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## **FAQ - Clubbing of Open Positions**

### **1. What are the norms for Position Limits in Commodity Derivatives?**

In terms of SEBI circular SEBI/HO/CDMRD/DMP/CIR/P/2016/96 dated September 27, 2016 and corresponding Exchange circular no. NCDEX/RISK-037/2016/244 dated September 28, 2016, SEBI has consolidated and updated norms with regard to position limits and has also prescribed numerical position limits for all commodities which are presently traded on the Commodity Derivatives Exchanges.

### **2. What is Clubbing of Open Positions?**

In terms of SEBI circular SEBI/HO/CDMRD/DMP/CIR/P/2016/96 dated September 27, 2016, while calculating open positions for the purpose of position limits, Exchanges shall take suitable measures for clubbing of open positions of clients/members who may be acting in concert to circumvent the norms of position limits. Thus clubbing of open positions is a principal involving aggregating of positions of two or more persons so that no person whether a member or a client shall **hold or control** an open position whether long or short, in excess of the prescribed limit.

### **3. What is the objective of Clubbing of Open Positions?**

The major reasons for placing limits on open positions that can be taken by a member or a client would include risk management i.e. prohibiting members and client to assume risk beyond a particular limit, preventing market manipulation or market abuse and to protect market integrity. In relation to commodities market, the object of open position limits would also include to prevent cornering or squeeze in the market.

Since there are prescribed positions limits at a member and client level at commodity level (i.e. all contracts together) and near month contract level, there could be possibilities of two or more persons act together and take positions in a concerted manner to circumvent the prescribed position limits.

Therefore, to maintain the sanctity of the Regulatory prescribed position limits, the open positions of such persons who act in concert to circumvent the position limit norms are clubbed and the positions of all such persons acting together are considered as if taken by a single person and monitored against the prescribed limit as applicable to a single client or member.

### **4. Are there international practices similar to clubbing of positions?**

CFTC has under its rules prescribed Aggregation of Positions which to some extent is similar to clubbing of positions. Aggregation of positions is based on ownership and control. All positions in accounts for which a person, by power of attorney or otherwise, directly or indirectly holds positions or controls trading shall be included with the positions held by such person. Additionally, positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding shall be treated the same as if the positions were held by a single person.

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**5. What is meant by the term Persons Acting in Concert under SEBI Regulations?**

As per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, Persons Acting in Concert are individual(s) /company(ies)/ any other legal entity(ies) who are acting together for a common objective or for a purpose of substantial acquisition of shares or voting rights or gaining control over the target company pursuant to an agreement or understanding whether formal or informal. Acting in concert would imply co-operation, co-ordination for acquisition of voting rights or control. This co-operation/ co-ordinated approach may either be direct or indirect.

The concept of PAC assumes significance in the context of substantial acquisition of shares since it is possible for an acquirer to acquire shares or voting rights in a company "in concert" with any other person in such a manner that the acquisition made by them may remain individually below the threshold limit but may collectively exceed the threshold limit.

Unless the contrary is established certain entities are deemed to be persons acting in concert like companies with its holding company or subsidiary company, mutual funds with its sponsor/ trustee/ Asset management company, etc.

**6. What is meant by market integrity and what would therefore mean compromising with market integrity?**

There is no statutory definition of Market Integrity under Indian Legislation. Market integrity is the state of affairs in the market absent of 'market abuse' or 'market manipulation' and where market forces operate without any artificial interference. While it may not be possible to exhaustively carve out instances of compromise of market integrity, SEBI Laws and Regulations dealing with prevention of market manipulation and market abuse are instructive.

