14 June 2019

Mr. Achal Singh

General Manager

Division of Foreign Portfolio Investors & Custodians

Securities and Exchange Board of India

Dear Shri Singh,

ASIFMA response to SEBI consultation on Khan Committee Report of the Working Group on FPI Regulations

On behalf of its members, Asia Securities Industry & Financial Markets Association ("ASIFMA[1]") is submitting hereby our comments and suggestions on the SEBI consultation on the 'Report of the working group on the SEBI (Foreign Portfolio Investors) Regulations, 2014' submitted by the working group under the Chairmanship of Shri Harun R. Khan, Deputy Governor (retd.), Reserve Bank of India ("Consultation").

We have outlined in Annex 1 the feedback from ASIFMA members and ASIFMA Asset Management Group members including local custodians, Foreign Portfolio Investors ("FPIs"), brokers and Offshore Derivatives Instruments ("ODI") issuers. We have only outlined the recommendations where we have questions, concerns or suggestions. We are supportive of all other recommendations that are not mentioned in Annex 1.

We very much appreciate the efforts of SEBI and the Khan Committee to smoothen FPI access and investments in India and are broadly supportive of the approach to many of the recommendations set out in the Consultation. We believe that consolidating and rationalizing the various circulars, clarifications and FAQs will significantly reduce complexity and increase the ease of doing business for FPIs. ASIFMA members are supportive of simplifying the compliance regime for FPIs whilst retaining appropriate control to detect potential AML and/or misconduct.

As noted above we are also incorporating the comments, suggested changes and rationale from the ODI Issuers group. The group is concerned about the potentially material negative impact on the legitimate

[1] ASIFMA is an independent, regional trade association with over 110 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region's economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

interests of ODI investors (which are the same for India as they are for other jurisdictions). We consider that this misses a real opportunity to support the growth of capital markets in India through this segment at a time when global uncertainty and trade barriers are negatively affecting sentiment in other major emerging markets.

We have also taken the opportunity to bring to your attention in Annex 2 a number of recommendations that were not included in the Consultation but that we believe will significantly smoothen the FPI registration and investment process whilst at the same time meeting SEBI's objectives.

We would be very supportive of an opportunity for a small group of representatives to meet with SEBI and the Working Group to discuss these comments in further detail during the ASIFMA senior staff's upcoming visit to Mumbai on 9-10 July. We look forward to hearing from you further in this regard and remain at your disposal for any questions you might have.

Kind regards,

Mark

Mark Austen
CEO, ASIFMA

ANNEX 1: Feedback on the SEBI consultation on the 'Report of the working group on the SEBI (Foreign Portfolio Investors) Regulations, 2014' submitted by the working group under the Chairmanship of Shri Harun R. Khan, Deputy Governor (retd.), Reserve Bank of India ("Consultation").

Sr. No.	Relevant Section and sub-heading	Comments and suggested changes, if any	Rationale
1	**Generic comment (1)**	Section 4.12, 4.16 & 7.12 suggest multiple timelines for existing FPIs to meet the recommendations. We propose that a common deadline for meeting all new requirements for existing FPIs be proposed. We suggest 2 years from the date of the regulation coming into effect.	This will avoid multiple submissions by existing FPIs at various intervals.
2	**Generic comment (2)**	We observe that while most of the recommendations endeavor to simplify documentary requirements from an FPI registration perspective, it makes procurement of documents confusing as well as complex for other market participants such as brokers & clearing members. In this regard we suggest that a revised set of guidelines be issued with respect to KYC documents to be procured for each entity type and that suitable indications be made available on the FPI certificate to assist the intermediary to understand the KYC template applicable for such FPI.	Easy reference of KYC documents is required per entity type with exemptions for both applicants as well as market intermediaries.

3	**Generic comment (3)**	While allowing the same entity with segregated portfolios (and other entities covered in section 4.4 & MIM) it will be too cumbersome for the entity to provide all entity-related documents on multiple occasions. We recommend a mechanism therefore be devised to either link the parent or the first FPI registered in this chain on the KRA portals such that the intermediaries / other custodians are able to procure the common documents directly without asking the same from client again and again.	This will allow for single basic entity level KYC to be used on multiple occasions by multiple market participants, and therefore ease the life of the applicants as well.
4	**Generic comment (4)**	For market intermediaries other than custodians, we suggest a simplified KYC regime with only the procurement of FPI certificate be mandatory. Additional KYC documents, unless relating to daily operations may not be considered mandatory.	This approach is similar to recommendation 5.1 where custodians are being allowed to depend on KYC done by their group entities. In such cases, wherever required, the regulator will anyway be able to procure necessary documents from the custodians, should the need arise.
5	**Generic comment (5)**	We believe that Annexure I & Annexure II have not completely taken into account all recommendations and we suggest that a final copy of the same be prescribed by SEBI and open for consultation and market comments.	Since it is not yet clear as to whether all stated Recommendations will be finalized as is, an updated version will be required and should be open for consultation and feedback from the market.
6	**4.1 Fast track on-boarding process for select Category II FPIs**	1) We recommend that when an FPI has benefited from fast-track registration, that this	1) We welcome that certain documents (e.g. constitutive documents/fund prospectus" do not need to be provided by fast-track clients. Brokers

