

Easing of Access Norms for Investment by Foreign Portfolio Investors (FPI)

1. Objective of the Board Memo:

1.1. This board note seeks to implement the proposals contained in the consultation paper titled as “Easing of Access Norms for investment by FPIs” after consideration of the comments received from public at large.

2. Background:

2.1. In order to simplify entry & investment by FPIs in India, SEBI (Foreign Portfolio Investors) Regulations, 2014 was notified. During the implementation of FPI regime, SEBI has been receiving various suggestions from the stakeholders to fine-tune and modify the extant access and investment norms for FPIs to further ease their experience in India. For this purpose, SEBI held extensive deliberations and consultations with stakeholders. During the process, it was suggested to align the extant access and investment norms with that of developed jurisdictions and do away with excessive documentation requirements.

2.2. Accordingly, SEBI found merit in the suggestions and advised the stakeholders to indicate the desired changes in the extant regulatory framework.

2.3. Accordingly, stakeholders have requested for certain changes in FPI regime. They have indicated that these changes will help in further easing of access norms for investment by FPIs in Indian capital market. Accordingly, SEBI proposed to make appropriate amendments to SEBI (FPI) Regulations, 2014 and Circulars/ Guidelines, etc. issued thereunder.

2.4. The proposed changes include expansion of eligible jurisdictions for grant of FPI registration by including countries having diplomatic tie-ups with India, simplification of broad based requirements by considering Sovereign Wealth

Funds (SWFs), Pension Funds, Insurance Companies, Exchange Traded Funds (ETFs), etc. on looking through basis for compliance with broad based requirement, simplification of process for obtaining approval for addition of share class, etc.

2.5. SEBI had vide letters dated May 24, 2017 shared the aforementioned proposed changes with Department of Economic Affairs (DEA), Department of Revenue (DOR) and Reserve Bank of India (RBI), requesting them to offer their comments on the same to enable SEBI to take a suitable view in the matter. A reminder letter dated June 06, 2017 was also sent to them. Copy of SEBI letters dated May 24, 2017 and June 06, 2017 are placed at Annexure 1.

2.6. SEBI Board, in its 172nd meeting held on June 21, 2017, directed issuance of a Consultation Paper with a view to solicit comments/ suggestions from public at large on the proposed amendments to SEBI (FPI) Regulations, 2014 and Circulars/ Guidelines, etc. issued thereunder.

3. Floating of Consultation Paper on Easing of Access Norms for Investment by FPIs

3.1. Accordingly, a consultation paper was hosted on SEBI's website on June 28, 2017 with a request to general public to offer their comments within 30 days from the date of its dissemination on SEBI website. Copy of the consultation paper is placed at Annexure 2.

3.2. A brief description of the 14 proposals contained in the said consultation paper is as under:

3.2.1. Expansion of eligible jurisdictions for grant of FPI registration to Category-I FPIs by including countries having diplomatic tie-ups with India and FEMA compliant:- The list of eligible jurisdictions in terms of FPI Regulations, 2014 for grant of registration to Category-I FPIs, may be expanded by also considering those FEMA compatible jurisdictions, wherein Government of

India has diplomatic tie-up, in addition to existing requirements whereby the concerned securities market regulator is required to be a signatory to IOSCO MMoU (International Organization of Securities Commissions Multilateral Memorandum of Understanding)/bilateral MoU with SEBI. Consequently, more jurisdictions would be able to access the Indian capital market due to change in FPI Regulations.

- 3.2.2. Rationalization of fit and proper criteria:- Category-I and II FPIs are essentially Government/ Government related and Appropriately Regulated entities and therefore, it is felt that additional documentation and procedural requirements under Regulation 4(f), (g), (h) and (i) of SEBI (FPI) Regulations, 2014 may not be required to be applied for such investors. Documentation requirement under Regulation 4(j) would suffice. However, Category-III FPIs shall continue to be subject to specific requirements under Regulation 4 (f), (g), (h), (i) and (j) of SEBI (FPI) Regulations, 2014.
- 3.2.3. Modification in encumbrance obligation to address statutory requirements: Designated Depository Participants (DDPs) are required to ensure that equity shares held by FPIs are free from all encumbrances. Lien/ set-off on investments of FPIs are required for regulatory reasons such as Irrevocable Payment Commitment, payment of clearing & settlement obligations, custody fees, administrative fees/ charges, and as such, these may not be treated as encumbrance for the purpose of this clause.
- 3.2.4. Simplification of broad based requirement: A broad based fund shall mean a fund, established or incorporated outside India, which has at least 20 investors, with no investor holding more than 49% of the shares or units of the fund. Provided that if the broad based fund has an institutional investor who holds more than 49% of the shares or units in the fund, then such institutional investor must itself be a broad based fund. Further, in case an FPI applicant has a bank as an investor, then such FPI shall be deemed to be broad based. It is now proposed that this rationale on deemed to be broad based criteria

may also be extended in other cases wherein the applicant funds have other institutional investors viz. Sovereign Wealth Fund, Insurance/ Reinsurance Companies, Pension Funds, Exchange Traded Funds, etc. as their underlying investors.

3.2.5. Rationalization of procedure for submission of Protected Cell Company (PCC)/ Multi-Class Vehicle (MCV) Declarations and Undertakings and Investor grouping requirement at the time of continuance of registration of FPIs.: PCC/ MCV D&U and information regarding FPI investor group is provided at the time of FPI registration/ conversion and the details of the same are recorded in NSDL portal. In case there is no change in the information already submitted, the requirement to re-submit PCC/ MCV D&U and information regarding investor group at the time of continuance may be dispensed with.

3.2.6. Discontinuance of requirements for seeking prior approval from SEBI in case of change in local custodian/ Designated Depository Participant (DDP): Majority of the registered FPIs access the Indian securities market through Global Custodians (GCs) wherein they appoint the GC and the GC in turn appoints a local/ sub-custodian in India. The GC represents its FPI clients and liaises with the local custodian on behalf of its clients regarding custodial services in India. At present, in case the FPI wishes to change the DDP/ Custodian, the request for change shall be intimated to SEBI through the concerned DDP/ Custodian. Taking specific request letter from each FPI regarding change in local custodian may create operational and logistical challenges to change local custodian in India. Hence, it is proposed to permit the new local custodian / DDP to rely on letter from GC regarding the change in local custodian of its FPI clients provided the transferor local custodian/ DDP provides no objection certificate to the transferee local custodian / DDP for change of local custodian. The intimation regarding the change in local custodian/DDP may be sent to the compliance officer of the concerned FPI by the transferee local custodian/ DDP. Upon receipt of no objection from

transferor local custodian/ DDP, the transferee local custodian/ DDP shall approve the change and intimate SEBI about the change.

- 3.2.7. Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/ DDP of FPIs: At the time of change of local custodian/ DDP, by an FPI, the new local custodian/ DDP is required to carry out the adequate due-diligence requirement to ascertain the eligibility of the FPI. The due diligence by the new DDP on an already registered FPI at the time of change of local custodian / DDP often leads to increased documentation and sometimes delays the transition. Accordingly, it is suggested that at the time of change of local custodian/ DDP, the new DDP may be permitted to rely on the registration granted by previous DDP at the time of transition. This will avoid duplicate efforts/ incremental documentation by the FPIs as well as the DDPs.
- 3.2.8. Exemption to FPIs having Multiple Investment Managers (MIM) structure from seeking prior approval from SEBI in case of free of cost transfer of assets: Free of cost transfer of assets (FOC) is permitted wherein the transferor and transferee FPIs have exactly the same beneficial owners. Currently, any requests for FOC by the FPI along with list of securities intended to be transferred are forwarded by DDPs to SEBI for consideration. In order to streamline this, it is proposed that requests for FOC by FPIs operating under MIM structure can be processed by DDPs. For non-MIM FPIs, the request for FOC may be forwarded to SEBI through the concerned DDP, for appropriate consideration.
- 3.2.9. Simplification of process for addition of share class: FPIs are required to obtain prior approval from SEBI/DDP in case of addition of share classes. Since the share classes are generally launched in the home jurisdiction of the FPI, the requirement of seeking prior approval sometimes impedes the launch of the new share class and thus impact the fund and its investors. Accordingly, it is proposed that in a fund where common portfolio is maintained across all share classes, prior approval for addition of share class may not be required.

If there is change in structure due to the addition of share class, FPIs are nevertheless required to notify forthwith. In cases where segregated portfolios are maintained, FPIs are required to obtain prior approval of SEBI/DDP for addition of share class (one or more). For addition of non-broad based share classes, DDP may obtain an undertaking from the FPI that all the newly added share classes shall attain the broad based status within 180 days from the date of approval issued by the DDP.

3.2.10. Permitting FPIs operating under the MIM structure to appoint multiple custodians: Currently, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple FPI registrations. However, these applicants are required to appoint the same local custodian and investments made under such multiple registrations are clubbed for the purpose of monitoring of investment limits as per the extant regulatory requirement. Some FPIs have raised concern that by appointing single entity as the local custodian/DDP, they are exposed to higher counter-party risk. Accordingly, it is proposed that such MIM accounts may be permitted to appoint different local custodians/DDPs. In any case, under the provisions of SEBI (FPI) Regulations, 2014, the depositories (NSDL & CDSL) are required monitor the investment limits of the FPIs.

3.2.11. Permitting FPIs holding Foreign Venture Capital Investors (FVCI) to appoint multiple custodians: SEBI vide circular dated June 12, 2015 permitted an FVCI for grant of FPI registration. It was inter alia advised that such an applicant holding FPI & FVCI registration should have same custodian. SEBI has now received representations that as the limit computation and monitoring is being carried out by the depository, same entities with multiple registrations (such as FPI and FVCI or multiple FPI) may be permitted to use separate custodians to hold assets, which will also provide more flexibility to the entities. Accordingly, it is proposed that FPIs holding FVCI registration may be permitted to appoint multiple custodians.

