Report of the working group on SEBI (Foreign Portfolio Investors) Regulations, 2014

1.0 Objective

1.1 The purpose of this Board Memorandum is to seek approval of the Board to implement the recommendations contained in the "Report of the working group on the SEBI (Foreign Portfolio Investors) Regulations, 2014" constituted under the Chairmanship of Shri Harun R. Khan, Deputy Governor (Retired), Reserve Bank of India.

2.0 Background

2.1 Under SEBI (Foreign Portfolio Investor) Regulations, 2014 (hereinafter to be referred as FPI Regulations), SEBI has issued 57 circulars and 183 Frequently Asked Questions (FAQs) over the last 5 years. With a view to simplify the regulatory framework, SEBI constituted the aforesaid working group on March 26, 2018, with the following terms of reference:

(i) To advise SEBI on redrafting the FPI Regulations for simplification.

(ii) To advise SEBI on incorporating the provisions contained in circulars, FAQs and Operational Guidelines issued by SEBI concerning the FPI, in the regulations itself, to the extent possible.

(iii) To advise on any other issue relevant to Foreign Portfolio Investors.

2.2 The working group, under the Chairmanship of Shri Harun R. Khan, consisted of representatives from two custodians and officials of SEBI. However, to have wider view, the working group invited representatives from two other custodians, two law firms and two audit firms to participate in meetings.

2.3 In view of the widespread representations of the market participants on the issues emerging from the SEBI circular dated April 10, 2018 on Know Your Client (KYC) and beneficial ownership related requirements for FPIs, SEBI requested the said working group to examine the issues and submit an interim report. The working group held consultations with various stakeholders, including officials of the Ministry of Finance (MoF) and a few FPIs and submitted its interim report.

2.4 The said interim report along with public comments received thereon were placed before the Board in its meeting held on September 18, 2018 for consideration. On the basis of the Board's decision, SEBI issued circulars on 'KYC Requirements for FPIs' and 'Eligibility Conditions for FPIs' on September 21, 2018. With regard to clubbing of investment limit for FPIs based on beneficial ownership, SEBI issued a circular on December 13, 2018 pursuant to Board's decision in its meeting held on December 12, 2018. Necessary amendments to the SEBI (FPI) Regulations, 2014 were notified on December 31, 2018.

3.0 Final report of the Working Group

3.1 The working group deliberated the issues in several meetings with an objective to review the FPI Regulations. RBI officials participated in one of the meetings. The working group has submitted its final report on May 24, 2019. The focus of the recommendations is ease of access of Indian market by FPIs, simplification of documents and KYC related issues and review of investment restrictions. Copy of the report is placed at Annexure-1.

3.2 The working group, in its report, has also stated that for implementing certain recommendations, consultation with RBI and Government of India is required. The working group has also submitted draft amendments to the FPI Regulations and a draft master circular covering all the instructions/guidelines framed by SEBI for FPI Investment in India. The master circular would replace all the existing circulars, operating guidelines and FAQs.

4.0 Comments received on the final report:

4.1 The report of the Working Group was placed on SEBI's website on May 24, 2019 seeking public comments by June 14, 2019. Comments on the recommendations contained in the report have also been sought from DEA, Department of Revenue (DoR), MCA and RBI.

4.2 SEBI has received public comments from 48 different entities including from some of the working group members. Summary of the public comments received on the recommendations of the working group is placed at Annexure-2. The market participants and the media have broadly appreciated the recommendations.

4.3 MCA, vide its letter dated June 26, 2019, has, inter-alia, stated that it has no specific comments to offer on the report of the working group.

4.4 DEA, vide its letter dated June 21, 2019, provided its comments and it has agreed with most of the recommendations of the working group. Subsequently, DEA called for a meeting on July 11, 2019, under the Chairmanship of then Finance Secretary, to discuss the recommendations of the working group. DEA vide letter dated July 15, 2019, has, inter-alia, stated the following:

(i) SEBI should make all efforts to simplify and rationalize the existing regime for FPIs to the maximum possible extent in terms of operational constraints and removal of cumbersome compliance requirements.

(ii) The existing risk-based categorization of FPIs to three categories may be revamped by merging Categories I & II FPIs.

(iii) DEA would be notifying the FEMA (Non-Debt Instruments) Rules shortly which would necessitate amendments to certain provisions of SEBI (Foreign Portfolio Investors) Regulations. DEA has advised that once the FEMA (Non-Debt Instruments) Rules are notified by the Government, SEBI may finalize the FPI regulations and place the same before the Board for consideration.

4.5 RBI, vide e-mails dated June 21, 2019, June 27, 2019 and July 23, 2019 provided its comments and it has broadly agreed with the recommendations of the working group.

4.6 Comments from DoR have not yet been received by SEBI.

4.7 The comments received by SEBI have been discussed with the market participants. Further, the comments submitted by 'X' (name has been changed for reasons of confidentiality) have been discussed with delegation of 'X' in a meeting held on July 10, 2019.

4.8 After extensive discussions with the industry and after examining the comments and suggestions, it was felt that there was further scope for simplification of regulatory framework. Some of the provisions introduced years back had outlived their utility. Therefore, it was decided to discuss all the comments and suggestions in the meeting of the same Working Group. Therefore, a meeting of the Group was convened on July 26, 2019.