	Recommendation 1 on Fast-track registration and KYC	"fast-track status" be added in the FPI registration certificate. 2) Fast-track registration should also be available for certain funds that cater to diverse institutional clients bases, including institutional funds (e.g., common trust funds) from countries that are FATF member and that the investment manager of which is registered as a Category II FPI from a country that is a FATF member. 3) Suggest that all applicants (and not only fast-registration applicants) can only provide the Beneficial Owners (BO) name, date of birth and nationality. The provision of government issued ID numbers should not be required for any FPI applicant.	however would be unaware whether an FPI has benefited from the fast-track registration process and might not be in a position to ascertain why the exempted documents are not available for download on the KRA portal. To indicate the fast-track registration status of FPIs for the brokers, we suggest to add this on the FPI registration certificate. 2) This recommendation should be expanded as it does not afford easier registration processes for funds that cater to institutional clients bases that may be just as diverse in nature and have a stable class of investors. 3) In the note under Recommendation 1, it is mentioned that for funds that go through fast-track registration, the applicant is allowed to only provide the BO name, date of birth (DOB) and nationality and do not have to provide a government issued ID number because "(u)nique identity of BO can generally be established using combination of name, DOB and nationality". We believe this information would be sufficient even for entities that are not allowed to use fast-track registration. We suggest that if this information is sufficient for BOs of one client type, it is sufficient for others as well.

		4) The list of investment types should be expanded to include corporate debt instruments or at the very least, quasi-sovereign corporate debt instruments.	4) Many fixed income funds seeking registration would want the flexibility to invest in both corporate and government debt. Fixed income investments are perceived less risky than equity investments and are already subject to limits and other restrictions.
7	**4.3 Pension funds to be treated Category I FPI** *Recommendation 3: Pension, superannuation or similar scheme that provides retirement benefit to employees/contributors should be treated as Category I FPI. However, BO details will have to be provided for such funds on similar lines as per fast track registration.*	1) We recommend that – - When a Pension, superannuation or similar scheme that provides retirement benefit to employees/ contributors is treated as Category I FPI, that this "Pension Fund status" be added in the FPI registration certificate OR - A declaration from such client be uploaded on KRA by the custodian stating that the client (Fund) is a Pension, superannuation or similar scheme that provides retirement benefit to employees/ contributors. 2) We recommend that this category of investors be eligible to hold ODIs.	1) We welcome that such Schemes would be treated as FPI Cat I clients, but they would have to provide BO details on similar lines as per fast track registration. Brokers would not be aware whether an FPI has benefited as it is a Pension Fund and hence may not be aware of the requirement to collect the aforesaid BO details, though the client is FPI Cat I. To clarify to the brokers that the fund is Pension, superannuation or similar scheme that provides retirement benefit to employees/ contributors, we suggest to add this on the FPI registration certificate OR alternately a declaration from the client (fund) to this effect be uploaded on KRA by the local custodian. 2) This is in line with proposals that the ODI issuers group has made over many years to permit these types of investors. We are pleased to see that there is recognition that this category of investors is rightly considered appropriate for access to Indian markets through the FPI (and also the ODI) route.

