

M&A Hotline

May 19, 2009

COMMODITY EXCHANGES GET A BREATHER!

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

BACKGROUND:

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

1. Investments by Foreign Institutional Investors (FIIs) under the Portfolio Investment Scheme would be limited to an aggregate of 23%;
2. Investment under the Foreign Direct Investment (FDI) will be within 26% and would require prior Government approval; and
3. The aggregate equity holding of a single foreign investor / entity including persons-acting-in-concert¹ should not exceed 5%.

EXTENSION:

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

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

- Yamini Dwarkanath & Vaidhyanadhan Iyer

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

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Telemedicine in India

August 31, 2024

Clinical Trials and Biomedical Research in India

August 31, 2024

Compendium of Research Papers

August 27, 2024

Research Articles

Acquirers Beware: Indian Merger Control Regime Revamped!

September 15, 2024

Navigating the Boom: Rise of M&A in Healthcare

August 23, 2024

Navigating The Change in Shareholding and Management Rule for Non-Banking Financial Companies in India: A Practical Perspective

August 22, 2024

Audio

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part II

August 26, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part III

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

Union Budget: Key takeaways for Private Equity Investors and Foreign Companies

July 24, 2024

**Self Declaration Certificate For Ads:
Decoding The Complexities Of Ad
Regulations**

July 08, 2024

**Future of India-Mauritius tax treaty –
Impact of new Protocol on M&A
deals and Private Equity structures**

April 23, 2024
