

Framework for providing flexibility to Foreign Portfolio Investors in dealing with their securities post expiry of their registration

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 provide for a framework for providing flexibility to Foreign Portfolio Investors (hereinafter referred to as “FPIs”) in dealing with their securities post expiry of their registration.

2. Background:

2.1. FPIs are required to have a valid registration as long as they hold securities in India. To keep their registration valid, inter alia, FPIs are required to pay registration fee for every block of three years. The FPI’s registration expires if such registration is not paid on time. After expiry, any securities held by such FPI are frozen in their demat accounts.

2.2. Further, restrictions on purchase and/or sale of securities is placed in case of non-compliance with regulatory requirements, such as:

2.2.1. when there is a change in compliance status of home jurisdiction of the FPI with respect to it being a signatory to IOSCO MMOU/ bilateral MoU with SEBI/ membership of BIS/ FATF;

2.2.2. when the FPI fails to provide additional KYC documents in case of its reclassification from Category I to Category II, within the prescribed timelines;

2.2.3. when the FPI fails to make requisite additional disclosures in terms of SEBI circular dated August 24, 2023.

2.3. In the aforementioned cases listed in Para 2.2, the FPIs are also required to liquidate their holdings within the prescribed timelines, failing which the remaining securities are frozen in their demat accounts. In the past, there have been several instances of unsold securities being frozen in the accounts of such FPIs. As on June 30, 2023, there were 55 such entities holding securities

notionally valued at approximately INR 3,300 crores in their demat accounts, of which one FPI alone holds securities worth approximately INR 2,860 crore.

2.4. FPIs can also make an application to SEBI under Regulation 43B of the FPI Regulations, for relaxation from strict enforcement of any provision of the said regulations. In the past, SEBI has received several applications from FPIs under Regulation 43B, requesting permission for sale of securities frozen in their demat accounts. In such cases, if the FPI is unable to demonstrate that the non-compliance was caused due to 'factors beyond its control' or that the compliance requirement is 'procedural or technical in nature', there is limited scope for any relaxation. In addition, it is preferable to have a consistent, explicit, and non-discretionary policy in the regulatory framework to deal with such instances.

2.5. An FPI with expired registration can authorize its custodian to write-off the securities held in its account. After write-off, such securities are extinguished from the safekeeping account (held in custodian's internal books/system) of the FPI, but remain frozen in the demat account of the FPI. The rights and benefits, associated with such securities, do not flow to the FPI. While the monetary corporate benefits are credited to the Investor Protection and Education Fund created by SEBI (hereinafter referred to as "IPEF"), non-monetary corporate benefits continue to accumulate in the FPI's demat account. As on June 30, 2023, there were 20 such entities that had written off securities notionally valued at around INR 94 crores.

2.6. In all aforementioned cases, the securities continue to remain frozen for perpetuity, and the share capital of the companies that have issued these securities remain blocked for trading. The demat accounts of the FPIs also remain open (in frozen state) even after the FPIs have surrendered their registration, which is not desirable as it renders such stale accounts vulnerable to misuse.

2.7. With a view to address the aforementioned issues, certain proposals are being placed for consideration of the Board and are discussed in the subsequent paragraphs.

3. Recommendations of the FPI Advisory Committee and Public Consultation:

3.1. The proposals, in subsequent paragraphs, were discussed in the FPI Advisory Committee (hereinafter referred to as “the Committee”), in its meeting held on December 13, 2023. The Committee deliberated on the proposals and recommended certain changes in the proposals placed before it.

3.2. A Consultation Paper in this regard soliciting public comments on the proposals was issued by SEBI on February 07, 2024, and the same is placed at **Annexure A**. A summary of the public response to the proposals is placed at **Annexure B**.

3.3. The changes recommended by the Committee and suggestions received during public consultation have been incorporated in the proposals placed before the Board.

4. Reactivation of FPI registration and disposal of securities, post expiry of registration due to non-payment of registration fee

4.1. Intermediaries registered with SEBI (e.g. stock broker, merchant banker, mutual funds, etc.) are required to pay a registration fee. Some of them are also required to pay fees on a continuous basis to be eligible to offer services to the investors. The respective regulations provide for delayed payment of such fee by the intermediaries. The period allowed for such delayed payment ranges from two months in case of mutual funds, to six months in case of share transfer agents and debenture trustees.

