

Flexibility for increased participation by Non-Resident Indians (“NRIs”), Overseas Citizens of India (“OCIs”) and Resident Indian (“RIs”) individuals in SEBI registered Foreign Portfolio Investors (FPIs) based out of International Financial Services Centres (“IFSCs”) in India and regulated by the International Financial Services Centres Authority (“IFSCA”)

1. Objective

- 1.1. This Memorandum seeks approval of the Board for providing flexibility for increased contribution by NRIs, OCIs and RI Individuals, on an aggregate basis, in the corpus of certain FPIs based out of IFSCs in India and regulated by IFSCA, subject to certain conditions to manage regulatory risk.

2. Regulatory provisions

- 2.1. In terms of Regulation 4(b) of the SEBI (Foreign Portfolio Investors) Regulations, 2019 (“FPI Regulations”) an NRI or OCI is not eligible for registration as FPI. However, Regulation 4(c) of the FPI Regulations provides for NRIs, OCIs and Resident Indian (‘RI’) individuals to be constituents of an FPI, subject to certain conditions. The conditions are provided in Para 1(ii) of Part A of the Master Circular for FPIs and Designated Depository Participants (DDPs) dated December 19, 2022 and are reproduced below:

“1. Guidance for Processing of FPI applications by DDPs

....

(ii) ...

Where NRIs or OCIs or RIs are constituents of the applicant -

- a. the contribution of a single NRI or OCI or RI shall be below twenty-five percent of the total contribution in the corpus of the applicant;*
- b. the aggregate contribution of NRIs, OCIs and RIs shall be below fifty percent of the total contribution in the corpus of the applicant.*

Explanation: The contribution of resident Indian individuals shall be made through the Liberalised Remittance Scheme (LRS)

notified by Reserve Bank of India (RBI) and shall be in global funds whose Indian exposure is less than 50%.

- c. The NRIs, OCIs and RIs shall not be in control of the applicant. This is not applicable, if the applicant is an 'offshore fund' for which 'No Objection Certificate' has been issued by the Board in terms of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, or is controlled by an Investment Manager which is controlled and/or owned by NRI or OCI or RI if the following conditions are satisfied:
 - i. such Investment Manager is appropriately regulated in its home jurisdiction and registered with the Board as a non-investing FPI, or*
 - ii. such Investment Manager is incorporated or setup under the Indian laws and appropriately registered with the Board.**
- d. The provisions mentioned at a to c above shall not apply to a non-investing FPI or if the applicant proposes to invest or invests only in units of schemes floated by mutual funds in India.*
- e. An applicant not meeting above requirements at the time of seeking FPI registration shall comply within a period of two years from the date of registration. A FPI who remains non-compliant even after the period specified above shall be prohibited from making any fresh purchase of securities and such foreign portfolio investor shall liquidate its existing position in the Indian securities market within a period of one hundred and eighty days.*
- f. In case of temporary breach of above investment limits post grant of registration, the FPI shall comply with the eligibility conditions within ninety days of its breach. In case the FPI remains non-compliant with the said requirement even after ninety days, then no fresh purchases shall be permitted and such FPI shall liquidate its existing position in Indian securities market within a period of the next one hundred and eighty days.”*

3. Representation from stakeholders for permitting higher contribution by NRIs/OCIs/RIs in the corpus of FPIs

- 3.1. Over the years, there have been representations for channelling more NRI/OCI/RI investments into the Indian securities markets by facilitating greater participation of NRIs/OCIs/RIs in the corpus of the FPIs. It is also a stated policy decision of the Government of India to facilitate higher NRI investments into the country.
- 3.2. NRIs/OCIs have an avenue for directly investing in the Indian securities markets, including in units of Indian Mutual Fund Schemes, through the Portfolio Investment Scheme (PIS) route under Schedule III of the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (“NDI Rules”) on a repatriation basis, and under Schedule IV of the NDI Rules (by NRIs/OCIs and entities owned and controlled by NRIs/OCIs) on a non-repatriation basis. As on March 31, 2023, NRIs/OCIs were holding assets in demat mode worth INR 1,16,921 crore through investments made under Schedule III and INR 1,56,668 crore through investments made under Schedule IV. Further, NRIs/OCIs were also holding mutual fund units worth INR 73,149 crore through statement of account (out of a total of INR 1,65,801 crore holdings by NRIs/OCIs in units of mutual fund schemes). Cumulatively, NRIs/OCIs were holding assets worth INR 3,46,738 crore in the Indian securities market through Schedules III and IV on March 31, 2023.
- 3.3. The limits on NRI/OCI/RI contribution to the corpus, do not apply in case of FPIs investing exclusively in units of Indian mutual fund schemes. As on June 30, 2023, there were 9 such FPIs holding units worth INR 1,900 crore.
- 3.4. Some stakeholders have given a feedback that investing through the PIS route restricts NRIs/OCIs from investing in India through overseas pooled structures managed by professional managers, thereby depriving them of the benefits of investment management by overseas professionals. However, it may be noted that there is no bar on NRIs/OCIs accessing and benefiting from services provided by domestic fund managers. In addition, the investments are in India and often the Investment Managers/Advisors of FPIs themselves are Indians/Indian entities.