4.9 In the light of the comments received, the working group deliberated the issues and made revised recommendations primarily with an objective to simplify the regulatory regime without compromising on the essentials. Some of the main recommendations are as follows:

(i) Removal of the requirement of broad-based criteria:

a. Currently, for certain entities such as mutual funds, investment trusts and insurance/ reinsurance companies, to be eligible for Category-II FPI registration, fulfillment of the broad-based requirement is one of the criteria. In terms of FPI regulations, "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.

b. Since the inception of Foreign Institutional Investor (FII) regime in 1995, broad based requirement has been one of the conditions to be complied by a fund which is desirous of making investments in Indian capital markets. It is understood that broad based criteria ensure diversification of the fund and thus lowers the overall risk. The broad based requirements have, however, been relaxed by SEBI over a period of time for institutional oriented funds. Some of such institutions are now deemed to be broad based. Given the fact that even the foreign individuals can now invest in Indian Securities markets and that SEBI has also strengthened identification of beneficial ownership requirements over the years, it is in the fitness of things that broad-based requirement can be completely relaxed.

c. The requirement of broad-based criteria makes the regulation complicated for FPIs at the time of registration and also for ensuring on-going compliance. The Designated Depository Participants (DDPs) are required to ensure fulfillment of the criteria at the time of their registration as well as on continuous basis and this becomes cumbersome for DDPs and FPIs.

d. In order to simplify the complexity and to mitigate the risks, the working group has suggested to do away with broad based requirement. The focus is on appropriately regulated funds or investment managers and identification of beneficial ownership. The rationale for the same is as under:

   i. Investors being from FATF and IOSCO membership countries mitigates money laundering risk. KYC and Anti-money Laundering (AML) benchmark standards that all FATF member countries (presently 37 countries) are required to follow, and the information sharing protocols available under the IOSCO MMoU are strong justifications to "recognize" FPIs regulated in these jurisdictions as fit & proper to invest in India and qualified to benefit from liberalized entry conditions.

   ii. With issuance of SEBI circular on KYC of FPIs dated September 21, 2018, all FPIs are required to provide detailed beneficial ownership information, including material intermediate investor details, on a look through basis. This has strengthened the ownership identification including controlling owners and senior managers. This has significantly reduced the risk of market abuse.

e. Accordingly, the requirement of broad-based criteria may be done away with. This will simplify and expedite the registration process and would bring about considerable ease in continuous compliance requirement. In fact, a number of regulations, circulars and FAQs pertain to broad based structure of FPIs and accepting the recommendation would simplify the regulatory framework.

(ii) Recategorisation of FPIs:

a. Government related and multilateral institutions have been included under Category I definition as per existing FPI Regulations, which have been perceived as long term investors with low or zero risks of money laundering or market abuse. As mentioned earlier, well-regulated institutional investors from FATF member countries and/or IOSCO member jurisdictions are also similarly low-risk investors. Such institutions may also be identified for application of liberalized framework making it easy for them to invest in Indian securities market.

b. On reviewing the risk profiling of the FPIs, it is suggested that the FPIs may be re-categorized in two categories - Category I and II - instead of present requirement of 3 categories. After rationalization, the revised list of FPIs in different categories is given in Annexure-4. Also, the list of documents required for existing and proposed categories of FPIs has been reviewed.

c. As a result, Category I FPIs as per new categorization shall be eligible for issuance of offshore derivative Instruments (ODIs). However, all entities eligible for registration as Category-I shall be permitted to subscribe to ODIs. Presently, category I and II FPIs (except unregulated broad based funds) are eligible to issue ODIs to regulated entities.

d. FPIs which are institutions (i.e. FPIs other than individuals, corporates & family offices) shall be classified as Qualified Institutional Buyer (QIB) for the purpose of investment in public issues. Presently, Category I and II FPIs are classified as QIB.

e. Presently, FPIs in Category I and II are permitted to have market wide position limit (MWPL) of 20% in stock derivative contracts and Category III FPIs are having client level position limit, i.e. the higher of (a) 1% of the free float market capitalization (in terms of number of shares) or (b) 5% of the open interest in the derivative contracts on a particular underlying stock (in terms of number of contracts).

   It is proposed that category I FPIs shall continue to have 20% MWPL. The category II FPIs, other than FPIs in sub-categories individuals, corporates & family offices, shall have 10% of MWPL and these three types of investors shall have 5% of MWPL.

(iii) To strengthen the identification of beneficial ownership (BO) requirement, the sub-funds of a fund with segregated portfolio shall provide BO details at the sub-fund level instead of present requirement of submission of BO details at the fund level. The existing requirement whether to have separate registration at the sub-fund level would continue to be at the discretion of the FPIs.

(iv) Pursuant to Board meeting held on December 12, 2018, SEBI had issued a circular clarifying on clubbing of investment limits of FPIs on December 13, 2018. In said circular, it was mentioned that (a) FPI in breach of investment limit shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company, or, (b) The said investments shall be treated as Foreign Direct Investment from the date of breach.

It is now proposed to clarify that a FPI including its investor group, whose investments have reached 10% of the paid up capital on a fully diluted basis in a company under FPI route, shall have to divest its holding within five trading days from the date of settlement of the trades which caused the breach. Further, in case a FPI including its investor group invests through both FPI and non-FPI routes (viz. FDI, FVCI, etc.) and the aggregate investments reach 10% of the paid up equity capital on a fully diluted basis, then their entire shareholding in the particular company shall be classified as FDI for reporting purpose. Once such investment is classified as FDI, the FPI including its investor group shall not acquire any further shares of the company under the FPI route.

(v) SEBI circular dated July 07, 2017 had placed restrictions that ODI issuing FPIs shall not be allowed to issue ODIs with derivative as underlying, with the exception of those derivative positions that are taken by the FPI for hedging the equity shares held by it, on a one to one basis.

As the market participants have reported that it is difficult to monitor the above requirement, an alternative approach may be as follows:

a. If an ODI issuing FPI takes a separate FPI registration for directly or indirectly hedging the ODIs, such FPIs shall be permitted to take derivative position in Indian stock exchanges and the applicable position limit for the purpose of same shall be 5% of market wide position limits.

b. If an ODI issuing FPI does not seek separate registration for issuance of ODIs, such FPI can only issue ODIs by hedging with cash equities or Debt securities. Further, ODI issuing FPIs shall give a declaration that ODIs are not hedged, directly or indirectly, with its proprietary derivative position.

The existing derivative position held by ODI issuing FPI shall be aligned with above by December 31, 2020 as per existing time limit given to FPIs. Further, a one time off-market transfer shall be permitted for such FPIs between two accounts before the said timeline.

