

Bill No. 29 of 2006

THE FORWARD CONTRACTS (REGULATION) AMENDMENT
BILL, 2006

A

BILL

further to amend the Forward Contracts (Regulation) Act, 1952.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Forward Contracts (Regulation) Amendment Act, 2006. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification, 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 (hereafter in this Chapter referred to as the principal 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. Amendment of long title.

3. In section 2 of the principal Act,—

(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 of such underlying goods or activities, services, rights, interests and events, as may be notified in consultation with the Commission by the Central Government, but does not include securities;

(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) "demutualisation" 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 words 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;

(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 forward contract or classes of forward contracts” 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.

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

Amendment of section 3.

“(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.”.

5. After section 3 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H.

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

Management of Commission.

(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 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, 2006, 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, 2006, 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.

(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—

(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.

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

Removal of member from office.

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—

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

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

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

Vacancies, etc., not to invalidate proceedings of Commission.

3F. Any member, who is a director of a company and who as such director has any direct or indirect pecuniary interest in any matter coming up for consideration at a meeting of the Commission, shall, as soon as possible after 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.

Member not to participate in meetings in certain cases.

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.

Bar on future employment of members.

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.**

Officers and employees of Commission.

(2) **The terms and conditions of service of the officers and 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, 2006, 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;”.

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;

Amendment of section 4.

Fund.

(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 market;

(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.”.

Amendment of section 4A.

7. In section 4A of the principal Act,—

(a) in sub-section (3), for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted;

5 of 1898.
2 of 1974.

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

Insertion of new sections 4B and 4C.

8. After section 4A of the principal Act, the following sections shall be inserted, namely:—

Power to issue directions by Commission.

“4B. Save as otherwise provided in section 4, if after making or causing to be made an enquiry, 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.

Cease and desist proceedings.

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.”.

Insertion of new Chapter IIA.

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

“CHAPTER II A

FINANCE, ACCOUNTS AND AUDIT

Grants by Central Government.

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.

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 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. Accounts and audit.

(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.”.

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;

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

(b) in sub-section (2), for the words “forward contracts”, the words “forward contracts or option in goods or option in commodity derivative” shall be substituted,

(c) 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, 2006 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.”.

11. In section 6 of the principal Act,—

(a) in sub-section (1),—

Amendment of section 5.

Amendment of section 6.

(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, 2006, shall be deemed to have been granted by the Commission in accordance with the provisions of this Act.”.

Substitution of new sections for section 7.

Withdrawal of recognition.

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

‘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.

Corporatisation and demutualisation of associations.

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

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
demutualisation.

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 enquiry 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 recognised 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.

1 of 1956.

(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.

(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.’

13. In section 8 of the principal Act,—

Amendment
of section 8.

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

(b) for the word “inquiry”, where it occurs, the words “an inquiry or inspection” shall be substituted;

(c) 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.

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 Gazette of India, 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.

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

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

1 of 1956.

(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.

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

Substitution of
new sections
for sections 12
and 12A.

“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.

Power of
Commission to
make or amend
bye-laws of
recognised
association.

(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 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 publication 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.

Amendment of section 12B.

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 Gazette of India, 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;

(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.

Substitution of new section for section 13.

Power of Commission to supersede governing body of recognised association.

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

“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 person to be the vice-chairman.

(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 revest, as the case may be, in the governing body so reconstituted.”.

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

Amendment of section 14.

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

Substitution of new Chapter for Chapter IIIA.

“CHAPTER IIIA

REGISTRATION OF MEMBERS AND INTERMEDIARIES

14A. (1) On and from the commencement of the Forward Contracts (Regulation) Amendment Act, 2006, 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.

Registration of members and intermediaries.

(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, 2006, 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.

Suspension or cancellation of certificate of registration.

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

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.”.

Substitution of new sections for section 15, 16 & 17.

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

Forward contracts illegal or void in certain circumstances.

“15. (1) Subject to the provisions contained in sections 17 and 18, every forward contract, entered into otherwise than between members of a recognised association or through or with any such member, shall be illegal.

(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 also

(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, 2006, 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.

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.

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

(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.”.

23. In section 18 of the principal Act,—

Amendment of section 18.

(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.

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

Substitution of new section for section 19.

“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, 2006, otherwise than between members of a recognised association or through or with any such member shall be illegal.

Option in goods or option in commodity derivative illegal in certain circumstances.

(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.

Amendment
of section 21.

26. In section 21 of the principal Act,—

(i) in clauses (a) to (f) for the words “forward contracts”, where ever 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 derivaive" 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. 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 Commisison, 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 pay 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;

(d) being a person or who was incharge 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 pay a fine of rupees one lakh for every occasion of such obstruction.