- 3.5. There is also a feedback that limits on contribution by NRIs/OCIs to the corpus of FPI increases the compliance burden and cost on the FPI/its investment manager as it is difficult for them to monitor the said limits on an ongoing basis and take remedial measures. In today's digital era, the operational aspect alone may not be the principle de rigueur of investment decisions. However, it may be argued that due to these limits, some foreign funds either exclude Indian assets from their portfolio or do not accept any participation from NRIs/OCIs, resulting in loss of investments into India.
- 3.6. SEBI has also received requests from IFSCA to permit greater participation of NRIs/OCIs in IFSC based funds that invest in the Indian securities markets through the FPI route. IFSCA has stated that IFSC based funds receive a lot of interest from the NRI/OCI community because of their familiarity with Indian processes and trust in the domestic institutions, compounded by their sense of patriotic responsibility towards the nation. However, IFSC based funds contend that due to the limits on NRI/OCI contribution in FPIs, they face difficulty in raising money from NRI/OCI investors.
- 3.7. SEBI's understanding of this issue is that domestic (Indian) fund managers have the required connect/access to NRIs/OCIs, from whom they can raise funds for investment into India, but they do not have the necessary reach/connect/access to other overseas investors to fill the balance 50% of fund raise required under the current regulations. This issue thus merits consideration.
- 3.8. IFSCA has also stated that the risks associated with NRI/OCI owned entities trading in the Indian securities markets through the FPI route may be suitably addressed in case of funds based out of IFSCs in India, as IFSCA, which is, in essence, an 'Indian' regulator, shall suitably regulate such funds. The KYC / due diligence / AML requirements applicable to such funds are also in line with those prescribed under the Prevention of Money Laundering Act, 2002 ("PMLA") and Prevention of Money Laundering (Maintenance of Records) Rules, 2005 ("PMLR"). IFSCA has, therefore, suggested that the investment vehicles under its supervision, may be granted greater flexibility as FPIs as far as NRI/OCI participation

is concerned. IFSCA has also agreed to enter into a MoU with SEBI for data sharing in this regard.

4. Context of limits on contribution by NRIs/OCIs/RIs to the corpus of FPIs

- 4.1. The Report of the Joint Parliamentary Committee on Stock Market Scam and Matters Relating Thereto (“JPC Report”) was presented to the Parliament on December 19, 2002. This report had, inter alia, focused on the role of Overseas Corporate Bodies (OCBs) (i.e. entities owned directly or indirectly at least 60% by non-residents of Indian nationality/origin), in the stock market scam of 2001, due to their close proximity to Indian entities/ promoters of Indian entities.
- 4.2. Based on prima facie findings of involvement of some of the OCBs in aiding and abetting Ketan Parekh entities in market manipulations, SEBI had recommended to the Government of India that the facility of portfolio investments provided to OCBs needs to be withdrawn. The Government accepted this suggestion and OCBs were prohibited from investing in secondary market through portfolio investment route by the RBI, vide circular dated November 29, 2001. Thereafter, on September 16, 2003, RBI also derecognized OCBs in India as an eligible class of investors under various routes/ schemes available under extant Foreign Exchange Management regulations. Vide press release dated September 18, 2003, it was further clarified by RBI that the overseas entities owned by NRIs can enjoy all the facilities available to any foreign investor, including automatic route for foreign direct investment (“FDI”).
- 4.3. Certain issues relating to OCBs, identified in the JPC Report, including their low capitalization, proximity / possible proximity to Indian promoters, difficulty in identification of actual beneficial owners etc., may exist even today.
- 4.4. Generically, there is the possibility of entities acting in concert/ promoters using the FPI route to circumvent the requirements specified under various SEBI regulations such as maintenance of Minimum Public Shareholding (MPS), and requirements under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“SAST”).