(vi) Presently, category I FPI are exempted from payment of fees for their first registration and are charged USD 3,000 for each subsequent registration. Category II and III are charged USD 3,000 and USD 300 respectively. The market participants have reported that since, same group FPIs are taking registration with different custodians, it is difficult to administer the same. Further, category III FPIs being high risk require closer monitoring. Upon re-categorizations, category I shall be charged USD 3,000 without any exemption for first registration and category II shall pay a fees of USD 1,000.

(vii) The working group also made certain modifications in other recommendations (Annexure-5).

4.10 The revised recommendations of the Working Group have been discussed at length internally within SEBI and may be accepted.

4.11 While being on the same subject, Hon’ble Finance Minister has in union budget for 2019-20, inter-alia, announced that:-

"With a view to provide NRIs with seamless access to Indian equities, it is proposed to merge the NRI-Portfolio Investment Scheme Route with the Foreign Portfolio Investment Route."

The proposal requires deliberations between DEA, RBI and SEBI to work out the modalities. As and when these are finalized, the necessary action, as may be required to be taken by SEBI, would be taken separately in due course.

5.0 Proposal

5.1 It is proposed that recommendation of the working group be accepted.

5.2 Since these recommendations including merger of all circulars and FAQs would result in major changes in extant FPI framework, a new set of FPI regulations, 2019 has been framed. Appropriate circular shall be issued in accordance with the amended regulations.

5.3 In case, proposed FEMA (Non-Debt Instruments) Rules require any further amendment in new SEBI (FPI) Regulations, 2019, the same shall be carried out on receipt of reference from DEA.

5.4 Board may please approve the above proposals and revised set of regulations. The Chairman may be authorized to take necessary measures to implement the same including any incidental changes and notification of the Regulations.

Annexure-5

Recommendations of the working group including the modified recommendations

Section I:

Serial Number	Subject	Recommendation(s)	Revised Recommendations
1.	Fast Track on-boarding process for select Category II FPIs	Fast track registration and KYC process may be introduced for certain set of investors, by providing simplified documentation requirements. These will be for -: i. Public retail funds coming from countries that are FATF Member; or ii. Applicants seeking registration as non-investing FPIs from countries that are FATF Member; or iii. Applicants intending to invest only in Government securities (including Central Government securities, State Development Loans or Municipal Bonds) or units of mutual funds; or. iv. Applicants seeking to invest only through VRR . For this purpose, the documentation requirement is suggested as under: Simplified form Abridged Common Application Form (A/ CAF) – which, inter-alia, exempts a) Broad based investor details b) NRI/RI/OCI related information c) Intermediate material shareholder/owner details and d) Information in respect of authorized signatories/ senior management	In order to simplify the complexity on account of broad based criteria and also to mitigate the risks, an alternative proposal is to do away with broad based requirement for appropriately regulated funds or investment managers from IOSCO and FATF member jurisdictions. The KYC standards of FATF member countries can be relied upon. Further, being a regulated fund from IOSCO enable sharing of information through IOSCO-MMOU mechanism. Moreover, the requirement for beneficial ownership has already been strengthened for FPIs. Accordingly, the requirement of broad-based criteria may be done away with. This will simplify the registration process and will reduce the time taken. Pursuant to removal of broad based criteria, a review of categorisation of FPIs may also be done by suitably merging category II FPIs into Category I FPIs. Hence, it is recommended that the broad based requirement may be removed and recategorization of FPIs may be carried out.

Serial Number	Subject	Recommendation(s)	Revised Recommendations
		(In respect of (a) and (b), DDP may place reliance on existing declaration by the applicants that they shall be in compliance with provisions of SEBI (FPI) Regulations and circulars issued thereunder),	In view of the proposal to remove 'broad based' requirement and recategorization of FPIs, this recommendation may be deleted. Revised recommendation is as follows: Recommendation 1 (a): There is no need for separate requirement for "broad based". The "broad basedd" and related clauses may therefore be removed from FPI Regulations. Recommendation 1 (b): Revised categories of FPIs are as follows: Category I A. Government and Government related investors such as (a) central banks (b) Governmental agencies (c) sovereign wealth funds (d) international or multilateral organizations or agencies B. (a) Pension Fund, University Fund and (b) Appropriately regulated entities such as insurance / reinsurance entities, banks, asset management companies, investment managers/ advisors, portfolio managers, broker dealers and swap dealers

Serial Number	Subject	Recommendation(s)	Revised Recommendations
			C. Entites from FATF member countries such as (a) appropriately regulated Funds (b) Unregulated funds whose investment manager is appropriately regulated and registered as FPI (c) university related endowments wherein the university has been in existence for more than five years D. Entities owned 75%, directly or indirectly or controlled by entities as per A,B, C above, provided entities from B and C above should own up full responsibility of compliance. Category II i. Regulated funds not eligible as Category-I foreign portfolio investor. ii. endowments & foundations, iii. trusts such as charitable societies & charitable trusts iv. corporate bodies v. family offices vi. Individuals vii. Appropriately regulated entities investing on behalf of its client viii. Other entities

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			In respect of present differences in category II and III, the following is proposed:- i. Category I as per new categorization shall be eligible for issuance and subscribe of offshore derivative Instruments (ODIs). Earlier, category I and II were eligible to issue and subscribe to ODIs ii. FPIs which are institutions (i.e. FPIs other than individuals, corporates & family offices) should be eligible for Qualified Institutional Buyer (QIB). Presently, only Category I and II FPIs are permitted for QIB. iii. Presently, FPIs in Category I and II are permitted to have market wide position limit (MWPL) of 20% in stock derivative contracts and Category III FPIs are having client level position limit, i.e. the higher of (a) 1% of the free float market capitalization (in terms of number of shares) or (b) 5% of the open interest in the derivative contracts on a particular underlying stock (in terms of number of contracts). iv. It is proposed that category I FPIs shall continue to have 20% MWPL. The category II FPIs, other than FPIs in sub-categories individuals, corporates & family offices, shall have 10% of MWPL and these three types of investors shall have 5% of MWPL.

