It was stated by them that they supported the view that the penalty be imposed from day one.

3.22 The representatives of Indian Commodity Exchange in their submission has suggested that the purpose of penalty is to act as a deterrent and prevent deviant behavior. The purpose of a penalty is not to kill a business. Principal of natural justice requires that punishment be commensurate with the offence. They, therefore, favored a maximum penalty of Rs.10 lakhs. They felt that imposition of penalty should not be held in abeyance for the initial two to three years as it sends a wrong signal regarding regulators' seriousness in enforcing the rules.

(F) CLAUSE 27 — INSIDER TRADING

3.24 Clause 27 – this Clause proposes to substitute section 21A of the Forward Contracts (Regulation) Act, 1952.

3.25 The Government has now proposed to insert new Sections 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21I, 21J, 21 K, in place of Section 21A of the Principal Act.

3.26 Proposed Section 21D states if any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in forward contract or option in goods or option in commodity derivative on any association on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any forward contract or option in goods or option in commodity derivative on the basis of unpublished price sensitive information, shall be liable to a penalty of twenty-five lakh rupees or three times the amount of profits made out of insider trading, whichever is higher.

3.27 Section 21E. If any person indulges in fraudulent and unfair trade practices relating to forward contract or option in goods or option in commodity derivative, he shall be liable to a penalty of twenty five lakh rupees or three times the amount of profits made out of such practices, whichever is higher.

3.28 When enquired as to what type of activities are considered as "Fraudulent and Unfair trade practices", the Department of Consumer Affairs stated in their written reply that It is not practicable to exhaustively explain the term "fraudulent and Unfair Trade practices" in the Act itself to ensure that all unscrupulous market participants are booked under the Act and penalty imposed. Such practices and conduct can vary from case to case and from time to time. Therefore, it is necessary that the term needs to be specified in detail which may also require expansion of its scope in the Regulations.

(G) CLAUSE 30 — INVESTIGATION

3.30 The Government have proposed that after Section 22B of the Principal Act, Section 22C (1) shall be inserted as under:-

“Where the Commission has reasonable grounds to believe that—

(a) the transactions in forward contracts or option in goods or option in commodity derivative are being dealt with in a manner detrimental to the commodity market or person associated with the commodity market; or

(b) any intermediary or any person associated with the commodities market has violated any of the provisions of this Act or the rules or regulations made or directions issued by the Commission thereunder,

It may, at any time by order in writing, direct any person (hereinafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or person associated with the commodities market and to report thereon the Commission."

3.31 During evidence, the Committee enquired whether any qualification has been prescribed for the investigating authority, the representative of the Department of Consumer Affairs stated that **Appointment of Investigating Authority under the**

proposed section 22C(1) is an operational issue. Qualifications for appointment of investigating authority will be included in the Rules to be made by the Government.

(H) CLAUSE 33 — APPEAL TO APPELLATE TRIBUNAL

3.33 The Government has proposed that after Chapter V of the Principal Act, a new Chapter VA may be inserted as under:—

Chapter VA

24B. (1) Save as provided in sub-section (2), any persons aggrieved on or after the commencement of the Forward Contracts (Regulation) Amendment Act, 2006, or by an order of the Commission made, or the rules or regulations made thereunder or by an order made by an adjudicating officer under this Act may prefer an appeal to the Appellate Tribunal having jurisdiction in the matter.

(2) The Central Government shall specify, by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

(3) No appeal shall lie to the Appellate Tribunal from an order made by the Commission or an adjudicated officer with the consent of the parties.

(4) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Chairman of the Commission is received by and it shall be in such form and be accompanied by such fee as may be prescribed; Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within that period.

3.34 The Government has proposed *vide* Clause 3 of the Bill that the Appellate Tribunal shall be established under sub-section (l) of section 15K of the Securities and Exchange Board of India Act, 1992 for adjudicating offences relating to forward trading

and future trading. Asked about the reasons for not having a separate Appellate Tribunal for the Forward Markets Commission, the Department informed that the provisions to designate Securities Appellate Tribunal (SAT) for the purposes of FCR Act have been made to ensure economy, exploit synergy and also to ensure consistency with other regulatory bodies such as the Securities and Exchange Board of India (SEBI). Strengthening of the FMC, in the wake of the present amendments, will ensure better regulation of the markets, and the need for appeals against FMC orders may not be large. Hence, SAT can manage the resultant load of appeals.