<p>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.</p>	<p>Penalty for failure by any person to enter into an agreement with clients.</p>
<p>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.</p>	<p>Penalty for failure to redress clients' grievances.</p>
<p>21D. If any insider who,—</p> <p>(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</p> <p>(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</p> <p>(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,</p> <p>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.</p>	<p>Penalty for insider trading.</p>
<p>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.</p>	<p>Penalty for fraudulent and unfair trade practices.</p>
<p>21F. If any person, who is registered as an intermediary under this Act or any regulations made thereunder,—</p> <p>(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;</p> <p>(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;</p> <p>(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.</p>	<p>Penalty for default in case of an intermediary.</p>
<p>21G. Any person, who fails to comply with the directives issued by the Commission under section 4B, shall be liable to pay a penalty not exceeding two lakh rupees for each day during which such failure continues which may extend to five lakh rupees.</p>	<p>Penalty for failure to comply with directives of Commission.</p>
<p>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.</p> <p>(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.</p>	<p>Consequences of failure to pay penalty.</p>

Power to
adjudicate.

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 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.

Factors to be
taken into
account by
adjudicating
officer.

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

(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
Fund of India.

21K. All sums realised by way of penalties under this Act shall be credited to the Consolidated 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" at both the places where they occur, 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.

1 of 1956.

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

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

Power of Central Government to issue directions.

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

“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 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.

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.

Return and reports

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.

(2) Without prejudice to the provisions of sub-section (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 sub-section (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.

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 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.

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.”.

45 of 1860.

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

“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.”.

27 of 1957.

43 of 1961.

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

(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.”.

Delegation.

Bar of jurisdiction.

Member, officers and employees of Commission to be public servants.

Insertion of new section 27B.

Exemption from tax on wealth and income.

Amendment of section 28.

Insertion of new sections 28A and 28B.

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

Power to make regulations.

“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.

(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;

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

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

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

(i) 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

Amendment of section 15U of Act 15 of 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.

STATEMENT OF OBJECTS AND REASONS

The Forward Contracts (Regulation) Act, 1952 (FCR Act, 1952) was enacted with a view to regulate certain matters relating to forward contracts, the prohibition of options in goods and for matters connected herewith.

2. A Bill amending the Forward Contracts (Regulation) Act, 1952 was introduced on the 23rd December, 1998 in Rajya Sabha 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 on Food, Civil Supplies and Public Distribution, was passed on the 15th December, 2003 by Rajya Sabha but could not be passed by the 13th Lok Sabha due to its dissolution.

3. Since then several changes have taken place in the commodity futures market. While the commodity futures market has been liberalised with effect from April, 2003 and modern institutional structures are in the process of being evolved, the Forward Markets Commission (FMC) is broadly functioning in its traditional manner. Many of the existing provisions of the FCR Act, 1952 have also become redundant in view of the rapid expansion of the commodity futures market. This has necessitated changes in the organisational structure and institutional capacity of the FMC. There is also a growing demand for allowing trading in options and new generation of commodity derivatives so as to provide wider option for risk management.

4. In order to regulate commodity derivatives market effectively, there is a need to restructure and strengthen the FMC and also confer upon it more statutory powers. The Central Government has, therefore, decided to restructure and strengthen FMC broadly on the lines of the Securities and Exchange Board of India and make necessary amendments in the Forward Contracts (Regulation) Act, 1952 for the said purpose.

5. The Forward Contracts (Regulation) Amendment Bill, 2006, *inter alia*, seeks to make the following amendments to the Forward Contracts (Regulation) Act, 1952, to,—

(a) amend the definition of the expression “forward contract” so as to include therein “commodity derivative” and also insert new expressions such as “commodity derivative”, “corporatisation”, “demutualisation” and “intermediary”, etc., which have been used in the Bill;

(b) increase the maximum number of members of FMC from four to nine out of which three to be whole-time members and a Chairman;

(c) confer power upon the FMC to levy fees;

(d) provide for constitution of FMC General Fund to which all grants, fees and all sums received by the FMC shall be credited except penalty and apply the funds for meeting the expenses of the Commission;

(e) confer power upon the Central Government to issue directions to the FMC on the matter of policy and to supersede the FMC in certain cases;

(f) make provisions for corporatisation and demutualisation of recognised associations in accordance with the scheme to be approved by the FMC;

(g) make provisions for registration of members and intermediaries;

(h) allow trading in options;

(i) make provision for investigation, enforcement and penalty in case of contravention of the provisions of the FCR Act 1952;

(j) make provision of appeals, from the order of the FMC and adjudicating officer to the Securities Appellate Tribunal for the purposes of FCR Act, 1952 and from the order of the Securities Appellate Tribunal under the FCR Act, 1952 to the Supreme Court;

(k) make provision for transfer of the duties and functions of a clearing house to a clearing corporation; and

(l) make provisions for exemption from payment of tax on wealth, income and profits or gains of FMC.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 24th February, 2006.

SHARAD PAWAR.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 17(1)/2005-IT/436, dated the 24th February, 2006 from Shri Sharad Pawar, Minister of Agriculture and Consumer Affairs, Food and Public Distribution to the Secretary-General, Lok Sabha]

The President, having been informed of the subject matter of the proposed Forward Contracts (Regulation) Amendment Bill, recommends to the House for the introduction and consideration of the Bill under article 117(1) and (3) of the Constitution.

Notes on clauses

Clause 3.—This clause seeks to amend section 2 of the Forward Contracts (Regulation) Act, 1952 relating to definitions.