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2.	Simplified Registration for MIM accounts	In case of MIM structures, if the entity had already furnished registration details to a DDP at the time of its registration as FPI and there is no change, then the entity need not provide these details again for subsequent registrations. However, such FPI need to provide the name of its investment manager at the time of request for new registration.	No change in recommendations.
3.	Pension Fund be treated Category I FPI	Pension, superannuation or similar scheme that provides retirement benefit to employees/ contributors should be treated as Category I FPI. However, BO details will have to be provided for such funds on similar lines as per fast track registration	In view of the proposal for recategorization of FPIs, this recommendation may be deleted.
4.	Review of broad based condition for appropriately regulated entities	In case an appropriately regulated entities such as banks including private banks and merchant banks, asset management companies, investment managers/ advisors, portfolio managers, insurance & reinsurance companies, broker dealers and swap dealers, etc. is investing on behalf of clients and is not fulfilling the conditions of broad based and common portfolio, category III FPI registration shall be granted subject to following condition: i. Clients of FPI should also be eligible for registration as FPI and should not be dealing on behalf of third party. ii. KYC of client of FPI should have been done as per home jurisdiction of FPI, if from country that are FATF member, iii. FPI has to provide complete investor details of clients (if any) on quarterly basis to DDP.	In case an appropriately regulated entity, such as banks including private banks and merchant banks, asset management companies, investment managers/ advisors, portfolio managers, insurance & reinsurance companies, broker dealers and swap dealers, etc, is investing on behalf of clients, category II FPI registration shall be granted subject to following conditions: i. Clients of FPI can only be individuals and family offices. ii. Clients of FPI should also be eligible for registration as FPI and should not be dealing on behalf of third party. iii. KYC of client of FPI should have been done as per home jurisdiction of FPI, if FPI is from country that are FATF member OR as per Indian KYC requirements, otherwise. iv. FPI has to provide complete investor details of clients (if any) on quarterly basis to DDP.

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		iv. Clubbing of investment limit shall continue to be done for clients of these FPIs dealing through other entities or directly as a FPI.	v. Clubbing of investment limit shall continue to be done for client of these FPIs dealing through other entities or directly as a FPI.
5.	Deemed broad based status for Insurance/Reinsurance entities	Insurance/Reinsurance entities may be treated deemed to be broad based for Category II FPI registration provided that Insurance/Reinsurance entity, in its capacity as an applicant or as an investor in a FPI with majority stake jointly or separately, directly or indirectly with other institutional investors, shall be deemed to be broad based. Provided further insurance entities shall be deemed broad based only if it does not maintain segregated portfolio with one to one correlation with a single investor.	In view of the proposal to remove 'broad based' requirement this recommendation may be deleted.
6.	Deemed Broad based Status to Category I eligible entities	In addition to the current provisions, FPIs shall also be deemed to be broad based, if majority of its investors are, directly or indirectly, constituted by Category I eligible entities.	In view of the proposal to remove 'broad based' requirement, this recommendation may be deleted.
7.	Entities owned by Category I eligible investors	In order to provide parity to such entities, it is recommended that the entities which are owned 75%, directly or indirectly or controlled by investors eligible for Category I FPI registration at all times, shall be eligible for Category I FPI registration.	In order to provide parity to such entities, it is recommended that the entities which are owned 75%, directly or indirectly or controlled by investors eligible for Category I FPI registration at all times, shall be eligible for Category I FPI registration. For Category I (B) and I (C) as mentioned in recommendation 1(b), it will be subject to eligible parent entity giving an undertaking that they shall be responsible for all obligations as applicable to the applicant/ FPI in terms of Indian laws

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8.	Entities owned by Category II eligible investors	An entity 100% owned/ subscribed by foreign banks or insurance / reinsurance entities or university funds shall be eligible for registration as Category II FPIs by relying on parent's regulatory and broad based status. This will be subject to foreign bank or insurance / reinsurance entity giving an undertaking that they shall be responsible for all obligations as applicable to the applicant/ FPI in terms of Indian laws.	Not required due to new categorization of FPIs (recommendation 1(b)) and already considered in revised recommendation 7.
9.	Non-BIS Central Banks to be eligible for FPI	Considering that they are relatively long term, low risk investors directly / indirectly managed by the Government, the central banks that are still not member of BIS shall be eligible for FPI registration.	No change in recommendations.
10.	***University related endowments eligible for Category II FPIs***	University related endowments from FATF member countries wherein the university has been in existence for more than five years be eligible for Category II registration. Existing university related endowments registered as Category II FPI shall be grandfathered.	Consequent to change in categorisation, this recommendation may be deleted.
11.	***Simplified registration requirement for Category III FPIs***	Regulation 4(f), 4(g), 4(h) and 4(i) of SEBI (FPI) Regulations, 2014 be deleted.	No change in recommendations.

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12.	Modification in the criteria of broad based fund	Broad based funds shall include entities set up as collective investment vehicles. Further, the broad basing should be on basis of economic ownership interest either by way of holding units / shares or other instruments. Further, in order to rely on an investor fund for broad based, such investor fund(s) singly or together should at least be 25% in order to achieve broad based status for the fund. Existing FPIs not meeting this condition will be grandfathered for a period of three years from the date of notification of this change.	In view of the proposal to remove 'broad based' requirement, this recommendation may be deleted
13.	Conditional Registration as Category II FPI	It is suggested that: i. 180 day validity of conditional registration should be extended for Category II FPI applicants who are well established in home jurisdiction. ii. 90 days conditional registration be also granted to unregulated funds seeking registration under Category II, whose IM is registered as Category II FPI or for regulated Category III funds... Subject to above that during the period of "conditional" registration, FPIs are not permitted to issue or subscribe to ODIs. In case, these FPIs with conditional registration failed to fulfil the conditions for registration within the timelines, they shall be recategorised as Category III FPI on submission of necessary KYC documents. Till these funds fail to provide necessary KYC documents, fresh	In view of the proposal to remove 'broad based' requirement this recommendation may be deleted