3.35 The State Government of Gujarat has suggested that for speedy disposal of cases, pending with Appellate Tribunal, time limit for disposal of cases needs to be fixed. Asked whether any provision has been made in the Bill for disposal of cases in a prescribed time limit, the Ministry informed that the proposed amendments in the Act by way of insertion of Section 24B provides for appeal to the Appellate Authority against the order of the Adjudicating Officer and the sub Section (7) of Section 24B provides that the appeal shall be dealt with as expeditiously as possible and finally disposed of within six months from the date of receipt of the appeal.

(I) CLAUSE 35 — EXEMPTION FROM TAX ON WEALTH AND INCOME

3.37 Section 27 of the Forward Contract (Regulation) Act, 1952 deals with power to exempt and states that the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions and in such circumstances and in such areas as may be specified in the notification, any contract or class of contracts from the operation of all or any of the provisions of this Act.

3.38 The Government has proposed that after Section 27 A of the Principal Act, Section 27B shall be inserted:-

“27 B. Notwithstanding anything contained in the Wealth-tax Act, 1957, the Income-tax Act, 1961, or any other enactment for the time being in force relating

to tax on wealth, income, profits or gains, the Commission shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.”

3.39 When asked as to why the FMC has been exempted from payment of Tax on Wealth, Income and prepaid and others, the Committee was informed that Presently, it is a part of the Government. After the amendment, it would be a regulatory body like SEBI and not a commercial enterprise. SEBI has been exempted from payment of wealth-tax, Income-tax or any other tax in respect of its wealth, income, profits or gains derived (section 25 of SEBI Act, 1992).

(J) CLAUSE 37 — POWER TO MAKE RULES AND REGULATIONS

3.41 The Government have proposed *vide* clause 37 of the Bill that after section 28A of the principal Act, the following sections shall be inserted, namely:—

“28A. (1) The Commission may, with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act”.

ANNEXURE-I

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON FRIDAY, 21st JANUARY, 2011

The Committee sat from 1500 hrs to 1615 hrs in Committee Room 'D' (Ground Floor), Parliament House Annexe, New Delhi.

Present

Shri Vilas Muttemwar - Chairman

Members

Lok Sabha

2. Shri Kamlesh Balmiki
3. Shri Tarachand Bhagora
4. Shri Shivraj Bhaiya
5. Shri Arvind Kumar Chaudhary
6. Shri Sanjay Singh Chauhan
7. ShriLal Chand Kataria
8. Shri Mohinder Singh Kaypee
9. Shri Marotrao Sainuji Kowase
10. Shri Sukhdev Singh Libra

Rajya Sabha

10. Smt. T. Ratna Bai
11. Shri Shantaram Laxman Naik
12. Shri Kanjibhai Patel
13. Shri Rajniti Prasad
14. Shri Sanjay Raut
15. Shri Kaptan Singh Solanki

Secretariat

1. Shri P.K.Misra - Joint Secretary
2. Smt. Veena Sharma - Director

Representatives of the Department of Consumer Affairs

Sl No.	Name	Designation
1.	Shri Rajeev Agarwal	Secretary(Consumer Affairs)
2.	Shri B.C. Khatua	Chairman (FMC)
3.	Dr. Kewal Ram	Sr. Economic Advisor
4.	Shri Brij Mohan	Director

3. Shri Khakhai Zou - Under Secretary

At the outset, Hon'ble Chairman welcomed the representatives of the Department of Consumer Affairs to the sitting of the Committee convened for briefing by the representatives of the Department on "The Forward Contracts (Regulation) Amendment Bill, 2010 and apprised them of the provisions of Directions 55(1) of the Directions by the Speaker. In his opening remarks, Hon'ble Chairman desired that the Secretary, Department of Consumer Affairs might enlighten the Committee about the salient features, aims and objectives of the Bill, the major weaknesses/shortcomings of the Forward Contracts (Regulation) Act, 1952, major stakeholders of the Bill, the volume and value of futures trading in the country and the status of implementation of the recommendations of the Committee contained in their 17th Report (14th Lok Sabha) on the Forward Contracts (Regulation) Amendment Bill, 2006 etc. Thereafter, the representatives of the Department of Consumer Affairs made a power-point presentation regarding the salient features of the Bill to the Committee. The following points emerged during the deliberation of the Committee:-

- (i) Need to make the future markets transparent and efficient
- (ii) Need to have an efficient and transparent price discovery mechanism which will benefit the farmers
- (iii) Need to create awareness amongst farmers to prevent them from exploitation.
- (iv) Effect of future trading on Price rise of Essential Commodities.
- (v) Direct involvement of farmers in forward trading of commercial crops.
- (vi) Forward trading and black-marketing.

