The Asset Management Industry
SERVING INDIVIDUAL INVESTORS

Letter from the Investment Company Institute

August 28, 2026

Reserve Bank of India
Central Office Building
Shahid Bhagat Singh Road
Mumbai-400 001

Submitted electronically to NDIfeedback@rbi.org.in

Re: Rationalisation of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019

Dear Sir or Madam:

The Investment Company Institute (ICI)[1] appreciates the opportunity to provide feedback on the Reserve Bank of India (RBI)'s consultation on Rationalisation of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (NDI Rules).[2]

ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. Our members manage assets on behalf of investors around the world, including through regulated investment funds that invest in India and other capital markets globally.

ICI welcomes the RBI's initiative to rationalise the NDI Rules into a principle-based framework for foreign investment while enhancing ease of doing business. We are concerned, however, that certain provisions of the Draft Foreign Investment Rules (Draft FI Rules) could inadvertently subject SEBI-regulated funds in India, such as domestic mutual funds and domestic exchange-traded funds (ETFs), to stipulations that were designed for other forms of

[1] The Investment Company Institute (ICI) is the leading association representing the global asset management industry in service of individual investors. ICI members are located in Europe, North America and Asia and manage fund assets of $58.5 trillion, including UCITS, mutual funds, exchange-traded funds (ETFs), closed-end funds, unit investment trusts (UITs) and similar funds in these different jurisdictions. ICI has offices in Brussels, London, and Washington, DC.

[2] Rationalisation of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 – Draft Rules for Comments https://www.rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=63204

investment. These types of regulated investment funds are diversified, professionally managed investment vehicles that raise capital from a broad range of Indian domestic as well as foreign portfolio investors and operate under extensive SEBI oversight. Clarifying the treatment of these funds would help ensure that the final rules appropriately consider their nature and characteristics while preserving the RBI's policy objectives of simplification and harmonisation.

We provide further comments and additional detail on these suggestions below.

I. Exclude Mutual Funds and ETFs from the ambit of "investment vehicle" under the "Foreign Controlled Entity" Test (Rule 3(1)(h))

We request the RBI to clarify that SEBI-regulated Indian mutual funds and ETFs will not be considered "foreign controlled" even if the sponsor or asset management company is foreign owned or foreign controlled, and that Indian mutual funds and ETFs are not considered "investment vehicles" for the purposes of the foreign controlled entity test. This clarification would be consistent with the current treatment of Indian equity mutual funds and ETFs, which were excluded from the definition of "investment vehicle" under the NDI Rules, per Notification S.O. 4355(E), dated December 5, 2019 (2019 amendments). [3] The 2019 amendments recognized the distinct structure and operation of SEBI-regulated mutual funds and ETFs and helped ensure that such funds would not be treated as foreign controlled solely because of the ownership structure of the asset management company.

We are concerned that the proposed definition of "foreign controlled entity" under Rule 3(1)(h) and the treatment of "investment vehicles" under the Draft FI Rules could be interpreted to reverse the approach under the 2019 amendments and bring Indian mutual funds and ETFs back into scope. We submit that the potential disconnect has arisen because the Draft FI Rules do not define the term "investment vehicle" and instead list the types of investment vehicles (including mutual funds and ETFs) in the definition of "eligible investee entity" in Rule 3(1)(b)(iii) of the Draft FI Rules. The Draft FI Rules also do not clearly explain how ownership and control should be determined for Indian mutual funds and ETFs. The proposed definition under Rule 3(1)(h) provides that ownership and control shall be governed by the applicable provisions stipulated by the relevant sectoral regulator and, in the absence of such provisions, by the law under which the entity is incorporated. However, SEBI's mutual fund regulations do

[3] Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2019 https://issuer.nsdl.com/docs/%28First_Amendment%29_NDI%20Rules_2019_dated_December5_2019.pdf

not provide a specific test for determining whether a domestically issued mutual fund is "foreign controlled".

Under the current NDI Rules framework, only downstream investments by an Indian company, limited liability partnership, and an investment vehicle (which is specifically defined to exclude Indian mutual funds and ETFs) are considered indirect foreign investment. Since mutual funds and ETFs are not considered as investment vehicles under the NDI Rules framework, investments by mutual funds and ETFs are not considered indirect foreign investment, regardless of the extent of units held by non-resident investors in a mutual fund or an ETF and regardless of whether the sponsor or asset management company of such mutual fund or ETF is foreign owned or controlled.