4.2. FPIs are also required to pay registration fee in blocks of three years to continue their registration. However, there is no provision for delayed payment of fee by an FPI. Therefore, once the FPI misses the fee payment timeline, there is no provision for it to pay the fee and re-activate its registration. Further, there is no provision permitting disposal of securities lying in the demat account of the FPI in case the registration expires due to non-payment of fee.

4.3. In view of the above and with an objective to facilitate ease of doing business for FPIs, it is proposed to permit FPIs to re-activate their account within 30 days from the expiry of the registration, subject to compliance with KYC, AML/CFT requirements and payment of late fee @ 2% of registration fee per day. The registration fee for FPIs is currently USD 2,500 for Category I and

USD 250 for Category II. Therefore, late fee on a per day basis in this context will work out to USD 50 for Category I and USD 5 for Category-II FPIs. No fresh purchase of securities shall be permitted until re-activation of registration. To minimize cases where such re-activation is required, DDPs shall be required to send suitable reminders for renewal of registration to their respective clients in advance of expiry of registration.

4.4. Further, in cases where the FPI chooses to not re-activate its registration within 30 days as mentioned above, it is proposed to permit such FPIs to dispose their holdings after expiry of registration. Such disposal shall be required to be done within 180 days after the expiry of the above mentioned 30-day time-period. The remittance of sale proceeds to the FPI shall be subject to KYC, AML/ CFT/ Tax requirements. The proposed time-period of 180 days for disposal of securities, is also in alignment with the prescribed time-period in other cases of non-compliances as per extant framework. Accordingly, the proposals are summarized as under:

	Until validity of registration	Upto 30 days from date of expiry of registration due to non-payment of fee	Beyond 30 days from date of expiry of registration due to non-payment of fee
Permissible actions	All trading activity as long as certificate of registration is valid	<ul style="list-style-type: none"> • Re-activate the registration with payment of additional late fee as mentioned above • Sell existing holdings (purchases frozen) 	<ul style="list-style-type: none"> • Cannot re-activate the registration, since timeline for late payment of fee has elapsed. • Sell existing holdings within a period of 180 days (purchases frozen)

4.5. During the said period of 30 plus 180 days, FPI shall continue to receive monetary/ non-monetary corporate benefits, if any, and exercise of voting rights etc. with respect to such securities, as the securities continue to remain in the demat account of the FPI.

Public Comments on the Proposal

4.6. Total 56 comments were received in this regard from 12 commenters (including DDPs and FPIs). An analysis of the comments received show that 47 comments are mostly in agreement (strongly agree + agree + partially agree), 9 comments are not in agreement (disagree + strongly disagree) with the proposal in the consultation paper.

4.7. It is seen from the comments that the proposal mentioned in the consultation paper has received overall positive feedback from the public. Commenters who have disagreed with the proposal have suggested that the window for late payment of fee may not be provided. Further, it has been suggested that the proposed late fee is very small and should be increase substantially and kept fixed @USD 1500/1000 for Category I and USD 150/100 for Category II, irrespective of the number of days. In this regard, the provision for late payment of fee is being proposed to provide flexibility to the FPIs. With respect to the late fee, the suggested amount is considered very high which may not be in line with the objective of ease of doing business and therefore the suggestion is not being accepted.

Proposal:

4.8. FPIs may be permitted to re-activate their account within 30 days from the date of expiry of the registration due to non-payment of fee. The FPIs may be permitted to dispose their holdings during this 30-day period. Further, in cases where the FPI chooses to not re-activate its registration within 30 days, such FPIs may be permitted to dispose their holdings within 180 days after the expiry of the above mentioned 30-day time-period.

To give effect to the above, it is proposed to insert Regulation 7(6) and amend Regulation 9(3) and Part A of Second Schedule to the FPI Regulations. The detailed framework is proposed to be provided by way of issuance of circular.