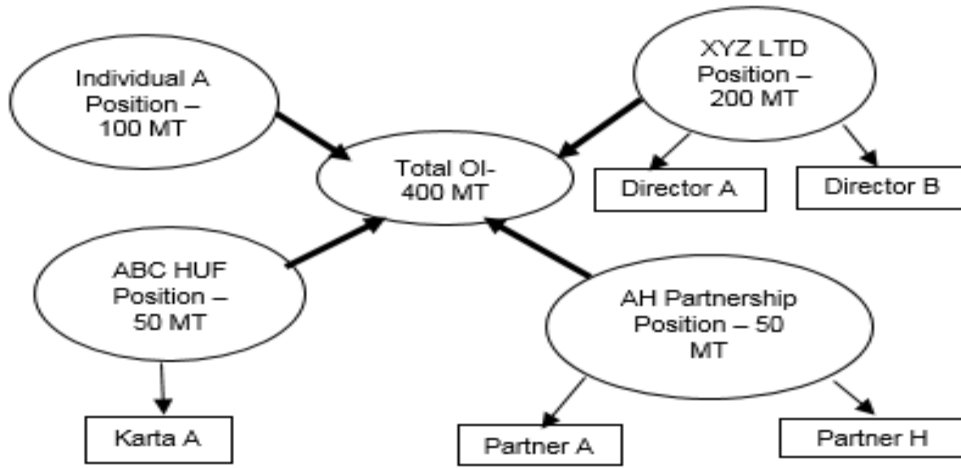
Keeping in view the objective of introduction of position limits i.e. for protecting market integrity, attempt to violate the position limits through patterns such as acting in concert would ipso facto lead to compromising the market integrity.

**7. What are the criteria which have been laid down for clubbing of open positions?**

Annexure B of the SEBI Circular no. SEBI/HO/CDMRD/DMP/CIR/P/2016/96 dated September 27, 2016 has laid down the criteria for the purpose of clubbing of positions. These criteria are already announced and the positions are being clubbed based on information uploaded by the members in respect of their proprietary and client accounts

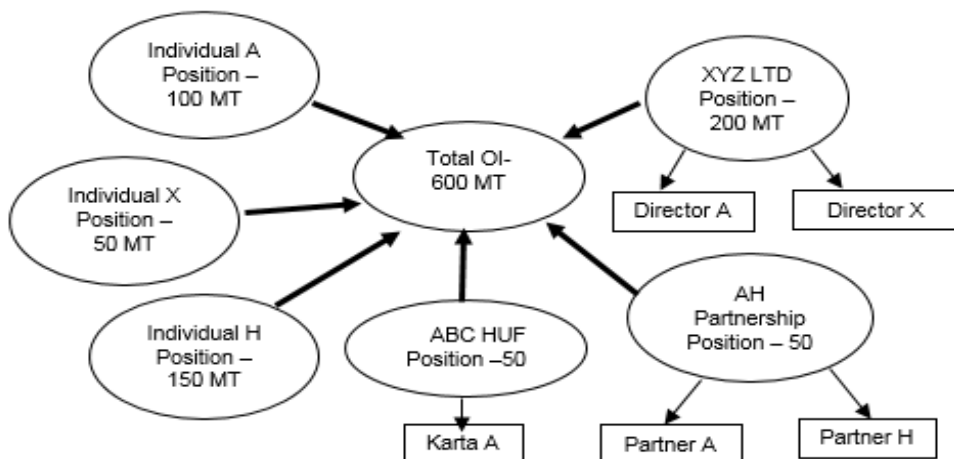
- a) When a person is a partner in one or more partnership firms and /or is a director in one or more companies and/or is a manager (karta) of a Hindu Undivided Family (HUF), the total open position of
- the person as an individual operator,
  - the firm or firms in which he is a partner ;
  - the Company or companies in which he is a director ; and
  - the HUF of which he is a manager (karta)
- taken together shall not exceed the prescribed limit.

Illustration:



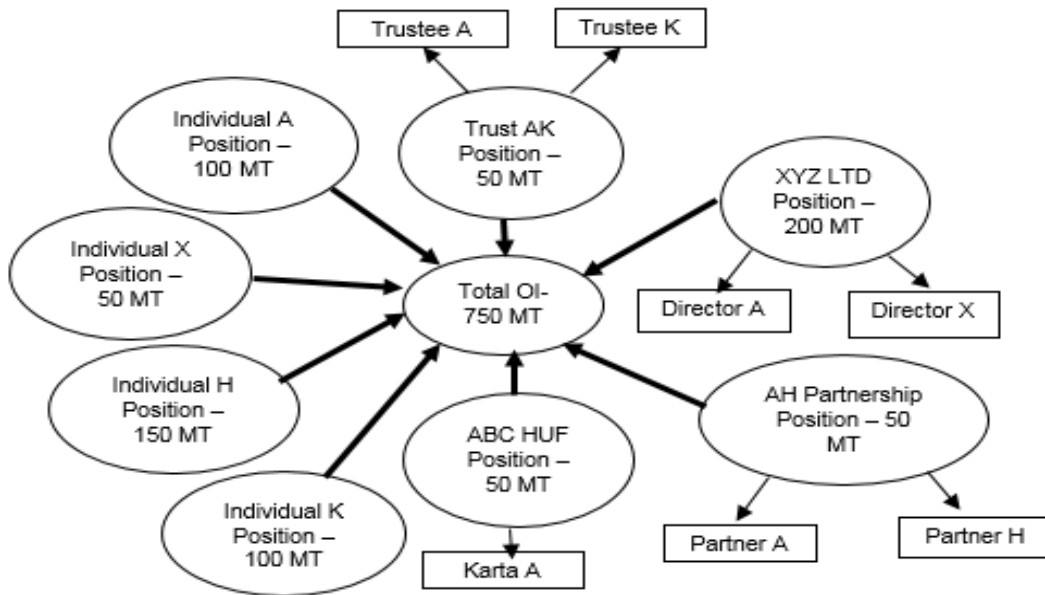
- b) Where two or more persons are partners in a partnership firm or firms and where two or more persons are director in a company or companies and where two or more persons are Kartas of HUFs, the total open position held by
- all the partners of partnership firm or firms;
  - the concerned partnership firm or firms;
  - all the directors of the company or companies ;
  - the concerned company or companies ;
  - all the Kartas of the HUFs ; and
  - the concerned HUFs
- taken together shall not exceed the prescribed limit.

Illustration:



- c) Where a person or persons operating as individuals and /or being partners in one or more partnership firms and/or being directors in one or more companies and/or being kartas of HUFs are also trustees in one or more trusts, the total open position of
- the person as individual operator,
  - the firm or firms in which they are partners;
  - the company or companies in which they are directors;
  - the HUFs in which they are Kartas; and
  - the trust or trusts in which they are trustees,
- taken together shall not exceed the prescribed limit.

Illustration:



**8. What would comprise of Persons Acting in Concert for the purpose of clubbing of open positions ?**

For the purpose clubbing of open positions, ‘persons acting in concert’ shall comprise of but not limited to “persons who are acting together pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate and take positions in a commodity derivatives contract with a common objective or purpose of collectively circumventing the norms of position limits as applicable to a client and member or otherwise, unless the contrary is established”.

Further, other than the laid down criteria above, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons in the same category or other categories unless the contrary is established:-

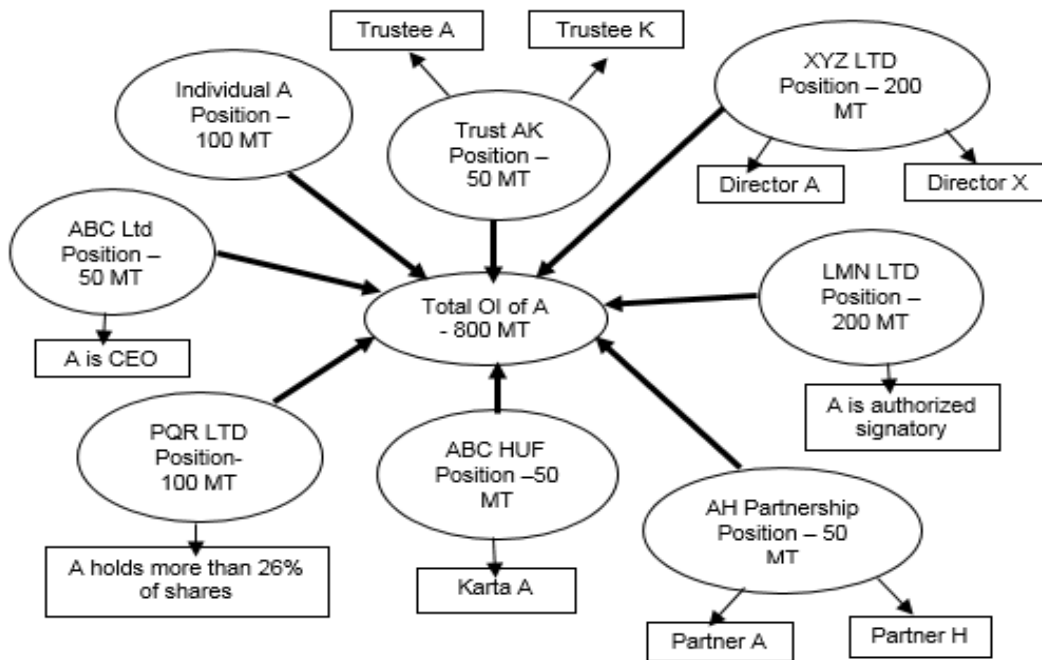
- a company, its Holding / Subsidiary company