- (vii) Amplification of powers of Chairman and Board of members and their regulatory rights.
 - (viii) Administrative and financial autonomy of Forward Market Commission on the lines of SEBI.
2. The representatives of the Department of Consumers Affairs replied to the various queries raised by the Members during the course of briefing.
 3. The Chairman then thanked the witnesses for appearing before them and sharing their views with the Committee.
 4. A verbatim record of the proceeding has been kept.

The Committee then adjourned.

ANNEXURE-II

MINUTES OF THE SIXTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON FRIDAY, THE 25th MARCH, 2011

The Committee sat from 1500 hrs. to 1700 hrs .in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Vilas Muttemwar - Chairman

MEMBERS

LOK SABHA

2. Shri Tarachand Bhagora
3. Shri Shivraj Bhaiya
4. Shri Sanjay Singh Chauhan
5. Shri Lal Chand Kataria
6. Shri Marotrao Sainuji Kowase
7. Shri Purnmasi Ram

RAJYA SABHA

8. Smt. T. Ratna Bai
9. Shri Lalhming Liana
10. Shri Shantaram Laxman Naik
11. Shri Kanjibhai Patel
12. Shri Rajniti Prasad
13. Shri Kaptan Singh Solanki

SECRETARIAT

1. Shri P.K.Misra - Joint Secretary
2. Smt. Veena Sharma - Director
3. Shri Khakhai Zou - Under Secretary

(a) Representatives of the Confederation Indian Industry(CII):-

1. Shri Jignesh Shah - Chairman, CII National Committee on Commodities Markets & vice Chairman, Multi Commodities Exchange of India Limited
2. Shri R. Ramaseshan - MD &CEO, National Commodity and Derivatives Exchange Ltd (NCDEX)
3. Shri D.K. Aggarwal - Chairman & MD, SMC Comtrade Ltd.
4. Shri Ashok Aggarwal - MD, Globe Capitals Markets Ltd.
5. Shri Shiv Kumar Goel - Co-Founder, Bonanza Online
6. Shri Sunil Khairnar - Director, Financial Technologies India Ltd
7. Shri G Srivastava - Director & Head – Financial Services, CII.
8. Shri Shreeram Lakshman - Deputy Director (CII)

(b) Representatives of the Federation of Indian Chambers of Commerce & Industry (FICCI):-

- 1 Shri Lamon Rutten - MD & CEO, Multi Commodity Exchange of India Ltd. (MCX), Mumbai
- 2 Shri R. Ramaseshan - MD &CEO, National Commodity and Derivatives Exchange Ltd (NCDEX)

(c) Representatives of the Sarthak Advocates & solicitors:-

1. Shri Abhishek Tripathi - Advocate
2. Shri Ashish Porwal - Advocate
3. Kum. Sudeshna Chatterjee - Advocate

(d) Representatives of the PRS Legislative Research:-

1. Dr. M. R. Madhavan - Head of Research
2. Kum. Sana Gangwani - Analyst

1. At the outset, Hon'ble Chairman welcomed the members to the sitting convened for hearing the views of the representatives of CII, FICCI, Sarthak Advocates & solicitors and PRS Legislative Research on the Forward Contracts (Regulation) amendment Bill, 2010. Before the representatives of the

organizations/institutions were called, the Committee briefly discussed the letter received from the Chief Secretary, Government of Rajasthan wherein he expressed his regret for not appearing before the Committee without obtaining prior permission of the Chairman during their visit to Udaipur from 8th to 9th February, 2011. The Committee, however, expressed their anguish and displeasure and desired that the Chief Secretary be conveyed that care should be taken to avoid such incidence in future and he shall have to appear before the Committee for discussion on any subject if and when the Committee so desires.