This clause seeks to amend definitions of “associations”, “forward contract”, “ready delivery contracts”, and “specific delivery contracts”.

It, *inter alia*, further seeks to define the expressions “Appellate Tribunal” “Chairman”, “commodity derivative”, “corporatisation”, “demutualisation”, “Fund”, “intermediary”, “member”, “notification”, “option in commodity derivative”, “regulation” and “scheme” used in the Bill.

Clause 4.—This clause seeks to amend section 3 of the Forward Contracts (Regulation) Act, 1952 relating to establishment of the Forward Markets Commission. It is proposed to substitute sub sections (2), (3), (4) and (5) with a new sub-section (2) so as to confer upon the Forward Markets Commission the status of a body corporate.

Clause 5.—Clause 5 of the Bill proposes to insert new sections 3A, 3B, 3C, 3D, 3E, 3F, 3G and 3H in the Forward Contracts (Regulation) Act, 1952. The new section 3A contains provisions relating to management of the Forward Markets Commission. The new section 3B contains provisions for the term of office and conditions of service of Chairman and members of the Commission. The new section 3C contains provisions for removal of members from office. The new section 3D contains provisions for meetings of the Commission. The new section 3E contains provisions for vacancies, etc., not to invalidate proceedings of the Commission. The new section 3F contains provisions for member not to participate in meetings in certain cases. The new section 3G contains provisions for bar on future employment of whole-time members and Chairman. The new section 3H contains provisions for appointment of officers and employees of the Commission.

Clause 6.—This clause seeks to amend section 4 of the Forward Contracts (Regulation) Act, 1952 relating to functions of the Commission.

Under the existing provisions contained in clause (a) of section 4 of the Forward Contracts (Regulation) Act, 1952, the Forward Markets Commission is required to advise the Central Government in respect of recognition or withdrawal of recognition from any association or in respect of any other matter arising out of the administration of the said Act.

It is proposed to amend clause (a) of section 4 of the Forward Contracts (Regulation) Act, 1952 to confer power upon the Forward Markets Commission to also grant or withdraw recognition from any association.

It is further proposed to amend clause (e) of the said section to remove the reference of registered association or any member of such association as the concept of registered association is proposed to be done away with in the Bill.

It is also proposed to amend clause (f) of the said section 4 of the Forward Contracts (Regulation) Act, 1952, to confer power upon the Forward Markets Commission (a) to regulate the business of association, clearing houses, warehouses and intermediaries; (b) to levy fees; (c) to conduct research for the purpose of development and regulation of commodity derivatives market; (d) to call from or furnishing of information from agencies; (e) to protect the interests of market participants; (f) to promote and regulate self-regulatory organisations; (g) to prohibit fraudulent and unfair trade practices relating to commodity derivatives market; (h) to promote investors’ education and training of intermediaries; (i) to prohibit insider trading; (j) to advise the Central Government in respect of forward contracts or option in goods or option in commodity derivative; and (k) to perform such other duties and such other powers as may be assigned to the Commission.

Clause 7.— This clause seeks to amend sub-section (3) of section 4A of the Act Sub-section (3) of section 4A makes reference to the Code of Criminal Procedure, 1898, which has been repealed and re-enacted as the Code of Criminal Procedure, 1973. It is proposed to

amend the said sub-section so as to give reference to the Code of Criminal Procedure, 1973 instead of, the Code of Criminal Procedure, 1898.

Clause 8.—This clause seeks to insert new sections 4B in the Forward Contracts (Regulation) Act, 1952, relating to power to issue directions by the Commission and 4C relating to cease and desist proceedings.

The new section 4B proposes to confer power upon the Forward Markets Commission to issue directions to any intermediary or association in the interest of trade and orderly development of commodity derivatives market by the Commission.

The new section 4C proposes to confer power upon the Forward Markets Commission to pass an order requiring any person to cease and desist from committing or causing any violation of the Forward Contracts (Regulation) Act, 1952 or rules or regulations made thereunder, if such person has committed any such violation.

Clause 9.—This clause proposes to insert a new Chapter IIA in the Forward Contracts (Regulation) Act, 1952, relating to Finance, Accounts and Audit.

The proposed new section 4D contains provisions for grants by the Central Government to the Forward Markets Commission. Such grants will be made after due appropriation made by Parliament by law. The new section 4E contains provisions for constitution of a Fund, to be called the Forward Markets Commission General Fund which all grants, fees and charges, etc., received by the Forward Markets Commission shall be credited and also the provisions for application of the Fund. The new section 4F contains provisions for maintenance of proper accounts and other relevant records and annual statement of accounts by the Forward Markets Commission and for audit of accounts by the Comptroller and Auditor General of India.

Clause 10.—This clause seeks to amend section 5 of the Forward Contracts (Regulation) Act, 1952 relating to application for recognition of associations.

Under the existing provisions contained in the said section 5, trading in forward contracts by the association is allowed if such association is recognised.

Since option in goods or option in commodity derivative are being permitted, it is proposed to extend the scope of trading in options by such associations.

