

Proposal to improve ease of doing business with respect to the additional disclosure framework for FPIs

1. Objective:

1.1. The purpose of this Board Memorandum is to seek approval of the Board on the proposal to amend the additional disclosure framework for FPIs specified under the SEBI Circular dated August 24, 2023 by exempting certain funds with concentrated holdings in listed entities with no identified promoter group, where there is no risk of breach of Minimum Public Shareholding (MPS).

2. Background:

2.1. To guard against possible circumvention of MPS norms, requirements under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“SAST Regulations”), and Press Note 3, SEBI (Foreign Portfolio Investors) Regulations, 2019 (“FPI Regulations, 2019”) were amended in August 2023, and Regulations 22(6) and 22(7) were inserted in FPI Regulations, 2019. SEBI’s related circular dated August 24, 2023 (“August circular”) mandated disclosure of granular details of all entities holding any ownership, economic interest, or control in an FPI, on a full look through basis, without any threshold, by FPIs that fulfill any of the following criteria:

- a. holding more than 50% of their Indian equity Assets Under Management (AUM) in a single Indian corporate group; or
 - b. individually, or along with their investor group (in terms of Regulation 22(3) of the FPI Regulations, 2019), holding more than INR 25,000 crore of equity AUM in the Indian markets
- 2.2. Certain FPIs, including those that are regulated funds with a broad based, pooled structure with widespread investor base or those having ownership interest by Government or Government related investors were exempted from such enhanced disclosure requirements, subject to certain conditions.

2.3. The August circular became effective from November 01, 2023 and the FPIs, which met the specified objective criteria were provided a time period of 90 days to realign their portfolios. Thereafter, the additional disclosure requirements would start to apply and FPIs whose investments continued to exceed the prescribed threshold post expiry of time period for realignment would be required to make disclosures within 30 trading days. Accordingly, for such FPIs that met the objective criteria as on October 31, 2023 and did not realign within the specified time period, and were not exempted either, adequate disclosures need to be made on or before March 12, 2024.

2.4. Further, while the framework for disclosures and exemptions from the same was outlined in the August circular, the detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions, was spelt out through a comprehensive Standard Operating Procedure (SOP) that was created by the pilot Custodians and DDPs Standard Setting Forum (CDSSF), in consultation with SEBI. The SOP for implementation of SEBI circular dated August, 2023, was accordingly adopted by the DDPs/Custodians on October 27, 2023 and was uploaded on their respective websites.

3. Suggestions received during interactions with Industry Participants

3.1. During the implementation of the additional disclosure framework, SEBI interacted with industry participants and received several suggestions and requests for clarifications. Accordingly, clarifications were provided to the DDPs/ Custodians and the SOP was accordingly modified.

3.2. During interactions with industry participants, the case for enhancing ease of doing business in respect of FPIs with concentrated holdings in listed entities without an identified promoter was made.

4. Exemption in case of companies with no identified promoter and low FPI holdings

- 4.1. In respect of FPIs with concentrated holdings in a single corporate group, while describing the issue of potential circumvention of regulatory requirements such as maintenance of MPS and adherence to SAST norms, para 3.1.1 of the Board Memorandum dated June 22, 2023 read as follows:

“3.1.1 Some FPIs have been observed to concentrate a substantial portion of their equity portfolio in a single investee company/ corporate group. In some cases, these concentrated holdings have also been near static and maintained for a long time. Such concentrated investments raise the concern and possibility that promoters of such corporate groups, or other investors acting in concert, could be using the FPI route for circumventing regulatory requirements such as that of disclosures under SAST Regulations or maintaining MPS in the listed company. Further, if this were the case, the apparent free float in a listed company may not be its true free float, increasing the risk of price manipulation in such scrips.”

- 4.2. In case of listed companies without any identified promoter, the entire shareholding is classified as “public” and there is no risk of circumvention of MPS requirements. To that extent, there is scope for relaxing the additional disclosure requirements for FPIs holding concentrated positions in such companies. However, the concerns regarding circumvention of SAST Regulations would still persist.
- 4.3. It may be noted that as per the extant SAST requirements, any investor along with persons acting in concert (PAC), acquiring more than 5% shares or voting rights in a listed entity is required to make the disclosures prescribed therein. Disclosures are further to be made for any change in holding exceeding 2% of the total shareholding. Any increase in holding resulting in shareholding beyond 25% would require an open offer to be made.
- 4.4. Consider a corporate group where the apex company, i.e., the eventual promoter/ associate to all other companies in the group, itself has no identified promoter.