- 4.5. During several investigations, SEBI has faced difficulties in obtaining details of underlying investors of FPIs, incorporated in certain jurisdictions. The issue is exacerbated due to layers of ownership spread across multiple jurisdictions, including certain 'tax havens'. Considering the same, the issue of investor identification is even more pertinent.
- 4.6. In this regard, it may be noted that in June 2023, the SEBI Board approved a risk-based approach to mandate enhanced granular disclosures of all entities holding any ownership, economic interest, or exercising control by FPIs that meet certain objectively defined criteria.
- 4.7. Separately, the possibility of NRIs/OCIs making direct investment in a listed company under Schedule III of the NDI Rules and simultaneously investing indirectly in the same company as constituents of, (i) FPIs investing under Schedule II, (ii) FVCIs investing under Schedule VII or (iii) AIFs investing under Schedule VIII, cannot be ruled out. This may effectively result in the NRI/OCI breaching the 5% individual limit and or 10% aggregate limit prescribed under Schedule III of the NDI Rules. SEBI has flagged this issue with DEA and RBI. The absence of uniform and consolidated monitoring of investments across different schedules of NDI Rules makes it difficult to monitor the possible breaches in individual/aggregate investment limits for NRIs/OCIs and possible circumvention of maintenance of MPS and requirements under SAST, as mentioned above.
- 4.8. It may be noted that currently, the identity of constituent NRI/OCI/RI investors is only available on a self-declared basis by the investing entity, if such investors were to meet the Beneficial Owner definition under PMLA and PMLR.
- 4.9. However, the current limit of 50% on aggregate contribution by NRIs/OCIs/RIs in the corpus of an FPI, and also the restrictions on NRIs/OCIs/RIs being in control of such FPI, somewhat mitigate the risk of wanton breach of Schedule III limits and circumvention of maintenance of MPS and requirements under SAST using this route.
- 4.10. The risk of circumvention of limits prescribed under Schedule III of NDI Rules, requirement of MPS, and those prescribed norms under SAST, would increase if aggregate NRI/OCI/RI contribution in an FPI is enhanced

to 100%, since such FPI could have exclusively NRIs/OCIs/RIs constituents and would no longer need to on-board other investors to meet the extant 50% threshold.

4.11. These risks get further accentuated in cases wherein multiple individuals of the same NRI/OCI/RI family individually hold less than 25% but in aggregate hold the entire 100% of the corpus of the FPI.

4.12. From the above, it is clear that there is a need to balance the need for facilitating and increasing investments from NRIs/OCIs into the country with appropriate risk mitigation measures to address the concerns around possible circumvention of regulatory provisions.

5. Consultation with stakeholders

5.1. In the above context, a framework for giving flexibility for increased contribution by NRIs/OCIs, on an aggregate basis, in the corpus of FPIs based out of IFSCs in India and regulated by IFSCA was formulated and put up for public comments through the consultation paper on the subject issued by SEBI on August 25, 2023.

5.2. The framework was discussed in the meeting of SEBI's FPI Advisory Committee ("FAC") held on August 31, 2023. There was broad support for the framework as outlined in the consultation paper. It was suggested that the current framework was kind of a sandbox approach, being experimented with FPIs based out of IFSCs in India initially. Based on this experience, SEBI may consider extending the same to other jurisdictions in the future, post consultation with the FAC and the public at large.

5.3. Certain concerns regarding the framework were also raised by FAC members, primarily being the concerns raised in the JPC Report as well. It was suggested that in the context of certain ongoing SEBI investigations, the timing of implementation is critical and needs to be thought through by SEBI. It was also discussed that the risk of same NRI/OCI directly owning 5% in a listed company through Schedule III, and simultaneously taking up indirect position in the same company by investing through FPIs may become more pronounced with the removal of the 50% aggregate cap on NRI/OCI investments in an FPI. This may also result in possible breach of

the aggregate limit of 10% prescribed for all NRIs/OCIs under Schedule III of the NDI Rules.

