

MCX/CCO/144/2011-2012

Corporation Finance Department
Division of Issues and Listing
Securities & Exchange Board of India
Plot No. C4-A, G-Block
Bandra Kurla Complex
Bandra (East)
Mumbai 400 051

E/95
28/5/12

Dear Sir,

Sub: Request for an interpretative letter under the SEBI (Informal Guidance) Scheme, 2003, as amended (the "SEBI Scheme") in connection with the lock-in of equity shares of ex-employees

1. This is a request for an interpretative letter under clause 5(ii) of the SEBI Scheme on the basis of the factual background and details provided herein below in this letter.
2. **Factual Background:**
 - 2.1 Multi Commodity Exchange of India Limited ("Company") is a listed entity having its registered office at Exchange Square, Suren Road, Chakala, Andheri (East), Mumbai 400 093 and is engaged in the business of facilitating nationwide online trading, clearing and settlement operations of commodities futures transactions. The equity shares of the Company were listed on the BSE Limited ("BSE") on March 9, 2012 pursuant to its initial public offering ("IPO").
 - 2.2 The Company had implemented the following two employee stock option schemes to reward and retain employees:
 - 2.2.1 Multi Commodity Exchange of India Limited Employees Pre IPO Stock Option Plan 2006 ("ESOP 2006"): ESOP 2006 was approved by the shareholders of the Company vide special resolution dated January 13, 2006 for issue and grant of 6,50,000 options. However, post sub-division of the equity shares of the Company from Rs.10 per equity share to Rs. 5 per equity share, the Company granted total of 13,00,000 options under ESOP 2006 to the employees and directors of the Company and the erstwhile holding company of the Company, namely, Financial Technologies (India) Limited, ("FTIL"). Each option granted under the ESOP 2006 entitled the holder thereof, on exercise, to one equity share of Rs. 5 each, of the Company.. Pursuant to the ESOP 2006, 10,83,740 options were exercised at Rs. 14 per option. The ESOP 2006 was terminated with effect from January 16, 2010.
 - 2.2.2. Employees Stock Option Scheme 2008, ("ESOP 2008" and together with ESOP 2006, referred to as "ESOP Schemes"): ESOP 2008 was approved by the shareholders of the Company by their resolution dated February 27, 2008 and the Company granted 26,00,000 options pursuant thereto to the trust, namely, the MCX ESOP Trust, which was set up for the implementation of ESOP 2008. Each option granted under ESOP 2008 entitled the holder thereof, on exercise, to one equity share of Rs. 5 each, of the Company. The Compensation Committee granted options in two tranches: (a) 21,01,200 options to the eligible employees / directors of the Company on July 2, 2008 and August 23, 2008; and (b) 331,750 options (including lapsed options available for re-issuance) to the eligible employees / directors of the Company on October 24, 2011.

- 2.3 The equity shares allotted under the ESOP Schemes to the employees of the Company, who had ceased to be in employment as on the date of the allotment of shares pursuant to the IPO, were locked-in by the Company for a period of one year from the date of allotment in the IPO. Such lock-in of equity shares was based on the definition of the term 'employee' under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended (the "**SEBI Regulations**") and pursuant to Regulation 37 of the SEBI Regulations. Further, this approach was in line with the interpretation in the informal guidance provided by the Securities and Exchange Board of India ("**SEBI**") in its interpretative letter dated November 14, 2007 to Firstsource Solutions Limited ("**Firstsource Informal Guidance**"). Additionally, as mentioned in para 2.2.1 of this letter, pursuant to ESOP 2006, shares were also allotted to employees of FTIL, the erstwhile holding company of the Company. The shares held by such employees of FTIL, whether presently in employment of FTIL or not, were also locked-in as FTIL was no longer the holding company of the Company at the time of the IPO.
- 2.4 In relation to the above, appropriate disclosures were included on pages 86 and 87 as well as on pages 91 to 95 of the Prospectus, page 87 and pages 91 to 92 of the Red Herring Prospectus and page 70 and pages 75 to 78 of the Draft Red Herring Prospectus. Copies of the above mentioned pages of the Prospectus and the Red Herring Prospectus are annexed herewith as Annexure 1. The Company had also submitted a list of employees whose shares allotted under the ESOP Schemes were ineligible for lock-in to the designated stock exchange (BSE Limited) during the Post Issue process.
- 2.5 However, the Company received an email dated April 17, 2012 from Raju Thomas Panackal, an ex-employee of the Company forwarding to the Company an email dated April 17, 2012 from SEBI ("**Email**"), in relation to lock-in of equity shares of ex-employees (annexed herewith as Annexure 2). In terms of the Email, SEBI has stated that "the shares allotted under an employee stock option plan to an employee shall be eligible for the exemption from lock-in provided under Regulation 37 of SEBI Regulations, notwithstanding the fact that the allottee has ceased to be an employee at the time of getting the said shares listed.....".

3 Legal Framework and Past SEBI Informal Guidance:

3.1 Regulation 37 of SEBI Regulations states:

"In case of an initial public offer, the entire pre-issue capital held by persons other than promoters shall be locked-in for a period of one year:

Provided that nothing contained in this regulation shall apply to:

- (a) equity shares allotted to employees under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VIII....."