5. Facilitation of disposal of securities by FPIs, post expiry of registration for reasons other than non-payment of registration fees

5.1. The extant regulatory framework provides a time-period of 180 days for mandatory disposal of securities by FPIs under various scenarios of non-adherence to regulatory requirements, viz., non-disclosure of additional details

upon breach of specified criteria in terms of the August 24, 2023, circular, breach of thresholds specified for NRI/ OCI/ RI holding limit in the FPI, etc. However, in some scenarios, the time-period for disposal of securities is linked to the end of the registration block.

5.2. In view of the above, it is proposed that a standard minimum time-period of 180 days may be provided in the said scenarios as well. Accordingly, the following is proposed:

Nature of non-adherence	Time-period allowed for compliance/regularization		Time-period allowed for disposal	
	Existing	Proposed	Existing	Proposed
Change in compliance status of home jurisdiction of the FPI with respect to such jurisdiction being a signatory to IOSCO MMOU or bilateral MoU with SEBI, or status of its membership of BIS/ FATF	Purchase disallowed until the jurisdiction is compliant. Sale allowed.	No change	Till the end of existing registration block	180 days from the change in status or till the end of existing registration block, whichever is later
Non-submission of additional KYC documents in case of reclassification	Till the end of registration block. Purchase disallowed and sale	No change	Till the end of registration block. DDP to refer to SEBI if FPI continues to hold securities after	180 days from date of reclassification, or end of

n Category I to Category II	from allowed in the meantime.		180 days from purchase freeze.	registration block, whichever is later.
--	--	--	-----------------------------------	--

5.3. In cases where the FPI is required to dispose of its holdings but unable to do so due to any regulatory agency/ statutory agency/ Court imposed restrictions or directions from any enforcement agency, the time-period for disposal shall be as per the direction of such enforcement agency/ regulator/ Court, and in case no time-period for disposal is provided, within 180 days of removal of such regulatory/ statutory restrictions. During this period, as the securities continue to be in the demat account of the FPI, there shall not be any restrictions on receipt of corporate benefits and exercise of voting rights with respect to such securities by the FPI.

5.4. The proposed timelines for compliance and disposal shall be applicable only for non-compliances that occur in future. FPIs that are non-compliant as on the date of issuance of this proposed framework may use the one-time opportunity as mentioned in Para 6.7 below.

Public Comments on the Proposal

5.5. Total 23 comments were received in this regard from 12 commenters (including DDPs and FPIs). An analysis of the comments received show that 21 comments are mostly in agreement (strongly agree + agree + partially agree), 2 comments are not in agreement (disagree + strongly disagree) with the proposal in the consultation paper.

5.6. It is seen from the comments that the proposal mentioned in the consultation paper has received overall positive feedback from the public. Commenters who have disagreed with the proposal have suggested that the time-period for compliance in case of reclassification from Category I to Category II may be increased. We agree with the comment and therefore, no change in the time-period for compliance in case of reclassification from Category I to Category II is being proposed. Further, it has been suggested that during the time-period for disposal, voting rights/corporate benefits should not accrue to the FPI. In this regard, it may be noted as the FPI continue to be the legal owner of the

securities, no curtailment of its rights vis-à-vis such securities is being proposed.

Proposal:

5.7. A minimum time-period of 180 days may be provided for disposal of securities in cases of:

5.7.1. Adverse change in compliance status of the home jurisdiction of the FPI,

5.7.2. Non-submission of additional KYC documents in case of reclassification of FPI category from I to II, and,

5.7.3. disposal of balance securities being prevented by regulatory/ statutory/ Court directions, after the lifting of such restrictions.

5.8. In cases where any regulatory agency/ statutory agency/ Court has specified the time-period of disposal in its Directions, the same shall prevail.

It is proposed that the above proposals at Para 5.7 and 5.8 above may be specified by way of issuance of circular.

6. Framework for dealing with securities blocked in the accounts of FPIs after expiry of registration

6.1. The securities held by an FPI with an expired registration are blocked in its demat account, if it fails to sell them within the allowed disposal time-period as mentioned above. The concerns regarding presence of such accounts have been discussed in Para 2 above. Therefore, there is a need to provide for a regulatory mechanism to deal with such securities blocked in the demat account of the FPI with an expired registration, after the prescribed time-period for disposal.