3.2.12. Permitting appropriately regulated Private Bank/ Merchant Bank to invest on their behalf and also on behalf of their clients: Private Banks that are appropriately regulated and managing funds of their investor pool should be permitted to undertake investments on behalf of its investors if such investors are ready to share the details of their investors. It is proposed that Private Bank/Merchant Bank may invest on behalf of their clients provided:

- Details of beneficial owners (BOs) are available and will be provided as and when required by regulators;
- Banks do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated.

3.2.13. Expansion of entities considered as “appropriately regulated persons in terms of Regulation 5(b)(iii): Currently, Category II FPIs includes - appropriately regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers. It is proposed to broaden this definition by FAQ to prescribe more inclusions as suggested. Accordingly, appropriately regulated entities may also include entities such as broker-dealer, swap dealer that are regulated by an “appropriate regulator” proposed to be classified as Category-II provided such entities shall provide beneficial ownership details of their clients to SEBI and/ or any other enforcement agencies, as and when required.

3.2.14. Other Clarifications on further simplification of broad based requirements/ Conditional registration:

- (a) It is proposed that in case any broad based fund due to exit of some offshore global investors loses its broad based status, this may not result in immediate loss of Category II status. Accordingly, 3 month time may be given to such funds to regain broad based status.

- (b) Further, the conditional registration facility currently available only to “newly established” funds may also be extended to existing fund.

4. Status of comments received from DOR/DEA/RBI

4.1. DEA vide letter dated June 20, 2017 informed that it supports SEBI’s proposal to make appropriate amendments to SEBI (FPI) Regulations, 2014 and Circulars/ Guidelines issued thereunder for further easing of access norms for investment by FPIs in Indian capital market. Further, DEA also requested SEBI to consult it before finalizing and notifying the amendments after stakeholder consultation, since the same requires amendment of FPI Regulations.

4.2. Subsequently, SEBI vide letters dated September 08, 2017 shared the aforesaid consultation paper with DOR and RBI with a request to provide their comments/ suggestions on the proposals contained in the consultation paper.

4.3. SEBI is yet to receive any comments from DOR.

4.4. RBI vide its letter dated September 21, 2017 and e-mail dated November 21, 2017 submitted its comments. Views of SEBI on the comments received from RBI are as follows:

S. No.	Proposal	Comment of RBI/DOR/DEA	Views of SEBI
Comments of RBI			
1	No. 1 Changes in Regulation 4(b) of SEBI (FPI) Regulations, 2014	RBI: Government of India having diplomatic tie-up with a country is a political decision. Many a time it may not be suitable for investment	In view of the comments received from RBI, this proposal may be dropped.

S. No.	Proposal	Comment of RBI/DOR/DEA	Views of SEBI
		<p>decision. RBI has further stated that the existing criteria for FPI Category-I may be continued. The bilateral MOU with SEBI is always available with willing investor in the current guidelines.</p>	
2	<p>No.2 Amendment to Regulation 4 & 23- Rationalization of fit and proper criteria</p>	<p>RBI: RBI has requested SEBI to examine whether the criteria mentioned under Regulation 4(j) of SEBI (FPI) Regulations, 2014 covers all relevant conditions mentioned in Regulation 4(f),(g),(h) and (i) and it should not be subject to interpretation.</p>	<p>Regulation 4 of SEBI (FPI) Regulations, 2014 lays down the eligibility criteria for grant of certification of registration as an FPI to an applicant. Regulation 4(j) requires an applicant to be a fit and proper person based on the criteria specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008. As per Schedule II read with Regulation 7 of SEBI (Intermediaries) Regulations, 2008, the criteria for determining a fit and proper person is as under:-</p> <ul style="list-style-type: none"> i. integrity, reputation and character; ii. absence of convictions and restraint orders;

S. No.	Proposal	Comment of RBI/DOR/DEA	Views of SEBI
			<p>iii. competence including financial solvency and networth;</p> <p>iv. absence of categorization as a wilful defaulter.</p> <p>It is felt that the conditions laid down by Regulation 4(j) of SEBI (FPI) Regulations, 2014 adequately covers the conditions specified in Regulation 4 (h) of SEBI (FPI) Regulations, 2014.</p> <p>Category-I and Category-II FPIs are essentially Government/ Government related and appropriately regulated entities. It is, therefore, felt that the conditions specified in Regulation 4(f), (g), (h) and (i) of SEBI (FPI) Regulations, 2014 are deemed to be fulfilled by such FPIs. Accordingly, additional documentation and procedural requirements under Regulations 4(f), (g), (h) and (i) of SEBI (FPI) Regulations, 2014 may not be required for these FPIs.</p>

S. No.	Proposal	Comment of RBI/DOR/DEA	Views of SEBI
3	No.4 Amendment to Explanation 2 to Regulation 5(b)-Simplification of broad based requirement	RBI: RBI has requested SEBI to examine whether extending the criteria to other institutional investors viz. SWFs, Pension Funds, ETFs, Insurance/ Reinsurance companies, etc. would result into dilution of 'broad based' character.	<p>In view of the comments received from RBI, the proposal for considering ETFs as underlying investors for fulfillment of broad based criteria may be dropped as of now. If required, it could be re-examined at a later stage for taking appropriate view.</p> <p>Banks, SWFs, Pension Funds, Insurance/ Reinsurance companies belong to Category I and II FPIs, which are essentially Government/ Government related and appropriately regulated entities. Accordingly, it is expected that these entities may manage/represent money of multiple underlying depositors/investors. Further, a specific provision has been inserted which mandates that underlying fund shall also be required to fulfill the extant eligibility requirements as prescribed for FPIs.</p> <p>In view of the same, SEBI now proposes to consider FPIs</p>

S. No.	Proposal	Comment of RBI/DOR/DEA	Views of SEBI
			<p>having more than fifty percent holding by institutional investors viz. SWFs, Pension Funds, Insurance/ Reinsurance companies on look through basis for compliance of Broad based requirements. In any case, SEBI has already given this relaxation to the funds having banks as its underlying investors.</p> <p>Further, with a view to ensure uniformity, SEBI also proposes that FPIs having Bank as minority investor but are deemed as Broad Based may be given 6 months window to comply with the aforesaid fifty percent requirement.</p>

4.5. SEBI has received 27 comments/suggestions, from the public at large, on the proposals contained in the consultation paper floated by SEBI. It is observed that public have broadly agreed with the proposal contained in the consultation paper. The summary of the suggestions received on the aforesaid proposals is placed at Annexure-3.

5. Proposals:-

In order to further ease the access norms for investment by FPIs in Indian capital market, following steps are being proposed, taking into consideration the comments received on the Consultation Paper issued on June 28, 2017:-

5.1. Amendment to SEBI (FPI) Regulations, 2014

5.1.1. Rationalization of fit and proper criteria: Regulation 4 of SEBI (FPI) Regulations, 2014 lays down the eligibility criteria for grant of certification of registration as an FPI to an applicant. It is felt that the conditions laid down by Regulation 4(j) of SEBI (FPI) Regulations, 2014 adequately covers the conditions specified in Regulation 4 (h)&(i) of SEBI (FPI) Regulations, 2014.

Category-I and Category-II FPIs are essentially Government/ Government related and appropriately regulated entities. It is also felt that the conditions specified in Regulation 4(f) (g) (h) of SEBI (FPI) Regulations, 2014 are deemed to be satisfying by such FPIs. Accordingly, additional documentation and procedural requirements under Regulations 4(f), (g), (h) and (i) of SEBI (FPI) Regulations, 2014 may not be required for these FPIs. In view of the same, the following changes in Regulation 4 of SEBI (FPI) Regulations 2014 is proposed:

Existing provision	Proposed change
Regulations 4 (f) to (j) of SEBI (FPI) Regulations 2014 read as follows – (f) the applicant is legally permitted to invest in securities outside the country of its incorporation or establishment or place of business; (g) the applicant is authorized by its Memorandum of Association and	A proviso to be inserted under Regulation 4 clarifying that only Regulation 4 (j) be applicable for Category I and II FPIs and as regards Category III FPIs, Regulation 4 (f), (g), (h), (i) and (j) will continue to be applicable.

Existing provision	Proposed change
<p>Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients;</p> <p>(h) the applicant has sufficient experience, good track record, is professionally competent, financially sound and has a generally good reputation of fairness and integrity;</p> <p>(i) the grant of certificate to the applicant is in the interest of the development of the securities market;</p> <p>(j) the applicant is a fit and proper person based on the criteria specified in Page 4 of 23 Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008</p>	<p>Regulation 4(j) to be added in part of Chapter V - General Obligations and Responsibilities of FPI also (Regulation 23).</p>

5.1.2. Modification in encumbrance obligation to address statutory requirements:

DDPs are required to ensure that equity shares held by FPIs are free from all encumbrances. Lien/ set-off on investments of FPIs are required for regulatory reasons such as Irrevocable Payment Commitment, payment of clearing & settlement obligations, and as such, these may not be treated as encumbrance for the purpose of this clause. Accordingly, the following changes in Regulation 32(2)(d) of SEBI (FPI) Regulations 2014 is proposed:

Existing provision	Proposed change
<p>Regulation 32(2)(d) of SEBI (FPI) Regulations, 2014 read as follows:</p> <p>“The designated depository participant engaged by an applicant seeking registration as foreign portfolio investor shall:-</p> <p>(a)...</p> <p>(b)...</p> <p>(c)....</p> <p>(d) ensure that equity shares held by foreign portfolio investors are free from all encumbrances.”</p>	<p>Regulation 32(2)(d) of SEBI (FPI) Regulations, 2014:</p> <p>“The designated depository participant engaged by an applicant seeking registration as foreign portfolio investor shall:-</p> <p>(a)...</p> <p>(b)...</p> <p>(c)....</p> <p>(d) ensure that the securities held by foreign portfolio investors are free from all encumbrances.\</p> <p>Provided that the encumbrance(s) created to meet statutory and regulatory requirements will not be considered for this purpose. ”</p>

5.1.3. Simplification of broad based requirement: In order to extend the rationale on deemed to be broad based criteria, the following changes in Explanation 2 to Regulation 5(b) of SEBI (FPI) Regulations, 2014 are proposed.

