

Relaxation in timelines for disclosure of material changes by Foreign Portfolio Investors

1. Objective:

1.1. The purpose of this Board Memorandum is to seek approval of the Board for amending the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019 (hereinafter referred to as “the FPI Regulations”) to relax the timelines for disclosure of material changes/events by Foreign Portfolio Investors (hereinafter referred to as “FPIs”).

2. Background:

2.1. Regulation 22 of the FPI Regulations provide for general obligations and responsibilities of FPIs. The obligations include making certain disclosures to SEBI and/or the respective Designated Depository Participant (DDP) within seven working days of the event necessitating the disclosure, e.g., material change in information previously submitted by the FPI, change in structure, ownership, control or investor group of the FPI, action taken by overseas regulator, etc.

2.2. Further, Master Circular for FPIs and DDPs dated December 19, 2022 prescribes a time period of seven working days for the following disclosures/obligations:

2.2.1. change in information relating to change in structure, ownership, control

2.2.2. change in regulatory status, merger, demerger, restructuring

2.2.3. change in category/sub-category/structure/jurisdiction/name of FPI/beneficial ownership etc.

2.2.4. making application for change in name in PAN records pursuant to name change

2.2.5. deletion of sub-fund/share classes in case of segregated portfolios

2.2.6. change in material information which has a bearing on the registration

2.3. Prior to March 15, 2023 the FPI Regulations mandated the aforementioned disclosures to be made 'forthwith'. The term 'forthwith' did not denote a specific time-period and therefore diverse market practices were prevalent in this regard. Therefore, in order to provide clarity to the FPIs, a specific time-period for disclosures and other obligations was prescribed. Accordingly, in addition to other ease of doing business measures with respect to onboarding of FPIs, the FPI Regulations and the Master Circular were amended to replace the term 'forthwith' with 'as soon as possible but not later than seven working days'. The seven working-day period was considered reasonable in view of the different time-zones and holiday calendar in different jurisdictions. However, the market participants have represented that the seven working days' time-period for disclosures and other obligations mentioned above may be relaxed.

2.4. In this regard, it may be noted that Rule 9B of Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ("PMLR"), provides a period of 30 days for submission of documents for any update to the information provided by a client of a reporting entity.

3. Representations from Market Participants:

3.1. As mentioned above, SEBI is in receipt of several representations from market participants regarding the need to relax the disclosure time-period. It has been represented that there are several challenges in adhering to the prescribed timelines, especially in case of change in Beneficial Owner. The market participants have, inter alia, represented that:

3.1.1. Public Retail Funds ("PRFs") often have thousands of underlying investors and the holding of such investors in the FPI can fluctuate on a daily basis. In many cases, the investors participate through intermediaries that are subject to KYC, AML and customer verification requirements as applicable to the fund. In line with the FATF risk based approach, the funds rely on these intermediaries for KYC/AML compliance to avoid duplication in efforts to collect and verify client data.

3.1.2. Although it is rare that such funds will have an investor who meets the 10% threshold [for determination of Beneficial Ownership in FPI], monitoring the same requires increase in compliance monitoring and

sharing of data, on a daily basis between the funds and intermediaries/investors.

3.1.3. Further, the granular and frequent reporting may not be useful to regulatory authorities due to constant changes.

3.1.4. The seven working days' notification requirement increases the compliance challenges as gathering the required information from entities spread across various jurisdictions, may take several weeks. This becomes even more challenging, in case documents with wet ink signatures of authorized signatories are required to be sent from across jurisdictions.

4. Material changes to the information submitted earlier that need to be notified by FPIs

4.1. FPIs are required to notify material changes to the information previously submitted by them. Such changes include those that may impact the eligibility of an FPI or any privileges/exemptions that are available to an FPI. Therefore, DDPs are required to examine the material changes notified by an FPI and re-assess its eligibility. If required, FPI may need to seek fresh registration, e.g. in case of change of jurisdiction of FPI, change in name of FPI due to merger/acquisition, etc.

4.2. Further, in terms of the extant regulatory framework, certain privileges are available to FPIs, including the following:

4.2.1. In terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, FPIs (other than individuals, corporate bodies and family offices) are categorized as Qualified Institutional Buyers ("QIBs") and have certain privileges for securities' offerings made under the said regulations.