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		buying shall not be permitted and SEBI may initiate appropriate action, as deemed fit.	
14.	***Removal of opaque structure condition***	All FPIs need to provide BO details and those who failed to provide BO details including on account of bearer shares cannot deal in securities market in India. Thus, there is no need for separate definition of opaque structure. The "opaque structure" clause may be removed from FPI Regulations.	No change in recommendations.
15.	Doing away with PCC/MCV D&U	There should be no requirement of submitting a PCC/MCV D&U at the time of seeking fresh FPI registration. FPI shall ensure compliance with all the eligibility requirements of the FPI Regulations and DDP shall rely on applicant's declaration in this regard.	No change in recommendations.
16.	Separate registration for sub-funds of a fund with segregated portfolio	There should be separate registration for each sub-fund/ share class having segregated portfolio investing in India. Also, the matter be taken up with Income Tax department for separate PAN for each sub-fund of fund In consultation with Income-tax. Existing FPIs shall be provided one year to comply with the new provisions.	Each sub-fund/ share class having segregated portfolio investing in India should provide BO declaration. Existing FPIs having segregated portfolio shall provide BO declaration for each sub-fund/ share class investing in India at the time of FPI's continuance or within six month from the date of notification of this change, whichever is later.
17.	Easing No Objection Certificate from SEBI/RBI for Bank applicant	To reduce time taken for registration and renewals the current practice of DDPs seeking No Objection Certificate from SEBI / RBI in respect of applicants which are banks / subsidiaries of banks and do not have local presence should be dispensed with.	No change in recommendation.

<u>Section II:</u>

Serial Number	Subject	Recommendation(s)	Revised Recommendations
18.	KYC Reliance on same group regulated entity of custodian for non-PAN documents	For non-PAN related KYC documents, SEBI may consider permitting a local custodian to rely on KYC carried out by its group entity which is regulated and is from an FATF member country. Where such a reliance is placed, the group entity/ FPI should provide an undertaking to the effect that the relevant KYC documents, as applicable in India, would be submitted to the DDP/ Local Custodian when required by regulator/law enforcement agency/ government departments/ tax authority, etc.	For non-PAN related KYC documents, SEBI may consider permitting a local custodian to rely on KYC carried out by another entity of the same financial group (like a Global Custodian or Investment Manager) which is regulated in an FATF member country, where KYC is carried out as per their home jurisdiction standards. Where such a reliance is placed, such other entity/ FPI should provide an undertaking to the effect that the relevant KYC documents, would be submitted to the DDP/ Local Custodian when required by regulator/law enforcement agency/ government departments/ tax authority, etc. However, the Custodian / local intermediary will be required to collect constitution documents and BO related declarations (wherever applicable) and upload on KRA the evidence that it has relied on the KYC carried out by the Global Custodian / Investment Manager in their home jurisdiction. In such situations where the broker is relying on KRA, it will be obligated to verify the PAN and download the available documents from KRA. It is further recommended that such KYC reliance may also be extended to third party GCs and Investment Managers with whom the local intermediary (custodian/broker) have a contractual arrangement. This may require changes in PMLA provisions requiring further deliberations with Government. SEBI may take this proposal for consideration of the Government.

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19.	Simplifying certification process for KYC documents	The KYC documents should be appropriately certified by the Notary Public, officials of Multinational Foreign Banks, or any bank regulated by Reserve Bank of India. Self-certification of the supporting documents is optional and such self-certification will not invalidate KYC documents.	No change in recommendation
20.	Modification in FPI registration certificate	FPI certificate issued by the DDPs should be accepted as identity and address proof for issuance of PAN. For the same, FPI Certificate format should be revised to include address details and signature of the DDP officials. Further, SEBI may issue circular permitting issuance of such certificates for registration of FPIs.	No change in recommendation.
21.	Simplified verification of PAN for KYC	i. For opening of accounts with Local Custodians in a quick time verification of PAN on the specified website of the Income tax authorities should be sufficient and there should be no need to provide/ receive PAN Cards.; ii. alternatively, e-PAN issued by CBDT can also be produced by FPI for KYC compliance without requiring any certifications.	No change in recommendation
22.	Power of Attorney as valid address proof for Category III FPI	Power of Attorney duly legalized (appostiled/ consularised and notarized) may be considered as valid address proof document for Category III FPI applicants from non-high risk jurisdictions.	Power of Attorney duly legalized (appostiled/ consularised and notarized) may be considered as valid address proof document for all categories of FPI applicants. Further, intermediaries may place reliance on address of FPI

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			appearing on website of regulator/ registrar for address proof. .
23.	Submission of additional details for enquiry/ investigations	The regulator may ask for additional document/ information including complete investor details as required at the time of enquiry/ investigations or enforcement proceedings for Category III FPIs and those Category II FPIs from high risk jurisdictions.	A suitable declaration in the CAF be incorporated provisioning for submission of additional document/ information including complete investor details as required at the time of enquiry/ investigations or enforcement proceedings for all categories of FPIs
24.	Simplified Documentation - Miscellaneous	To cut down the need for obtaining similar details from multiple documents it is recommended to exempt submission of following documents: a) investment management agreement for MIM structures for FPIs where name of investment manager is already provided as part of the application. b) photograph of the authorized signatory of category III FPI, as identity document with photograph is already provided as part of KYC;. c) Board Resolution and the authorized signatory list (ASL) if SWIFT is used as a medium of instruction between custodian and FPI or its authorized representative being regulated bank or custodian in FATF member country. However, the FPI has to provide the ASL if they use any other mode of communication.	To cut down the need for obtaining similar details from multiple documents it is recommended to exempt submission of following documents: a) investment management agreement for MIM structures for FPIs where name of investment manager is already provided as part of the application. b) photograph of the authorized signatory of category III FPI, as identity document with photograph is already provided as part of KYC;. c) Board Resolution and the authorized signatory list (ASL) provided: (i) SWIFT is used as a medium of instruction between custodian and FPI or its authorized representative being regulated bank or custodian in FATF member country. However, the FPI has to provide the ASL if they use any other mode of communication. **OR** (ii) There is no exchange of physically signed documents / agreements between the local Broker and the FPI or its authorized representative being an Investment

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		SEBI may also take up with RBI for similar exemption for opening of bank accounts.	Manager regulated in FATF member country. However, the broker is required to obtain Board resolution or ASL if it relies on some signed document from the Investment Manager. SEBI may also take up with RBI for similar exemption for opening of bank accounts.