2. Thereafter, Hon'ble Chairman welcomed the representatives of the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI), Sarthak Advocates & solicitors, PRS Legislative Research to the sitting of the Committee convened for taking their views on the Forward Contracts (Regulation) Amendment Bill, 2010. In his opening remarks the Hon'ble Chairman requested the representatives of the above mentioned organizations/institutions to give their candid opinion & views on the various provisions of the Bill, particularly the issues relating to giving full autonomy to the Forward Market Commissions, raising the number of members of FMC from 4 to 9, corporatization and demutualization of existing commodity exchanges, Provision for clearing corporation, registration of members and intermediaries, enhancement of penal provisions, provisions relating to the Appellate Tribunal and appeal to the Supreme Court, permitting trading in options in goods or commodity derivatives, etc.

3. Thereafter, the representatives after introducing themselves one by one, placed before the Committee their considered views on the various issues raised by Hon'ble Chairman in his opening remarks. Some of the important issues that emerged during the course of deliberation are as follows:-

- (i) Need for granting greater autonomy to the FMCs as a market regulator and its effects;
- (ii) Need for creating infrastructure like godowns and cold storage facilities;

- (iii) Creating awareness among the farmers for greater participation in futures market and for getting price signals;
- (iv) Making the FMC a strong body for regulating the intermediaries, deciding the price mechanism & training the farmers;
- (v) Provisions required for facilitating international trade; and
- (vi) Exempting the FMCs from taxation, etc.

4. The members of the Committee also raised supplementary queries on the various provisions of the bill which were explained by the representatives of the above mentioned organizations/ institutions to their satisfaction.

5. The Chairman then thanked the witnesses for appearing before the Committee.

6. A copy of the verbatim proceedings of the sitting of the Committee has been kept on records.

The Committee then adjourned.

ANNEXURE-III

MINUTES OF THE TWELFTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON TUESDAY, THE 26th JULY, 2011

The Committee sat from 1430 hrs. to 1500 hrs. in Committee Room 'C', Ground floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Shantaram Laxman Naik, M.P. (RS) - Acting Chairman

MEMBERS

LOK SABHA

2. Shri Kamlesh Balmiki
3. Shri Shivraj Bhaiya
4. Shri Arvind Kumar Chaudhary
5. Shri Lal Chand Kataria
6. Shri Mohinder Singh Kaypee
7. Shri Marotrao Sainuji Kowase
8. Shri Sukhdeo Singh Libra
9. Shri Sohan Potai
10. Shri Purnmasi Ram

RAJYA SABHA

11. Smt. T. Ratna Bai
12. Shri Lalhming Liana
13. Shri Kanjibhai Patel
14. Shri Rajniti Prasad
15. Shri Sanjay Raut
16. Shri Kaptan Singh Solanki

SECRETARIAT

1. Shri P.K.Misra - Joint Secretary
2. Shri Khakhai Zou - Under Secretary

2. Hon'ble Members were informed by Joint Secretary that a telephonic message was received from Hon'ble Chairman stating that he would not be able to attend the sitting. Hon'ble Members were therefore requested to choose another member to act as Chairman for the sitting. Accordingly, Shri Shantaram Laxman Naik was unanimously chosen to preside over the meeting by the Members present, in terms of Rule 258 (3) of the Rules of Procedure and Conduct of Business in Lok Sabha. Thereafter, the acting Chairman welcomed the Members to the sitting of the Committee convened to discuss/consider the replies to the list of points on various provisions of the Forward Contracts (Regulation) Amendment Bill, 2010 as received from the Planning Commission and the Ministry of Finance as well as the views/suggestions received from the General Public on the Bill.

3. In his welcome address, the acting Chairman mentioned, inter-alia, that the Hon'ble Speaker referred the Bill to this Standing Committee on 16th December, 2010 for examination and report within three months. Accordingly, the Committee has held three sittings in connection with the examination of the Bill i.e. on 21st January, 9th and 25th March, 2011. The Committee also discussed the various provisions of the Bill with the Officials of the State Governments of Rajasthan, Gujarat and Andhra Pradesh during their study visit to Udaipur, Ahmedabad and Hyderabad from 8 to 12 February, 2011. As the Committee could not complete the examination of the Bill within three months period that expired on 15th March, 2011, Hon'ble Speaker had kindly granted extension of time to submit the report on the Bill to the Parliament till the end of the Monsoon Session of Parliament.

4. The Committee thereafter considered the views/suggestions furnished by the M/o Finance and the Planning Commission on the Bill. They also considered the views of the general public and various stakeholders, furnished in response to the press release given in the leading newspapers. Considering the complexity of the Bill and its wide implication on the public at large, the Committee desired to hear the views of some more State governments, National Commodity Exchanges/Institutions, etc. and

thereafter take the final evidence of the representatives of the Department of Consumer Affairs and Forward Market Commission before preparing a Report on the Bill.