Existing provision	Proposed change
<p>Explanation 2 to Regulation 5(b) of SEBI (FPI) Regulations, 2014 read as:</p> <p>“A) For the purpose of this clause, “broad based fund” shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor</p>	<p>Explanation 2 to Regulation 5(b) of SEBI (FPI) Regulations, 2014:</p> <p>“A) For the purpose of this clause, “broad based fund” shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor</p>

Existing provision	Proposed change
<p>holding more than forty-nine percent of the shares or units of the fund:</p> <p>Provided that if the broad based fund has an institutional investor who holds more than forty nine percent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.</p> <p>B) For the purpose of clause A of this Explanation, for ascertaining the number of investors in a fund, direct investors as well as underlying investors shall be considered.</p> <p>C) For the purpose of clause B of the Explanation, only investors of entities which have been set up for the sole purpose of pooling funds and making investments, shall be considered for the purpose of determining underlying investors.”</p>	<p>holding more than forty-nine percent of the shares or units of the fund:</p> <p>Provided that if the broad based fund has an institutional investor who holds more than forty nine percent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.</p> <p>Provided further that in case, if an FPI applicant has a Bank, Sovereign Wealth Fund, Insurance/ Reinsurance Companies and Pension Funds as its underlying investor, then such an FPI applicant shall be deemed to be broad based for the purpose of Regulation 5(b) of the FPI Regulations subject to the condition that such underlying investor(s) in the fund shall either individually or jointly hold more than fifty percent of the shares or units of the fund in the applicant fund at all times.</p> <p>Provided further that in case where broad based status is achieved on the basis of underlying fund, then such underlying fund shall also be required to fulfil the extant eligibility requirements as prescribed for FPIs from time to time by SEBI.”</p>

5.2. Issuance of Circular

5.2.1. Discontinuance of requirements for seeking prior approval from SEBI in case of change in local custodian/ Designated Depository Participant (DDP): A Global Custodian generally manages a large number of FPI accounts, sometimes it results in transition of large number of FPIs from one local custodian to another. Taking specific request letter from each FPI regarding change of local custodian may create operational and logistical challenges to change local custodian in India. Accordingly, the following changes are proposed:

Clause 5.4 of Operational Guidelines for DDPs ref. SEBI circular dated January 08, 2014 – Change in DDP/Custodian	
Existing provision	Proposed change
In case the FPI wishes to change the DDP/Custodian, the request for change shall be intimated to SEBI through the concerned DDP/Custodian. On receipt of no objection from the existing transferor DDP/Custodian and acceptance from the proposed transferee DDP/Custodian, then approval from SEBI shall be sought by concerned FPI.	In case the FPI or its Global Custodian wishes to change the local custodian/DDP, the request for change shall be forwarded to new local custodian/DDP. In case the Global Custodian of FPI wishes to change the local custodian/DDP, then the request for change can be sent by the Global Custodian on behalf of its underlying FPI clients provided such Global Custodian has been explicitly authorized to take such steps by the client. Upon receipt of no objection from the transferor local custodian/DDP, the transferee local custodian/DDP shall approve the change and intimate

	SEBI about the change. In case the request for change in local custodian/DDP is received from Global Custodian, the transferee local custodian/DDP shall inform Compliance Officer of the concerned FPI(s) regarding the change in their local custodian/DDP.
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5.3. Modification of FAQ

5.3.1. Rationalization of procedure for submission of PCC/MCV Declarations and Undertakings (D&U) and Investor grouping requirement at the time of continuance of registration of FPIs: At the time of FPI registration / conversion, PCC/MCV/ D&U and information regarding FPI investor group is provided and the same are recorded in NSDL portal. In case there is no change in the information already submitted, the requirement to resubmit PCC/MCV D&U and information regarding FPI investor groups at the time of continuance may be dispensed with. Accordingly, FAQ 51 is proposed to be changed in the following manner:

FAQ 51. Is a DDP required to collect Form A from an FPI at the time of payment of registration fee for continuance of its registration as FPI?	
Existing provision	Proposed change
In the FPI regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA is not required to submit Form A. However, it is required to submit certain documents namely Declaration and Undertaking as	In the FII regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA was not required to submit Form A. The same practice shall continue in the FPI regime. Further, FPIs are not required to re-submit

<p>specified in SEBI circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010 and Information regarding FII groups along with a confirmation to the effect that there is no change in structure of the FII and SA as compared to that furnished to SEBI earlier. The same practice shall continue in the FPI regime.</p>	<p>'Declaration and Undertaking' (as specified in the SEBI Circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010) and information regarding FPI investor groups, in case there is no change in the information as compared to that furnished to the DDP earlier.</p> <p>DDPs may rely on the specific declaration from the FPI that there is no change in the information, as previously furnished. However, it may be noted that the DDP/Custodians will continue to ensure compliance with the KYC due diligence requirement prescribed by SEBI/RBI and changes therein as may be notified from time to time.</p>
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5.3.2. Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/ DDP of FPIs: At the time of change of local custodian/DDP by an FPI, the new local custodian/DDP is required to carry out the adequate due diligence requirement to ascertain the eligibility of the FPI. The due diligence by the new DDP on an already registered FPI at the time of change of local custodian/DDP often leads to increased documentation and sometimes delays the transition. Accordingly, the following changes are proposed:

Existing provision (e-mail dated July 02, 2015)	Proposed change
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With respect to the process of change of Custodian/DDP by an FPI, it is informed that both old (i.e. transferor) as well as new Custodian/DDP (i.e. transferee) shall be required to carry out the adequate due diligence in the process.	With respect to the process of change of local custodian/DDP by an FPI, it is informed that the new DDP (i.e. transferee) can rely on the existing SEBI registration granted by previous DDP (i.e. transferor). However, the new DDP is required to carry out the adequate due diligence at the time when the FPI applies for continuance of its registration on an ongoing basis.
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5.3.3. Exemption to FPIs having Multiple Investment Managers (MIM) structure from seeking prior approval from SEBI in case of Free of Cost transfer of assets: Currently, any requests for FOC by the FPI along with list of securities intended to be transferred are forwarded by DDPs to SEBI for consideration. In order to streamline this, it is proposed that requests for FOC by FPIs operating under MIM structure can be processed by DDPs. For non-MIM FPIs, the request for FOC may be forwarded to SEBI through the concerned DDP, for appropriate consideration. Accordingly, the following changes are proposed:

FAQ 28. Who would consider application for free of cost transfer of assets?	
Existing provision	Proposed change
The request for free of cost transfer of assets by the FPI should be forwarded to SEBI for its consideration through the concerned DDP.	The request for free of cost transfer of assets between FPIs having same PAN and are also registered with SEBI showing Multiple Investment Managers (MIM) structure may be processed by DDPs. For non-MIM FPIs, the request for free of cost transfer of assets may be forwarded

	to SEBI through the concerned DDP, for appropriate consideration.
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5.3.4. Simplification of process for addition of share class: FAQs 49 and 100 are proposed to be changed as follows:

FAQ 49. Does every fund / sub fund / share class need to separately fulfil broad based criteria? Is prior approval required for launch of new share class from DDP?	
Existing provision	Proposed change
<p>Yes, every fund / sub fund / share class needs to separately fulfil broad based criteria, where segregated portfolio is maintained. In case of addition of classes of shares, the FPI shall be required to obtain prior approval from DDP. For granting of such prior approval, DDPs shall obtain following documents from the FPI applicant: a) A declaration and undertaking with respect to PCC, MCV status as specified in SEBI circular ref. no. CIR/IMD/FIIC/1/2010 dated April 15, 2010; b) In cases where segregated portfolios are maintained, where the newly added share class is already broad based, the FPI will continue to be considered as being broad based.</p> <p>i. Where the newly added share class is not broad based, then an undertaking</p>	<p>In case common portfolio of Indian securities is maintained across all classes of shares/fund/sub-fund and broad based criteria are fulfilled at portfolio level after addition of share class, prior approval from DDP is not required.</p> <p>However, in case of segregated portfolio in India, every fund / sub fund / share class needs to separately fulfil broad based criteria. Further, in case of addition of classes of shares for segregated portfolio, the FPI shall be required to obtain prior approval from DDP. However, for deletion of share classes of shares of segregated portfolio, an intimation should be provided to DDP forthwith. For granting of such prior approval, DDPs shall obtain declaration and</p>

<p>is to be obtained by the DDP that the newly added share class will become broad based within 90 days from the date of DDP approval letter.</p> <p>ii. In case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter.</p>	<p>undertaking with respect to PCC, MCV status. Further, in case of addition of one or more than one share class, which are not broad based, an undertaking may be obtained by the DDP that all the newly added share classes shall attain broad based within 6 months from the date of approval issued by DDP.</p>
<p>FAQ 100. If the prospectus of a fund (registered as FPI) allows for share classes such as various currencies, can such an FPI request for addition of share class for every single iteration/variant of a share-class at one time irrespective of whether it actually launches the share-class or not?</p>	
<p>Existing provision</p>	<p>Proposed change</p>
<p>It has already been clarified in reply to Q 49 of FAQs that in case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter. However, where common portfolio is</p>	<p>It has already been clarified in reply to Q 49 of FAQs that in case of simultaneous addition of more than one share class (where segregated portfolio is maintained), which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will attain broad based</p>

maintained, the approval of launch of share class/variant shall be taken prior to its launch.	status within 180 days from the date of approval issued by DDP.
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5.3.5. Permitting FPIs operating under the Multiple Investment Managers (MIM) structure to appoint multiple custodians: FAQs 6 and 103 are proposed to be changed as follows:

FAQ 6. Can an entity obtain more than one FPI registration (similar to the one allowed for MIM structures in the FII regime)?	
Existing provision	Proposed change
Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.	Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. Further, investments made under such multiple registrations were clubbed for the purpose of monitoring of investment limits. The same position shall continue in the FPI regime. Also, such applicants can appoint different local custodians/DDPs.
FAQ 103. Can a DDP register proprietary accounts for the purposes of internal segregation (other than for MIM purposes)? Are there any limitations on how many such proprietary FPIs can be registered?	
Existing provision	Proposed change
It has already been clarified in reply to Q6 of the FAQs that in the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple	Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. Further, investments made

registrations with SEBI. These applicants are required to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.	under such multiple registrations were clubbed for the purpose of monitoring of investment limits. The same position shall continue in the FPI regime. Also, such applicants can appoint different local custodians/DDPs.
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5.3.6. Permitting appropriately regulated Private Bank/ Merchant Bank to invest on their behalf and also on behalf of their clients: It is proposed that private bank/ merchant bank may invest on behalf of their clients provided that the banks do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated. Further, details of beneficial owners are available and would be provided as and when required by the investors. Accordingly, the following changes are proposed:

FAQ 20. How would the Private Banks and Merchant Banks be classified? Should they be considered as appropriately regulated if they are regulated or supervised by the banking regulator of the concerned foreign jurisdiction and thus qualify to be Category II FPI?	
Existing provision	Proposed change
Private Banks and Merchant Banks that are regulated by an “appropriate regulator” may be classified as Category II. Further, such entities shall be allowed to undertake only proprietary investments. [Ref. Regulation 5(b)]	Private Banks and Merchant Banks that are regulated by an “appropriately regulator” may be classified as Category II. Further, they will be permitted to undertake investments on behalf of its investors provided the private banks/ merchant banks submit a declaration that

	<ul style="list-style-type: none"> i. The details of beneficial owners are available and will be provided as and when required by the regulators; ii. The banks do not have any secrecy arrangement with the investor and all required legal/regulatory arrangements have been put in place in order to ensure that any secrecy laws or confidentiality clauses do not impede disclosure of Beneficial owner details as and when required by Indian regulators. iii. In addition to (i) and (ii), such entities shall also be allowed to undertake proprietary investment by taking separate registration with SEBI.
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FAQ 21. Can a Private Bank/Merchant Bank invest on behalf of its clients?

Existing provision	Proposed change
No. Private Bank/Merchant Bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.	FAQ 21 may be deleted

FAQ 162. A private bank namely "Y" is one of the investors in a fund namely "X", which seeks to get registered as an FPI. "Y" intends to invest on behalf of multiple clients. Can a DDP consider "X" eligible for grant of registration as an FPI?

Existing provision	Proposed change
While assessing the eligibility of an FPI applicant, a DDP may refer to the reply to Q# 21 of the FAQs, which states that private bank/merchant bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.	FAQ 162 may be deleted

5.4. New Clarifications to be issued by way of FAQs/ Circular

5.4.1. Expansion of entities considered as “appropriately regulated persons in terms of Regulation 5(b)(ii): Presently, Category II FPIs include appropriately regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers. It is proposed that the following clarification may be provided to broaden this definition:

- (a) FAQ: Can appropriately regulated entities i.e. broker-dealer, swap dealer, seek FPI registration under category-II as per Regulation 5(b)(ii)?

Answer: Appropriately regulated entities i.e. broker dealer, swap dealer who are regulated by an “appropriate regulator” can be classified as Category II provided such entities provide beneficial ownership details of their clients to SEBI and/ or any other enforcement agencies, as and when required.

5.4.2. Other Clarifications on further simplification of broad based requirements:

- (a) Broad based requirements: In case any broad based fund, due to exit of some offshore global investors, may not result in immediate loss of Category II status. It is proposed that a time period of three months may be given to such funds to regain broad based status.
- (b) Conditional registration: Clause 2.5 of operational guidelines mandated in Circular No. CIR/IMD/FIIC/02/2014 dated January 08, 2014, states that conditional registration facility is available only to “newly established” India dedicated fund. The facility of granting conditional registration may also be extended to existing funds, proposing to convert as India dedicated funds. However, existing India dedicated funds shall be given time of three months to achieve Broad based status.

6. Proposal (s) for consideration:

6.1. The Board is requested to consider and approve the proposed amendments to SEBI (FPI) Regulations, 2014 and Circulars/Guidelines etc. issued thereunder and therefore authorize the Chairman, SEBI to take all necessary measures to implement the Board’s decision.

Date : December 13, 2017
Place: Mumbai

Anand R. Baiwar
Executive Director

(This has been excised for reasons of confidentiality).

Consultation Paper on Easing of Access Norms for Investment by FPIs.**A. OBJECTIVE:**

To solicit the comments/views from general public on the proposals contained in this consultation paper, which may warrant amendments to SEBI (Foreign Portfolio Investors) Regulations, 2014 and Circulars/Guidelines etc. issued thereunder.

B. PROPOSALS:**1. Expansion of eligible jurisdictions for grant of FPI registration to category I FPIs by including countries having diplomatic tie-ups with India and FEMA compliant (Proposed amendments to Regulation 4(b)):**

The Regulation 4(b) of FPI Regulations reads as – “...*the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Board...*”

Proposal-

In terms of the aforementioned regulations, the applicants eligible to seek registration under Category I are limited to those who are resident of a country whose securities market regulator is either a signatory to IOSCO’s MMoU or has a bilateral MoU with SEBI. Category I entities are essentially Government and related entities or Multilateral agencies and are perceived to be the highest quality and lowest risk investors, with a long term investment horizon generally. Therefore, for multilateral agencies, there may not be any requirement to pass jurisdiction check. However, in certain jurisdictions like Canada, there is no separate securities market regulator nationwide but have provincial regulators, which are signatory to

IOSCO's MMOU. Thus, from Canada, FPIs can be only from those provinces which are signatory to IOSCO's MMOU (presently four viz. Ontario, Quebec, British Columbia & Alberta). Accordingly, residents of other provinces are not eligible to seek registration as an FPI and make investments in Indian securities market. Incidentally, there is no such requirement for the strategic investor investing under FDI route.

In view of the above, it is proposed that the list of eligible jurisdictions in terms of FPI Regulations for grant of registration to Category I FPIs, may be expanded by also considering those jurisdictions, wherein Government of India has diplomatic tie-up and FEMA compliant jurisdiction, in addition to existing requirements whereby the concerned securities market regulator is required to be a signatory to IOSCO MMoU. Consequently, more jurisdictions such as other provinces in Canada would be able to access the market due to change in FPI Regulations.

Changes proposed-

Regulation 4(b) to be amended as:

“the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission’s Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Board.

Provided further that the applicant shall be considered as eligible for registration under Category I, if, the applicant is resident in a country, which is in compliance with extant regulatory framework laid down in FEMA and also has formal diplomatic ties with India (SEBI in consultation with Government of India to notify list of such countries).”

Other eligibility requirements in terms of FPI Regulations for grant of registration shall remain unchanged.

2. Rationalization of fit and proper criteria (Proposed amendments to Regulation 4 & Regulation 23)

Proposal-

Regulations 4 (f) to (j) of FPI Regulations read as follows –

(f) the applicant is legally permitted to invest in securities outside the country of its incorporation or establishment or place of business;

(g) the applicant is authorized by its Memorandum of Association and Articles of Association or equivalent document(s) or the agreement to invest on its own behalf or on behalf of its clients;

(h) the applicant has sufficient experience, good track record, is professionally competent, financially sound and has a generally good reputation of fairness and integrity;

(i) the grant of certificate to the applicant is in the interest of the development of the securities market;

(j) the applicant is a fit and proper person based on the criteria specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008

The requirements to ascertain whether the applicant is “fit and proper” are very broad and generally cover the relevant factors, including the eligibility requirements prescribed under Regulation 4 (f), (g), (h) and (i).

In view of the fact that category I and II FPIs are essentially Government and Regulated entities, it is felt that any additional documentation and procedural

requirements under Regulation 4 (f), (g), (h) and (i) may not be required to be applied for such investors.

Accordingly, documentation requirements under Regulation 4 (j) would suffice. However, Category III FPIs shall continue to be subject to specific requirements under Regulation 4 (f), (g), (h), (i) and (j)”.

As per Regulation 4, general obligation for FPI eligibility requirement is on DDPs and not on FPI applicant. While the DDPs shall continue to perform due diligence at the time of processing the registration applications, it is felt that FPIs should also be made obligatory of this eligibility requirement. Accordingly, the eligibility requirement under 4(j) may be made a part of Chapter V - General Obligations and Responsibilities of FPI also.

Changes proposed –

- a. A proviso to be inserted under Regulation 4 clarifying that only Regulation 4 (j) be applicable for Category I and II FPIs and as regards Category III FPIs, Regulation 4 (f), (g), (h), (i) and (j) will continue to be applicable.
 - b. Regulation 4(j) to be added in part of Chapter V - General Obligations and Responsibilities of FPI also.
- 3. Modification in encumbrance obligation to address statutory requirements (Proposed amendments to Regulation 32(2)(d))**

“(2) The designated depository participant engaged by an applicant seeking registration as foreign portfolio investor shall :-

.....

(d)ensure that equity shares held by foreign portfolio investors are free from all encumbrances...”