Section III:

Serial Number	Subject	Recommendation(s)	Revised Recommendations
25.	Liberalized investment cap	I. FPIs may be allowed to invest up to applicable sectoral in an aggregate basis II. Indian companies may be allowed to decrease the aggregate limit to 24% or 49% or 74%, as they deemed fit, with the approval of their Board of Directors and its General Body through a resolution. SEBI may take up this proposal for consideration of the Government and the RBI.	i. The aggregate holdings of all FPIs put together (including any other direct and indirect foreign investments in the Indian company permitted under FEMA 20, if any), should be permitted up to the sectoral cap / statutory ceiling applicable to the relevant Indian company with respect to its paid-up equity capital on a fully diluted basis, and up to such same sectoral cap percentage of paid up value of each series of debentures or preference shares or share warrants. ii. Indian companies may be allowed to decrease the aggregate investment limit to 24% or 49% or 74%, as they deemed fit, with the approval of their Board of Directors and its General Body through a

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			resolution. If the Indian company decreases its aggregate investment limit to 24%, the Indian company should be permitted to increase such aggregate limit to 49% or 74% or the sectoral cap/statutory ceiling as deemed fit from time to time, with the approval of its Board of Directors and its General Body, however once the aggregate limit has been increased to a higher threshold, the Indian company can reduce the same to a lower defined threshold only if aggregate foreign investment in the company is below such lower threshold . iii. Further a suitable time period (say 6 months) should be provided to Indian companies to decide, implement and notify their revised aggregate investment limits, which would come into force from a date as specified by SEBI.
26.	Review of prohibited sector for foreign investment for FPIs	It is proposed that prohibition relating to foreign investments in certain sectors should be limited to FDI and not be extended to FPIs. However, such FPIs existing investments, including ADR and GDR, may not exceed 49%.	No change in recommendations.
27.	Separate limit for Investment in Security Receipts (SRs)	SEBI, in consultation with RBI, may review and look at feasibility of a separate limit, outside the corporate debt investment limit, for FPI investments into SRs, more so when the utilization of the current limits increases substantially.	No change in recommendations.

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28.	Harmonisation between investment restrictions in FPI Regulations and FEMA 20(R)	i. FPI Regulations should be updated to provide that paid-up equity capital on a fully diluted basis is in line with FEMA. ii. Since FPIs are now permitted to invest in both listed and unlisted debt securities, additional requirement of to be listed debt securities can be removed. For monitoring of limit, investment in to be listed debt may be considered under unlisted securities till it is listed on the exchange. , iii. It may be clarified by way of circular whether or not perpetual debt instruments will be reckoned as a part of corporate debt limit considering the nature of such instruments. They will be equity and come under 10% limit? iv. Permission for FPIs to invest in units of REITS, INVITS, AIF may be included in regulations. Currently, this is enabled by way of circular from SEBI. v. Current requirement under the regulations is that FPIs can invest in 'Shares, debentures and warrants of companies, listed or to be listed on a recognized stock exchange in India, through primary and secondary markets. The word "Company" may be replaced by "Body Corporate" to include instruments issued by statutory bodies like NHAI. Further, Since as FPIs are recommended to sell 'off market', reference of primary and secondary markets from FPI Regulations be deleted. . vi. Transfer of rights entitlements shall be at ruling market price or fair market value, as applicable.	In respect of iii, the revised recommendaiton is as unde;- *iii It may be clarified by that since perpetual debt instruments are more akin to equity not debt, FPI investment in perpetual debt instruments should not be part of corporate debt limit considering the nature of such instruments.*

Serial Number	Subject	Recommendation(s)	Revised Recommendations
		vii. Credit of unlisted shares through voluntary corporate actions should be allowed. However, such unlisted investment shall be treated as FDI viii. A provision may be included in the FPI regulations that FPI will be allowed to invest in any debt securities permitted by RBI from time to time so that all future changes can be accounted without need for amendment the regulations.	
29.	***Review of restriction on Sovereign Wealth Funds for investment in corporate debt securities***	In consultation with RBI, Sovereign wealth funds be exempted from investment limit restrictions under SEBI and RBI circular dated June 15, 2018 on corporate bonds.	No change in recommendations.
30.	***Strengthening of clubbing restrictions***	The investor group should consist of all associate entities of FPI who are investing in Indian securities and identified on basis of common ownership of more than 50% or common control. FPI need to ensure that holding of all their group entities in shares of a company shall be below 10%. In case the limit is breached, either all entities of investor group are re-categorised as FDI in accordance with the procedure prescribed by SEBI & RBI or divestment is made within 5 trading days from date of settlement of the trades causing the breach. SEBI may take this up with RBI and Government to frame further rules in this regard.	It is now proposed to clarify that a FPI including its investor group, whose investments have reached 10% of the paid up capital on a fully diluted basis in a company under FPI route, shall have to divest its holding within five trading days from the date of settlement of the trades which caused the breach. Further, in case a FPI including its investor group invests through both FPI and non-FPI routes (viz. FDI, FVCI, etc.) and the aggregate investments reach 10% of the paid up equity capital on a fully diluted basis, then their entire shareholding in the particular company shall be classified as FDI for reporting purpose. Once such investment is classified as FDI, the FPI including its investor group shall not acquire any further shares of the company under the FPI route.