- 5.4. In response to the above, it is noted that the concerns around possible circumvention of regulations still exist. As mentioned earlier, in June 2023, the SEBI Board approved a risk-based approach to mandate enhanced granular disclosures of all entities holding any ownership, economic interest, or exercising control by FPIs that meet certain objectively defined criteria. The same approach is now proposed to be extended to the instant framework as well, with a stricter threshold of 33% exposure to an Indian corporate group. Over and above this, Regulation 22(1) (j) of the FPI Regulations empowers SEBI to seek any additional information or documents as may be required to ensure compliance with the PMLA/PMLR/FATF standards, irrespective of the breach of any risk criteria.
- 5.5. However, it is noted that the possibility of the same NRIs/OCIs investing under Schedules II and III of NDI Rules and potentially breaching the limits specified thereunder and possibly circumventing SAST and MPS requirements does exist and for addressing the same, an effective monitoring mechanism shall be required. This mechanism should not only be restricted to the BOs but to all constituents of such FPIs that are NRIs/OCIs, as the breach could also occur due to a constituent who holds less than the prescribed threshold for BOs under PMLA/PMLR. Considering that PAN is the unique identification number for all participants transacting in the Indian securities market, demat accounts of all NRIs/OCIs investing under Schedule III of the NDI Rules would be linked with their PAN. Therefore, obtaining PAN of all NRIs/OCIs that are constituents of FPIs would help in identifying and monitoring such potential breaches.
- 5.6. NRIs/OCIs/RI individuals may also be indirectly investing in the corpus of the FPI through non-individual entities such as body corporate, trust etc., which are direct constituents of the FPI. In such cases where a non-individual entity majority owned or controlled by one or more NRIs/OCIs/RI individuals is a constituent of such FPIs, then PAN of such NRIs/OCIs/RI

individuals should also be made available to the DDPs for identifying and monitoring potential breaches as described above.

- 5.7. However, all NRIs/OCIs may not have taxable income in India and hence may not have a PAN. It is therefore suggested that such FPIs may submit copies of PAN card of those NRI/OCI constituents who have already obtained PAN from the Indian tax authorities or are willing to do so. In case any NRI/OCI constituent does not have a PAN and does not wish to obtain a PAN, the FPI may obtain a declaration from such NRI/OCI to the effect that they neither have a PAN nor have taxable income in India and submit the same to the concerned DDP, along with copies of their respective valid Indian passport/OCI Card.
- 5.8. In any case, once the requirement for granular disclosure of investor details is triggered for such FPIs, the disclosure requirements would be applicable in terms of SEBI's circular dated August 24, 2023 and any subsequent changes in this regard as may be specified by SEBI.
- 5.9. In respect of public consultation, a total of 16 responses to the consultation paper were received from stakeholders such as FPIs, DDPs, Custodians, Investment Managers, Portfolio Managers, Industry association, Law Firms, Tax consultants etc. The significant suggestions and our comments thereon are given below.
- 5.10. Some commenters had suggested that the extra due diligence of obtaining passport/ OCI Card of BOs that are NRIs/ OCIs and granular details of entities holding any ownership, economic interest, or exercising control in such entities, provided they exceed the threshold, should be mandated only for Category-II FPIs. This suggestion was not accepted as the potential risks from higher NRI/OCI contribution, as brought out in the JPC Report and outlined in the sections above, could manifest in both Category-I as well as Category-II FPIs.
- 5.11. Currently, NRIs, OCIs and RIs can be in control of the applicant, if the applicant is controlled by an Investment Manager ("IM") that is controlled and/or owned by NRI, or OCI or RI, provided, inter alia, that such IM is appropriately regulated in its home jurisdiction and registered with the Board as a non-investing FPI. One suggestion received was that the

requirement of IM registration may be removed, as it is an additional cost of compliance; however, the requirement of disclosing the BOs of IM may be made mandatory.