Proposal –

DDPs are required to ensure that equity shares held by FPIs are free from all encumbrances. Lien/set-off on investments of FPIs are required for regulatory reasons such as Irrevocable Payment Commitment (IPC), payment of clearing & settlement obligations, custody fees, administrative fees/charges, and as such, these may not be treated as encumbrance for the purpose of this clause.

Changes proposed –

In view of the above, this clause in the FPI Regulations may be modified to read as –

“DDPs are required to ensure that equity shares held by FPIs are free from encumbrances:

Provided that the obligation (s) created to meet statutory and regulatory requirements will not be considered for this purpose”.

4. Simplification of broad based requirement (Proposed amendments to Explanation 2 to Regulation 5 (b))

Explanation 2 to Regulation 5 (b) of FPI Regulations read as follows –

Explanation 2.-

A) For the purposes of this clause, "broad based fund" shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor holding more than forty-nine per cent of the shares or units of the fund:

Provided that if the broad based fund has an institutional investor who holds more than forty nine per cent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.

Proposal –

It has been brought to the notice of SEBI that that some of fund applicants desirous of seeking registration as an FPI are open-ended funds and, as such, are always open for subscription and redemption by investors. Accordingly, at times due to reasons such as redemption by existing investors, portfolio rebalancing etc., the number of investors in that fund may go below 20 and thus, the fund ceases to satisfy the broad based criteria in terms of FPI Regulations. SEBI had given clarification that in case an FPI applicant has a bank as an underlying investor, then such FPI shall be deemed to be broad based for the purpose of Regulation 5(b) of the FPI Regulations. It is now proposed that this rationale on deemed to be broad based criteria may also be extended in other cases wherein the applicant funds have other institutional investors viz., Sovereign Wealth Fund, Insurance/Reinsurance Companies, Pension Funds, Exchange Traded Funds etc. as their underlying investors. The same may be in conformity with Explanation 2 of Regulation 5 (b) of SEBI (FPI) Regulations, 2014.

Changes proposed –

In view of the above, a proviso to Explanation 2 to Regulation 5 (b) of FPI Regulations may be inserted. Accordingly, it may be read as follows –

Explanation 2.-

A) For the purposes of this clause, "broad based fund" shall mean a fund, established or incorporated outside India, which has at least twenty investors, with no investor holding more than forty-nine per cent of the shares or units of the fund:

Provided that if the broad based fund has an institutional investor who holds more than forty nine per cent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.

Provided further that in case, if an FPI applicant has a Bank, Sovereign Wealth Fund, Insurance/ Reinsurance Companies, Pension Funds, and Exchange Traded Funds as its underlying investor, then such an FPI applicant shall be deemed to be broad based for the purpose of Regulation 5(b) of the FPI Regulations subject to the condition that such underlying investor (s) in the fund shall either individually or jointly hold majority stake in the applicant fund at all times.”

5. Rationalization of procedure for submission of PCC/MCV Declarations and Undertakings (D&U) and Investor grouping requirement at the time of continuance of registration of FPIs –

In terms of FAQ 51, at the time of seeking continuance of registration, FPIs are required to re-submit D&U to the effect that it is not Protected Cell Company (PCC) /Multi- class Vehicle (MCV) and information regarding FPI investor groups (along with a confirmation that there is no change in structure).

Considering that PCC/MCV D&U and information regarding FPI investor groups is provided at the time of FPI registration/conversion and the details of the same are recorded in NSDL portal. In case there is no change in the information already submitted, the requirement to re-submit PCC/MCV D&U and information regarding FPI investor groups at the time of continuance be dispensed with. However, DDPs/Custodians will continue to ensure compliance with the KYC due-diligence requirement in terms of the extant regulatory requirements.

The changes proposed in FAQ are as under –

FAQ 51. Is a DDP required to collect Form A from an FPI at the time of payment of registration fee for continuance of its registration as FPI?	
Present Language	Revised Language
In the FII regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA is not required to submit Form A. However, it is required to	In the FII regime, an FII/SA at the time of payment of registration fee for continuance of its registration as FII/SA was not required to submit Form A. The same practice shall continue in the FPI

<p>provide certain documents namely Declaration and Undertaking as specified in SEBI Circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010 and Information regarding FII groups along with a confirmation to the effect that there is no change in structure of the FII and SA as compared to that furnished to SEBI earlier. The same practice shall continue in the FPI regime.</p>	<p>regime. Further, FPIs are not required to re-submit 'Declaration and Undertaking' (as specified in the SEBI Circular No. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010) and information regarding FPI investor groups, in case there is no change in the information as compared to that furnished to the DDP earlier.</p>
	<p>DDPs may rely on the specific declaration from the FPI that there is no change in the information, as previously furnished. However, it may be noted that the DDP/Custodians will continue to ensure compliance with the KYC due diligence requirement prescribed by SEBI/RBI and changes therein as may be notified from time to time.</p>

6. Discontinuance of requirements for seeking prior approval from SEBI in case of change in local custodian/DDP

It is reported that majority of the registered FPIs access the Indian securities market through Global Custodians (GCs) wherein they appoint the GC and the GC in turn appoints a local/sub-custodian in India. The GC represents its FPI clients and liaises with the local custodian on behalf of its clients regarding custodial services in India. All post-trade activities of the FPIs in the Indian securities market are conducted through GCs, including account opening, trade settlements etc. Since a GC generally manages a large number of FPI accounts, sometimes it results in transition of large number of FPIs from one local custodian to another. Taking specific request letter from each FPI regarding change of local custodian may create operational and logistical challenges to change local custodian in India.

Hence, it is proposed to permit the new local custodian/DDP to rely on letter from GC regarding the change in local custodian of its FPI clients provided the transferor

local custodian/DDP provides no objection certificate to the transferee local custodian/DDP for change of local custodian. The intimation regarding the change in local custodian/DDP may be sent to the concerned FPI by the transferee local custodian/DDP.

The changes proposed are as under –

Clause 5.4 of Operational Guidelines for DDPs ref. SEBI circular dated January 08, 2014 – Change in DDP/Custodian	
Present language	Revised Language
<p>In case the FPI wishes to change the DDP/Custodian, the request for change shall be intimated to SEBI through the concerned DDP/Custodian. On receipt of no objection from the existing /transferor DDP/Custodian and acceptance from the proposed/ transferee DDP/Custodian, then approval from SEBI shall be sought by concerned FPI.</p>	<p>In case the FPI or its Global Custodian wishes to change the local custodian/DDP, the request for change shall be forwarded to new local custodian/DDP.</p> <p>In case the Global Custodian of FPI wishes to change the local custodian/DDP, then the request for change can be sent by the Global Custodian on behalf of its underlying FPI clients provided such Global Custodian has been explicitly authorized to take such steps by the client.</p>
	<p>Upon receipt of no objection from the transferor local custodian/DDP, the transferee local custodian/DDP shall approve the change and intimate SEBI about the change.</p> <p>In case the request for change in local custodian/DDP is received from Global</p>

	Custodian, the transferor local custodian/DDP shall inform Compliance Officer of the concerned FPI(s) regarding the change in their local custodian/DDP.
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7. Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/DDP of FPIs

At the time of change of local custodian/DDP by an FPI, the new local custodian/DDP is required to carry out the adequate due diligence requirement to ascertain the eligibility of the FPI. The due diligence by the new DDP on an already registered FPI at the time of change of local custodian/DDP often leads to increased documentation and sometimes delays the transition. It is pertinent to note that the DDPs are required to conduct a due diligence at the time when a registered FPI applies for continuance of its registration every three years from the date of registration.

Accordingly, at the time of change of local custodian/DDP, it is suggested that the new DDP may be permitted to rely on the registration granted by previous DDP at the time of transition. This will avoid duplicate efforts and incremental documentation by the FPIs as well as the DDPs. The changes proposed are as under –

Present language (e-mail dated 2 nd July 2015)	Revised Language
With respect to the process of change of Custodian/DDP by an FPI, it is informed that both old (i.e. transferor) as well as new Custodian/DDP (i.e. transferee)	With respect to the process of change of local custodian/DDP by an FPI, it is informed that the new DDP (i.e. transferee) can rely on the existing SEBI registration granted by previous DDP (i.e. transferor).

shall be required to carry out the adequate due diligence in the process.	However, the new DDP is required to carry out the adequate due diligence at the time when the FPI applies for continuance of its registration on an ongoing basis.
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8. Exemption to FPIs having Multiple Investment Managers (MIM) structure from seeking prior approval from SEBI in case of Free of cost transfer of assets –

Free of cost transfer of assets (“FOC”) is permitted wherein the transferor and transferee FPIs have exactly the same beneficial owners. Currently, any requests for FOC by the FPI along with list of securities intended to be transferred are forwarded by DDPs to SEBI for consideration. In order to streamline this with other miscellaneous cases, it is proposed that requests for FOC by FPIs can be processed by DDPs subject to compliance with below requirements:

FOC request for non-MIM structure such as on account of complex restructuring exercise, merger etc. will be forwarded by DDPs to SEBI for appropriate consideration. The changes proposed in FAQ are as under –

Q 28. Who would consider application for free of cost transfer of assets?	
Present Language	Revised Language
The request for free of cost transfer of assets by the FPI should be forwarded to SEBI for its consideration through the concerned DDP.	The request for free of cost transfer of assets by FPIs registered under the Multiple Investment Managers (MIM) structure may be processed by DDPs. For non-MIM FPIs, the request for free of cost transfer of assets may be forwarded to SEBI through the concerned DDP, for appropriate consideration.

9. Simplification of process for addition of share class –

In case of addition of share classes, the FPIs are required to obtain prior approval from SEBI/DDP. Since the share classes are generally launched in the home jurisdiction of the FPI, the requirement of seeking prior approval sometimes impedes the launch of the new share class and thus impact the fund and its investors.