Under the existing provisions, the applications for recognition of associations is required to be made to the Central Government. The proposed amendment further seeks to provide that such applications shall, after the commencement of the proposed amendments, be made to the Forward Markets Commission.

A transitory provision is also proposed to be made for transfer of such applications with the Central Government to the Commission.

Clause 11.—This clause seeks to amend section 6 of the Forward Contracts (Regulation) Act, 1952 relating to grant of recognition to association.

Under the existing provisions, recognition to the association is granted by the Central Government. It is, *inter alia*, proposed to confer power upon the Forward Markets Commission to grant recognition to the association. A validation provision is also proposed to be made for recognitions already granted to associations by the Central Government before commencement of this Act.

Clause 12.—This clause seeks to substitute section 7, by new sections 7, 7A and 7B, in the Forward Contracts (Regulation) Act, 1952 relating to withdrawal of recognition, corporatisation and demutualisation of associations and the procedure for corporatisation and demutualisation.

Under the existing provisions, the Central Government has been conferred power to withdraw recognition of an association. The new section 7 seeks to confer power upon the Forward Markets Commission instead of the Central Government to withdraw recognition granted to an association. The new section 7A contains provisions for corporatisation and demutualisation of associations wherein trading of commodities and commodity derivative is conducted or may be carried out. The new section 7B relates to procedure for the corporatisation and demutualisation of the associations.

Clause 13.—This clause seeks to amend section 8 of the Forward Contracts (Regulation) Act, 1952 relating to power of the Central Government to call for periodical returns or direct inquiries to be made.

It is, *inter alia*, proposed to confer the said power upon the Forward Markets Commission.

Clause 14.—This clause seeks to amend sub-section (2) of section 9A of the Forward Contracts (Regulation) Act, 1952. The said sub-section (2) gives powers to the Central Government to approve rules made by the recognised association. It is proposed to confer the said power upon the Forward Markets Commission.

Clause 15.—This clause seeks to substitute section 10 of the Forward Contracts (Regulation) Act, 1952 by new sections 10 and 10A relating to power of Commission to direct rules to be made or to make rules and relating to clearing corporation.

The existing provisions contained in section 10 confer power upon the Central Government to direct rules to be made by an association or to amend rules made by it. It is proposed to confer the said power upon the Forward Markets Commission. It is further proposed to insert a new section 10A for transfer the duties and functions of a clearing house to a clearing corporation. Every clearing corporation is required to make bye-laws for the purpose of transfer of said duties and functions and submit the same to the Forward Markets Commission for its approval.

Clause 16.—This clause seeks to amend section 11 of the Forward Contracts (Regulation) Act, 1952, relating to power of recognised associations to make bye-laws.

Under the existing provisions, the recognised associations can make bye-laws for the regulation and control of forward contracts subject to the previous approval of the Central Government.

It is proposed to confer the said powers upon the Forward Markets Commission and also to extend the scope of the said section to option in goods or option in commodity derivative.

Clause 17.—This clause seeks to substitute section 12 and 12A of the Forward Contracts (Regulation) Act, 1952 by new sections relating to power of the Commission to make or amend bye-laws of recognised association and application of amendment of bye-laws to existing forward contracts.

The existing provisions contained in section 12 confer powers upon the Central Government to make or amend bye-laws of recognised associations.

It is proposed to confer the said power upon the Forward Markets Commission.

The existing provisions contained in section 12A provide for application of amendment of bye-laws to the existing forward contracts.

It is further proposed to extend the scope of the said section to the option in goods or option in commodity derivative also.

Clause 18.—This clause seeks to amend section 12B of the Forward Contracts (Regulation) Act, 1952, relating to power of the Commission to suspend the member of a recognised association or to prohibit him from trading.

It is proposed to extend the scope of the said section to include trading in option in goods or option in commodity derivative to enable the Commission to suspend members of associations who are trading in option in goods or option in commodity derivative in addition to forward contracts.

Clause 19.—This clause seeks to substitute section 13 of the Forward Contracts (Regulation) Act, 1952, relating to power of the Central Government to supersede governing body of recognised association.

It is proposed to confer the said power upon the Forward Markets Commission.

Clause 20.—This clause seeks to amend section 14 of the Forward Contracts (Regulation) Act, 1952, relating to power to suspend business of recognised associations.

It is proposed to confer the said power upon the Forward Markets Commission.

Clause 21.—This clause proposes to substitute Chapter IIIA by a new Chapter in the Forward Contracts (Regulation) Act, 1952, relating to registration of members.

It is proposed to require the members and intermediaries to register with the Forward Markets Commission. The proposed new section 14B confers power upon the Forward Markets Commission to suspend or cancel the certificate of registration.

Clause 22.—This clause, *inter alia*, seeks to substitute section 15 of the Forward Contracts (Regulation) Act, 1952 which provides the circumstances in which the forward contracts are illegal or void. It is proposed to substitute said section 15 by a new section so as to do away with the requirement of issuing the notifications in respect of forward contract.