6.2. It may be noted that a similar matter regarding foreign investors holding securities after expiry of their registration was also dealt with in the “Report of the Working Group on FPI Regulations” dated May 24, 2019. On recommendation of the Working Group, a time-period of one year from the date of notification of the regulations, i.e., September 23, 2019, was provided under the FPI Regulations to such foreign investors to sell their securities. However,

the FPI Regulations remain silent on the manner of dealing with securities that remain unsold even after such one-year period. Further, going forward as well, securities may get blocked in the demat account of the FPIs after the prescribed time-period for disposal is over.

6.3. In view of the above, it is proposed to provide a framework under FPI Regulations for dealing with securities that may be held by the FPI after expiry of their registration and/ or the time-period for disposal of securities. As mentioned in Para 5.1 above, a time-period of 180 days for disposal of securities is already prescribed under FPI Regulations. Also, in Para 4.4 above, it has been proposed to provide a time-period of 180 days to FPIs for disposal of securities by FPIs whose registration has expired due to non-payment of fee. Additionally, it is now proposed to provide a further period of 180 days over and above such disposal period, during which the FPI shall be permitted to dispose its holding subject to a financial disincentive of 5% of the sale proceeds, which shall be deducted by the custodian from the sale proceeds and credited to IPEF. The opportunity to sell the securities shall be subject to the FPI fulfilling the prescribed KYC, AML/ CFT/ tax requirements. During this period, sale of suspended, unlisted/ delisted securities shall also be permitted through off-market transactions, in accordance with the pricing guidelines for such sale as per FEMA Rules, as specified in Para 3 of Part C of SEBI Master Circular for FPIs and DDPs dated December 19, 2022. Further, during this period, as the securities continue to be in the demat account of the FPI, it shall continue to receive monetary/non-monetary corporate benefits, if any, and exercise of voting rights with respect to such securities.

6.4. Further, it is proposed that after expiry of this additional 180-day period, any securities still remaining unsold shall be deemed to have been compulsorily written-off, and the FPI shall lose any beneficial interest in the said securities including voting rights and benefits arising from corporate action. The financial disincentive and compulsory write-off are being proposed to encourage the FPI to dispose its holdings within the first block of 180 days.

6.5. It is also proposed to provide for appropriate reporting requirements for the custodians with respect to such securities that are disposed by the FPI after expiry of its registration.

6.6. As mentioned earlier, there are existing cases where the time-period for re-activation of account and/ or time-period for disposal of securities has already expired and there are securities blocked in the demat accounts of such FPIs. For such cases, it is proposed to provide a similar one-time opportunity of 360 days for disposal of securities by the respective FPIs.

6.7. Accordingly, it is proposed that FPIs, whose registration has expired prior to issuance of this framework, be provided an opportunity to sell the securities lying in their demat accounts within 180 days from the date of issuance of this framework without any financial disincentive. Securities that remain unsold during this 180 days' period, shall be required to be disposed within an additional 180 days, subject to a financial disincentive of 5% of sale proceeds. Further, during this period, as the securities continue to be in the demat account of the FPI, it shall continue to receive monetary/ non-monetary corporate benefits, if any, and exercise of voting rights with respect to such securities. After expiry of this period, any securities remaining unsold shall be deemed to have been compulsorily written-off and the FPI shall lose any beneficial interest in the said securities including voting rights, benefits arising from corporate action. The opportunity to sell the securities shall be subject to the FPI fulfilling the prescribed KYC, AML/ CFT/ tax requirements, applicable as on date.

6.8. Further, the time-period of one year, provided to foreign investors to dispose their holdings as mentioned in Para 6.2 above, has elapsed. In view of the same, it is proposed to delete the said provision.

Public Comments on the Proposal

6.9. Total 102 comments were received in this regard from 13 commenters (including DDPs and FPIs)). An analysis of the comments received show that 90 comments are mostly in agreement (strongly agree + agree + partially agree), 12 comments are not in agreement (disagree + strongly disagree) with the proposals in the consultation paper.