- 5.12. The above suggestion was not accepted as the registration of such IMs inter alia empowers SEBI to take suitable enforcement actions against such entities, in case of non-compliance with applicable law.
- 5.13. Another suggestion received was that if an FPI chooses to have more than 50% aggregate NRI/OCI contribution, it should also have the option to revert to the standard guidelines for NRI/OCI in the event that the NRI/OCI holdings in the corpus of the FPI falls below 50%, at least on some periodic basis. The said comment was considered, since the investment objective and investors of the fund may change over time. However, such changes should not be allowed on a very frequent basis, as the same could be used for opportunistic actions in the market, i.e., buying, selling, voting etc.
- 5.14. It was, therefore, suggested that once a FPI has opted for having the flexibility of having more than 50% aggregate NRI/ OCI contribution in its corpus, it may be allowed to review the same at the time of renewal of its registration, i.e., every 3 years. Existing FPIs may submit this declaration anytime until the validity of their current registration block or six months from the date of issuance of guidelines by SEBI, whichever is later.
- 5.15. Some commenters had suggested that RIs should be allowed to invest through LRS route, without any condition on the fund. The same was not accepted in totality as RIs can directly invest in securities in India and do not need to route it through FPIs. Routing investments by RIs through FPIs also increases the probability of round tripping of money. However, it is possible that RIs may want to contribute through such FPIs, in order to have exposure to global markets.
- 5.16. Acknowledging the same, under the current regulatory framework, RIs are allowed to contribute less than 25% on an individual basis and less than 50% on an aggregate basis to the corpus of an FPI, under LRS route. As a safeguard, the contribution of RI individuals through the LRS route in FPIs can only be made in global funds whose Indian exposure is less than 50%.

5.17. In order to prevent potential misuse of the proposed framework by RIs and considering that the KYC carried out by Indian intermediaries of such RIs is in accordance with PMLA/PMLR, it is suggested that RIs investments made in such FPIs through the LRS route may also be treated at par with NRIs/OCIs in respect of aggregate contribution to the corpus of FPIs, subject to such funds having India exposure less than 50%. Further, as recommended for NRIs/OCIs, such FPIs shall submit copies of PAN of their RIs constituents to their respective DDPs. In case the RI is exempt from obtaining PAN by the Indian tax authorities, the FPI shall submit a declaration from such RI to this effect and the relevant provision under which they are exempt, along with copies of any other identity document issued by the Government of India (such as Aadhaar, Passport etc.).

6. Discussions at the SEBI Board and comments of IFSCA

6.1. The framework (hereinafter referred to as '**Option A**') placed at **Annexure A**, after incorporating the changes as mentioned above, was discussed in SEBI's Board meetings held on September 21, 2023 and November 25, 2023. During the meeting held on September 21, 2023, RBI had stated that the proposal needed to be examined by them in detail in the context of its circular on OCBs. Separately, RBI had also expressed some possible concerns regarding monitoring of investments by NRIs/ OCIs across various Schedules of the NDI Rules, if this proposal was to be implemented. RBI has flagged this issue with DEA and a final view on that is awaited.

6.2. In the meantime, IFSCA vide email dated October 23, 2023 had inter alia stated that SEBI's KYC disclosure under '**Option A**' are onerous by requiring that KYC of each NRI/OCI investor is to be shared with DDP/Depository and not just the beneficial owners, even in cases where the agreed threshold (33% exposure to a single corporate group or INR 25,000 Crore AUM in Indian markets) has not been reached. Further, IFSCA also stated that as against the Passport No. / OCI Card No., SEBI has proposed to take copies of passport / OCI card, as may be applicable. Further, SEBI has proposed that such FPIs will be required to report change of each and every NRI/OCI client to the DDP/Depository even in cases where the applicable threshold has not been reached. While some

conditions may be necessary to ensure that entities do not abuse the norms, the conditions should not be so excessive that even genuine FPIs find it difficult to comply and thereby the purpose of the exercise to provide “seamless access to Indian equities” to the NRI investors, is not achieved.