5. As it was not possible to complete the examination of the Bill and present Report thereon to the Parliament by the end of the Monsoon Session, the Committee decided to seek further extension of time to present the Report to the Parliament till the Winter Session of Parliament.

The Committee then adjourned.

ANNEXURE-IV

**MINUTES OF THE SITTING OF THE STANDING COMMITTEE ON FOOD,
CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON MONDAY, THE
12th DECEMBER, 2011**

The Committee sat from 1500 hrs. to 1630 hrs. in Committee Room 'E', Parliament House Annexe, New Delhi.

PRESENT

Shri Vilas Muttemwar - Chairman

MEMBERS

LOK SABHA

2. Shri Shivraj Bhaiya
3. Shri Abdul Mannan Hossain
4. Shri Lal Chand Kataria
5. Shri Marotrao Sainuji Kowase
6. Shri Gobinda Chandra Naskar
7. Shri Sohan Potai
8. Shri Purnmasi Ram
9. Shri Ramkishun
10. Shri Chandulal Sahu

RAJYA SABHA

11. Smt. T. Ratna Bai
12. Shri Sanjay Raut
13. Dr. T. N. Seema
14. Shri Kaptan Singh Solanki

SECRETARIAT

- | | | |
|----------------------|---|------------------|
| 1. Shri P.K.Misra | - | Joint Secretary |
| 2. Smt. Veena Sharma | - | Director |
| 3. Ms. Amita Walia | - | Deputy Secretary |
| 4. Shri Khakhai Zou | - | Under Secretary |

Representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs)

- | | | | |
|----|----------------------|---|-----------------------|
| 1. | Shri Rajeev Agarwal | - | Secretary |
| 2. | Smt. Ganga Murthy | - | Principal advisor |
| 3. | Shri Ramesh Abhishek | - | Chairman (FMC) |
| 4. | Shri Brij Mohan | - | Director |
| 5. | Shri M. P. Krishnan | - | Deputy Director (FMC) |

1. At the outset, Hon'ble Chairman welcomed the members to the sitting of the Committee convened to take oral evidence of the representatives of the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) in connection with examination of 'The Forward Contract (Regulation) Amendment Bill, 2010'. Thereafter Secretary and other officials of the Department of Consumer Affairs were invited to the sitting. After their welcome, the Chairman apprised them of the provisions of Direction 55(1) of The Directions by the Speaker.

2. Hon'ble Chairman then requested the representatives of the Department to explain the specific issues that the Amendment Bill seeks to address, particularly the reasons for giving full autonomy to FMC, limiting the size of the transaction by the Commodity Exchange, implications of Commodity Futures Market opening to financial players like Banks, Insurance Company etc, enhancement of penal provisions, provisions relating to the Appellate Tribunal and appeal to the Supreme Court, permitting trading in options in goods or commodity derivatives etc.

3. Thereafter, the Secretary, Department of Consumer Affairs explained the various issues raised by the Hon'ble Chairman. His replies were supplemented by the Chairman, FMC. The supplementary queries of the Members of the Committee were also responded to by the representatives of the Department.

4. Some of the main issues that emerged during the deliberations of the Committee were as follows:-

- (i) Reasons for giving full autonomy to the Forward Markets Commission;
- (ii) Reasons for the exclusion of the term 'option in good' from the definition of Commodity Derivatives;
- (iii) Need for permitting trading in 'options in goods' ;
- (iv) Need to enhance the publicity awareness campaign being taken up by the Department, especially through the local language in the electronic media and periodic publications of magazines etc;
- (v) Need for enough provisions in the proposed Bill to take care of the interest of Regional Commodity Exchanges vis-à-vis the National Commodity Exchanges etc;

5. The Hon'ble Chairman then thanked the Secretary and other representatives of the Department of Consumer Affairs for their free and frank discussion while tendering evidence before the Committee. The Committee also decided to convene the next sitting on 16th December, 2011 for consideration and adoption of the draft report on the "Forward Contracts (Regulation) Amendment Bill, 2010".

6. A verbatim record of the proceedings has been kept.

The Committee then adjourned.

