

MEMO# 31406

September 25, 2018

SEBI Issues New Circulars on Foreign Portfolio Investor KYC Norms and Eligibility Criteria

[31406]

September 25, 2018 TO: ICI Global Investing Subcommittee
ICI Global Regulated Funds Committee
International Operations Advisory Committee
SEC Rules Committee
Security Valuation Operations Committee
Tax Committee RE: SEBI Issues New Circulars on Foreign Portfolio Investor KYC Norms and Eligibility Criteria

On September 21, 2018, the Securities and Exchange Board of India (SEBI) issued two circulars specifying revised norms on eligibility conditions for foreign portfolio investors (FPIs) and know your client (KYC) requirements for FPIs.[\[1\]](#) As we previously informed you, in April 2018 SEBI issued a circular on KYC norms for FPIs that raised significant concerns for FPIs that are regulated funds, as well as other investors in India.[\[2\]](#)

As a result of the issues raised and feedback received from industry regarding the April circular, SEBI requested that a working group under the leadership of Mr. H.R. Khan provide recommendations for improvement. The working group recommended a number of relaxations to the KYC requirements for FPIs, most of which we supported in our response to SEBI's request for feedback on the working group's recommendations.[\[3\]](#) The SEBI Board, in its September 18 meeting, considered this matter and broadly accepted most of the recommendations of the Khan working group.

The two new circulars implement the Board's decisions. We understand that SEBI will be issuing another circular regarding the clubbing of investment limit of FPIs and that further amendments may be made to the SEBI (Foreign Portfolio Investors) Regulations, 2014, wherever necessary (and will be separately notified).

The key revisions in the circulars are discussed below.

Eligibility Conditions for FPIs

- Non Resident Indians (NRIs), Overseas Citizens of India (OCIs) and Resident Indians (RIs) are permitted to have a significant economic interest in an FPI, provided that (i)

investment by a single NRI/OCI/RI in an FPI is less than 25% of the corpus of the FPI, and (ii) investments by all NRIs/OCIs/RIs taken together are less than 50% of the corpus of the FPI.

- An investment management entity controlled by NRIs/OCIs/RIs can be in control of an FPI provided it is regulated in its home jurisdiction and registers with SEBI as a non-investing FPI or it is set up under Indian law and is registered with SEBI.
- The restrictions on NRIs/OCIs/RIs controlling an FPI do not apply to FPIs that are “offshore funds” for which no-objection certificate has been provided by the Board in terms of SEBI (Mutual Fund) Regulations, 1996.
- There is no restriction on NRIs/OCIs/RIs being identified as the senior managing official (SMO) of an FPI.
- Existing and new FPIs will need to satisfy the eligibility conditions within two years from the date of the amended regulations or from the date of registration, whichever is later.
- FPIs are given 90 days to remediate in case of temporary breach.

KYC Requirements for FPIs

- Identified beneficial owners (BO) are still required to provide information in the stipulated format. However, the FPI may provide *any* government issued identity document number (e.g. driver’s license). A SSN or passport number is not required.
- The KYC Registration Agency is required to protect personal information of BOs reported by the FPIs and access to such information to market intermediaries will only be made on a need to know basis using an authentication method.
- Contrary to our recommendation, listed companies that are FPIs are not excluded from the requirements to identify a BO.
- Existing FPIs need to provide the details of the BOs and relevant KYC documentation within six months from the date of the circular (i.e. March 20, 2019). If an FPI is unable to do so, it will not be permitted to execute purchase transactions after that date.

Clubbing of Investment Limits

- There is a comment in the KYC circular that clubbing should not be done on the basis of BO as per the rules of the Prevention of Money Laundering Act (PMLA). However, the circular does not clearly specify the final requirements for clubbing of investment limits.
- We understand that SEBI intends to separately address this issue.

We will hold a member call or webinar on the new FPI KYC requirements within the next few weeks (details are still to be determined).

Eva M. Mykolenko
Associate Chief Counsel - Securities Regulation

endnotes

[1] The circulars are available at <https://www.sebi.gov.in/legal/circulars/sep-2018/know-your-client-requirements-for-foreign->

[portfolio-investors-fpis-_40408.html](https://www.sebi.gov.in/legal/circulars/sep-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-_40408.html) and https://www.sebi.gov.in/legal/circulars/sep-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-_40408.html.

[2] The circular is available at https://www.sebi.gov.in/legal/circulars/apr-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-_38618.html. ICI Global submitted a letter expressing our primary concerns with the circular on August 1, and certain of the compliance requirements were subsequently delayed by SEBI from October 10 to December 31. Our letter is available at <https://www.iciglobal.org/iciglobal/pubs/memos/memo31311>.

[3] ICI Global's letter providing feedback on the Khan committee's recommendations is available at <https://www.iciglobal.org/pdf/31387a.pdf>.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.