June 13, 2019

Submitted electronically to fpi-review@sebi.gov.in

Achal Singh
General Manager
Division of Foreign Portfolio Investors and Custodians
Securities and Exchange Board of India

Dear Mr. Singh,

ICI Global\(^1\) has a keen interest in the Securities and Exchange Board of India (SEBI) regulations that are applicable to foreign portfolio investors (FPIs). Our member firms, regulated funds\(^2\) publicly offered to investors in jurisdictions worldwide, invest in markets throughout the world, including India. In addition, our members have significant experience complying with SEBI’s requirements for FPIs (including SEBI’s know-your-customer or KYC requirements), as well as with similar requirements in various jurisdictions around the world.\(^3\)

We applaud SEBI’s effort to consolidate, simplify, rationalize, and liberalize the FPI regime and appreciate the opportunity to provide feedback on the recommendations of the HR Khan Working

\(^1\)ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI’s membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US$29.7 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

\(^2\)The term “regulated funds” includes “regulated US funds” (or “US mutual funds” where appropriate), which are comprehensively regulated under the Investment Company Act of 1940 (Investment Company Act), and “regulated non-US funds,” which are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors (e.g., funds domiciled in the European Union and qualified under the UCITS Directive (UCITS)).

\(^3\)In August 2018, we submitted a letter to SEBI expressing our significant concerns with certain of the knowyour client (KYC) requirements included in SEBI Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 (Circular), as they apply to FPIs that are regulated funds, and in September we provided feedback on the HR Khan Working Group interim report. See Letter from Dan Waters, ICI Global Managing Director to Achal Singh, SEBI Deputy General Manager, dated September 14, 2018, available at https://www.iciglobal.org/pdf/31387a.pdf and letter from Dan Waters, ICI Global Managing Director, to Ajay Tyagi, SEBI Chairman, and Achal Singh, SEBI Deputy General Manager, dated August 1, 2018, available at https://www.iciglobal.org/pdf/31331a.pdf.
Group. A simpler FPI registration process and compliance regime, with effective and appropriate controls, will facilitate further investment in India, the fastest growing major economy in the world.

Under SEBI’s FPI regime, a foreign investor seeking to invest in the Indian stock market must register as an FPI in one of three categories. These categories are based on the risk classification of FPIs and are subject to differing KYC frameworks and investment restrictions. Under SEBI’s regulations, regulated funds – which are generally diversified and considered a stable type of investor – are able to register as Category II FPIs so long as they are broad-based. As described below, the broad-based requirement is a significant challenge for many regulated funds looking to invest in India, whether due to the particular fund manager’s process for seeding and launching a fund or the intended strategy of the fund (i.e., index funds). Regulated funds that cannot meet the broad-based requirement must instead register as a Category III FPI. Certain regulated funds find the stricter KYC requirements applicable to Category III FPIs to be too onerous or impossible to meet and choose not to pursue FPI registration and forego investing in India. We urge SEBI to consider whether the broad-based requirement is necessary particularly given the consequences for certain regulated funds, as well as the points that we raise below, as it finalizes the proposed regulations based on the recommendations of the Working Group.

<table>
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<tr>
<th>Sr. No.</th>
<th>Relevant Section and Sub-heading</th>
<th>Comments and Suggested Changes</th>
<th>Rationale</th>
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<tbody>
<tr>
<td>1.</td>
<td>4.1 Fast Track on-boarding process for select Category II FPIs</td>
<td>1. We support this proposal. We request that, for the avoidance of doubt, the implementing provisions clearly state that all types of public retail funds are within scope, such as SICAVs, OEICs, and FCPs.</td>
<td>2. A notation of fast-track status on the registration certificate will indicate to a broker that an FPI has benefitted from fast-track registration and explain why certain documents are not available for download from the KYC registration agency.</td>
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<td>Recommendation 1</td>
<td>2. We request that, when an FPI has benefitted from fast-track registration, this status is noted on the FPI registration certificate.</td>
<td>3. In the note to Recommendation 1, it states that the unique identity of a BO can be established using a combination of the name, date of birth, and nationality. If this information is determined to be sufficient to establish the identify of a BO for a fast-track</td>
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<td>3. We recommend that all FPIs from FATF member countries – not only those that qualify for fast-track registration – be able to satisfy the beneficial owner (BO) documentation requirements by providing the name, date of birth,</td>
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4 SICAV refers to a société d’investissement à capital variable established in Luxembourg. OEIC refers to an open ended investment company established in the United Kingdom, and FCP to a fond commun de placement established in France.
Letter to Mr. Achal Singh, General Manager
Securities and Exchange Board of India
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| 2. | 4.11 Simplified registration requirement for Category III FPIs Recommendation 11 | We support this proposal. | registration applicant, it should be equally sufficient for the BO of any FPI applicant from a FATF member country. |
| 3. | 4.12 Modification in the criteria of broad based fund Recommendation 12 | 1. We recommend that the broad based criteria for determining FPI category be eliminated. If despite our objections, SEBI determines to maintain this condition, we provide comments on the specific broad based requirements.  
2. The final regulations should (1) include entities that are set up as collective investment vehicles as broad based funds, and (2) determine broad based ownership on the basis of economic ownership of units/shares or other instruments. However, we strongly recommend that the third aspect of the proposal – requiring investor fund(s) singly or together to at least be 25% in order to achieve broad based status for the FPI fund – be deleted.  
3. We recommend that, in Explanation 2 to Section 5(b) of the proposed amended regulations, the first “Provided that” be amended as follows: “Provided that if the broad based fund has an institutional investor who holds more than forty nine per cent of | 1. Meeting SEBI’s complex broad based requirements is a significant challenge for many regulated funds looking to invest in India, whether due to the particular fund manager’s process for seeding and launching a fund or the intended investments of the fund (i.e., less than 5% of corpus in India). This requirement has, for some regulated funds, served as a roadblock and for others, a significant compliance and operational burden. SEBI’s recently adopted revised KYC and disclosure requirements (including beneficial owner requirements) provide SEBI with better insight into the ownership of an FPI to assess potential risk. With these new requirements, the broad based requirements serve a limited purpose and, in fact, act as a deterrent to desirable FPI investment in India. |
economic ownership interest in the fund, then such institutional investor must itself be a broad based fund.”