For an FPI that has more than 50% of its India equity AUM in such a corporate group, it is proposed to relax the additional disclosure requirements in the following manner:

- 4.4.1. If such an FPI holds more than 50% of its India equity AUM in the corporate group, even after disregarding its holding in the apex company (with no identified promoter), it would come under the disclosure requirements of the August circular. The rationale for this is that even though the apex company in the group itself has no identified promoter, the FPI still holds a significant part of its portfolio in related companies in the same group that have an identified promoter.
- 4.4.2. If not, as long as the composite holdings of all FPIs that hold in excess of the 50% concentration criteria in the corporate group and are not exempted either, is less than 3% of the total equity share capital of the apex company, it would be exempted from the additional disclosure requirements. A flowchart illustrating the aforesaid exemption is placed at **Annexure A**.
- 4.5. The core principle behind the above formulation is that there is no risk of circumvention of MPS requirements in case of listed entities with no identifiable promoters. Further, the potential risk of circumvention of SAST Regulations through the FPI route is mitigated by adoption of an acceptable risk-threshold of 3% holding as against the extant SAST thresholds. The above formulation is expected to reduce the compliance requirement on the industry without compromising the regulatory principles.
- 4.6. Custodians and depositories will track the utilisation of this 3% limit for companies without an identified promoter, at the end of each day. When the 3% limit is met or breached, depositories and custodians will make this information public before start of trading the next day. Thereafter, prospective FPI positions in the company that meet the 50% concentration criteria in the corporate group will be required to either realign such positions below the 50% threshold within 10 trading days, or

make additional disclosures prescribed under Para 7 of the August circular; provided the aforementioned 3% cumulative FPI limit for the listed company continues to be met through the 10 trading days.

Public Comments on the Proposal:

- 4.7. A Consultation Paper soliciting public comments, inter alia, on this proposed new category of exemption was issued by SEBI on February 27, 2024, and the same is placed at **Annexure B**.
- 4.8. Total 28 comments were received on the aforesaid consultation paper from 14 commenters (including DDPs, industry associations, law firms and FPIs). It is seen from the comments that this proposal has received overall positive feedback from the public. On the question of granting exemption as proposed in the consultation paper, all the comments received are in favour (strongly agree + agree + partially agree) of the proposal. With respect to the proposed threshold of 3% for holdings by identified FPIs, 10 out of 14 comments are in favour (strongly agree + agree + partially agree) of the proposal and 4 comments are in disagreement (disagree + strongly disagree) with the proposal. Further, some of these commenters have suggested that the threshold may be kept higher at 5% or 10%. In this regard, as mentioned above, in terms of SAST Regulations, the disclosure requirement kick-in at the 5% threshold and further disclosures are required to be made for every increase or decrease in holding by 2%. The threshold of 3% acts as a cushion in cases of near-to 3% utilization and multiple FPIs simultaneously taking positions, before the additional disclosure requirements for prospective FPI positions kick-in. In view of the above, the proposed threshold has been kept at 3%. Further, suggestions regarding public disclosure of the limit remaining in the corporate group have been received. In this regard, as proposed, information on the investments in apex company of a corporate group shall be made public on daily basis by the depositories. A summary of the public response to the proposals is placed at **Annexure C**.

Proposal:

4.9. Additional disclosure requirements for an FPI having more than 50% of its India equity AUM in a corporate group may be relaxed, subject to compliance with all of the following conditions:

4.9.1. The apex company of such corporate group, i.e., the eventual promoter/ associate to all other companies in the group, itself has no identified promoter.

4.9.2. Such FPI holds not more than 50% of its India equity AUM in the corporate group, after disregarding its holding in the apex company (with no identified promoter).

4.9.3. The composite holdings of all such FPIs (that hold in excess of the 50% concentration criteria and are not exempted) in the apex company is less than 3% of the total equity share capital of the apex company.

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

4.10. For FPIs that met the objective criteria as on October 31, 2023 and neither realigned their portfolio within the specified time period nor were exempted, adequate disclosures ought to have been made on or before March 12, 2024. Considering that the instant proposal is scheduled for deliberation at the Board during its meeting on March 15, 2024, a regulatory forbearance may be provided to FPIs that would qualify for exemption under the instant proposal, if so approved, for the period from March 13, 2024, to the date of issuance of the circular in this regard.

