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SEBI circular on additional disclosures by Foreign Portfolio Investors

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A SEBI circular dated 24 August 2023 mandates Foreign Portfolio Investors meeting the prescribed criteria to disclose information about their beneficial owners, such as details of all entities holding any ownership or economic interest or exercising control on a full look through basis, up to the level of all natural persons, irrespective of the threshold. Certain Foreign Portfolio Investors are exempted from making these disclosures. Moreover, the circular allows Foreign Portfolio Investors to realign their investments within a specified period to avoid making these granular disclosures.

1 Background

The Securities and Exchange Board of India (**SEBI**) has cited concerns about the possible misuse of the Foreign Portfolio Investor (**FPI**) route by certain FPIs. It has observed that in cases where promoters of Indian entities indirectly hold substantial shareholding in their own companies through FPI entities (i.e., concentrated portion of the FPI's equity portfolio is in a single investee company or corporate group), the promoters and Indian investors could potentially circumvent the disclosure requirements prescribed under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 or the requirement to maintain minimum public shareholding in the listed entity. SEBI also recognised the possibility of the same natural person holding significant aggregate economic interest in an FPI through various investment entities, each of which being below the threshold prescribed under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 for identification of beneficial owners.

In a move to address the risks arising from such concentrated investments and to promote transparency in the identification of the beneficial owners of FPIs, SEBI issued a circular on 24 August 2023 (**Circular**) requiring FPIs which fulfil the prescribed criteria (discussed below) to make certain additional disclosures to their Designated Depository Participants (**DDP**). These include details of entities which hold any ownership or economic interest or exercise control in the FPI up to the level of all natural persons, irrespective of the quantum or amount of such interest or control. Such disclosures will also be considered '*material information*' in terms of regulation 22(1)(c) of the SEBI (Foreign Portfolio Investors) Regulations, 2019 (**FPI Regulations**) till the time the FPI's holdings are more than the threshold prescribed in the criteria for making these disclosures.

This Circular follows recent amendments made to the FPI Regulations requiring FPIs to provide information or documents in relation to persons with any ownership, economic interest, or control in the FPI in the manner specified by SEBI. (To read our earlier update on these disclosure requirements, click here.)

2 Criteria for submission of disclosures

The criteria for FPIs to make these mandatory disclosures are:

a. FPIs holding more than 50% of their Indian equity Assets under Management (**AUM**) in a single Indian corporate group; and

b. FPIs holding more than INR 25,000 crore of equity AUM in Indian markets, either individually or with investor group.

Certain FPIs which fulfil these criteria have, however, been granted an exemption from the disclosure requirements. These are:

a. Government or government related investors registered as FPIs;

b. Public Retail Funds;

c. Exchange Traded Funds (with less than 50% exposure to India and India-related equity securities) and entities listed on stock exchanges of permissible jurisdictions;

d. Pooled investment vehicles regulated by government/regulatory authority in home jurisdiction, where:

   i. their holding in an Indian corporate group is below 25% of their overall global AUM at a scheme level; and/or

   ii. their equity AUM in the Indian markets is below 50% of their overall global AUM at a scheme level;

e. FPIs which are unable to liquidate their excess investments due to statutory restrictions;

f. Newly registered FPIs (only exempted for the first 90 days from the settlement of first trade in equity segment); and

g. FPIs in the process of winding down their investment and surrendering their FPI registration.

Interestingly, where an FPI investor group collectively holds more that INR 25,000 crore of equity AUM in the Indian securities market, and certain FPIs in the said group are exempted from making the disclosures, then the entire group will be exempted from making the disclosures if the net AUM falls below the threshold of INR 25,000 crore after deducting the AUM of the exempted FPIs. However, if the AUM does not fall below the threshold of INR 25,000 crore, the non-exempted FPIs will be required to make the disclosure.

For instance, where an FPI investor group has five FPI entities out of which two fall under the exempted category and if after reducing the AUM of the two exempted FPI entities the net AUM of the group is less than INR 25,000 crore, then the entire group will be exempted from making any disclosure. However, where the net AUM does not fall below INR 25,000 crore, then the three FPI entities which were not exempted will be required to make the disclosure.

Where an entity identified by an FPI on a look through basis falls under a category which is exempted from making the disclosures, then further identification of entities having ownership interest in such entity will not be required.

In addition to the exempted categories and to provide some relief from this additional compliance burden, FPIs will be exempted from making the disclosures if they realign their investments to bring them below the disclosure threshold as per the timeline below:

Disclosure threshold	Timeline for realigning investments within the threshold	Other conditions
FPIs holding more than 50% of their Indian equity AUM in a single Indian corporate group.	Ten trading days from the date on which such FPIs exceed the threshold.	FPIs will also be prohibited from making any fresh purchases in companies of such corporate group during the next 30 calendar days.
FPIs, including their investor group, holding more than INR 25,000 crore of equity AUM in the Indian markets.	Ninety calendar days from the date on which such FPIs exceed the threshold.	Accounts of all FPIs will be blocked for further equity purchases until the holding is brought below the threshold of INR 25,000 crore.

FPIs whose investments continue to exceed the prescribed threshold even after the expiry of these timelines will be required to make the disclosures to their DDPs within 30 trading days from the expiry of such timelines. Additionally, FPIs that fulfil the prescribed threshold as on the date of applicability of the Circular, that is, 1 November 2023, have to make the disclosures within 90 days from the date of applicability.

Any failure in making the disclosures by the FPIs will result in cancellation of the certificate of registration and they will be required to liquidate their securities and exit within 180 days from the cancellation of the certificate.

DDPs and Custodians are required to formulate a Standard Operating Procedure in consultation with SEBI which will set out the detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions in the Circular.

3 Looking ahead

This move by SEBI will significantly increase the compliance burden on certain FPIs requiring them to constantly track and provide details of all beneficial owners, even if their holding is minuscule. It will require FPIs to reduce their exposure in single corporate groups and Indian markets if they are unable to provide details of their beneficial owners.

It is amply clear that SEBI is now focusing on obtaining details of beneficial owners of FPI entities that engage in target focused investment in certain listed companies in India. While such target focused investment by FPIs in listed companies is not prohibited, it will now come with this additional cost of compliance of disclosing granular details of beneficial owners. However, this move will not impact FPIs which have diversified investments across multiple listed companies in India.

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