4. We recommend that the fifth proviso to Explanation 2 in Section 5(b) be revised to read as follows: “Provided that underlying investor fund(s) singly or together hold economic interest of at least be 25% in order to achieve broad based status for the fund.”

5. We recommend that paragraph C of Explanation 2 to Section 5(b), which requires that an entity be set up for the sole purpose of pooling funds and making investments to be an entity that can be looked through for the purpose of determining underlying investors, be deleted.

2. The proposed requirement for investor fund(s) to own at least 25% is at odds with the intention of easing market entry for FPIs and would add to market confusion and complexity. This requirement would further complicate the registration and monitoring of Indian registered products, making the process even more manual and difficult.

3. Investors that qualify for this provision should not be limited to broad based funds because newly established regulated funds may be seeded, not by another fund, but by corporate entities. So long as a corporate entity is itself broad based, then the fund it seeds should be deemed broad based.

4. We request this revision to make clear what we believe is SEBI’s intention with this proviso.

5. This provision should be deleted as it severely limits a fund’s ability to rely on the broad based status of a seed investor that is not an entity set up for the sole purpose of “pooling funds and making investments.” So long as the investor meets the broad based criteria, there is no reason to restrict the underlying investor based on this criteria.
| 4. | **4.13 Conditional Registration as Category II FPI** Recommendation 13 | 1. We support this proposal.  
2. In addition, we strongly urge SEBI to revise the first sentence in Explanation 3 to Section 5(b) of the proposed amended regulations so that it reads as follows: “For the purposes of (i) and (iii) above, if a existing fund or new fund does not satisfy the broad based criteria at the time of making application, conditional registration may be granted for ensuring compliance within 180 days from the time the fund commences operations in India.”  

|  |  | 2. Under the regulations, the designated depository participant (DDP) maintains discretion to grant conditional registration if a new or existing fund does not satisfy the broad based criteria at the time of making the application. The proposal does not specify what factors a DDP should consider in granting such conditional registration and, absent clear guidance, DDPs would likely be reluctant to grant such conditional registration. Obtaining Category II status is important to FPIs as it impacts the registration process and investment restrictions. Leaving such discretion without any guidance to DDPs adds a significant element of uncertainty to the registration process for FPI and will likely render this provision meaningless.  

As stated above, the broad based fund requirement remains the largest challenge and roadblock to regulated funds’ investment in India. To improve access to the Indian market for these stable investors, they should be given automatic conditional registration for 180 days.  

We believe that the conditional registration period should begin when a fund commences operations in India, rather than when the account is opened as there can be a delay between... |
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<td>opening the account and receiving permission to operate in India, which could substantially reduce the 180 day period.</td>
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<td>5.</td>
<td><strong>4.14 Removal of opaque structure condition</strong></td>
<td>Recommended 14</td>
<td>We support this proposal.</td>
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<td>6.</td>
<td><strong>4.15 Doing away with PCC/MCV D&amp;U</strong></td>
<td>Recommended 15</td>
<td>We support this proposal.</td>
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</table>
| 7. | **4.16 Separate registration for sub-funds of a fund with segregated portfolio** | Recommended 16 | 1. We support this proposal.  
2. In addition, we strongly urge SEBI to coordinate with the Income Tax department to establish clear rules for how securities will be treated for a fund transitioning from a consolidated registration to separate registrations of sub-funds. For example, off-markets transfers of securities to the separate accounts must be permitted.  
2. There are important tax issues that must be addressed for funds moving from consolidated to separate registrations. For example, the tax attributes of any securities (holding period, cost basis, etc.) transferred from a consolidated account to separate accounts should remain intact. |
| 8. | **5.1 KYC Reliance on same group regulated entity of custodian for non-PAN documents** | Recommended 18 | 1. We support this proposal. We recommend that it be made clear that no additional KYC would be required other than what the global custodian (GC) otherwise collects. In particular, in the case of regulated funds, this would alleviate the requirement for annual KYC renewal for Category III funds and the three-year KYC renewal for Category II funds.  
2. As stated in the report, GCs follow global KYC-related procedures, including the use of a risk-based approach for customer due diligence. Therefore, a local custodian should be able to rely on the KYC carried out by any regulated GC from a FATF member country, rather than only an affiliated GC. Allowing local custodians to rely on the KYC performed by any |
2. We recommend that SEBI additionally consider permitting a local custodian to rely on KYC carried out by a GC that meets certain standards, such as being regulated and from a FATF member country. qualifying global custodian would address concerns regarding the potential competitive advantage that affiliated custodians are afforded with this proposal.