It is proposed to make forward contract illegal or void unless organised under the aegis of recognised association except under section 17 (power of the Central Government to prohibit forward contracts or options in goods or option in commodity derivative) and section 18 (special provisions in respect of certain kinds of forward contracts).

This clause also proposes to substitute sections 16 and 17 of the Forward Contracts (Regulation) Act, 1952, relating to the consequences of contravention of section 15 and relating to power to prohibit forward contracts or option in goods or option in commodity derivative.

In view of the amendment in section 15 vide clause 22, the marginal heading of section 16 would require amendment and the power under section 16 is proposed to be conferred upon the Forward Markets Commission.

Under the existing provision contained in section 17, forward contracts in certain cases can be prohibited.

It is proposed to extend the scope of the said section 17 to the option in goods or option in commodity derivative and also make certain other minor amendments.

Clause 23.—This clause seeks to amend section 18 of the Forward Contracts (Regulation) Act, 1952, relating special provisions in respect of certain kinds of forward contracts (non-transferable specific delivery contracts and specific delivery contracts).

Under the existing provisions contained in section 18 non-transferable specific delivery contracts could be entered into in any area other than recognised associations.

It is proposed to amend the said section 18 of the Forward Contracts (Regulation) Act, 1952, so as to bring specific delivery contracts both (transferable and non-transferable) also within the scope of section 18. The existing provisions contained in sub-section (2) of the said section 18 confer power upon the Central Government to grant exemption to forward contracts relating to transferable specific delivery contract.

It is proposed to extend the scope of the sub-section (1) of the said section 18 to all transferable specific delivery contracts. Therefore, sub-section (2) of section 18 is proposed to be omitted. The omission of sub-section (2) is of consequential in nature.

Clause 24.—This clause seeks to substitute a new section for section 19 of the Forward Contracts (Regulation) Act, 1952 relating to option in goods or option in commodity derivative illegal or void in certain circumstances.

Under the existing provisions contained in section 19, trading in options in goods is prohibited.

It is proposed to substitute the said section 19 so as to allow trading in option in goods or option in commodity derivative.

Clause 25.—This clause seeks to amend section 20 of the Forward Contracts (Regulation) Act, 1952, relating to penalties. Clause 24 of the Bill proposes to substitute section 19 of the Forward Contracts (Regulation) Act, 1952, so as to allow trading in option in goods or option in commodity derivative. It is, therefore, proposed to extend the scope of the said section 20 to options in goods or option in commodity derivative also in addition to forward contracts.

It is further proposed to extend the scope of the said section 20 in cases of failure to make or accept delivery of goods under non-transferable specific delivery contracts or transferable specific delivery contracts of goods by inserting new clause (*da*) in the said section. Under the existing

provisions, the monetary penalty for contravention of provisions of Chapter IV (forward contracts and option in goods) and option in commodity derivative is "one thousand rupees". It is also proposed to enhance the said monetary penalty to "twenty-five thousand rupees".

Clause 26.—This clause seeks to amend section 21 of the Forward Contracts (Regulation) Act, 1952, relating to penalty for owning or keeping place used for entering into forward contracts in goods.

Under the existing provisions, penalty is provided in relation to entering into forward contracts in goods.

It is proposed to include in clauses (a) to (f) of the said section the options in goods or option in commodity derivative in addition to forward contracts. It is further proposed to enhance monetary penalty from "one thousand rupees" specified in the aforesaid section 21 to "twenty-five thousand rupees".

Clause 27.—This clause proposes to substitute section 21A of the Forward Contracts (Regulation) Act, 1952, relating to power of Court to order forfeiture of property by the new sections 21A, 21B, 21C, 21D, 21E, 21F, 21G, 21H, 21-I, 21J and 21K.

The new section 21A contains provisions for penalty relating to failure to furnish information, return, etc. The new section 21B contains provisions for penalty relating to failure by any person to enter into an agreement with clients. The new section 21C contains provisions relating to penalty for failure to redress clients' grievances. The new section 21D contains provisions relating to penalty for insider trading. The new section 21E contains provisions relating to penalty for fraudulent and unfair trade practices. The new section 21F contains provisions relating to penalty for default in case of an intermediary. The new section 21G contains provisions relating to penalty for failure to comply with directives of the Commission. The new section 21H contains provisions relating to consequences of failure to pay penalty. The new section 21-I contains provisions relating to power to adjudicate. The new section 21J contains provisions relating to factors to be taken into account by adjudicating officer. The new section 21K contains provisions relating to crediting sums realised by way of penalties to Consolidated Fund of India. The new section 21L contains provisions relating to power of court to order forfeiture of property. The contraventions for which the penalty is leviable (except under new section 21G) are broadly on the lines of the provisions contained in the Securities and Exchange Board of India Act, 1992, but the quantum of monetary penalty is different in the said new sections from the monetary penalties specified under the Securities and Exchange Board of India Act, 1992.

Clause 28.—This clause seeks to amend section 22A of the Forward Contracts (Regulation) Act, 1952, relating to power to search and seize books of account or other documents in the case of forward contracts or option in goods entered into in contravention of provisions of the Act. It is proposed to extend the scope of the said section to option in commodity derivative also. Sub-section (2) of section 22A gives reference of the Code of Criminal Procedure, 1898, which has been repealed and re-enacted as the Code of Criminal Procedure, 1973.