4.2.2. In terms of SEBI Circular dated August 24, 2023 mandating additional disclosure requirements, FPIs that meet certain prescribed criteria are exempted from making such additional disclosures.

4.3. Therefore, it is proposed to segregate the material changes to be notified by the FPIs into the following categories:

Type I: this category shall include critical material changes that

- render the FPI ineligible for registration
- require FPI to seek fresh registration
- render FPI ineligible to make fresh purchase of securities
- impact any privileges (e.g. QIB) available or granted to the FPI under the extant regulatory framework
- impact any exemptions available or granted to the FPI under the extant regulatory framework

Type II: this category shall include material changes other than those included under Type I material changes, e.g. change in address without change in jurisdiction, change in Beneficial Owner, etc.

4.4. Accordingly, based on above principles, a framework containing the list of Type I material changes shall be specified by SEBI by way of issuance of circular and the implementation standards for such disclosures shall be adopted by the pilot Custodian and DDPs Standard Setting Forum (“CDSSF”), in consultation with SEBI.

4.5. The time-period for disclosure and other obligations as discussed above, is proposed to be prescribed on the basis of type of material change, in the following manner:

4.5.1. Type I material changes shall be informed by FPIs as soon as possible and within seven working-days of the occurrence of the change and the supporting documents (if any) shall be provided within 30 days of such change.

4.5.2. Type II material changes shall be informed and supporting documents (if any) shall be provided by FPIs as soon as possible and within 30 days of such change.

To give effect to the above, it is proposed to amend Regulation 22(1)(b), 22(1)(c), 22(1)(e) and 22(5) of the FPI Regulations. The detailed framework is proposed to be provided by way of issuance of circular.

5. Recommendations of the Working Group for Review of FPI Regulations and Public Consultation:

5.1. The matter was discussed by the Working Group for review of FPI Regulations, (“Working Group”), setup by SEBI to review the Regulations from an ease of doing business perspective. Upon deliberations, the said Working Group agreed with the proposal.

5.2. A Consultation Paper in this regard soliciting public comments on the proposals was issued by SEBI on February 07, 2024, given at **Annexure A**. Total 61 comments were received on the aforesaid consultation paper from 18 commenters (including DDPs, FPIs, law firms and industry associations). An analysis of the comments received show that 51 comments are mostly in agreement (strongly agree + agree + partially agree), 10 comments are not in agreement (disagree + strongly disagree) with the proposals in the consultation paper. A summary of the comments received from the commenters is given at **Annexure B**.

5.3. It is seen from the comments that the proposals mentioned in the consultation paper have received overall positive feedback from the public. The comments in disagreements with the proposals are regarding the disclosure timeline being short and burdensome. Further, suggestions have been received that the principle behind list of Type I material changes may be reviewed and such list may also include (i) entity becoming ineligible for FPI registration or (ii) FPI not eligible to make fresh purchases. In this regard, as mentioned above, the shorter 7 working days’ timeline is being prescribed only for notification of Type I material changes, which are considered to be critical. For submission of required documents for such change, timeline of 30 days is being prescribed. With respect to the list of Type I material changes, the suggestions have been accepted and necessary modifications have been made in the proposal.

6. Proposals:

- 6.1. In order to facilitate ease of doing business by relaxing the timelines for disclosure of material changes by FPIs, the Board may consider and approve the proposals as mentioned in paragraphs 4.3, 4.4 and 4.5 above.
- 6.2. A comparison of the existing provisions with the proposed amendments to the FPI Regulations is placed at **Annexure C**. The draft notification for the proposed amendment is placed at **Annexure D**.
- 6.3. The Board is requested to consider and approve the proposed amendments to the FPI Regulations and authorize the Chairperson, SEBI, to take such consequential and incidental steps necessary to give effect to the decision of the Board.

The consultation paper is available at the following link:

https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-on-relaxation-in-timelines-for-disclosure-of-material-changes-by-foreign-portfolio-investors_81211.html

This has been excised for reasons of confidentiality.

Annexure C

Amendment to SEBI (Foreign Portfolio Investors) Regulations, 2019 shall be notified after following the due process.

Annexure D

Amendment to SEBI (Foreign Portfolio Investors) Regulations, 2019 shall be notified after following the due process.