ANNEXURE-V

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON FRIDAY, THE 16th DECEMBER, 2011

The Committee sat from 1500 hrs. to 1530 hrs. in Committee Room 'D', Ground floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Vilas Muttemwar - Chairman

MEMBERS
LOK SABHA

2. Shri Tarachand Bhagora
3. Shri Arvind Kumar Chaudhary
4. Shri Lal Chand Kataria
5. Shri Gobinda Chandra Naskar
6. Shri Ramkishun

RAJYA SABHA

7. Shri Lalhming Liana
8. Shri Kanjibhai Patel
9. Shri Kaptan Singh Solanki

SECRETARIAT

- | | |
|----------------------|--------------------|
| 1. Shri P.K.Misra | - Joint Secretary |
| 2. Smt. Veena Sharma | - Director |
| 3. Ms. Amita Walia | - Deputy Secretary |
| 3. Shri Khakhai Zou | - Under Secretary |

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee convened for consideration and adoption of the draft Report on 'The Forward Contracts (Regulation) Amendment Bill, 2010' pertaining to the Department of Consumer Affairs.

3. Hon'ble Chairman, then read out a letter addressed to him by Shri Prabodh Panda, a Member of the Committee in the context of the Report under consideration. He directed the Secretariat to examine the points raised by the member

and submit factual comments vis-à-vis the draft Report. The Committee then decided to convene the next sitting on 19th December, 2011 to consider the points raised in the light of the facts and then consider the draft Report for adoption.

The Committee then adjourned.

ANNEXURE-VI

MINUTES OF THE FOURTH SITTING OF THE STANDING COMMITTEE ON FOOD, CONSUMER AFFAIRS AND PUBLIC DISTRIBUTION HELD ON MONDAY, THE 19th DECEMBER, 2011

The Committee sat from 1500 hrs. to 1615 hrs. in Chairman's Room No. 115-A, First Floor, Parliament House Annexe, New Delhi.

PRESENT

Shri Vilas Muttemwar - Chairman

MEMBERS

LOK SABHA

2. Shri Tarachand Bhagora
3. Shri Shivraj Bhaiya
4. Shri Arvind Kumar Chaudhary
5. Dr. Ram Chandra Dome
6. Shri Lal Chand Kataria
7. Shri Marotrao Sainuji Kowase
8. Shri Gobinda Chandra Naskar
9. Shri Sohan Potai
10. Shri Purnmasi Ram
11. Shri Ramkishun
12. Shri Chandulal Sahu

RAJYA SABHA

13. Smt. T. Ratna Bai
14. Shri Lalhming Liana
15. Shri Kanjibhai Patel
16. Dr. T. N. Seema
17. Shri Kaptan Singh Solanki

SECRETARIAT

- | | | |
|----------------------|---|------------------|
| 1. Shri P.K.Misra | - | Joint Secretary |
| 2. Smt. Veena Sharma | - | Director |
| 3. Ms. Amita Walia | - | Deputy Secretary |

2. At the outset, Hon'ble Chairman welcomed the Members to the sitting of the Committee convened for consideration and adoption of the draft Report on 'The Forward Contract (Regulation) Amendment Bill, 2010' pertaining to the Department of Consumer Affairs.

3. Hon'ble Chairman, then mentioned that at the sitting of the Committee held on 16th December, 2011 for consideration and adoption of the draft Report on the 'The Forward Contract (Regulation) Amendment Bill, 2010', he had read out a letter addressed to him by Shri Prabodh Panda, a member of the Committee in context of the Report under consideration and had directed the Secretariat to submit factual comments on the points raised in the letter vis-à-vis the draft Report for consideration of the Committee at their next sitting to be held on 19th December, 2011 for consideration and adoption of the draft Report on the aforementioned Bill in the light of the points raised by Shri Prabodh Panda.

4. Hon'ble Chairman, then read out the factual comments furnished by the Secretariat on the points raised in the letter of Shri Prabodh Panda. He also read out the amendment proposed to be made to the relevant recommendation in the light of the suggestions given by Shri Prabodh Panda. After some deliberations, the draft Report was adopted without any amendment. However, two other members namely Dr. Ram Chandra Dome (Lok Sabha) and Dr. T. N. Seema (Rajya Sabha) gave their letters of dissent to the Report. The Committee decided to append the letters of dissent to the Report. The Committee then authorized the Chairman to finalize the aforesaid Report and present the same to the Parliament during the ongoing Winter Session of Parliament.

The Committee then adjourned.