It is proposed to amend the said sub-section to give a reference of the Code of Criminal Procedure, 1973, instead of the Code of Criminal Procedure, 1898.

Clause 29.—This clause seeks to amend section 22B relating to presumption to be drawn in certain cases. It is proposed to extend the scope of this section to option in commodity derivative also.

Clause 30.—This clause seeks to insert a new section 22C in the Forward Contracts (Regulation) Act, 1952, relating to investigation.

It is proposed to confer power upon the Forward Markets Commission to direct the Investigating Authority to investigate the affairs of intermediary or person associated with the commodity derivative market and to submit the report to the Forward Markets Commission.

Clause 31.—This clause seeks to insert new clause (e) in section 23 of the Forward Contracts (Regulation) Act, 1952, which specifies certain offences to be cognizable. Clause 27 of the Bill proposes to insert a new section 21H relating to consequences of failure to pay penalty.

It is proposed to insert reference of section 21H so as to make the offence specified in the proposed new section 21H (consequences of failure to pay penalty) cognizable.

Clause 32.—This clause seeks to insert new section 24A in the Forward Contracts (Regulation) Act, 1952, relating to bar of jurisdiction of Civil Courts.

It is proposed to bar the jurisdiction of the civil courts relating to any matter in respect of which the Adjudicating Officer or the Forward Markets Commission has the jurisdiction under the Act.

Clause 33.—This clause proposes to insert a new Chapter VA in the Forward Contracts (Regulation) Act, 1952, relating to jurisdiction, authority and procedure of Appellate Tribunal.

The new section 24B contains provisions relating to appeal to the Appellate Tribunal. It is further provided that the Central Government shall, specify by notification, the matters and places in relation to which the Appellate Tribunal may exercise jurisdiction.

The new section 24C contains provisions for right to legal representation. The new section 24D contains provisions for limitation. The new section 24E contains provisions for appeal to the Supreme Court.

Clause 34.—This clause seeks to insert new sections 26A, 26B, 26C, 26D and 26E in the Act. The new section 26A contains provisions relating to power of the Central Government to issue directions. The new section 26B contains provisions relating to power of the Central Government to supersede the Forward Markets Commission. The new section 26C contains provisions relating to returns and reports to be furnished by the Forward Markets Commission. The new section 26D contains provisions relating to delegation of powers by the Commission. The new section 26E contains provisions relating to bar of jurisdiction. The new section 26F contains provisions relating to members, officers and employees of the Commission to be public servants.

Clause 35.—This clause proposes to insert new section 27B in the Forward Contracts (Regulation) Act, 1952, relating to exemption from tax on wealth, income, profits or gains of the Forward Markets Commission.

Clause 36.—This clause seeks to amend section 28 in the Forward Contracts (Regulation) Act, 1952, which confers power upon the Central Government to make rules in respect of certain matters.

Clause 37.—This clause seeks to insert new section 28A and 28B in the Forward Contracts (Regulation) Act, 1952, proposing to confer power upon the Forward Markets Commission to make regulations. The regulations to be made by the Forward Markets Commission shall be laid before both Houses of Parliament.

It is further proposed to insert a new section 28B so as to provide that the provisions of the Forward Contracts (Regulation) Act, 1952, shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Clause 38.—This clause seeks to amend section 15U of the Securities and Exchange Board of India Act, 1992. It is proposed to widen the scope of the said section to the matters arising out of the Forward Contracts (Regulation) Act, 1952 also.

The proposed amendment is consequential in nature.

FINANCIAL MEMORANDUM

Clause 4 of the Bill seeks to provide that the Forward Markets Commission shall be a body corporate with powers to acquire, hold and dispose of property, both movable and immovable and to contract, etc. Clause 5 of the Bill seeks to insert a new section 3A for the appointment of the Chairman and eight other members. The proposed section 3B provides for the conditions of service of the Chairman and members of the Commission to be prescribed by rules made under the Act. The proposed section 3H provides for appointment of officers and other employees of the Commission and to provide for their conditions of service to be determined by regulations. Accordingly, the structure and infrastructure facility of the Commission will have to be suitably augmented and strengthened.

2. Clause 9 of the Bill seeks to insert a new Chapter IIA to the Act relating to Finance, Accounts and Audit. The proposed new section 4D provides for grants to the Commission by the Central Government by due appropriation made by Parliament. The new section 4E provides for a Fund to be called the Forward Markets Commission General Fund to which all grants, fees and all sums received by the Commission from such sources shall be credited as may be decided by the Central Government.

3. The expenditure involved in the operational expenses of the Forward Markets Commission including rent for additional premises, salary, etc; shall be Rupees twenty-five crore for the year 2006-07, for acquiring and furnishing of new premises and part of the operational expenses shall be Rupees sixty-five crore for the year 2007-08, for operational expenses and furnishing of new premises to the extent not met by revenue shall be Rupees twenty-five crore for the year 2008-09 and operational expenses to the extent not met by revenue for the year 2009-10 shall be Rupees five crore. Thus, an amount of 120 crores of rupees will be required as interest free loan as detailed above subject to the moratorium period of five years and repayment period of ten years of the expiry of moratorium period.

