

**Consultation Paper on Relaxation in Timelines for Disclosure of Material Changes
by Foreign Portfolio Investors**

1. OBJECTIVE

- 1.1. The objective of the consultation paper is to seek comments/views/suggestions from the public on the proposal to give relaxation in timelines for disclosure of material changes by Foreign Portfolio Investors ('FPIs').

2. BACKGROUND AND EXTANT REGULATORY FRAMEWORK

- 2.1. Regulation 22 of SEBI (Foreign Portfolio Investors) Regulations, 2019 ('FPI Regulations, 2019'), provide for general obligations and responsibilities of FPIs. The obligations include making certain disclosures to SEBI and/or their respective Designated Depository Participants (DDPs). For such disclosures a time period of seven working days has been prescribed under FPI Regulations. The extant provisions under FPI Regulations, 2019, reads as follows:

“General obligations and responsibilities of foreign portfolio investors.

22. (1) The foreign portfolio investor shall –

- (a) comply with the provisions of these regulations, as far as they may apply, circulars issued thereunder and any other terms and conditions specified by the Board from time to time;*
- (b) as soon as possible but not later than seven working days, inform the Board and designated depository participant in writing, if any information or particulars previously submitted to the Board or designated depository participant are found to be false or misleading, in any material respect;*
- (c) as soon as possible but not later than seven working days, inform the Board and designated depository participant in writing, if there is any material change in the information including any direct or indirect change in its structure or*

ownership or control or investor group previously furnished by him to the Board or designated depository participant;

....

(e) as soon as possible but not later than seven working days, inform the Board and the designated depository participant, in case of any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it;

....

....

(5) In case of any direct or indirect change in structure or common ownership or control of the foreign portfolio investor or investor group, it shall, as soon as possible but not later than seven working days, bring the same to the notice of its designated depository participant.”

2.2. Further, in order to bring consistency with the provisions of the FPI Regulations, 2019, vide SEBI Circular dated March 27, 2023, the Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors ('FPI Master Circular'), was amended to provide for a similar time period of seven working days for the following obligations and disclosure requirements:

- 2.2.1. change in information relating to any direct or indirect change in its structure or ownership or control, change in regulatory status, merger, demerger or restructuring, change in category/ sub-category / structure/ jurisdiction/ name of FPI/ beneficial ownership etc.
- 2.2.2. making application for change in name in PAN records pursuant to name change
- 2.2.3. deletion of sub-fund/share classes in case of segregated portfolios
- 2.2.4. change in material information which has a bearing on the certificate granted to the FPI

2.3. The time-period of seven working days was prescribed under FPI Regulations, 2019 pursuant to an amendment to the said regulations, notified on March 15, 2023. Prior to the amendment, the FPI Regulations, 2019 mandated that the said disclosures be made 'forthwith' by the FPIs.

2.4. In this regard, it may be noted that Rule 9B of Prevention of Money-laundering (Maintenance of Records) Rules, 2005 ('PMLR'), provides for a period of 30 days for submission of documents for any update in the information provided by a client of a reporting entity. The said rules are also applicable in case of FPIs.

3. REPRESENTATIONS FROM MARKET PARTICIPANTS

3.1. Pursuant to notification of the seven working-days disclosure timeline for FPIs, SEBI is in receipt of several representations from market participants regarding relaxation in the said timeline. It has been represented by such market participants that there are certain challenges in making disclosures within the prescribed timelines, especially in case of change in Beneficial Owner and have requested for relaxation in the timelines for disclosures. The market participants have, *inter alia*, represented that:

3.1.1. Public Retail Funds ('PRFs') often have thousands of underlying investors and the holding of such investors in the FPI can fluctuate on a daily basis.

3.1.2. In many cases, the investors participate in the fund through intermediaries. These intermediaries are often already subject to KYC, AML and customer verification requirements as are applicable to the fund.

3.1.3. In line with FATF risk based approach, the funds rely on these intermediaries to avoid duplication in efforts to collect and verify client data.

3.1.4. Although, it is rare that such funds will have an investor who meets the 10% threshold [for determination of Beneficial Ownership in FPI], monitoring the same require increase in compliance monitoring and sharing of data, on a daily basis between the funds and intermediaries/investors.

3.1.5. The granular and frequent reporting may not be useful to regulatory authorities due to the constant changes.

3.1.6. The seven working-days notification requirement increases the compliance challenges as gathering the required information from entities spread across various jurisdictions, may take several weeks. This becomes even more challenging, in case documents with wet ink signatures of authorized signatories are required to be sent from across jurisdictions.

4. MATERIAL CHANGES IN THE INFORMATION SUBMITTED EARLIER THAT NEED TO BE NOTIFIED BY THE FPI

4.1. In terms of Regulation 22 of the FPI Regulations, the FPIs are required to notify changes in the information previously submitted by them. Such changes include those that affect the eligibility of the FPI or the privileges/exemptions that are available to the FPI. In this regard, in terms of Para 14 (ii) of Part A of FPI Master Circular, DDP are required to examine the material changes notified by an FPI and re-assess the eligibility of the FPI including requiring FPIs to seek fresh registration. Further, in terms of various SEBI regulations, certain privileges are available to FPIs, e.g. FPIs (other than individuals, corporate bodies and family offices) are categorized as Qualified Institutional Buyers under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and enjoy certain privileges for offerings made under the said regulations. Further, exemptions are also available to certain FPIs in terms of SEBI Circular dated August 24, 2023.