6.10. It is seen from the comments that the proposal has received overall positive feedback from the public. In disagreement, it has been requested that a maximum period of 180 days post expiry be granted across all such events

for the purpose of standardization. In this regard, additional 180 days are proposed to provide additional flexibility to FPIs with the objective of ease of doing business. Disagreements have been raised with regard to proposed financial disincentive/ write-off of unsold securities on account of the inability of an FPI to sell due to reason/ circumstances that may be beyond control. In this regard, it may be mentioned that the provision for relaxation under Regulation 43B of FPI Regulations is available to FPI to address such issues.

Proposal:

6.11. The following framework may be provided under FPI Regulations for dealing with securities that may be held by the FPI after expiry of their registration or time-period for disposal of securities:

6.11.1. An additional time-period of 180 days may be available to the FPIs for disposal of their securities (subject to a financial disincentive of 5% of proceeds), after expiry of registration and/ or time-period for disposal of securities;

6.11.2. Any securities remaining unsold after expiry of the additional 180 day period (with financial disincentive) shall be deemed to have been compulsorily written-off by the FPI.

6.11.3. A one-time opportunity of 360 days (180 days without financial disincentive, and an additional 180 days subject to a 5% financial disincentive) may be provided to the existing cases as on the date of issuance of the notification in this regard, for disposal of securities by the respective FPIs.

6.12. The extant provision allowing a one-year period for disposal of securities by foreign investors whose registration was invalid at the time of notification of FPI Regulations, may be deleted.

To give effect to the above, it is proposed to amend Regulation 7(5) and insert Regulations 7(6) and 7(7) in the FPI Regulations. It is also proposed to operationalize the above proposals, including providing for detailed framework, by way of issuance of circular.

7. Framework for disposal of written-off securities

- 7.1. As mentioned earlier, the written-off securities are extinguished by the custodian from the safekeeping account (held in banks internal books/ system) of the FPI but remain frozen in the demat account of the FPI. While the monetary corporate benefits are credited to IPEF, the securities along with any non-monetary corporate benefits accumulate in the demat account of the FPI itself.
- 7.2. The current regulatory framework provides only for voluntary write-off of securities by the FPIs in case the registration has expired or if the FPI intends to surrender the registration. However, it is proposed to provide for compulsory write-off of securities in certain cases, as mentioned above.
- 7.3. Therefore, it is proposed to provide a framework for dealing with securities written-off by the FPIs (voluntary or compulsory). This framework shall be applicable to securities already written-off by the FPIs and those that may get written-off in future. Therefore, it is proposed that the written-off securities shall be transferred by the respective custodians to a separate escrow account, operated by exchange empaneled broker. After transfer to the escrow account, the broker shall attempt to sell the securities at the available market price until the securities are disposed-off. The proceeds from the sale, net of brokerage and statutory charges, shall be transferred to the IPEF.
- 7.4. The following checks, inter alia, may be in place for such disposal of securities written-off by FPIs:
- 7.4.1. The disposal of securities shall be carried out by exchange/ clearing corporation empanelled brokers.
- 7.4.2. The disposal of listed equity securities shall be carried out through the regular online trading platform of the Stock Exchanges, excluding block deal window.
- 7.4.3. Such disposal of securities by the broker(s) shall be monitored by the Stock Exchanges.

7.4.4. Stock Exchanges shall periodically monitor the performance of the broker in terms of the efforts put in by the broker for disposal of securities, and shall have the option to appoint another broker, if deemed necessary.

7.4.5. Stock Exchanges shall send a periodic monitoring report to the Board indicating the details of securities sold during the period, the details of securities remaining unsold and the proceeds transferred to the IPEF.

Public Comments on the Proposal

7.5. Total 12 comments were received in this regard from 12 commenters (including DDPs and FPIs). An analysis of the comments received show that 8 comments are mostly in agreement (strongly agree + agree + partially agree), 4 comments are not in agreement (disagree + strongly disagree) with the proposal in the consultation paper.