- ii. a company, its Associates or Joint Venture Companies in which it holds atleast 20% shareholding
- iii. a company, its significant shareholder i.e. shareholder holding more than 26% of issued shares of the company
- iv. a company, its Key Managerial Personnel (KMP) and Authorised Signatories

**9. How would the Clubbing of Positions work when a person falls in both Criteria I and II?**

Where a person or persons operating as individuals and /or being partners in one or more partnership firms and/or being directors/significant shareholders/KMP's/Signatory in one or more companies and/or being kartas of HUFs are also trustees in one or more trusts, then the total open position of the person as individual, the firm or firms in which they are partners; the company or companies in which they are directors / significant shareholders / KMP's / Signatories, the HUFs in which they are Kartas, and the trust or trusts in which they are trustees, taken together should not exceed the position limit as prescribed.

Illustration:



**10. If a client is trading through two members, will the position be added across members?**

Yes, the position of the client will be added for the purpose of computing client level open interest irrespective of the number of members it is registered and trading. Similarly when a client is trading through a member and the entity / entities with which its positions are getting clubbed

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trade through different member / members, the positions of all such entities will be clubbed across the members.

**11. Are Limited Liability Partnership (LLP) covered under provisions of Clubbing?**

Yes, LLP's are covered under the provision of clubbing and are treated in a manner similar to partnership firms.

**12. 'A' and 'B' are directors in 'ABC Ltd'. 'ABC Ltd' does not hold any position. Would the positions of 'A' and 'B' be clubbed together?**

Yes, the positions of 'A' and 'B' will be clubbed together, even though 'ABC Ltd' does not hold any position or 'ABC Ltd' is an inactive client.

**13. 'A' and 'B' are directors in 'ABC Ltd'. 'A' is a karta of 'A HUF'. 'ABC Ltd' does not hold any position. Would the positions of 'A', 'B', and 'A HUF' be clubbed together?**

Yes, the positions of 'A', 'B' and 'A HUF' will be clubbed together, even though ABC Ltd does not hold position or 'ABC Ltd' is an inactive client.

**14. 'A' and 'B' are directors in 'ABC Ltd'. 'P' and 'Q' are directors in 'PQR Ltd'. 'B' and 'Q' are partners in partnership firm 'M/s BQ Enterprise'. How would the positions be clubbed?**

The positions of all 'A', 'B', 'P', 'Q', 'ABC Ltd', 'PQR Ltd' and 'BQ' Enterprise will be clubbed together. These positions will be clubbed even if 'M/s BQ Enterprise' does not hold position or 'ABC Ltd' is an inactive client

**15. Client 'A' is a director of XYZ Ltd and is also a Key managerial person / Authorised Signatory in PQR Ltd. Would the positions of XYZ Ltd and PQR Ltd be clubbed?**

Yes, the positions of Client 'A', XYZ Ltd and PQR Ltd will be clubbed in terms of Criteria II of the circular.

**16. ABC Ltd is a subsidiary of XYZ Ltd, will their positions be clubbed?**

Yes, the positions of ABC Ltd and XYZ Ltd will be clubbed in terms of Criteria II of the circular.

