

CIRCULAR

SEBI/ HO/ AFD/ AFD – PoD – 2/ CIR/ P/ 2023/ 148

August 24, 2023

To,

1. Foreign Portfolio Investors (FPIs)
2. Designated Depository Participants (“DDPs”) and Custodians
3. The Depositories
4. The Stock Exchanges and Clearing Corporations
5. Registrars to an Issue and Share Transfer Agents
6. Listed Companies

Dear Sir / Madam,

Subject: Mandating additional disclosures by Foreign Portfolio Investors (FPIs) that fulfil certain objective criteria

A. Background:

1. Certain FPIs have been observed to hold concentrated portion of their equity portfolio in a single investee company/ corporate group. Such concentrated investments raise the concern and possibility that promoters of such investee companies/ corporate groups, or other investors acting in concert, could be using the FPI route for circumventing regulatory requirements such as that of disclosures under Substantial Acquisition of Shares and Takeovers Regulations, 2011 (SAST Regulations) or maintaining Minimum Public Shareholding (MPS) in the listed company.
2. Recognizing the inherent risks of opportunistic takeover/ acquisition of Indian companies, the Government of India (GoI) issued Press Note 3 (PN3) dated April 17, 2020, requiring an entity of a country that shares land border with India, or where the Beneficial Owner (‘BO’) of an investment into India is situated in or is a citizen of any such country, to invest only under the Government route. While PN3 is not applicable to FPI investments, there are concerns that entities with large Indian equity portfolios could potentially disrupt the orderly functioning of Indian securities markets by misusing the FPI route.
3. Further, as regards identification of BOs of FPIs, while the thresholds for this purpose are specified in Prevention of Money Laundering (Maintenance of records) Rules, 2005 (‘PMLR’), it is often observed that no natural person is identified as the BO of several FPIs based on economic interest or ownership

interest, since each investor entity in the FPI may be below the threshold prescribed in the PMLR. However, there is a possibility that the same natural person may hold a significant aggregate economic interest in the FPI via various investment entities, each of which are individually below the threshold for identification as a BO as prescribed in PMLR.

B. Regulatory Amendments:

4. To mitigate the concerns stated above, a need was felt to obtain granular information of persons having any ownership, economic interest, or control in some objectively identified FPIs. With this objective, Regulations 22 (6) and 22(7) have been inserted in the SEBI (FPI) Regulations, 2019 ('FPI Regulations'), vide SEBI (Foreign Portfolio Investors) (Second Amendment) Regulations, 2023, notified on August 10, 2023.
5. In terms of Regulations 22 (6) and 22 (7) of the FPI Regulations, the criteria rendering FPIs liable to provide information or documents in relation to the persons with any ownership, economic interest, or control, in the FPI, and the manner for providing the same is being specified in the below sections of this circular.
6. While the broad principles for this purpose are being outlined in this circular, the detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions mentioned in the circular shall be spelt out in the Standard Operating Procedure (SOP) that shall be framed and adopted by all the DDPs/ Custodians, in consultation with SEBI. The SOP shall ensure consistent practice across the industry to avoid regulatory arbitrage amongst DDPs/ Custodians. The SOP shall be made public and updated from time to time by the DDPs/ Custodians, in consultation with SEBI.

C. Criteria for submission of disclosures by FPIs in terms of Regulations 22(6) and 22(7):

7. Granular details of all entities holding any ownership, economic interest, or exercising control in the FPI, on a full look through basis, up to the level of all natural persons, without any threshold, shall be provided by FPIs that fulfil any of the criteria mentioned below to the respective DDPs in the format specified in the above referred SOP,:
 - a. FPIs holding more than 50% of their Indian equity Assets Under Management (AUM) in a single Indian corporate group;

- b. FPIs that individually, or along with their investor group (in terms of Regulation 22(3) of the FPI Regulations), hold more than INR 25,000 crore of equity AUM in the Indian markets.

Note:

- I. Economic interest means returns from the investments made by the FPI.
- II. Ownership interest means ownership of shares or capital of the entity or entitlement to derive profits from the activity of the entity.
- III. Control shall have the same meaning as mentioned in Regulation 2(f) of the FPI Regulations.

8. However, FPIs having a broad based, pooled structure with widespread investor base, ownership interest by Government or Government related investors, etc. may not pose significant systemic risk. Further, certain genuine circumstances may also prevent some FPIs from adhering to the limits specified in Para 7 above. Considering the same, FPIs satisfying any of the criteria listed below shall not be required to make the disclosures as specified in Para 7 above:

- a. Government and Government related investors registered as FPIs under Regulation 5 (a) (i) of the FPI Regulations.
- b. Public Retail Funds ('PRFs') as defined under Regulation 22(4) of the FPI Regulations, subject to independent validation of the same by DDPs/ Custodians.
- c. Exchange Traded Funds (with less than 50% exposure to India and India-related equity securities) and Entities listed on specified Exchanges of the permissible jurisdictions as may be notified by the Board from time to time. To start with, the list of permissible jurisdictions and exchanges as mentioned in [Annexure A](#) to SEBI circular [SEBI/HO/MRD2/DCAP/CIR/P/2019/146](#) dated Nov 28, 2019 shall be considered as permissible exchanges and jurisdictions for this clause.
- d. Pooled investment vehicles registered with/ regulated by a Government/ regulatory authority in their home jurisdiction/ country of incorporation/ establishment/ formation, where:
 - i. their holding in an Indian corporate group is below 25% of their overall global AUM at a scheme level, in case of FPIs falling under Para 7 (a) above; or

- ii. their equity AUM in the Indian markets is below 50% of their overall global AUM at a scheme level, in case of FPIs falling under Para 7 (b) above;

subject to independent validation of disclosure of such holdings by the DDPs/ Custodians.