Serial Number	Subject	Recommendation(s)	Revised Recommendations
			SEBI may take this up with RBI and Government to frame further rules in this regard.
31.	***Clarity on "to be listed" share***	FPIs shall be permitted to acquire "to be listed" securities only in case of initial public offer (IPO) i.e. when the offer of specified securities by an unlisted issuer has being issued to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer;	No change in recommendation

<u>Section IV:</u>

Serial Number	Subject	Recommendation(s)	Revised Recommendations
32.	Liberalization for regulated Category III FPIs	KYC requirement for regulated Category III entities, coming from non high-risk jurisdictions, shall be equivalent to KYC requirement applicable to Category II FPIs. All other applicable Category III restrictions shall continue to apply for such FPIs.	KYC requirement for regulated Category II entities, shall be equivalent to KYC requirement applicable to Category I FPIs. However, simplified BO details shall not be applicable to such entities. All other applicable Category II restrictions shall continue to apply for such FPIs.
33.	***Off-market Transactions***	FPIs should also be permitted off-market transfer of securities which are unlisted, suspended or illiquid, to a domestic investor.	FPIs should also be permitted off-market transfer of securities which are unlisted, suspended or illiquid, to a domestic or foreign investor.

Serial Number	Subject	Recommendation(s)	Revised Recommendations
34.	***Harmonization of FPI and FDI rules***	I. For harmonization of KYC requirements the existing RBI and SEBI risk based KYC norms applicable to FPIs should also be applied to the securities account opened by a registered FPI for holding its investments under the FDI route II. Re-use of cash balances from FPI account for FDI purpose may be considered. FPIs are permitted to open onshore INR bank account in India for purposes of investments, under the provisions of FEMA and with free repatriation (subject to payment of applicable taxes). A non-resident investor registered as FPI should be permitted to utilize sale proceeds or monetary corporate benefits credited to its SNRR accounts to fund its FDI investments provided both FPI and FDI accounts pertain to the same legal entity with same PAN number III. The above relaxations may also be extended to FVCI, DR conversion and FCCB conversion accounts of registered FPIs During deliberations of Group with the RBI, the RBI officials advised that the general principle has been to not permit non-residents to maintain repatriable INR balances in India as this would be a step forward towards full capital account convertibility. The downside is that it will allow non-residents to wait for the exchange rate to be favorable for repatriation. When INR appreciates, it may lead to bulk selling thereby driving down the price of INR. It can be used for speculation measure. Therefore, the recommendation with respect to reuse of cash balances	For harmonization of KYC requirements the existing RBI and SEBI risk based KYC norms applicable to FPIs should also be applied to the securities account opened by a registered FPI for holding its investments under the FDI route. The above relaxations may also be extended to FVCI, DR conversion and FCCB conversion accounts of registered FPIs.

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		may be implemented only after ensuring that necessary safeguards / controls are in place in consultation with RBI	
35.	***Reclassification of investment from FPI to FDI***	The following process to operationalize the provisions of classifying the FPI acquisition of greater than 10% as FDI is proposed. For consideration of the RBI and the Government.. i. Option to reclassify FPI investment to FDI is applicable for all current and future breaches of 10% limit from the date circular i.e. with effect from 13 December 2018. ii. FPIs should be given five trading days from the date of settlement of trades to either sell or reclassify investments into FDI. iii. The FPI, through its designated custodian, shall bring the choice of reclassification of investment as FDI same to the notice of the depositories who in turn will notify the FPI as well as the concerned company for effecting necessary changes in their records, within seven business trading days from the date of settlement of the trades causing the breach. iv. The breach of 10% the aggregate or sectoral limit on account of such acquisition for the period between the acquisition and sale or conversion to FDI within the prescribed time, shall not be reckoned as a contravention under FEMA and SEBI regulations. v. Following operating guidelines for reclassification of Investments into FDI may also be considered :	The revised recommendaiton number 30 be seen. The current recommendation be deleted.

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		a. The holding will have to be marked as FDI in custodian and depository records for all reporting purposes and the custodians / depositories may be given an option to open a new / separate account. This will ensure explicit compliance instead of waiting for a new account to be opened and related documentation, etc. No additional documentation, including any KYC related documentation or approval is required for such reclassification, even if a new depository account needs to be opened for holding such FDI assets. b. If the 10% breach takes places on account FPI and FPI investor group collectively breaching 10% limit, then such security holding of all FPIs in the investor group be considered to be FDI. An investor group may be permitted to hold either FDI (upto applicable sectoral limit) or FPI (below 10%) investment in a particular Indian company, but not both. c. Credit of sale proceeds of such 'FDI' shares and related reporting (e.g. FCTRS) may follow usual FDI process. Optionally, such 'FDI' shares can continue to follow FPI process for sale proceeds and reporting while still being categorized as FDI for issuer. Transactions in other scrips will continue to be in FPI account. d. LEC reporting to close the existing FPI position (which got converted to FDI) may	

Serial Number	Subject	Recommendation(s)	Revised Recommendations
		be required. Also alternative of FC-TRS for future transactions may e. Any reduction of holding below 10% in a scrip due to such sale will not result in reclassification of the holding as FPI and will continue to be treated as FDI investment.	
36.	***Continuance of Registration***	FPIs should convey their intent to the DDP to undergo continuance of registration process alongwith applicable documents and requisite registration fees at least one month prior to the expiry of the existing three year block.	FPIs should convey their intent to the DDP to undergo continuance of registration process alongwith applicable documents and requisite registration fees at least one month prior to the expiry of the existing three year block. If DDP is in receipt of registration fee prior to validity date and due-diligence including KYC review is not complete, no further purchase transactions shall be permitted till due-diligence including KYC review is complete
37.	***Review of process of divestment***	I. FPI need to have registration as long as it is having securities or derivative position in India. To discourage FPIs from not meeting this requirement, SEBI may levy appropriate fees. II. Existing FPIs whose registration is not valid but are holding securities or derivatives position should be allowed one year to sell securities or time till expiry of their open derivatives position before exit.	No change in this recommendation.