It is proposed that in a fund where common portfolio is maintained across all share classes, prior approval for addition of share class may not be required. If there is change in structure due to the addition of share class, FPIs are nevertheless required to notify forthwith.

Further, in cases where segregated portfolios are maintained, FPIs are required to obtain prior approval of SEBI/DDP for addition of share class (one or more). For addition of non-broad based share classes, DDP may obtain an undertaking from the FPI that all the newly added share classes shall attain the broad based status within 180 days from the date of approval issued by the DDP. This shall bring uniformity in the timelines to become broad based in case of simultaneous addition of more than one share class for segregated portfolio. The changes proposed in FAQs are as under –

Q 49. Does every fund / sub fund / share class need to separately fulfil broad based criteria? Is prior approval required for launch of new share class from DDP?	
Present Language	Revised Language
Yes, every fund / sub fund / share class needs to separately fulfil broad based criteria, where segregated portfolio is maintained. In case of addition of classes of shares, the FPI shall be required to obtain prior approval from DDP. For	In case common portfolio is maintained across all classes of shares/fund/sub-fund and broad based criteria are fulfilled at portfolio level due to addition of

<p>granting of such prior approval, DDPs shall obtain following documents from the FPI applicant: a) A declaration and undertaking with respect to PCC, MCV status as specified in SEBI circular ref. no. CIR/IMD/FIIC/1/ 2010 dated April 15, 2010; b) In cases where segregated portfolios are maintained, Where the newly added share class is already broad based, the FPI will continue to be considered as being broad based.</p> <p>i. Where the newly added share class is not broad based, then an undertaking is to be obtained by the DDP that the newly added share class will become broad based within 90 days from the date of DDP approval letter.</p> <p>ii. In case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter.</p>	<p>share class, prior approval from DDP is not required.</p> <p>However, in case of segregated portfolio, every fund / sub fund / share class needs to separately fulfil broad based criteria. Further, in case of addition or deletion of classes of shares for segregated portfolio, the FPI shall be required to obtain prior approval from DDP. For granting of such prior approval, DDPs shall obtain declaration and undertaking with respect to PCC, MCV status. Further, in case of addition of one or more than one share class, which are not broad based, an undertaking may be obtained by the DDP that all the newly added share classes shall attain broad based within 180 days from the date of approval issued by DDP.</p>
<p>Q 100. If the prospectus of a fund (registered as FPI) allows for share classes such as various currencies, can such an FPI request for addition of share class for every single iteration/variant of a share-class at one time irrespective of whether it actually launches the share-class or not?</p>	
<p>Present Language</p>	<p>Revised Language</p>

<p>It has already been clarified in reply to Q 49 of FAQs that in case of simultaneous addition of more than one share class, which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will become broad based within 15 days from the date of DDP approval letter. However, where common portfolio is maintained, the approval of launch of share class/variant shall be taken prior to its launch.</p>	<p>It has already been clarified in reply to Q 49 of FAQs that in case of simultaneous addition of more than one share class (where segregated portfolio is maintained), which are not broad based, then an undertaking is to be obtained by the DDP that all the newly added share classes will attain broad based status within 180 days from the date of approval issued by DDP.</p>
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10. Permitting FPIs operating under the Multiple Investment Managers (MIM) structure to appoint multiple custodians–

In terms of SEBI FAQ 6 & 103, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple FPI registrations. However, these applicants are required to appoint the same local custodian and investments made under such multiple registrations are clubbed for the purpose of monitoring of investment limits as per the extant regulatory requirement. Some FPIs have raised concern that by appointing single entity as the local custodian/DDP, they are exposed to higher counter-party risk.

Under the erstwhile FII regime, requirement of same local custodian for MIM accounts was prescribed in order to ensure that investments made under such multiple registrations are clubbed for the purpose of monitoring of investment limits. Considering that FPI applicants are required to provide investor grouping information in the Form “A” while seeking registration and DDP reports the same to the depositories, investments made under such multiple registrations are clubbed for the purpose of investment limits by the depositories. In view of the same, it is proposed that such MIM accounts may be permitted to appoint different local custodians/DDPs. In any case, the depositories (NSDL & CDSL) are required monitor the investment limits of the FPIs.

The changes proposed in FAQs are as under –

Q 6. Can an entity obtain more than one FPI registration (similar to the one allowed for MIM structures in the FII regime)?	
Present Language	Revised Language
Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of investment limits. The same position shall continue in the FPI regime.	Yes. In the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. Further, investments made under such multiple registrations were clubbed for the purpose of monitoring of investment limits. The same position shall continue in the FPI regime. Also, such applicants can appoint different local custodians/DDPs.
Q 103. Can a DDP register proprietary accounts for the purposes of internal segregation (other than for MIM purposes)? Are there any limitations on how many such proprietary FPIs can be registered?	
Present Language	Revised Language
It has already been clarified in reply to Q6 of the FAQs that in the FII regime, wherever an entity engages Multiple Investment Managers (MIM structure) it can obtain multiple registrations with SEBI. These applicants are required to appoint the same local custodian. Further, investments made under such multiple registrations are clubbed for the purpose of	Please see reply to Q. 6.

investment limits. The same position shall continue in the FPI regime.	
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11. Permitting FPIs holding FVCI to appoint multiple custodians–

SEBI vide circular dated June 12, 2015 permitted an FVCI for grant of FPI registration. It was inter alia advised that such an applicant holding FPI & FVCI registration should have same custodian.

SEBI has now received representation that as the limit computation and monitoring is being carried out by the depository, same entities with multiple registrations (such as FPI and FVCI or multiple FPI) may be permitted to use separate custodians to hold assets, which will also provide more flexibility to the entities. Accordingly, in line with the suggestion to permit Multi Managed Structures (MIM accounts) to appoint separate local custodians, it is also proposed to permit different custodians for FPI and FVCI registrations for the same entity.

However, the existing mechanism of monitoring by NSDL to ensure that the aggregate holding by the FPI and FVCI entities that form part of the same investor group is below 10% of the issued share capital as stipulated under the FPI regulations will have to be monitored by the existing monitoring mechanism of NSDL.

To facilitate proper information flow w.r.t. such group accounts to NSDL, the FPIs are proposed to be advised to report details of all other FVCI accounts that share 50% or more of common beneficial ownership to DDP at the time of seeking registration. This information on the group accounts can be passed on NSDL by the custodian. Similarly FVCI applicants are also proposed to be mandated to provide details of 'group' FPI accounts to SEBI at the time of FPI registration application and this information can be further shared with NSDL by SEBI for monitoring purpose. Custodians shall also be required to provide details of physical

securities held by FVCI accounts that are part of any investor group to NSDL on a daily basis for the purpose of below 10% monitoring.

12. Permitting appropriately regulated Private Bank/Merchant Bank to invest on their behalf and also on behalf of their clients–

Private Banks that are appropriately regulated and managing funds of their investor pool should be permitted to undertake investments on behalf of its investors if such investors are ready to share the details of their investors. It is proposed that Private Bank/Merchant Bank may invest on behalf of their clients provided:

- Details of beneficial owners (BOs) are available and will be provided as and when required by regulators;
- Banks do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated.

The changes proposed in FAQs are as under:-

<p>Q 20. How would the Private Banks and Merchant Banks be classified? Should they be considered as appropriately regulated if they are regulated or supervised by the banking regulator of the concerned foreign jurisdiction and thus qualify to be Category II FPI?</p>	
Present Language	Revised Language
<p>Private Banks and Merchant Banks that are regulated by an “appropriate regulator” may be classified as Category II. Further, such entities shall be allowed to undertake only proprietary</p>	<p>Private Banks and Merchant Banks that are regulated by an “appropriate regulator” may be classified as Category II. Further, they will be permitted to undertake investments on behalf of its investors provided the private bank/</p>

<p>investments. [Ref. Regulation 5(b)]</p>	<p>merchant banks submit a declaration that</p> <ul style="list-style-type: none"> i. The details of the beneficial owners are available and will be provided as and when required by the regulators; ii. The banks do not have any secrecy arrangement with the investors and secrecy laws do not apply to the jurisdictions in which the bank is regulated.
<p>Q 21. Can a Private Bank/Merchant Bank invest on behalf of its clients?</p>	
<p>Present Language</p>	<p>Revised Language</p>
<p>No. Private Bank/Merchant Bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.</p>	<p>FAQ 21 to be deleted.</p>
<p>Q 162. A private bank namely "Y" is one of the investors in a fund namely "X", which seeks to get registered as an FPI. "Y" intends to invest on behalf of multiple clients. Can a DDP consider "X" eligible for grant of registration as an FPI?</p>	
<p>Present Language</p>	<p>Revised Language</p>
<p>While assessing the eligibility of an FPI applicant, a DDP may refer to the reply to Q# 21 of the FAQs, which states that</p>	<p>FAQ 162 to be deleted.</p>

<p>private bank/merchant bank cannot invest on behalf of their clients. They are only permitted to make proprietary investments.</p>	
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13.Expansion of entities considered as “appropriately regulated persons in terms of Regulation 5(b) (ii):-”

Proposal: - Category II FPIs currently includes - appropriately regulated persons such as banks, asset management companies, investment managers/ advisors, portfolio managers. It is proposed clarification may be provided to broaden this definition by FAQ to prescribe more inclusions as suggested.

FAQ:-Can appropriately regulated entities such as broker-dealer, swap dealer etc. can seek FPI registration under category II as per Regulation 5(b)(ii).

Answer:- Appropriately regulated entities such as broker dealer, swap dealer etc. that are regulated by an “appropriate regulator” proposed to be classified as Category II provided such entities shall provide beneficial ownership details of their clients to SEBI and/or any other enforcement agencies, as and when required.