‘Scheme’ for the purpose of this clause shall mean pooled investment vehicles with structures similar to ‘Scheme’ as defined in SEBI (Mutual Funds) Regulations, 1996.

- e. FPIs that are unable to liquidate their excess investments due to statutory restrictions (such as lock in restrictions of anchor investors in IPOs, moratoriums, freeze on accounts or shares due to regulatory orders etc.), till the time such restrictions exist.
- f. Newly registered FPIs, for the first 90 calendar days from the date of settlement of first trade by the FPIs in equity segment in India.
- g. FPIs in the process of winding down their investment and having intimated to their DDP, their intention to surrender their FPI registration. Such FPIs shall be required to bring down their holdings to ‘NIL’ within 180 calendar days from the date of their intimation for surrender, failing which the account of the FPI shall be blocked for purchase as well as sale, and the FPI shall be liable for regulatory action as stipulated by the Board.

The modalities for compliance with the above shall be detailed in the above referred SOP.

9. The constituents of FPI investor group which collectively hold more than INR 25,000 crore of equity AUM in the Indian markets, shall be exempted from making the additional disclosures if the investor group consists of FPIs that qualify for exemption in terms of any of the criteria in Para 8 above and the net equity AUM of the investor group, after deducting the AUM of such exempted FPIs, falls below INR 25,000 crore.

After making the aforesaid deductions of AUM of such exempted FPIs, in case the equity AUM of the remaining FPIs of the investor group continues to exceed INR 25,000 crore, only the non – exempted FPIs of the investor group shall be liable for making the disclosures in terms of Para 7 and consequent actions, if any, as stated in the section below.

10. Also, where the entity identified on a look through basis in terms of Para 7 above, falls under any of the sub - categories specified in Para 8 above, further identification of entities having ownership interest, economic interest, or control rights of such an entity on look through basis, shall not be required.

D. Timelines:

11. Disclosures specified under Para 7 shall not be required to be made by FPIs in case their investments are realigned with the prescribed thresholds, within the below mentioned timelines/ conditions:

- a. FPIs holding more than 50% of their Indian Equity AUM in a single Indian corporate group: 10 trading days from the date on which such FPIs exceed the threshold. Such FPIs shall not make fresh purchases of the equity shares of any company belonging to such Indian corporate group, during the next 30 calendar days from the date on which the FPIs exceeded the threshold.
- b. FPIs, including their investor group, holding more than INR 25,000 crore of equity AUM in the Indian markets: 90 calendar days from date on which such FPIs exceed the threshold. Accounts of all FPIs, individually or belonging to such investor group, shall be blocked for further equity purchases until the holding is brought below INR 25,000 crore of equity AUM in the Indian markets.
- c. FPIs required to make disclosures specified in Para 7 above as on the date of applicability of this circular: 90 calendar days from the date of applicability of this circular.

After realignment, in case the FPI's holdings exceed the prescribed threshold on a subsequent date, the timeline for FPI to realign with the limits shall restart from such subsequent date.

12. FPIs whose investments continue to exceed the prescribed threshold post expiry of timelines mentioned in Para 11 shall make the disclosures as specified in Para 7 to their DDPs within 30 trading days from the expiry of such timelines. Non – disclosures in this regard shall render the registration of the FPI invalid and the FPI shall not make any further purchases. Further, the FPI shall liquidate its securities and exit the Indian securities market by surrendering its FPI registration within 180 calendar days from the day the certificate becomes invalid.

13. During the aforementioned 180 calendar days, the investee companies shall restrict the FPI's voting rights to its actual shareholding or its shareholding corresponding to 50% of its equity AUM on the date its FPI registration is rendered invalid, whichever is lower. The mechanism for implementing the same shall be spelt out in the SOP.
14. Disclosures made as per Para 7 of this circular shall be considered material information in terms of Regulation 22(1)(c) of the FPI Regulations till the time the FPI's holdings are in excess of the prescribed thresholds in Para 7.
15. Depositories shall introduce new freeze reason codes and Stock Exchanges shall put in place appropriate mechanism / systems to ensure compliance of the above and to facilitate blocking of the accounts of the FPIs.
16. For monitoring compliance with the 50% exposure limit in a single corporate group, a repository containing names of companies forming a part of each Indian corporate group, shall be publicly disseminated on the websites of Stock Exchanges/ Depositories.
17. The provisions of this circular shall come into force with effect from November 01, 2023.
18. This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 3(2), 22(1), 22 (6), 22 (7) and 44 of SEBI (FPI) Regulations, 2019, and Sub-rule 14 (i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
19. This Circular is available at www.sebi.gov.in under the link "[Legal ---Circulars](#)".

Yours faithfully,

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