Exclusion of Indian mutual funds and ETFs would remain consistent with the RBI's policy goals underpinning the Draft FI Rules, including regulatory coherence, ease of doing business, and a future-ready framework. Regardless of the ownership structure of the asset manager, it does not own the assets of the Indian mutual funds or ETFs managed by that firm. The asset manager invests those assets on behalf of the fund's investors in a fiduciary capacity and under SEBI's regulatory framework. Therefore, an Indian mutual fund's or ETF's investments should not be treated as foreign controlled solely based on the ownership structure of the asset manager. We further note that linking the determination to the ownership of the sponsor or asset manager may not only adversely affect the foreign asset management groups that are currently active in India, but may also adversely affect Indian asset management groups that are publicly traded companies and whose shares therefore could be held predominantly by non-resident investors at some point in the future. Given the significant amount of Indian mutual funds, ETFs, and corresponding assets managed by foreign owned or publicly traded asset managers, a change in the rules that may result in these funds being treated as foreign investors could create significant and unnecessary confusion in the mutual fund and ETF market in India.

Therefore, we respectfully request the RBI clarify that—consistent with current practice—the ownership and control of an Indian mutual fund or ETF will not be determined by the ownership or control of its sponsor or asset management company, and that such mutual funds and ETFs are excluded from the definition of investment vehicle as it relates to foreign controlled entities.

II. Additional Recommendations and Clarifications to Facilitate Mutual Funds and ETF Activities

If the RBI adopts the approach described in Section I above, many of the other potential operational uncertainties identified by market participants would be resolved. To promote further certainty and facilitate implementation of the Draft FI Rules, we respectfully also suggest clarification of the following additional items.

- **Clarify the Treatment of Hybrid Instruments in the Definition of "Equity" (Rule 3(1)(d))**
  Rule 3(1)(d) defines "equity" by reference to applicable accounting standards. Those accounting standards, however, also recognize certain compound or hybrid instruments, such as convertible bonds and other hybrid securities, that combine features of both debt and equity. We suggest that the RBI clarify how such instruments will be classified for purposes of the Draft FI Rules, to avoid uncertainty regarding their treatment and applicability under the Foreign Exchange Management Act, 1999.

- **Clarify the Treatment of Foreign Investment in Unlisted Companies and LLPs (Rule 3(1)(f) and (g))**
  Under the current framework, foreign investment in an unlisted Indian company or LLP is treated as FDI irrespective of the level of shareholding, while for listed companies, foreign investment of less than 10 percent of equity capital is classified as foreign portfolio investment (FPI) and investment of 10 percent or more is classified as FDI. We welcome the RBI to clarify whether the 10 percent threshold distinguishing FDI and FPI under Rule 3(1)(f) and (g), and the corresponding regulatory requirements, are intended to apply to all foreign investment, including both listed and unlisted companies and LLPs.

- **Affirm that Pricing and Valuation Requirements for Mutual Funds and ETFs are Determined by SEBI Regulations (Rule 8(2))**
  Rule 8(2) of the Draft FI Rules requires that foreign investment in equity be priced in accordance with specified methodologies, and specifies that pricing for investment vehicles is determined in accordance with the relevant SEBI regulations. In the context of our recommendation to exclude Indian mutual funds and ETFs from the ambit of “investment vehicle” for the purposes of the “Foreign Controlled Entity” test, we suggest the RBI confirm that Indian mutual funds and ETFs may continue to rely on the existing SEBI pricing and valuation framework for the purposes of Rule 8(2)(a).

- **Leverage Existing SEBI and Market Infrastructure Reporting (Rule 9)**
  Rule 9 places the burden of compliance on the foreign investor and the eligible investee entity, or on the transferor and transferee, as applicable. We encourage the RBI to continue leveraging existing depository infrastructure wherever possible for reporting purposes. A uniform depository-based reporting approach would reduce operational complexity and facilitate consistent compliance across market participants, particularly for exchange-traded transactions undertaken by regulated pooled investment vehicles.

- **Publish the Remaining Annexures for Consultation (Annexures II and III)**
  A significant part of the operation of the Draft FI Rules depends on the Annexures. We respectfully suggest that the RBI make the proposed text of Annexures II and III available to allow stakeholders to assess the proposed Draft FI Rules as a whole and allow a further period for comment before the Draft FI Rules are finalised.

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Thank you again for the opportunity to provide feedback on the Consultation. If you have any questions, please contact me at tracey.wingate@ici.org, Matthew Mohlenkamp at matthew.mohlenkamp@ici.org, or Kaori Kabata at kaori.kabata@ici.org.

Sincerely,

/s/ Tracey Wingate

Tracey Wingate
Chief Global Affairs Officer
Investment Company Institute