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<td>9.</td>
<td><strong>5.2 Simplifying certification process for KYC documents</strong>&lt;br&gt;Recommendation 19</td>
<td>We support this proposal.</td>
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<td>10.</td>
<td><strong>5.3 Modification in FPI registration certificate</strong>&lt;br&gt;Recommendation 20</td>
<td>We support this proposal.</td>
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<td>11.</td>
<td><strong>5.4 Simplified verification of PAN for KYC</strong>&lt;br&gt;Recommendation 21</td>
<td>We support this proposal.</td>
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<td>12.</td>
<td><strong>5.5 Power of Attorney as valid address proof for Category III FPI</strong>&lt;br&gt;Recommendation 22</td>
<td>We support this proposal.</td>
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<td>13.</td>
<td><strong>5.7 Simplified Documentation</strong>&lt;br&gt;Recommendation 24</td>
<td>We support this proposal.</td>
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<td>14.</td>
<td><strong>6.2 Review of prohibited sector for foreign investment for FPIs</strong>&lt;br&gt;Recommendation 26</td>
<td>We support this proposal.</td>
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<td>No.</td>
<td>Recommendation</td>
<td>Description</td>
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<td>15.</td>
<td>Liberalized investment cap</td>
<td>We support this proposal. Additionally, we recommend that SEBI clarify that, should an Indian company choose to restrict FPI investment in its shares, existing FPIs would not be required to divest any of their positions to meet the lower threshold. Absent guidance from SEBI, it is unclear whether FPIs would need to divest.</td>
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<td>16.</td>
<td>6.4 Harmonisation between investment restrictions in FPI Regulations and FEMA 20(R)</td>
<td>We support this proposal.</td>
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<td>17.</td>
<td>6.7 Clarity on “to be listed” share</td>
<td>1. We support this proposal. 2. We recommend that guidance be provided regarding whether the unlisted shares of an IPO that has been shelved for several months or years are to be considered “to be listed.” 2. We request this guidance because it is unclear how such shares should be treated and they may therefore be treated differently by investors.</td>
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<td>18.</td>
<td>7.1 Liberalization for regulated Category III FPIs</td>
<td>Although we generally support this proposal, it further complicates the FPI regulations. We recommend that SEBI consider simplifying these requirements by including regulated entities from non-high risk jurisdictions in Category II.</td>
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<td>19.</td>
<td>7.2 Off-market Transactions</td>
<td>1. We support this proposal. 2. In addition, we strongly urge SEBI to permit free of cost off-market transfers of shares in the event of overseas reorganizations. This regulation could be conditioned on a requirement that FPI’s disclose any overseas income-tax outcome of such reorganizations can be</td>
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20. **7.4 Reclassification of investment from FPI to FDI**
   Recommendation 35
   - We recommend that SEBI allow FPIs to obtain prior approval to invest over the ten percent FPI limit if such investment is for investment purposes only.
   - In addition, we recommend that SEBI reconsider the circumstances in which investments need to be clubbed, and require such clubbing only when such entities are truly affiliates. For example, as described above, FPIs may be seeded by an investment adviser (that is broad based) and, under current interpretation, these FPIs are then grouped for purposes of the clubbing limit, even if they are not acting in concert or are not related entities.
   - The ten percent limit for FPIs (on a clubbed basis) is overly restrictive and is a barrier for certain FPIs that are investing for investment purposes only and have no intention of controlling an issuer.

21. **7.5 Continuance of Registration**
   Recommendation 36
   - We support this proposal.

22. **7.15 Modification in SEBI circular on eligibility conditions for FPIs**
   Recommendation 49
   - We support this proposal.

23. **Effective Date of New Regulations**
   - We recommend that SEBI incorporate a transition period for any new regulations.
   - Although many of the changes proposed in the report of the Working Committee are welcome and will make it easier for FPIs to invest in India, implementing any change to the requirements for opening and operating a foreign investment account can be a complex
process for a fund manager. A transition period will provide industry participants with an opportunity to review and understand new provisions (particularly new forms), address any questions or request clarity if needed, and implement procedures and process to comply with such new regulations.

Historically, there has not been an implementation period and market participants have experienced significant delays to FPI applications because market participants needed to incorporate the new rules into the application documentation before moving forward with the application.

* * * * *

We greatly appreciate your consideration of these issues. If you have any questions, please contact me at +1 (202) 326-5876 or jennifer.choi@ici.org or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or emykolenko@ici.org.

Sincerely,

/s/ Jennifer S. Choi

Jennifer S. Choi
Chief Counsel
ICI Global