

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

1. Objective:

- 1.1. The purpose of this Board Memorandum is to seek approval of the Board on the proposal to amend the additional disclosure framework for FPIs specified under SEBI circular dated August 24, 2023 by exempting University Funds and University related Endowments Category-I FPIs that meet certain objective criteria.

2. Background:

- 2.1. To guard against possible circumvention of MPS norms, requirements under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (“SAST Regulations”), and Press Note 3, SEBI (Foreign Portfolio Investors) Regulations, 2019 (“FPI Regulations, 2019”) were amended in August 2023, and Regulations 22(6) and 22(7) were inserted in FPI Regulations, 2019. SEBI’s related circular dated August 24, 2023 (“August circular”) mandated disclosure of granular details of all entities holding any ownership, economic interest, or control in an FPI, on a full look through basis, without any threshold, by FPIs that fulfill any of the following criteria:
 - a. holding more than 50% of their Indian equity Assets Under Management (AUM) in a single Indian corporate group; or
 - b. individually, or along with their investor group (in terms of Regulation 22(3) of the FPI Regulations, 2019), holding more than INR 25,000 crore of equity AUM in the Indian markets
- 2.2. Certain FPIs, including those that are regulated funds with a broad based, pooled structure with widespread investor base or those having ownership interest by Government or Government related investors were exempted from such enhanced disclosure requirements, subject to certain conditions.
- 2.3. The August circular became effective from November 01, 2023 and the FPIs that met the specified objective criteria were provided a time period of 90 days to

realign their portfolios. Thereafter, the additional disclosure requirements became applicable and FPIs whose investments continued to exceed the prescribed threshold post expiry of time period for realignment were required to make disclosures within 30 trading days. Accordingly, for such FPIs that met the objective criteria as on October 31, 2023 and did not realign within the specified time period, and were not exempted either, adequate disclosures needed to be made on or before March 12, 2024.

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

3. Suggestions received during interactions with Industry Participants:

- 3.1. During the implementation of the additional disclosure framework, SEBI interacted with industry participants and received several suggestions and requests for clarifications. Accordingly, clarifications were provided to the DDPs/Custodians and the SOP was accordingly modified.
- 3.2. During interactions with industry participants, a case for enhancing ease of doing business in respect of University Funds and University related Endowment Category I FPIs was made to SEBI.

4. Exemption from making the additional disclosures to University Funds and University related Endowments:

- 4.1. University Funds and University related Endowments receive contributions from various donors and the corpus of the fund is used for the benefit of the

University/students, rather than to the donors. Further, such funds generally enjoy tax-exempt status in their home jurisdictions, and are, therefore, subject to disclosure requirements to ensure that the corpus of the fund is used for the purposes for which the fund was set up. Accordingly, University Funds and University related Endowments that meet certain size, vintage, tax status, disclosure of holdings, and broad-based holdings criteria may be exempted from the additional disclosure requirements prescribed under the August circular.

4.2. Further, in terms of Regulation 5(a) of the FPI Regulations, 2019, while all University Funds are eligible for registration as Category I FPI, registration of University related Endowments as Category I FPI is subject to it being based in FATF member countries and the relevant university being in existence for more than five years.

4.3. In view of the above, it is proposed to exempt University Funds and University related Endowments, registered or eligible to be registered as Category I FPI, from the disclosure requirements prescribed under the August Circular, subject to compliance with the following conditions:

4.3.1. Its India equity AUM is less than 25% of its Global AUM.

4.3.2. Its global AUM is more than INR 10,000 crore.

4.3.3. It has filed appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence that the entity is in the nature of a non-profit organisation and is exempt from tax. Such jurisdictions will be as specified by SEBI from time to time, in consultation with the pilot CDSSF, through the SOP to the August Circular.

4.4. The conditions mentioned above are proposed in order to ensure that the exemption is not misused through setting up of endowments for universities in jurisdictions where no or minimal disclosures are available. Further, the AUM criteria is being prescribed to ensure that only the well-funded and diversified funds are eligible for the exemption.

5. Public Comments on the Proposal:

- 5.1. A Consultation Paper soliciting public comments, inter alia, on this proposed new category of exemption was issued by SEBI on February 27, 2024, and the same is placed at **Annexure A**.
- 5.2. Total 25 comments were received on the aforesaid consultation paper from 13 commenters (including DDPs, industry associations, law firms and FPIs). A summary of the public response to the proposals is placed at **Annexure B**. It is seen from the comments that this proposal has received overall positive feedback from the public. On the question of granting exemption to University Funds and University related Endowments as proposed in the consultation paper, 12 out of 13 comments received are in favour (strongly agree + agree + partially agree) of the proposal. On the question regarding conditions for such exemptions 9 out of 12 comments received are in favour (strongly agree + agree + partially agree) of the proposal.
- 5.3. Some of these commenters have suggested that the exemption may be extended to other charitable organisations, foundations etc. In this regard, it may be noted that University Funds and University related Endowments are eligible for registration as Category I FPI while other charitable organisations and foundations can register as Category II FPI. In view of the same, the current proposal is made only for University Funds and University related Endowments which are eligible for registration as Category I FPI.
- 5.4. Further, with respect to the conditions for exemptions, some commenters have suggested that the University ranking criteria may be an inappropriate measure to decide exemption and hence may either be removed or made an alternative criteria. In this regard, it may be noted that university ranking is done by private bodies with varying objectives and methodology, and may change every year. Accordingly, the criterion of the university being listed in the Top 200 ranking as per the latest available QS World University Rankings, as was proposed in the Consultation Paper, has been removed.

5.5. It has also been suggested by few commenters that tax-exemption and the consequential requirement of a tax-return filing should not be a prerequisite for exemption. It may be noted that the regulatory intent of this condition was to ensure an independent verification of the utilization of funds being pooled through such structures towards the stated purpose. A filing to a tax authority gives a comfort that the basis on which the said fund structures are classified as 'University related endowment' is verifiable through documentation. Accordingly, the same may be retained.

5.6. It has also been suggested to reduce the proposed global AUM threshold of Rs 10000 crore. In this regard, it may be noted that the intent of prescribing this condition is to ensure only well-funded university funds and related endowments are eligible for exemption. Therefore, the same may be retained.

6. Proposal:

6.1. University Funds and University related Endowments, registered or eligible to be registered as Category I FPI, may be exempted from the disclosure requirements prescribed under the August Circular, subject to compliance with the following additional conditions:

6.1.1. Its India equity AUM is less than 25% of its Global AUM.

6.1.2. Its global AUM is more than INR 10,000 crore.

6.1.3. It has filed appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence that the entity is in the nature of a non-profit organisation and is exempt from tax. Such jurisdictions will be as specified by SEBI from time to time, in consultation with the pilot CDSSF, through the SOP to the August Circular.

6.2. It is proposed that the above may be specified by way of issuance of circular. Although there are no regulatory amendments to effect this proposal, this would be a new category of exemption from the disclosure requirements. The list of exemptions were approved by the Board during the meeting held on June 28,

2023 and included in the August Circular. Accordingly, the instant proposal is being submitted to the Board for its kind consideration.

7. Proposal to the Board:

- 7.1. In order to facilitate ease of doing business with respect to the additional disclosure framework for FPIs, the Board may consider and approve the proposals at Para 6 above.
- 7.2. The Board may also authorize the Chairperson, SEBI, to take such consequential and incidental steps necessary to give effect to the decision of the Board.

The consultation paper is available at the following link:

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

Annexure B

This has been excised for reasons of confidentiality.