



Communication of the Association of Global Custodian's Asia Focus Committee¹

18 December 2023

Shri Ananth Narayan Gopalakrishnan,
Whole Time Member,
Alternative Investment Fund and
Foreign Portfolio Investors Department,
Securities and Exchange Board of India.

(Sent by e-mail to: ananthg@sebi.gov.in)

Dear Mr. Gopalakrishnan,

Standard Operating Procedure (SOP) for seeking additional disclosures from certain Foreign Portfolio Investors (FPIs)

We refer to the Securities and Exchange Board of India's (SEBI) requirements under the SOP seeking additional disclosures from certain FPIs in accordance with SEBI circular number 148 dated 24 August 2023.

The Association of Global Custodians²(AGC) very much appreciates the approach followed by SEBI permitting our member bank sub-custodian group in Mumbai to contribute to the content of the SOP, which aims to ensure consistent market practice and the avoidance of regulatory arbitrage by FPIs amongst custodians. The helpful cooperation with the group this year to date has clarified a number of requirements in SEBI's quest to obtain more in-depth information on the identification and verification of beneficial owners of FPIs investing in the market.

¹Mr. Rafizain Rafii, Chairman, The Association of Global Custodians, Asia Focus Committee, c/o Northern Trust, One George Street, #12-06, Singapore 049145

² The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide and administer collectively over USD150 trillion of assets. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The member banks of the Association are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company.

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We seek SEBI's further understanding and forbearance in respect of important feedback on the SOP our member banks have received from their FPI clients. The significant comments are:

1. For new breaches of the 50% threshold in a single corporate group from 1 November 2023 onwards, FPIs will only have 10 trading days to realign holdings for FPIs who want to be considered as 'Exempt'. FPIs are earnestly requesting that a more reasonable time be accorded to their custodians to undertake an accurate review of an exemption status claim, especially for situations where it is not clear-cut. Whilst FPIs and their custodians acknowledge that exemptions are granted within SEBI's circular, both custodians and FPIs request that they be given a reasonable timeframe to determine a "Whitelist" of exempt and non-exempt FPIs upfront so that the market has a master list and any new FPIs on-boarded will be subject to such scrutiny before they start investing. Given that the required monitoring is on a daily basis, the market needs time to create such a "Whitelist" and to build an application/database that can support real time updates.

We also request that SEBI add corporate pension funds to the Exemption List stipulated under Clause 3.3. of the SOP, due to their nature and generally common, benign approach to investment in markets globally.

2. In regard to the trigger criteria for the 50% threshold in a single corporate group exposure, FPIs are asking whether SEBI could introduce a more reasonable threshold. Currently if a FPI has only one or two lines of security exposure, they will breach this threshold trigger even though their investments maybe miniscule, for example, 0.001% of the issuing company's issued shares. Participants don't think this is the type of FPI that SEBI intends to focus upon.

There is a common concern among FPIs over the materiality of the investments that are likely to be captured by any breaches. An FPI with a small equity AUM in the market will breach the 50% threshold even though the market value of the asset they hold is insignificant. We believe that the threshold for investment in a single corporate group is best set at a rupee amount, or a percentage of the available shares for that corporate group.

3. A tremendous amount of effort will be needed to monitor, track and comply with the new disclosure regime on a post-trade basis. FPIs are reasonably requesting if SEBI and/or the stock exchange could consider whether monitoring of this requirement would be more practical if done at the point of trading, as the triggers are based on either trading and/or investment behaviour. This information at the stock exchange would

enable the FPIs to comply with the requirements at the time of trade execution, instead of the current diligence in a post trade environment.

4. In regard to the exemption criteria for the 50% threshold in a single corporate group exposure, not all foreign investor entity types are recognized or defined clearly in the regulation, which is resulting in FPIs considered to be non-exempt, requiring them to prove they are exempt. One example is ERISA regulated funds such as collective investment funds, also known as a collective investment trusts. The latter are USA domiciled pooling vehicles that are sometimes not regulated by the Office of the Comptroller of the Currency (OCC), but by a state regulator that, nevertheless, follows the same guidelines as the OCC.

5. A FPI could find itself in breach of its disclosure requirement simply because the market value of one of their holdings increases relative to their overall portfolio i.e., a passive breach. FPIs opine that this is a passive breach due to fluctuations in portfolio values and not a result of trading activity as their overall shareholding in that company did not change.

FPIs opine that mandatory disclosure is not a viable and practical approach. Providing granular beneficial owner information down to each individual natural person, including any individual who has economic interest in the FPI, will be daunting for a FPI to provide. Furthermore, any change in these details would be considered material and need to be reported as per SEBI guideline on material changes. This is the greatest concern raised by FPIs in relation to providing granular information of beneficial owners.

6. Under the SOP FPIs need to provide an additional declaration agreeing to abide by Indian law. They have already met this requirement when signing-off on the Common Application Form - Part F when applying for FPI status.


FPIs do not believe an additional declaration specifically for this disclosure is necessary. However, if they do not provide the declaration, they will be subject to compulsory reporting by the local custodian to SEBI. FPIs are predicted to be highly reluctant to sign a duplicate declaration, due in many cases to the involved internal compliance procedures required in obtaining a duplicate approval.

If a report is made by the local custodian bank that a declaration was not provided, it is unclear what action SEBI will take and the impact it would have for 'Exempted' FPIs.

The AGC would be most grateful if SEBI would consider the points we have raised in this letter and provide clarity on them to FPIs as-soon-as-possible.

Thank you.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line.

Robert Edwards, (as attorney in fact)
For and on behalf of, Mr. Rafizain Rafii,
Chairman, Asia Focus Committee,
The Association of Global Custodians.

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