14.Other Clarifications on further simplification of broad based requirements:

A. Broad based requirement: In case any Broad based fund due to exit of some offshore global investors loses its broad base status. Then this may not result in immediate loss of Category II status. It is felt that 3 months’ time may be given to such funds to regain broad base status.

B. Conditional Registration: The clause 2.5 of operational guidelines provides that conditional registration facility is available only to “newly established” India dedicated funds. It is proposed that this facility may also be extended to existing funds also.

C. Public Comments:-

I. In light of the above, public comments are invited on the proposals contained in this consultation paper. Comments/ views may be provided in the format given below:

Name of entity / person / intermediary/ Organization			
S. No.	Pertains to Point No.	Suggestions	Rationale

II. The comments/views may either be forwarded by email to fpi-feedback@sebi.gov.in **OR** may be sent by post to the following address latest by July 27, 2017.

Mr. Achal Singh,
Deputy General Manager
Investment Management Department,
Division of Foreign Portfolio Investors & Custodians
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4-A, G Block
Bandra Kurla Complex
Mumbai - 400 021

Issued on: June 28, 2017

Annexure-3

SL. No.	Changes suggested in Consultation paper	Summary of some of the suggestions received	Views of SEBI
1	Expansion of eligible jurisdictions for grant of FPI registration to category I FPIs by including countries having diplomatic tie-ups with India and FEMA compliant (Proposed amendments to Regulation 4(b))	<p>a. SEBI should specify the relevant provision under FEMA which Category I FPI have to comply with.</p> <p>b. SEBI should add “jurisdiction” along with “country” to cover instances like Canada where regulator of some provinces are not part of IOSCO.</p> <p>c. SEBI should restrict the eligible jurisdiction to the following:</p> <ul style="list-style-type: none"> • Securities market Regulatory signatory to IOSCO’s MMoU; or • Bilateral MOU with SEBI; or • FATF compliant jurisdiction; or • Diplomatic ties with India <p>d. SEBI may notify the countries having formal diplomatic ties with India at any early date. SEBI may specify the frequency/ periodicity of the updation of the list. Alternatively or additionally the market participants may be</p>	In view of the comments received from RBI, this proposal may be re-examined and taken up at a later stage.

		<p>provided with an alert whenever there is an updation.</p> <p>e. List of this eligible jurisdiction should be expanded to regulated Cat-II entities as well. These Cat-II entities are regulated entities and securities market regulator has an oversight of these entities.</p>	
2	<p>Rationalization of fit and proper criteria (Proposed amendments to Regulation 4 & Regulation 23)</p>	<p>a. Currently, the applicants for FPI registration provide declarations and undertakings to their being eligible for being registered on an ongoing basis. Hence, the proposed change may not be required.</p> <p>b. DDPs may be permitted to rely on regulated status of the intermediary in the relevant jurisdiction which meets the 'Fit & Proper' criteria as laid down by SEBI or in alternative reliance to be placed on (i) Global Custodians or (ii) Declaration from applicant</p> <p>c. Further, an Illustrative list of documents for verifying 'Fit & Proper' criteria may also be prescribed</p>	<p>Category I & II FPIs are essentially Government and regulated entities, respectively. SEBI, therefore proposes not to apply Regulation 4(f), (g), (h), (i) and (j) of SEBI (FPI) Regulations to such FPI applicants. This will also result in rationalisation of documentation requirements for these FPIs. Incidentally, DDPs shall continue to be required to do due diligence as prescribed in SEBI (FPI) Regulations, 2014.</p>

		d. We recommend that for Category-III FPIs regulation 4 (f), (g), (h) (i) & (j) should be added in part of Chapter V - General Obligations And Responsibilities of FPI as it is applicable for category-III investors.	
3	Modification in encumbrance obligation to address statutory requirements (Proposed amendments to Regulation 32(2) (d))	<p>a. The proposed amendment should include custody fees and administrative fees also.</p> <p>b. SEBI may specify the methodology by which the DDP will ensure that the equity shares are free from all encumbrances.</p> <p>c. It may be appropriate to replace the words “equity shares” with “securities”.</p>	<p>Presently, Regulation 32(2)(d) of SEBI (FPI) Regulations, 2014 prescribe DDP should ensure that equity shares held by FPI are free from encumbrances. It is felt that FPIs should be restricted from creating encumbrances on all securities held by them.</p> <p>Accordingly, encumbrance(s) created to meet statutory and regulatory requirements may not be considered for the purpose of this clause.</p>
4	Simplification of broad based requirement (Proposed amendments)	A. Presently underlying Broad based funds do not go through any due diligence (beside 20-49 check) as per extant regulations. It is important to subject underlying	SWFs, Pension Funds, Insurance/ Reinsurance companies belong to Category I and II FPIs,

<p>to Explanation 2 to Regulation 5 (b))</p>	<p>fund to additional screening related to IOSCO jurisdiction, whether appropriate regulated etc.), so that simplification does not add to misuse risk.</p> <p>B. Category I and Category II FPIs are essentially government and regulated entities, we request that Category I and II entities be exempt from the broad based criteria.</p> <p>C. SEBI may consider revising Explanation 2 to Regulation 5(b)as follows:</p> <p>a. For the purposes of this clause, “broad based fund” shall mean a fund established or incorporated outside India</p> <p>(i) that invests in a broad set of countries, where Indian securities represent less than 10% of the fund’s total investments and where the investment decisions and voting of the fund are made by an investment manager subject to the fund’s governing documents; or</p> <p>(ii) which has at least twenty investors, with no investor holding</p>	<p>which are essentially Government/ Government related and appropriately regulated entities. Accordingly, it is expected that these entities represent multiple underlying investors.</p> <p>Further, a specific provision has been inserted which mandates that underlying fund shall also be required to fulfill the extant eligibility requirements as prescribed for FPIs. There is merit in the suggestion on underlying fund check. Presently, if a Dubai based fund is a major investor in say Mauritius based fund. In that scenario, the only check is whether there are 20 investors on look through basis</p>
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		<p>more than forty-nine per cent of the shares or units of the fund:</p> <p>Provided that if the broad based fund has an institutional investor who holds more than forty nine per cent of the shares or units in the fund, then such institutional investor must itself be a broad based fund.</p> <p>An institutional investor in the broad based fund that is a bank, sovereign wealth fund, insurance/reinsurance company, pension fund, or Exchange Traded Fund, will be deemed to be broad based fund for purposes of this analysis.</p> <p>Provided further that if an FPI applicant has a Bank, Sovereign Wealth Fund, Insurance/Reinsurance company, Pension Fund, Exchange Traded Fund or other institutional investor as its largest underlying investor, then the FPI applicant shall not be required to have at least 20 investors to be deemed to be broad based for the purpose of Regulation 5(b) of the FPI Regulations.</p>	<p>and no investor is having more than 49% stake. There is no check, if there are Indians holding majority stake in underlying fund or whether they are appropriately regulated. There is need to plug this gap by prescribing that in case where Broad based in achieved on strength of underlying Fund, then underlying Fund shall also be subjected to eligibility check as prescribed for FPIs. Accordingly, any chance of misuse of this relaxation would be eliminated.</p> <p>The extant broad based requirements ensure distribution of ownership of the investors in a fund. Suitable provisions have already been incorporated in SEBI (FPI) Regulations,</p>
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		<p>Provided further that, if an FPI applicant is a broad-based fund under (i) above and no more than 1% of the fund's total investments are represented by any single Indian security issuer, then the FPI is not required to provide information about underlying beneficial owners.</p> <p>D. We would recommend that Mutual Funds and other open ended regulated funds automatically qualify as Category II FPI.</p> <p>E. FPI applicant which is ETF should also be deemed as Broad based.</p> <p>F. The intuitional underlying investor could be direct investor of FPI or indirect investor of FPI.</p> <p>G. The term "FPI applicant: gives an impression that such proviso is only for new registration and not already registered FPIs.</p> <p>H. We would also suggest revising the broad-based criteria such that the inclusion of regulated endowments and charitable foundations as well as University</p>	<p>2014 w.r.t. quantum and nature of investments made by FPIs. Accordingly, it appears more suitable to apply broad based test on the number of investors rather than quantum and nature of investment of an FPI applicant fund.</p> <p>Accordingly, it is proposed as follows:</p> <p>i. The proposed amendment should be made applicable to existing FPIs as well as prospective FPI applicant.</p> <p>ii. FPI applicant having a Bank, Sovereign Wealth Fund, Insurance/Reinsurance company and Pension Fund as underlying investor having majority stake (either individually or jointly) may not be</p>
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		<p>funds and university related endowments as underlying investors in a fund automatically allow a regulated fund to qualify as broad-based.</p> <p>I. SEBI could add to the list of underlying investor ICSDs and distribution platforms (e.g. Vestima and Fundsettle).</p> <p>J. Family Offices be included in Broad Based.</p> <p>K. It should be clarified that need for 20 investors should not be applied if FPI is deemed as Broad Based.</p> <p>L. Clarification should also be provided regarding looking through for underlying investor details as with these types of entities it is often hard to obtain and dynamic in nature by virtue of what makes them eligible for consideration as broad based.</p> <p>M. Who is institutional investor, given that it has to be with reference to foreign jurisdictions.</p> <p>N. Deletion of monitoring the broad based requirement “at all times”</p>	<p>required to comply with Explanation 2 of Para (C) of Regulation 5 of SEBI (FPI) Regulations, 2014.</p> <p>iii. FPIs having Bank as minority investor but are deemed as Broad Based may be given 6 months window to comply with the proposed regulations.</p> <p>iv. Clarification, if necessary, may be provided at a later stage taking into account the views of all stake holders.</p>
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		<p>SEBI may consider tracking this information on quarterly / half-yearly / yearly basis.</p> <p>O. It is not clear what is meant by majority stake. Does it mean such investors should have more than 50% of FPI corpus. Or such investors collectively hold majority as compared to other investors.</p> <p>P. FPIs having Bank as investor are deemed to be Broad based irrespective whether they hold majority stake in FPI. The same position may be continued.</p> <p>Q. Part C of Explanation 2 may conflict with new proposed proviso to be incorporated in Para A. The underlying institutional investors in new proviso may not be set up for sole purpose of pooling of funds and hence such investors may not be counted for 20 direct or indirect investor requirements. SEBI may clarify.</p>	
5	Rationalization of procedure for submission of PCC/MCV Declarations and	a. SEBI to advise the format of the specific declaration to be obtained from the FPI that there is no change in information, as previously furnished.	A mere declaration would suffice. There is no need to issue a specific format for obtaining such