- 6.3. While IFSCA's abovementioned views were taken on record, SEBI submitted that the proposal focused on building suitable safeguards for addressing possible circumvention of compliance with MPS norms and SAST disclosures and may be further refined based on feedback received from the Board on the subject. During deliberations, SEBI clarified that in a regular FPI (with <50% aggregate NRI/OCI/RI participation), it can be inferred that NRIs/OCIs/RIs are not in control of the fund decisions and are, in effect, passive investors. However, in the proposed IFSC >50% NRI/OCI/RI participation route, by virtue of their majority investment in the fund, NRIs as a class could no longer be considered to be passive investors. Given this key distinction from extant FPIs, and the implications for compliance with SEBI regulations such as SAST and MPS requirement, PAN numbers of the NRI/OCI/RI investors of IFSC >50% NRI FPIs (where available) would need to be shared with Indian depositories. SEBI confirmed its readiness to implement the proposal subject to compliance with NDI Rules as may be clarified by RBI, along with the guardrails outlined in the Board Memorandum considered necessary for risk mitigation.
- 6.4. Pursuant to the above discussions, SEBI vide email dated December 27, 2023, also requested RBI to confirm and clarify its final position around this issue and clarify its support for the proposal to allow >50% NRI in some FPI registered in IFSC. RBI vide email dated March 15, 2024, has responded that prescribing investment limits (including composite limits, if any) for different categories of foreign investors is a subject matter of FDI policy as well as the NDI Rules, framed by the Government. Thus, the NDI Rules as well as the relevant SEBI guidelines should also cover this aspect while prescribing the ownership and control guidelines for various entities, such as FPIs, AIFs etc. RBI also stated that SEBI may like to effectively monitor these aggregate foreign portfolio investment limits (as prescribed by the FDI policy and NDI Rules) using the existing monitoring mechanism

and that as such, RBI has no concerns on the above issues under FEMA, 1999.

7. Re-initiation of discussions by SEBI with IFSCA with an alternative framework

7.1. Further to the above deliberations in the SEBI Board and in the absence of a consensus with respect to '**Option A**', SEBI re-initiated discussions with IFSCA and had several rounds of inter-regulatory discussions on the framework. Pursuant to the said discussions, SEBI suggested the revised framework (hereinafter referred to as '**Option B**' for funds desirous of having aggregate contribution to the extent of fifty percent or more in their corpus from NRIs/OCIs/RI individuals. Such funds shall not be required to provide the details of their NRI/OCI/RI individuals constituents, as proposed under '**Option A**', subject to the following conditions:

7.1.1. **Pooling:** Contribution of all investors of the fund, by law, to be pooled into one investment vehicle at GIFT-IFSC that shall take registration as an FPI with SEBI, with no side-vehicles.

7.1.2. **Pari-passu and Pro-rata:** The corpus of the fund shall be a blind pool (i.e. common portfolio) with no segregated portfolios, by law. All investors in the fund shall have pari-passu and pro-rata rights in the fund, i.e., they shall, by law, receive a share of returns/ gains from the fund in proportion to their contribution. Issuance of separate class of units by such funds shall be permitted only for the purpose of segregation of currency of contribution, but shall be pari-passu and pro rata in all respects, post conversion to a common currency.

7.1.3. **Diversification of investors:** The investors in the fund shall be diversified at every point of time with the fund having a minimum of 20 investors with each investor contributing not more than 25% to the corpus of the fund. A time-period of 3 months shall be available to the Investment Manager ("IM), for both initial and interim, passive breaches. Active breaches, i.e., breaches caused by a market action of the FPI, as opposed to price movement in the market, shall be considered a violation and will be dealt with as per the extant provisions of the FPI Regulations in this regard.

7.1.4. **Diversification of investments:** At every point of time, up to a maximum of 20% of the corpus of the fund may be invested in the equity shares of an Indian listed entity. Further, a time-period of 3 months shall be available to the IM for rectification of both initial and interim, passive breaches. Active breaches shall be considered a violation.

Further, at the corporate group level, if the concentration of investment of the fund breaches 33% threshold, the fund shall be required to make the disclosure required in terms of SEBI Circular dated August 24, 2023. Non-disclosure within prescribed timelines shall attract the consequences specified in the said circular.

7.1.5. **Disclosures in case of large investments:** Funds that individually, or along with their investor group (in terms of Reg 22(3) of FPI Regulations), hold more than INR 25,000 Crore of equity AUM in the Indian markets shall be bound by the disclosures for FPI in terms of SEBI's Circular dated August 24, 2023.

7.1.6. **Independent Investment Manager/Fund Manager:** No investor can have a say in the investment decisions of the fund. By law, the IM shall be completely independent with respect to taking investment decisions for the fund. Further, only an Asset Management Company of a Mutual Fund that is registered with SEBI and is sponsored by a Bank regulated by RBI or its IFSC based subsidiary/branch, can be the IM of the fund.