4.2. In view of the above, it is proposed to categorize the material changes to be notified by the FPIs into the following categories for the purpose of mandating timelines for notification of such changes:

Type I: changes which require FPI to seek fresh registration or which affect any privileges/exemption available to the FPI; and

Type II: all other material changes.

4.3. In this regard, a comprehensive list of Type I material changes shall be prepared in consultation with the industry participants/stakeholders. An indicative list of such Type I material changes is as follows:

Type I Material Changes (indicative list)

1. Change of Jurisdiction.
2. Name change on account of:
 - Acquisition
 - Merger
 - Demerger
 - Restructuring
 - Ownership/control
3. Acquisition/Merger/Demerger resulting in cessation of existence of FPI.
4. Restructuring of the legal form (e.g. corporate to trust).
5. Change in Regulatory Status (regulated to unregulated fund) of the FPI.
6. Change in status of compliant jurisdiction of FPI/BO in terms of Regulation 4(f) of the FPI Regulations, 2019.
7. Reclassification of the FPI (from one category to another).
8. Changes which impact any exemption in terms of SEBI Circular dated August 24, 2023.

5. RECOMMENDATIONS OF THE WORKING GROUP FOR REVIEW OF FPI REGULATIONS, 2019

- 5.1. SEBI has set up 16 Working Groups to review various SEBI regulations from the perspective of Ease of Doing Business. One such group constituted by SEBI is the 'Working Group for review of FPI Regulations, 2019' ('FPI Working Group').
- 5.2. The matter of disclosure timelines was also discussed in the FPI Working Group. The FPI Working Group was of the view that the current timeline of seven working-days be extended to 30 days in line with the requirements under PMLR. However, the FPI Working group also noted that the extant framework requires the DDPs to examine such material changes and re-assess the eligibility of the FPI and requirement of fresh registration, if any. After deliberations, it was agreed that w.r.t. material changes that necessitate fresh registration/affect privileges/exemptions, the disclosure may be made by the FPI within seven

working days of such change while the supporting documents may be provided within 30 days of such change.

6. PROPOSALS:

6.1. In view of the extant provisions under PMLR, representations received from market participants, recommendation of the FPI Working Group and considering the challenges faced by Foreign Portfolio Investors, the following is proposed:

6.1.1. Type I material changes shall be informed by FPIs within 7 working days of the occurrence of the change and the supporting documents (if any) shall be provided within 30 days of such change.

6.1.2. Type II material changes shall be informed and supporting documents (if any) shall be provided by FPIs within 30 days of such change.

6.1.3. The final list of Type I material changes shall be prepared in consultation with industry participants/stakeholders.

Questions for public comments

1. Do you agree with the proposal to have different timelines for disclosure of material change by the FPI based on the type of change?
2. Do you agree with the proposal to mandate disclosure of Type I material changes by FPIs within seven working days and submission of supporting documents (if any) within 30 days?
3. Do you agree with the proposal to mandate disclosure of Type II material changes and submission of supporting documents (if any) by FPIs within 30 days?
4. Do you agree with the indicative list of Type I material changes? Suggest inclusions/exclusions, if any.

7. PUBLIC COMMENTS

7.1. Considering the implications of the aforementioned matters on the market participants, public comments are invited on the above-detailed proposal. The comments/ suggestions may be provided latest by February 28, 2024, through the following link:

<https://www.sebi.gov.in/sebiweb/publiccommentv2/PublicCommentAction.do?doPublicComments=yes>

(It may be noted that the online web-based form will accept comments till February 28, 2024)

- 7.2. The instructions to be followed for submitting comments on the consultation paper are as under:

INSTRUCTIONS FOR SUBMITTING COMMENTS

1. Before initiating the process, please read the instructions given on top left of the web form as “**Instructions**”.
2. Select the consultation paper you want to comment upon from the dropdown under the tab – “**Consultation Paper**” after entering the requisite information in the form.
3. Email Id and phone number cannot be used more than once for providing comments on the same consultation paper.
4. If you represent any organization other than the types mentioned under dropdown in “**Organization Type**”, please select “**Others**” and mention the type, which suits you best. Similarly, if you do not represent any organization, you may select “**Others**” and mention “**Not Applicable**” in the text box.
5. There will be a dropdown of **Proposals** in the form. Please select the proposals one-by-one and for each proposal please record your level of agreement with the selected proposal. Please note that submission of agreement level is mandatory.
6. If you do not want to react on any proposal, you may skip the same by selecting “**Skip this proposal**”;
7. If you want to provide your comments for the selected proposal, please select “**Yes**” from the dropdown under “**Do you want to comment on the proposal**” and use the text boxes provided for the same.
8. After recording your response to the proposal, click on “**Submit**” button. System will save your response to the selected proposal and prompt you

to record your response for the next proposal. Please follow this procedure for all the proposals given in the dropdown.

9. Please download the pdf file, link of which is given at the bottom of the form, just before finally submitting the comments to last and final proposal. This pdf will help in case technical issue is faced while final submission of comments.
10. The final comments shall be submitted only after recording your response on all of the proposals in the consultation paper.

- 7.3. In case of any technical issue in submitting your comment through web based public comments form, you may contact the following through email with a subject *"Issue in submitting comments on Consultation Paper on Relaxation in Timelines for Disclosure of Material Changes by Foreign Portfolio Investors"*:

- a) afdconsultation@sebi.gov.in
- b) Manish Kumar Jha, DGM (manishk@sebi.gov.in)
- c) Naveen Kumar, AGM (naveenkr@sebi.gov.in)

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