3.2 Regulation 2(1)(m) of the SEBI Regulations defines 'employee' as under:

"a permanent and full-time employee, working in India or abroad, of the issuer or of the holding company or subsidiary company or of that material associate(s) of the issuer whose financial statements are consolidated with the issuer's financial statements as per Accounting Standard 21, or a director of the issuer, whether whole time or part time and does not include promoters and an immediate relative of the promoter (i.e., any spouse of

that person, or any parent, brother, sister or child of that person or of the spouse)"

3.3 Firstsource Informal Guidance: SEBI had clarified as follows:

- (i) "in terms of clause 1.2.1(xiib) of the SEBI (DIP) Guidelines 'employee' means (a) a permanent employee of the company working in India or out of India; (b) a director of the company, whether a whole time director, part time director or otherwise ; or (c) an employee as defined in sub-clause (a) or (b) of a subsidiary, in India or out of India or out of India, or of a holding company of the company.", (Para 2.4 of the Firstsource Informal Guidance).
- (ii) ".....as per the said definition, any person who ceased to be in the employment of the company is not covered in the above definition of 'employee'. Therefore, the exemption from lock in of shares as contained in clause 4.14.2(iii) of the SEBI (DIP) Guidelines is not available to shares held by any person who has ceased to be an employee of the company prior to the filing of the red herring prospectus...", (Para 3.6 of the Firstsource Informal Guidance).

4 Reason for seeking an Interpretative Letter from SEBI

We respectfully submit that the interpretation of Regulation 37 of the SEBI Regulations in the Email is not in line with the interpretation provided by SEBI under Firstsource Informal Guidance. Further, the interpretation provided in the Email would allow shares 'allotted' to an employee under an employee stock option plan, which have subsequently been transferred to and are presently held by any investor, to be eligible for exemption from lock-in. Accordingly, we request an interpretative letter clarifying the points mentioned in para 5 below.

5 Interpretation Sought

- 5.1 Whether the employees of the Company who have received shares pursuant to the ESOP Schemes and who have ceased to be the employees of the Company as on the date of the allotment of shares pursuant to the IPO would be considered as "employees" for the purposes of exemption from the one year lock-in under proviso (a) to Regulation 37 of the SEBI Regulations;
- 5.2 Whether the existing employees and ex-employees of FTIL, which was an erstwhile holding company of the Company, who had received shares pursuant to ESOP 2006, would be considered as "employees" for the purposes of exemption from the one year lock-in under proviso (a) to Regulation 37 of the SEBI Regulations; and
- 5.3 Consequently, whether the shares allotted to and held by the (i) ex-employees of the Company under the ESOP Schemes; and (ii) existing employees and ex-employees of FTIL (which had ceased to be a holding company of the Company at the time of IPO) under ESOP 2006, would be exempt from the one year lock-in under proviso to Regulation 37 of the SEBI Regulations and whether the Company should now release the lock-in on such shares.

6 Application under the SEBI Scheme

The paragraph 4 of the SEBI Scheme permits the following persons to make a request for informal guidance:

- (i) Any intermediary registered with the Board under section 12 of the Act;
- (ii) Any listed company;

- (iii) Any company which intends to get any of its securities listed and which has filed either a listing application with any stock exchange or a draft offer document with the board or the Central Listing Authority;
- (iv) Any mutual fund trustee company or asset management company;
- (v) Any acquirer or prospective acquirer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

The Company is a listed company whose shares are currently listed and traded on BSE and accordingly has applied for informal guidance under the SEBI Scheme.

- 7 **Compliance with paragraph 6 of the SEBI Scheme:** In accordance with paragraph 6 of the SEBI Scheme, this request for an interpretative letter is addressed to the Corporation Finance Department and is accompanied with a Demand Draft dated 28th May, 2012 bearing no. 440323 for Rs. 25,000 (Rupees Twenty Five Thousand only Only) drawn on HDFC Bank, Ahura Center branch, Andheri (E). Further, all material facts, circumstances and legal provisions which in our opinion are relevant for the purposes of determination of this request, are stated herein.

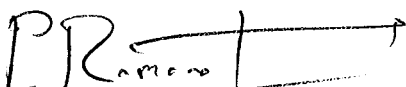
We would appreciate receiving the confirmations and interpretation sought above at your earliest convenience.

For further assistance or clarifications we request that you contact our company secretary and chief compliance officer at the address detailed below:

Attention: Mr. P. Ramanathan
Multi Commodity Exchange of India Limited
Exchange Square, Suren Road,
Chakala, Andheri (East),
Mumbai 400 093 Tel no : (91 22) 6731 8888;;
Fax no : (91 22) 6649 4151;
Cell no: +91 99302 67620;
Email Id: Ramanathan.P@mcxindia.com;

Thanking you

Yours faithfully,
For Multi Commodity Exchange of India Limited


Mr. P. Ramanathan
Company Secretary and Compliance Officer

Encl:

Annexure 1: Extracts of the disclosures in connection with one year lock-in of shares on pages 86, 87 and 91 to 95 of the Prospectus and page 87 and 91 to 92 of the Red Herring Prospectus.

Annexure 2: Email dated April 17, 2012 from Raju Thomas Panackal, forwarding to the Company an email dated April 17, 2012 from SEBI in relation to lock-in of shares of ex-employees granted under employee stock option schemes for a period of one year.