4. The Bill will not involve any other recurring or non-recurring expenditure.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 36 of the Bill seeks to amend section 28 of the Forward Contracts (Regulation) Act, 1952. This clause empowers the Central Government to make rules, by notification, to carry out the provisions of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate, *inter alia*, to provide for (i) the additional duties and powers that may be performed or exercised by the Commission under clause (q) section 4; (ii) the form and manner in which the annual statement of accounts of the Commission shall be maintained under section 4(F); (iii) the rules for dealing by foreign participant or foreign intermediary under the proviso to sub-section (3) of section 14A; (iv) the manner of inquiry under clause (a) of section 21-I; (v) 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; (vi) the form and the manner in which returns and report to be made to the Central Government under section 26C; (vii) 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.

2. Clause 37 of the Bill seeks to insert a new section 28A in the Forward Contracts (Regulation) Act, 1952. This clause empowers the Commission to make regulations, by notification, to carry out the purposes of the proposed legislation. The matters in respect of which such rules may be made are specified therein. These matters relate, *inter alia*, to provide for (i) the times 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; (ii) the terms and other conditions of service of officers and employees of the Commission under sub-section (2) of section 3H; (iii) the manner in which the fresh issue of equity shares shall be made to the public, under sub-section (8) of section 7B; (iv) the form in which and the terms and conditions subject to which applications for certificates of registration may be made under sub-section (2) of section 14A and the levy of fees in support of such application; (v) the terms and conditions subject to which registration may be granted under sub-section (4) of section 14A; (vi) the manner in which the certificate of registration may be granted, suspended or cancelled under section 14B; (vii) any other matter relating to conduct of commodity derivatives including trading, clearing, settlement and delivery of goods, forward contracts, option in goods or option in commodity derivative.

3. The rules made by the Central Government and the regulations made by the Forward Markets Commission shall be laid, as soon as may be after they are made, before each House of Parliament.

4. The matters in respect of which rules and regulations may be made are generally matters of procedure and administrative detail and it is not practicable to provide for them in the Bill itself. The delegation of legislative power involved is of a normal character.

ANNEXURE
EXTRACTS FROM THE FORWARD CONTRACTS (REGULATION) ACT, 1952
(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.

* * * * *

2. In this Act, unless the context otherwise requires,— Definitions.

(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;

* * * * *

(c) “forward contract” means a contract for the delivery of goods and which is not a ready delivery contract;

* * * * *

(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:

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 the 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 purposes of this clause,—

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

10 of 1949.
2 of 1934.

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 therefore as stipulated in the contract;

(j) “recognised association” means an association to which recognition for the time being has been granted by the Central Government under section 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 section 14 B;

* * * * *

(m) “specific delivery contract” means a forward contract which provides for the actual delivery of specific qualities or types of goods during it 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;

* * * * *

CHAPTER II

FORWARD MARKETS COMMISSION

Establishment and constitution of the Forward Markets Commission.

3. (1) * * * * *

(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 or part-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 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.

Functions of the Commission.

4. 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;

* * * * *

(e) to undertake the inspection of the accounts and other documents of 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.

4A. (1) * * * * * Powers of the Commission.

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 section 228 of the Indian Penal Code 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, 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.

* * * * *

CHAPTER III

RECOGNISED ASSOCIATIONS

5. (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. Application for recognition of associations.

(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 classes 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. (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 section 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. Grant of recognition to association.

(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 situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

Withdrawal of recognition.

7. 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.

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

8. (1) Every recognised association and every member thereof shall furnish to the Central Government such periodical returns relating to its affairs, or the affairs of 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 or a member thereof furnish in writing such information or explanation relating to its affairs or the affairs of any of its members 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 of 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 clauses (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.

(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 prescribed 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.

* * * * *

9A. (1) * * * *

(2) No rules of a recognised association made or amended in relation to any matter referred to in clauses (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 modifications therein as it thinks fit, and on such publication, the rules as approved by the Central Government shall be deemed to have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956.

1 of 1956.

* * * *

Power of recognised association to make rules respecting admission of a firm or a Hindu undivided family, grouping of members, restricting voting rights, etc., in special cases.

10. (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.

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

(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.

(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, 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.

11. (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.

Power of recognised association to make bye-laws.

(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 maintenance 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 a scale of brokerage and other charges;

(m) the making, comparing, setting 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 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;

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

(b) provide that the contravention of any 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:

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.

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

12. (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 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 all cases be 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.

12A. Any amendment of a bye-law 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 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.

Application of amendment of bye-laws to existing forward contracts.

12B. (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.

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

* * * * *

(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. (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 superseded, 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 the Chairman and another of such person to be the Vice-Chairman.

Power of Central Government to supersede governing body of recognised association.

(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 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 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 revest, as the case may be, in the governing body so reconstituted.

Power to suspend business of recognised associations.