7.2. The above framework was discussed by SEBI with IFSCA. After a series of inter-regulatory discussions on the subject, vide email dated April 15, 2024, IFSCA has inter alia informed that to give effect to the above framework, it has initiated the process of making suitable amendments to the IFSCA (Fund Management) Regulations, 2022. As regards the proposal previously discussed between SEBI and IFSCA, i.e. '**Option A**', IFSCA has requested SEBI to consider the broad comments shared by IFSCA vide email dated October 23, 2023 (referred at Para 6.2 above) and undertake necessary amendments to the FPI Regulations.

8. SEBI's comments on the views of IFSCA

8.1. With respect to 'Option A', SEBI has carefully considered IFSCA's comments. As has been brought out in the preceding paras, there is a need to balance channelling higher quantum of investments from the Indian diaspora into Indian securities market with the attendant guardrails based on SEBI's regulatory assessment of the said route.

9. Consultations in FPI Advisory Committee:

9.1. The proposed framework was discussed in the FAC meeting dated April 22, 2024. FAC members deliberated on the proposal and agreed with the proposed framework.

10. Proposed framework for facilitating flexibility of up to hundred percent aggregate contribution by NRIs/ OCIs/ RIs in the corpus of FPIs based out of IFSCs in India and regulated by IFSCA:

10.1. It is proposed that funds from IFSCs in India and regulated by IFSCA that satisfy the requirements mentioned for either 'Option A' or 'Option B' in toto, may be permitted to have up to 100% contribution by NRIs/OCIs/RIs in their corpus for investment in India as FPIs. It may be noted that the proposed framework is in addition to the already existing framework that permits FPIs including those based out of IFSCs in India to have less than 50% aggregate contribution from NRIs/ OCIs/ RIs. Further, with respect to information sharing for such IFSC based FPIs, inter alia, to ensure adequate monitoring of compliance with all applicable SEBI Regulations, particularly FPI Regulations and circulars issued thereunder, and other regulations, IFSCA and SEBI shall enter into a Memorandum of Understanding.

10.2. For implementation of the above proposal at Para 10.1, Regulation 4(c) of the SEBI (FPI) Regulations, 2019 may be amended to read as under:

"c) non-resident Indians or overseas citizens of India or resident Indian individuals may be constituents of the applicant subject to the following conditions:

- i. the contribution of a single non-resident Indian or overseas citizen of India or resident Indian individual shall be below

- twenty-five percent of the total contribution in the corpus of the applicant;
- ii. the aggregate contribution of non-resident Indians, overseas citizens of India and resident Indian individuals in the corpus of the applicant shall be below fifty percent of the total contribution in the corpus of the applicant;
 - iii. the contribution of resident Indian individuals shall be made through the Liberalised Remittance Scheme notified by the Reserve Bank of India and shall be in global funds whose Indian exposure is less than fifty percent;
 - iv. the non-resident Indians, overseas citizens of India and resident Indian individuals shall not be in control of the applicant; and
 - v. any other conditions specified by the Board from time to time.

[no change in first proviso]

[no change in second proviso]

Provided further that the provisions of sub-clause (ii) of clause (c) above shall not be applicable to an applicant, regulated by the International Financial Services Centres Authority and based in the International Financial Services Centres in India and subject to conditions as may be specified by the Board.”

10.3. The framework and conditions related to ‘**Option A**’ and ‘**Option B**’, as mentioned above may be provided by issuance of a circular.

10.4. A comparison of the existing provisions with the proposed amendments to the FPI Regulations is placed at **Annexure B**. The draft notification for the proposed amendments is placed at **Annexure C**.

11. Proposal to the Board:

11.1. The Board is requested to consider and approve the proposals at Para 10 with suitable amendments as considered appropriate and authorize the Chairperson to make consequential and incidental changes and take necessary steps to give effect to the decisions of the Board.