7.6. It is seen from the comments that the proposal mentioned in the consultation paper has received overall positive feedback from the public. Commenters who have disagreed with the proposal have suggested that the right of the FPI as the beneficial owner should be protected. Further, it has been suggested that in case the FPI has acted in good faith they should not be stripped of the opportunity to realise the value from the investment. In this regard, it may be mentioned that in case of write-off the FPI loses all rights in the written-off securities. While the concerns regarding presence of such demat accounts with blocked securities have already been discussed, the commenters have not provided any suggestion for an alternative mode of disposal of such securities. In view of the same the suggestions are not being accepted.

Proposal:

7.7. The following framework may be provided for dealing with securities written-off by the FPIs (voluntary or compulsory):

7.7.1. The written-off securities shall be transferred by the respective custodians to a separate escrow account, operated by an exchange empaneled broker.

7.7.2. The broker shall attempt to sell the securities at the available market price until the securities are disposed-off. The proceeds from the sale, net of brokerage and statutory charges, shall be transferred to the IPEF.

It is proposed that the above may be specified by way of issuance of circular.

8. Regulatory Action:

8.1. It may be noted that the above proposals shall not preclude SEBI from taking any regulatory action, including in existing cases, in terms of the applicable provisions of law.

9. Proposal to the Board:

9.1. In order to facilitate ease of doing business for FPIs, the Board may consider and approve the following proposals:

9.1.1. FPIs may be permitted to re-activate their account within 30 days from the date of expiry of the registration due to non-payment of fee. The FPIs may be permitted to dispose their holdings during this 30-day period. Further, in cases where the FPI chooses to not re-activate its registration within 30 days, such FPIs may be permitted to dispose their holdings within 180 days after the expiry of the above mentioned 30-day time-period. (Para 4.8)

9.1.2. A minimum time-period of 180 days may be provided for disposal of securities in cases of:

9.1.2.1. Adverse change in compliance status of the home jurisdiction of the FPI (Para 5.7)

9.1.2.2. Non-submission of documents for reclassification of FPI category from I to II, (Para 5.7) and,

9.1.2.3. Disposal of balance securities being prevented by regulatory/ statutory/ Court directions, after the lifting of such restrictions. (Para 5.7)

- 9.1.3. In cases where any regulatory agency/ statutory agency/ Court has specified the time-period of disposal in its Directions, the same shall prevail. (Para 5.8)
- 9.1.4. The following framework may be provided under FPI Regulations for dealing with securities that may be held by the FPI after expiry of their registration or time-period for disposal of securities:
- 9.1.4.1. An additional time-period of 180 days may be available to the FPIs for disposal of their securities (subject to a financial disincentive of 5% of proceeds), after expiry of registration and/ or time-period for disposal of securities; (Para 6.11)
- 9.1.4.2. Any securities remaining unsold after expiry of the additional 180 day period (with financial disincentive) shall be deemed to have been compulsorily written-off by the FPI. (Para 6.11)
- 9.1.4.3. A one-time opportunity of 360 days (180 days without financial disincentive, and additional 180 days subject to a 5% financial disincentive) may be provided to the existing cases as on the date of issuance of the notification in this regard, for disposal of securities by the respective FPIs. (Para 6.11)
- 9.1.5. The extant provision allowing a one-year period for disposal of securities by foreign investors whose registration was invalid at the time of notification of FPI Regulations, may be deleted. (Para 6.12)
- 9.1.6. The following framework may be provided for dealing with securities written-off by the FPIs (voluntary or compulsory):
- 9.1.6.1. The written-off securities shall be transferred by the respective custodians to a separate escrow account, operated by an exchange empaneled broker. (Para 7.7)
- 9.1.6.2. The broker shall attempt to sell the securities at the available market price until the securities are disposed-off. The proceeds from the sale, net of brokerage and statutory charges, shall be transferred to the IPEF. (Para 7.7)

9.2. 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**.

9.3. 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-framework-for-providing-flexibility-to-fpis-in-dealing-with-their-securities-post-expiry-of-their-registration_81210.html

This has been excised for reasons of confidentiality.

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

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