**17. A holds 30% shares of PQR Ltd, will their positions be clubbed?**

Yes. Positions of A and PRQ Ltd will be clubbed in terms of Criteria II of the circular.

**18. What would be other relevant criteria to club the open position?**

Apart from the parameters as broadly described above the following additional relationships / criteria will be considered by the Exchange for further analysis / investigations to ascertain whether certain persons are acting in concert under any other relevant criteria:

- a) Relatives as per AS 18
- b) Immediate Relatives for individual as defined in Companies Act

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- c) Promoters of the company as provided in Annual return filed with MCA
  - d) Co-parceners of HUF
  - e) Clients having same / similar postal address, e-mail address, bank accounts, website domain name or contact numbers
  - f) Clients having same person operating their account by placing order on their behalf

The Exchange shall look into the following parameters to test 'acting in concert' in the event of any of the above relationship criteria or any other criteria no mentioned herein triggers further investigation:-

- Existence of relationship between various clients on the basis of objective or subjective criteria
- Linked clients being on the same side i.e. Long or Short and cumulatively controlling substantial proportion of the market open interest in a particular commodity / contract
- Orders being placed at or around the same time at relatively near prices by group of clients
- Existence of commonality of funds flow between the various parties

#### **19. What are the Exemptions from Clubbing?**

- The position of different societies if they are members of a Federation will not be clubbed with the open interest position of the Federation for the purpose of determining the open interest position of the Federation or vice versa
- If Govt/RCS nominated directors sit on the Boards of different societies, this will not amount to common interest for the purpose of clubbing of positions
- Independent directors with no financial interest
- Govt/Financial Institutions nominated directors without any financial interest in the company

#### **20. How would Exchange proceed to Club the open positions?**

Exchange would collate the UCC information as uploaded by the members in respect of their individual and non-individual clients. Further Exchange would also refer to other reliable government sources like MCA portal for collating information in respect of non-individual clients like companies. This information as and when available with the Exchange, will form the basis of clubbing of positions for Criteria I and II given in the circular.

However, in case of parameters as mentioned in Criteria III, Exchange after investigation, will call for explanation from the concerned members / clients as to why their positions should not be clubbed. If the explanation/ replies are not found to be satisfactory, the Exchange will club the positions of the identified entities. The clubbing of positions on this basis will be a prospective action after providing a reasonable time to the concerned members/clients depending on their open positions to square-off their positions so determined by the Exchange as clubbable.

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**21. What would be the responsibilities of the Members?**

Members are required to carry out continuous Due Diligence of its clients. Ensure key KYC parameters are updated on periodic basis and latest information of the client and its directors/partners/karta details are updated in Unique Client Code (UCC) database of the Exchange.

In respect of changes in details of directors / partners / karta of their non-individual clients member are required to obtain the necessary documents like Form 12 or Form 32 for changes in directors, GAR 7 receipt of intimation of the changes to MCA by the client, partnership deed etc. in case of partnership firms and LLP.

**22. Whether Exchange is providing any report to members for them to monitor the positions of the clients?**

The Exchange is providing intraday and end of day reports on client level combined open position across members with a view to facilitate effective monitoring of open interest positions of the clients, where the same client trades through different trading members and / or where positions are clubbed as per clubbing guidelines conveyed through circulars on guidelines for calculation of net open position.

The reports are generated for Trading Members, if any of their client has open position exceeding 70% of applicable position limit. These intraday and end of day reports / files are available on the Extranet folder of the respective member. Members may please refer to Exchange circular no. NCDEX/TRADING-050/2015/139 dated April 23, 2015.

**23. What are the prescribed penalties for violation of position limits due to clubbing of positions?**

The penalties as prescribed in terms of SEBI circular SEBI/HO/CDMRD/DMP/CIR/P/2016/96 dated September 27, 2016 and corresponding Exchange circular no. NCDEX/RISK-037/2016/244 dated September 28, 2016 and Exchange circular no. NCDEX/TRADING-101/2016/257 dated September 28, 2016 shall be levied for violation of position limits.

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