14. 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 extended 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.

CHAPTER IIIA

REGISTERED ASSOCIATIONS

Certificate of registration to be obtained by all associations.

14A. (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 (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.

62 of 1960.

(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.

Grant or refusal of certificate of registration.

14B. On receipt of an application under section 14A, 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.

Application of sections 8 and 12B to registered associations.

14C. The provisions of sections 8 and 12B 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 12B.

CHAPTER IV

FORWARD CONTRACTS AND OPTIONS IN GOODS

15. (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.

Forward contracts in notified goods illegal or void in certain circumstances.

(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 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.

(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 discloses 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 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, as the case may be, on his own account.

16. 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—

Consequences of notification under section 15.

(a) every forward contract 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 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.

Power to prohibit forward contracts in certain cases.

17. (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 entered into on or before the date of notification and remaining to be performed after the said date as they apply to all forward contracts for the sale or purchase of any goods specified in the notification under section 15.

Special provisions respecting certain kinds of forward contracts.

18. (1) Nothing contained in Chapter III or Chapter IV shall apply to non-transferable 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 section 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 to 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 and 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.

Prohibition of options in goods.

19. (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

Penalties.

20. 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 (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 or 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 less than one month and the fine shall not be less than one thousand rupees.

21. Any person who—

(a) owns or keeps a place other than of a recognised association which is used for the purpose of entering into a 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 contracts 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, or

Penalty for owning or keeping place used for entering into forward contracts in goods.

(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) joins, gathers, or assists in gettingher 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, or

(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,

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 judgement of the Court, the imprisonment shall not be less than one month and the fine shall not be less than one thousand rupees.

Power of Court to order forfeiture of property.

21A. 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 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.

* * * * *

Power to search and seize books of account or other documents.

22A. (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, shall, so far as may be, apply to any 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. 5 of 1898.

Presumptions to be drawn in certain cases.

22B. (1) Where any books of account or other 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 option in goods, such books of account 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 the 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 committing the said offence.

5 of 1898.

23. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the following offences shall be deemed to be cognizable within the meaning of that Code, namely:—

Certain offences to be cognizable.

* * * * *

28. (1) * * * * *

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

* * * * *

(cc) the manner in which the applications for certificates of registration may be made under section 14A and the levy of fees in respect of such applications;

* * * * *

(g) any other matter which is to be or may be prescribed.

* * * * *

EXTRACT FROM THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

(15 OF 1992)

* * * * *

15U. (1) * * * * *

Procedure and powers of the Securities Appellate Tribunal.

5 of 1908.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 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 documents;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it *ex parte*;

(g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;

(h) any other matter which may be prescribed.

* * * * *

LOKSABHA

A

BILL

further to amend the Forward Contracts (Regulation) Act, 1952.

*(Shri Sharad Pawar, Minister of Agriculture and Consumer Affairs,
Food and Public Distribution)*

LOK SABHA

CORRIGENDA

to

THE FORWARD CONTRACTS (REGULATION) AMENDMENT BILL, 2006

[To be/As introduced in Lok Sabha]

1. Page 2, line 9, -
for "refund"
read "referred"
2. Page 6, line 1, against item (c),-
omit "Fund"
3. Page 6, line 12, -
for "derivatives"
read "derivative"
4. Page 6, line 15, -
for "derivatives"
read "derivative"
5. Page 6, line 29, -
for "After section 4A of the principal Act,"
read "In Chapter II of principal Act, after section 4A,"
6. Page 10, line 17, -
for 'where it occurs, the words "an inquiry'
read 'wherever it occurs, the words "inquiry'

7. Page 13, line 9, -
for "places they"
read "places where they"
8. Page 14, in the marginal heading against clause 22, -
for "section 15, 16 & 17"
read " sections 15, 16 and 17"
9. Page 15, line 10, -
for "options in goods or options"
read "option in goods or option"
10. Page 15, line 15, -
for "options"
read "option"
11. Page 15, in the marginal heading against the proposed new section 19, -
for "derivate"
read "derivative"
12. Page 15, line 45, -
for "optioin"
read "option"
13. Page 16, line 19, -
for "occure"
read "occur"

14. Page 16, line 46, -
for "being a person or"
read "and"
15. Page 17, line 21,-
for "shall be"
read "he shall be"
16. Page 17, line 41,-
for "directives"
read "directions"
17. Page 17, in the marginal heading, against the proposed new section 21G,-
for "directives"
read "directions"
18. Page 18, lines 32 and 33,-
omit "at both the places where they occur"
19. Page 18, line 50,-
for "grounds"
read "ground"
20. Page 18, line 1 from the bottom at both the places,-
for "commodity"
read "commodities"

21. Page 21, line 7,-

for “received by and”

read “received by the person referred to in that sub-section and”

22. Page 23, in the marginal heading against the proposed new section 26F,-

for “Member;”

read “Members;”

23. Page 24, line 18,-

for “class of member”

read “classes of member”

24. Page 24, line 20,-

for “be under”

read “be granted under”

NEW DELHI;

March 8, 2006
Phalguna 17, 1927 (Saka)