Serial Number	Subject	Recommendation(s)	Revised Recommendations
38.	***Surrender of FPI license***	When an FPI does not pay the fees for continuance of registration within the prescribed due date and such FPI does not have any cash or security balance, such FPI shall be deemed to have applied for surrender of its registration.	No change in this recommendation.
39.	***Definition of Long Term Investor***	All investor types, including Governmental Agencies, under FPI Category I may be included in the definition of 'Long Term' investors for the purpose of debt investment limits related rules. SEBI may take this up appropriately with RBI.	No change in this recommendation.
40.	***Amendment in FPI regulation with respect to payment of fees***	Regulation 3 and 7 of FPI Regulation with respect to payment of fees by FPIs be synchronized and the fees should be collected along with application. Further, SEBI may review registration fee structure for FPIs commensurate to their risk category.	Regulation 3 and 7 of FPI Regulation with respect to payment of fees by FPIs be synchronized and the fees should be collected along with application. Exemption from registration fee for Category I FPI other than international/multilateral agency need to be removed. SEBI may charge USD 3,000 for Category I and USD 1,000 for Category II FPIs.
41.	***Legal Entity Identifier - LEI***	All FPIs and ODI subscribers need to provide their LEI in a time bound manner coinciding with RBI requirements in this regard. Further, SEBI may consider utilizing LEIs for monitoring purposes including compliance with clubbing requirements. Further, in due course, SEBI may consider lowering the documentary requirements to verify identity of legal entity for KYC purpose once use of LEI becomes a common practice.	No change in this recommendation.

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42.	***IFSC (international financial services centre) related recommendations***	a. Entities established/incorporated in the IFSC may be permitted to use their IFSC location to be deemed to have met the jurisdiction criteria under Eligibility Rule 4 b. All other FPI eligibility conditions under Rule 4 have to be fully met for both the applicant entities as well as their beneficial owners. This is necessary to ensure that incorporation of a subsidiary in the IFSC does not offer regulatory arbitrage to entities who are otherwise unable to fulfill eligibility criteria c. Funds set up in IFSC by Indian SEBI Registered asset management companies – mutual funds, AIFs, PMS – should be deemed as appropriately regulated under Eligibility Rule 4. Banks, Broker dealers, AMCs, IMs/IAs operating in IFSC shall be permitted to seek FPI registration, subject to fulfilment of all eligibility conditions. d. DDP due diligence requirements and procedure should remain the same. DDP should report IFSC applicants under country “IFSC, India”. SEBI Portal should make required changes to accommodate the new location.	No change in this recommendation.
43.	***Offshore Fund to invest only through FPI route***	Offshore funds floated by Indian mutual funds can invest in India only after seeking registration as FPI. Existing offshore funds investing in India shall obtain registration within 180 days from the notification of this change. The offshore fund and domestic scheme through which its investment is routed should invest in securities by ensuring compliance with SEBI (FPI) Regulations, 2014.	No change in this recommendation.

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44.	***Alignment between FPI and AIF routes***	In order to ensure that AIF route is not misused by FPIs, it is suggested that i. the limit of 25% shall be on "investor group", ii. FPI (including investor group) investment in AIFs shall always be in compliance with restrictions imposed by RBI & SEBI. Also, investment by FPIs in AIF (even having Indian investment manager) shall be reckoned as foreign investment provided the overall FPI investment is more than 50%. However, this aspect may be examined further for all foreign investors in consultation with RBI and GOI. iii. There is need for parity between FPI and AIF requirements to be eligible for QIB, Those who are not in compliance may be provided additional timeline for compliance.	It is suggested that (i) the limit of 25% for FPI investment in AIF shall be on "investor group" basis. (ii) In addition to Category –I and II FPIs, the existing Category- III FPIs which are institutions (i.e. other than individuals, corporates and family offices) should be eligible for QIB.
45.	***Strengthening of ODI Framework - Compliance with SEBI circular dated July 07, 2017***	"ODIs with derivative as underlying" (as referred in clause 2.1 of SEBI circular dated July 07, 2017) shall mean ODIs hedged directly or indirectly on a one to one basis or portfolio basis in derivatives listed in India.	As the market participants have reported that it is difficult to monitor the above requirement, an alternative approach may be as follows: a. If an ODI issuing FPI takes a separate FPI registration for directly or indirectly hedging the ODIs, such FPIs shall be permitted to take derivative position in Indian stock exchanges and the applicable position limit for the purpose of same shall be 5% of market wide position limits. b. If an ODI issuing FPI does not seek separate registration for issuance of ODIs, such FPI can only
46.	Strengthening of ODI Framework - Reporting of Portfolio hedging	Complete information on ODIs hedged on portfolio basis should be included in ODI monthly statement and should establish one to one hedge on ODIs issued by FPIs (throughout the life of the ODIs). SEBI may also	

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		amend its circular dated June 15, 2011 in this regard suitably. Since, SEBI circular dated July 07, 2017 has given time till December 31, 2020 for transition, the existing ODIs may be grandfathered subject to sunset clause of December 31, 2020.	issue ODIs by hedging with cash equities or Debt securities. The existing derivative position held by ODI issuing FPI shall be aligned with above by December 31, 2020 as per existing time limit given to FPIs. Further, a one time off-market transfer shall be permitted for such FPIs between two accounts before the said timeline. Complete information on ODIs hedged on portfolio basis should be included in ODI monthly statement.
47.	Strengthening of ODI Framework - Review of ODI reporting format	Monthly ODI reporting format in which ODI issuing FPIs provide their reports to SEBI need to be appropriately amended.	In view of the changes in recmmendaiton 45 and 46, monthly reporting format be suitably modified.
48.	Strengthening of ODI Framework - Review of monthly ODI statement disseminated on SEBI website	Monthly ODI statement disseminated on SEBI website should be amended.	No change in this recommendation.
49.	***Modification in SEBI circular on eligibility conditions for FPIs***	The clause 2.7 of the SEBI circular dated September 21, 2018 be modified as under:- "The FPI applicant shall be given a time of 180 days from the date of registration to satisfy these eligibility conditions. The existing FPIs (as on notification of amended clause) shall be given a time upto December 2020 to ensure compliance with eligibility conditions."	No change in this recommendation.

Serial Number	Subject	Recommendation(s)	Revised Recommendations
		DDPs should monitor all FPIs owned or controlled by Indians and submit a monthly report to SEBI.	