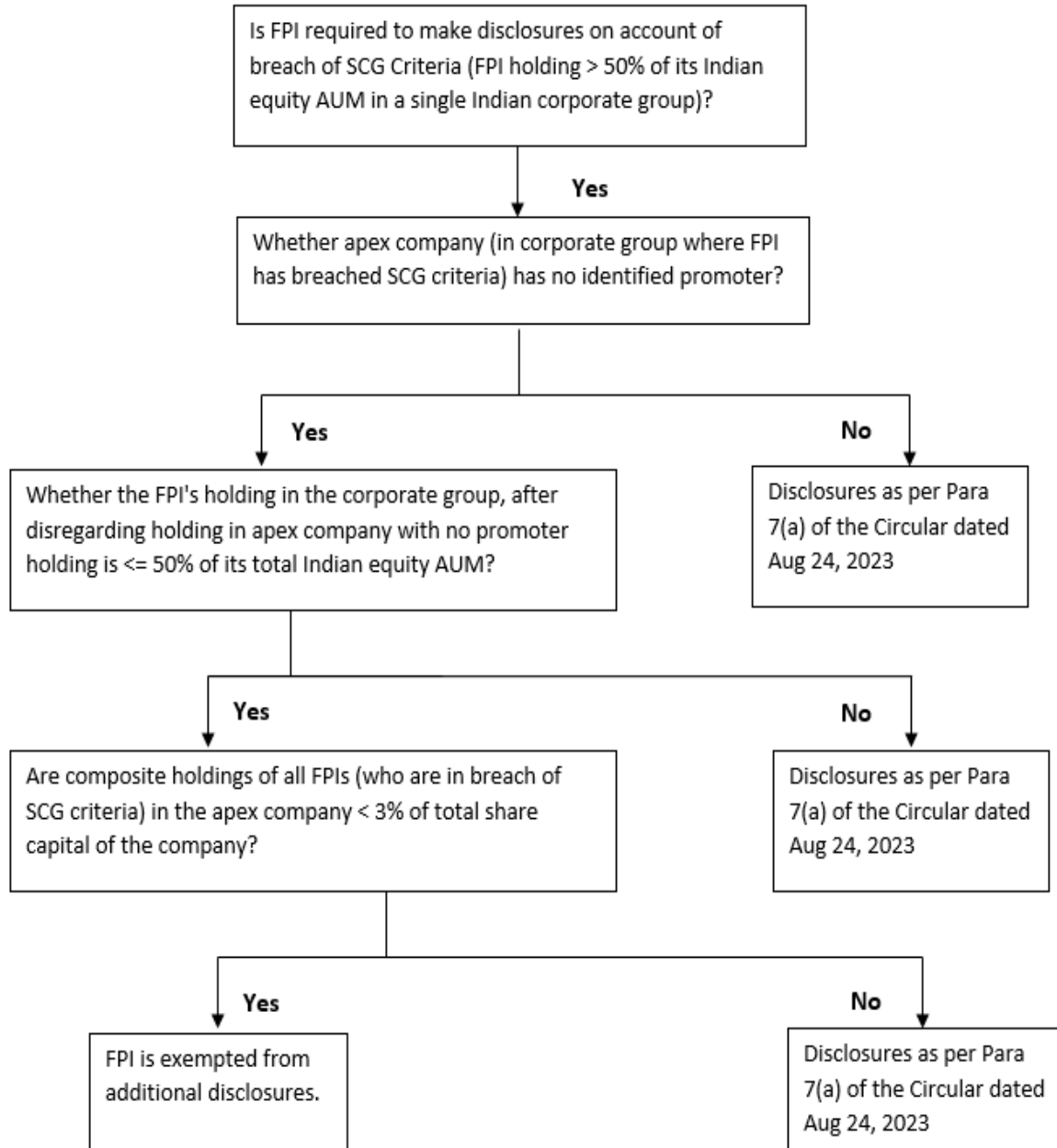
5. Proposal to the Board:

5.1. In order to facilitate ease of doing business with respect to the additional disclosure framework for FPIs, the Board may consider and approve the proposals at Para 4.9 and Para 4.10 above.

5.2. The Board may also authorize the Chairperson, SEBI, to take such consequential and incidental steps necessary to give effect to the decision of the Board.

Annexure A

Flowchart illustrating exemption in case of companies with no identified promoter and low FPI holdings



The consultation paper is available at the following link:

https://www.sebi.gov.in/reports-and-statistics/reports/feb-2024/consultation-paper-on-proposals-to-improve-ease-of-doing-business-with-respect-to-the-additional-disclosure-framework-for-fpis_81807.html

This has been excised for reasons of confidentiality.