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A STUDY RATIONALE BEHIND THE MERGING OF FORWARD MARKET COMMISSION WITH SECURITIES AND EXCHANGE BOARD OF INDIA- A CONCEPTUAL FRAMEWORK

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ABSTRACT

This study tries to bring out the important reasons behind the merging of two vibrant regulators in India namely FMC and SEBI, the former one is the sole regulator of Commodity Market till September 2015, the latter one is the regulator for Securities market in India. It is SEBI now become the sole regulator since 28th September 2015 for both securities, commodities market in India. Most of the reasons behind the merger of SEBI and FMC not known to many of us. Here is an attempt to study the reasons behind the merging of SEBI and FMC.

KEYWORDS: SEBI, FMC, Regulator, Securities Market, Commodity Market

INTRODUCTION

The Agency behind the Merging

The National Spot Exchange (NSEL), problem address the necessities of superior regulator to be in place to control commodity market operations in India to protect the interest of the investors and increase the confidence level. The FSLRC – Financial Sector Legislative Reforms Commission came out with a suggestion that sector –wise regulation could be brought. It is a system which suggests that Reserve Bank of India (RBI) might regulate the banking and payments system and a Unified Financial Agency (UFA) might support in all other financial sectors regulators like SEBI, IRDA, PFRDA and FMC to regulate the remaining Financial Markets in India.

Challenges before SEBI

Though SEBI has all necessary infrastructure to regulate the Commodities market, some experts feel that it has lack of knowledge on Commodity market but this problem could be sorted out by having the higher level officials from FMC to work with SEBI altleast in the initial merging period.

Actions Done by SEBI in the Short Span of Time

SEBI has created a exclusive Commodity Cell to monitor and regulate Commodity derivatives market. This Commodity cell has three man committee one each from Integrated Surveillance Department and Market Intermediaries Regulation and Supervision Department. SEBI seeks the help of the Agricultural Ministry for Data sources for the prices and to improve the methodology for determination of final settlement price. SEBI will extend one year time for those in

Commodities market to get in tune with the new regulations.

- Fundamental and Technical Analyst cannot trade in Securities hereafter.
- Disclose regulatory actions in abridged prospectus to companies.
- Companies should get listed within six days of share sale
- SEBI dismisses fraudulent trade charges against 10 entities
- Share holding Disclosure format
- Business Responsibility Disclosure Format
- Format for Board Meeting Voting Results
- Bring in Disaster Recovery Policy
- Fines on Non Disclosure cases of Entities

Reasons behind Merging of FMC with SEBI

- Legacy
- Risk Monitoring
- The Role of FIIs
- Freeing up Futures

Legacy

It is believed to be SCRA-1956 the so called Securities Contracts Regulation Act comparatively stronger than the FCRA – the so called Forward Contracts Regulation Act, important reason behind the merging of FMC with SEBI. All the players in the market feel that the commodity market will now be better regulated with much stronger rules and regulations and eventually maximize the confidence level of players of both the markets in India.

Risk Monitoring

It was believed that FMC had no effective direct control over brokers but on the other hand SEBI has a sophisticated compliance and vigilance system in place over brokers in India with regard to risk monitoring and enforcement system. This merger will boost up the confidence of investors and ensure the business growth. With this merging now SEBI has the power to access all the call data records.

The Role of FIIs

There were some restrictions for the foreign Institutional Investors to invest in Commodity Markets especially with regard to Commodity Exchange Transaction, but this Merger will be the encouraging factor for the FIIs to participate and gain maximum from commodity markets in the ears to come. According to securities experts, FIIs participation in commodities trading on forward trading will increase liquidity, investor participation and better price discovery. Most of the brokers felt that better hedging tool will be available for the investors as FIIs allowed to invest in Option contracts.

Freeing up Futures

In order to free up the futures market and contracts this merger is acknowledged.

Tax Implications in India with the merger of FMC and SEBI

According the Income Tax ACT, 1961, the Loss from the speculative transactions could be set right with business profits made from the speculative transactions. Income Tax Law has some exclusions on Speculative Transactions, they are derivatives transactions done at recognized stock exchange and commodity derivatives transactions done at a recognized commodity exchanges.

Very recently Four Commodity Exchanges have been notified as legally recognized ones with regard to the Forward Contracts (Regulation) Act, 1952, section 2(j), they are NCDEX-National Commodity and Derivatives Exchange Ltd., UCX- Universal Commodity Exchange Ltd., MCX- Multi-Commodity Exchange of India Ltd., ACE- Ace Derivatives and Commodity Exchange Ltd. The exchanges those who want to be legally recognized to fulfill certain prescribed conditions and have to be notified by the central government under Income Tax Act for the purpose of exclusion from securities transactions.

Based on the amendment given in the Finance Act, 2015, Forward Contracts (Regulation) Act was to be replaced from the notified date of 28th September 2015. As per the amendment, all the recognized Associations/commodity exchanges under FCRA are deemed to be recoginsed stock exchanges under the SCRA-Securities Contracts (Regulation) Act, 1956. According to this, all the commodity exchanges approved by the Forward Market Commission under FCRA will now become Stock Exchanges approved under SCRA by SEBI.

As FCRA replaces with SCRA, this action clearly indicates that a situation where commodity derivatives transactions prior to 28th September would not be speculative on the other hand the transactions after the 28th September 2015 would be considered to be speculative ones. There are criticisms against this argument as well. To avoid it must be the responsibility of (CBDT-Central Board of Direct Taxes) CBDT to clarify that whether the commodity derivatives transactions would still be qualified for exclusion from the definition of speculative transaction and amend a special Law in the Parliament, with an announcement could be made in the next budget.

As on date, share derivatives, currency derivatives and commodity derivatives transactions are excluded from speculative transactions. Squared up on the same day without delivery is regarded as speculative, which is allowed in transactions of shares and debt securities.

The Audit trial for all the derivatives transactions, whether it is done at stock market or in the commodity market which will prevent many manipulations. SEBI has more vibrant surveillance facility which unearths any sort of manipulative transactions, as it is having the share prices of small unknown companies too. That is why the logic of setting off the speculation loss couldn’t be done hereafter.

By rationalization of the law and reducing unwanted legal confusions on the subject, it is better to separate the speculative transactions from all other security and commodity market transactions in the one fray will help the government to find a solution for the given problem.

More Trading/Transaction Cost is Likely to Increase on This Merger

It is believed by the traders and players in both the Markets have to incur more Trading and transaction cost in the years to come.

CONCLUSIONS

After going through the above article, one could easily understands the implications of Merging between Forward Market Commission and Securities and Exchange Board of India, It is clearly shown that there people and associations to gain and there are people and associations to lose as well.

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