Option A: Framework for facilitating flexibility of up to hundred percent aggregate contribution by NRIs/OCIs/RIs in the corpus of FPIs based out of IFSCs in India and regulated by IFSCA

1. The conditions for NRIs, OCIs and RIs being constituents of FPIs/ FPI applicants are mentioned in Para 1 (ii) of Part A of SEBI's Master Circular for FPIs and DDPs issued on December 19, 2022. The said clause specifies that the contribution of a single NRI, OCI or RI individual shall be below twenty-five percent of the total contribution in the corpus of the applicant. Explanation after Para (ii) (b) further clarifies that the contribution of RI individuals shall be made through the Liberalised Remittance Scheme (LRS) notified by the RBI and shall be in global funds whose Indian exposure is less than 50%. The said conditions shall continue.
2. Para 1(ii) (b) of Part A of the said Master Circular states that the aggregate contribution of NRIs, OCIs and RIs shall be below fifty percent of the total contribution in the corpus of the applicant. FPIs based out of IFSCs in India and regulated by IFSCA shall be provided relaxation from this clause and allowed to have aggregate contribution of NRIs, OCIs and RI individuals (through LRS route) up to hundred percent of the total contribution in the corpus of the FPI applicant/ FPI, subject to the following conditions:
 - 2.1 FPI applicants desirous of having aggregate contribution to the extent of fifty per cent or more of their corpus from NRIs/OCIs/RI individuals shall submit a declaration to their respective DDPs stating the same. FPI applicants shall submit this declaration at the time of seeking registration. Existing FPIs, if desiring to do so, may submit this declaration anytime within six months from the date of issuance of guidelines by SEBI.
 - 2.2 Once the declaration is submitted, such FPIs can review the same at the time of renewal of its registration, by providing a suitable declaration to that effect. The choice made by the FPI (whether to have fifty percent or more aggregate NRI/ OCI/ RI contribution in its corpus or not) shall continue to be valid until the time of subsequent renewal of registration.
 - 2.3 Along with the declaration for opting to have fifty percent or more aggregate NRI/OCI/RI contribution in its corpus, the FPIs shall also provide to their

respective DDPs, copies of PAN card of all their NRI/OCI/RI individual constituents, along with the economic interest of these NRIs/OCIs/RI individuals in the FPI. In case such NRIs/OCIs do not have a PAN or if any RI individual is exempt from obtaining PAN by the Indian tax authorities, the FPI shall submit the following documents to the DDP in lieu of PAN:

- a) A declaration from
 - a.1. such NRIs/OCIs to the effect that they neither have a PAN nor any taxable income in India;
 - a.2. such RIs to the effect that they are exempted from obtaining PAN by the Indian tax authorities and the legal provision under which they are exempt;
- b) and copies of:
 - b.1. Indian passport, for such NRIs;
 - b.2. OCI Card, for such OCIs;
 - b.3. Identity document issued by Government of India (such as Aadhaar, passport, etc.), for such RIs.

2.4 In case of non-individual constituents of such FPIs, which are controlled directly or indirectly by one or more NRIs/ OCIs/ RI individuals, or where NRI/ OCI/RI Individuals together hold 50% or more ownership or economic interest on a full look through basis, the FPI shall provide the aforementioned details of such NRIs/OCIs/RI individuals, along with the percentage of ownership/economic interest/ control of these NRIs/OCIs/RI individuals in the non-individual entity and the FPI to their DDPs.

2.5 Any change in the details of NRI/OCI/RI constituents of the FPIs shall be informed by the FPIs to their respective DDPs in terms of timelines specified in Regulation 22 (1) (c) of the FPI Regulations, 2019, along with the necessary documents.

2.6 FPIs that have opted for having fifty percent or more aggregate NRI/OCI/RI contribution in their corpus shall provide to their respective DDPs, the granular details of all entities holding any ownership, economic interest, or exercising control in the FPI, in terms of the guidelines and exemptions mentioned in SEBI circular dated August 24, 2023 or any subsequent guidelines issued by SEBI in this regard, in case such FPIs fulfil any of the criteria mentioned below:

- a) FPIs holding more than thirty-three percent of their Indian equity Assets Under Management (AUM) in a single Indian corporate group;
or
- b) FPIs that individually, or along with their investor group (in terms of Regulation 22(3) of the FPI Regulations), hold more than INR 25,000 crore of equity Assets Under Management (AUM) in the Indian markets.

2.7 FPIs/FPI applicants that have opted for having fifty percent or more aggregate NRI/OCI/RI contribution in their corpus shall comply with the aforementioned conditions, irrespective of the actual aggregate NRI/OCI/RI contribution in the corpus of the FPI.

Annexure B

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

Annexure C

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