	Undertakings (D&U) and Investor grouping requirement at the time of continuance of registration of FPIs	<p>b. Point (a) and (c) of D&U is applicable for broad based fund, however, Category III FPI are not mandated to have a broad based status. SEBI may clarify that point (a) and (c) of declaration may not apply to Category III FPI.</p>	<p>declaration from an FPI applicant by a DDP.</p> <p>A Circular/FAQs may be issued at a later stage.</p>
6	Discontinuance of requirements for seeking prior approval from SEBI in case of change in local custodian/DDP	<p>a. If the language explicitly authorised is used, it could be construed that the transferor and the transferee custodian are to be named by the client. This may require specific letters to be obtained from each FPI separately.</p> <p>b. The transferee (not the transferor) custodian shall inform the Compliance Officer of the concerned FPI regarding the change in their local custodian.</p> <p>c. SEBI to mandate the transferor local custodian / DDP to provide the NOC to transferee local custodian / DDP within 21 business days of raising of such requests.</p> <p>d. It should not be a requirement for the DDP to advise the</p>	<p>Doing away with the requirement of obtaining prior approval in case of change in local custodian/ DDP by an FPI will simplify and expedite the overall process. On receipt of necessary intimation by the FPI, database maintained by the Depositories shall be updated accordingly.</p> <p>A Circular/FAQs may be issued at a later stage.</p>

		Compliance Officer of the change in DDP if the request comes from the GC, as the GC's contractual requirements with the FPI require notification to be given in accordance with agreed upon timeframes (typically not less than 30 days' notice) prior to a change in local custodian taking effect.	
7	Placing reliance on due diligence carried out by erstwhile DDP at the time of change of Custodian/DDP of FPIs	<p>a. Adequate due diligence is to be explicitly specified by SEBI.</p> <p>b. The DDP will get relief when the depository requirements are also changed.</p>	<p>DDP should carry out due diligence to ensure compliance with extant regulatory framework prescribed by SEBI for FPIs.</p> <p>Changes in the depository requirements are not envisaged in the current consultation paper. The purpose of proposed change is seamless transition of a FPI from one Custodian/ DDP to another.</p>
8	Exemption to FPIs having Multiple Investment Managers	It should be made clear if there are any restrictions as well as how the MIM structure will be determined (i.e. multiple FPIs with the same PAN or similar), as	The same fund/entity having common PAN but different registrations as FPIs with SEBI engages

	(MIM) structure from seeking prior approval from SEBI in case of Free of cost transfer of assets	otherwise this could get complicated or allow for loopholes if such proposal is also implemented.	multiple investment managers to invest in Indian securities market may be considered as MIM structure. Accordingly, SEBI may consider issuing FAQ for this purpose.
9	Simplification of process for addition of share class	<p>(a) We would like to seek clarity on the following highlighted point - If there is change in structure due to the addition of share class, FPIs are nevertheless required to notify forthwith. What does SEBI mean by change in structure?</p> <p>(b) In the revised reply to FAQ 49, para 1 “due to” be replaced with “after”.</p> <p>(c) The prior approval of SEBI is required only if such additional share class is making investment in India.</p> <p>(d) In segregated portfolio, the requirement for prior approval of DDP on deletion of share classes be removed. The approval even for deletion of share classes that were earlier approved at time of</p>	<p>(a) Under the extant framework, in case of addition of share classes, the FPIs are required to obtain prior approval from SEBI/DDP. SEBI has issued FAQs in the past, informing the need for obtaining such prior approvals in different circumstances.</p> <p>(b) In the present context, change in structure is limited to addition of share classes. Also, if there is change from common portfolio to segregated portfolio.</p>

		<p>addition reduces flexibility for FPIs.</p> <p>(e) Newly created and any previously created share classes should be considered together for purpose of Broad based test.</p> <p>(f) It is suggested to clarify that it should be a common portfolio of Indian Securities. It is also suggested that only those fund/ sub-fund/ share class that invest in India, need to separately fulfil broad based criteria.</p>	<p>(c) We may agree with suggestions that “due to“ be replaced with “after”.</p> <p>(d) Also, reply to FAQ be changed to include phrase “of Indian securities” in para 1 and “in India” in para 2 of reply to FAQ.</p> <p>(e) We may agree with the suggestion by doing away with the requirement of seeking prior approval in case of deletion of share classes in segregated portfolio. Accordingly, FPI may give only intimation to DDP for this purpose.</p>
10	Permitting FPIs operating under the Multiple Investment Managers (MIM) structure to appoint multiple custodians	Can SEBI also include/clearly state that where there is an investment manager with multiple mandates (i.e., one mandate for equity, another for debt or one for an Asia only fund and another specific to emerging markets) or segregation for the purpose of internal segregation (other than for MIM purposes) are allowed.	Under the extant framework, Depositories have been monitoring investment limit of an FPI group. It is proposed at this stage that such FPIs, having MIM structure, may be permitted to appoint multiple

			custodians instead of limiting to one custodian. The proposed change will give necessary operational flexibility to these FPIs.
11	Permitting FPIs holding FVCI to appoint multiple custodians	Since FVCI (which is not registered as an FPI) should not form part of FPI Investor group. This will reduce investment limit for FVCI to make investment under FEMA and FVCI regulations.	<p>The suggestion made relates to investor grouping. However, the proposal contained in the consultation paper refers to permitting FPIs holding FVCI to appoint multiple custodians.</p> <p>Under the extant framework, an entity having FPI and FVCI registration is required to have same custodian. With a view to provide more operational flexibility, it is desirable that such FPIs may be permitted to appoint multiple custodians instead of limiting to one custodian.</p>
12	Permitting appropriately	(a) It is proposed that point (ii) be read as under:-	We may consider favourably changes

	<p>regulated Private Bank/Merchant Bank to invest on their behalf and also on behalf of their clients</p>	<p>“The banks do not have any secrecy arrangement with the investor and all required legal/ regulatory arrangements have been put in place in order to ensure that any secrecy laws or confidentiality clauses do not impede disclosure of Beneficial owner details as and when required by Indian regulators.”</p> <p>(b) An additional point (iii) be added that :-</p> <p>“In addition to (i) and (ii), such entities shall also be allowed to undertake proprietary investment. “</p> <p>(c)Private bank/ Merchant Bank undertaking proprietary investments as well as invest on clients behalf be allowed to open two demat accounts and bank accounts. Alternatively, Private bank/ Merchant Bank investing on behalf of their clients should be permitted to seek separate registration for their client portfolio.</p>	<p>suggested at (a) and (b). Private bank/ Merchant Bank investing on behalf of their clients can seek separate registration for their client portfolio and another registration for their proprietary account.</p>
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		<p>(d) Request to include Private Bank and Merchant bank as appropriately regulated entities under regulation 5(b)(iii).</p> <p>(e) Model for registration of private bank, merchant bank may be elaborated. Whether they would be required to have 20 investors for being considered as category 2 FPI.</p> <p>(f) Since details of BO will be declared thus Sub-point (ii) under revised reply to FAQ be deleted.</p>	
13	Expansion of entities considered as “appropriately regulated persons in terms of Regulation 5(b) (ii):-”	<p>(a) Model for registration of Broker Dealer, Swap Dealer may be suitably elaborated.</p> <p>(c) It is suggested that Appropriately regulated entities prevalent in international capital market/ investment domain –such a broker-dealer, swap dealer, market maker, authorised participant, regulated fund, distribution platforms, regulated nominee CIV structures that are regulated by an appropriate regulator can seek FPI registration under category II as per Regulation 5(b)(ii).</p>	<p>(a) The present proposal is to expand the scope of eligible appropriately regulated entities i.e. Broker Dealer and Swap Dealer for consideration of grant of registration as an FPI subject to fulfilling extant eligibility requirements.</p> <p>(b) The suggestion on consideration of other entities for consideration of grant</p>

		<p>(d) Appropriately regulated persons should include private banks and merchant banks when they are investing on behalf of clients.</p>	<p>of registration as an FPI may be considered at a later stage.</p> <p>(c) In the FAQ and reply to FAQ, the word and “such as” shall be replaced with “i.e.”. Further, the word “etc.” shall be removed.</p>
14A	Other Clarifications on further simplification of broad based requirements:- 3 months window	SEBI may consider providing the FPI applicant to provide a period of 180 days to regain their broad based criteria.	It is felt that 3 months appears to be adequate for regaining broad based status for a fund after exit of existing investors. .
14B	Other Clarifications on further simplification of broad based requirements- Conditional Registration	<p>(a) The window of 180 days for conditional registration is narrow. The opening of bank account takes time for new funds. Thus, launch of fund happen after opening bank account.</p> <p>(b) It is proposed that requirement of 5% corpus in India for conditional registration be deleted.</p>	<p>The present proposal is limited to providing conditional registration to the existing funds. However, the suggestions received relate to granting other relaxations to the FPIs.</p> <p>As proposed, in the consultation paper the facility of granting</p>

		(c) SEBI should allow conditional registration to unregulated fund seeking registration under Category II but whose Investment Manager is registered as category II.	conditional registration may be extended to existing India dedicated funds in addition to newly established funds.
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