8	**4.4 Review of broad based condition for appropriately regulated entities** *Recommendation 4*	1) We are supportive of the recognition of an effective equivalence to be given to conducting KYC in accordance with the home jurisdiction of the FPI, provided they are an FATF member. 2) Although ODI issuers are not included within this category since they are not investing on behalf of clients, we recommend that consideration be given to extending this to cover a similar approach for ODI issuers when conducting KYC on ODI holders.	1) It is common for these kinds of mechanisms to occur (for example a fund manager dealing on behalf of a fund) and we are concerned that there is a risk of unintended consequences which will significantly restrict what is intended to be a liberalization of the rules here. 2) We note that ODI holders are similarly not directly investing in India and we believe that as with other jurisdictions it makes sense that the KYC be conducted according to the home jurisdiction of the ODI issuer, provided that they are a FATF member.
9	**4.5 Deemed broad based status for Insurance/Reinsurance entities** *Recommendation 5* **4.6 Deemed Broad based Status to Category I eligible entities** *Recommendation 6*	We welcome recommendations 5 and 6 that suggest that insurance/reinsurance entities (IRE) as well as entities that are majority owned by a Cat I eligible entities, will be deemed as broad-based. 1) We recommend that Global Custodians (GCs) can also be deemed to be broad-based by their fundamental nature. This is fundamental for complying with the SEBI KYC requirements for a subset of	1) We would like to put forth that characteristics attributable to those entities in the relevant sections for the purposes of gaining comfort as to their broad based status may also be attributable to GCs; this is important for a subset of retail public funds referred to as Exchange Traded Funds (“ETFs”).

		retail public funds referred to as Exchange-Traded Funds (ETFs).	For ETFs, we suggest that SEBI accepts that the Global Custodians (GC) of the ETF can be deemed as the BO and that the GCs can be deemed as broad based. <u>Rationale behind considering GC as BO for ETFs:</u> By way of background, ETFs are exchange listed funds that can be traded both publicly on the secondary market (accessible by the retail public) and on the primary market with institutional investors for the purposes of the creation and redemption of units. Effectively, they trade like a stock but perform like an index mutual fund. Secondary market trading and thus investor holdings and positions are dynamic and may change on a day to day basis. Execution of trades on the secondary market is therefore conducted independent of the manager and outside of its control. For Hong Kong domiciled ETFs for example, when examining the register of named holders via the Central Clearing and Settlement System ("CCASS"), the largest holders of ETFs are usually GCs. It is a similar case for many non-Hong Kong domiciled ETFs. This is because the assets of the ETF via sales of its units are held with the custodian. It is so materially difficult as to be almost prohibitive for the asset manager to look through the GC and find out who the many underlying investors of an ETF are. Even if the GC would provide the information of the investors (which is often not the case, for instance due to laws in regards to confidentiality of investor identities), the report from the GCs often shows funds as investors and it is impossible for the asset manager to further apply the look-through concept and contact that fund for further details on its investors.

			<u>Rationale for deeming GC as broad-based</u> We agree with the highly accurate description of 'Global Custodian' ("GCs") in section 5.1 of the Khan report. Simultaneously, we note the rationale for the proposals relating to 'deemed broad based status' for insurance/reinsurance entities ("IREs") and Cat 1 eligible entities ("C1E") in sections 4.5 and 4.6 respectively. We would like to put forth that characteristics attributable to those entities in the relevant sections for the purposes of gaining comfort as to their broad-based status may also be attributable to GCs; In section 4.5 of the Consultation, it is rightfully noted that IREs are "deemed to be broad based, as the [IREs] are expected to manage / represent money of multiple underlying depositors / investors". Similarly, it can be observed that GCs are expected to safeguard / represent money of multiple underlying depositors / investors. Then in 4.6, it is also rightfully noted that C1E can be "appropriately regulated entities [that are] expected to manage/represent money of multiple underlying depositors/investors". Again, similarly, GCs are essentially appropriately regulated entities expected to safeguard/represent money of multiple underlying depositors/investors. As such, we would argue that GCs can also be deemed to be broad based by their fundamental nature. However, in the event that the SEBI may not fully agree with this position on the basis that a GC may bare the characteristics sufficient to be deemed broad based on a global basis but perhaps not necessarily on a local basis (for example, when taking into account the assets under custody and administration in the

		2) We are supportive of this recommendation and in addition recommend that this category of investors be eligible to hold ODIs.	relevant fund's domicile), we would recommend that an appropriate threshold be considered. For instance, a GC that has at least one billion USD or equivalent on a local (relevant fund domicile) basis or one trillion USD or equivalent on a global basis, should be allowed to be deemed to be broad-based. 2) This is in line with proposals that the ODI issuers group has made over many years to permit these types of investors. We are pleased to see that there is recognition that this category of investors is rightly considered appropriate for access to Indian markets through the FPI (and also the ODI) route.
10	**General comment on broad-based fund requirements**	The broad-based requirement is the biggest obstacle for investment by foreign institutional investors, many of which are the type of long-term investors that we believe India would like to have in their markets. We believe that the regime should be fundamentally re-evaluated and consideration should be given as to whether the broad-based fund concept should be dismantled altogether. If that is not possible, we believe that all sovereign entities, and not just sovereign wealth funds, should be deemed to be broad-based as they all represent or benefit a large group of people.	Our members are opposed to broad-based criteria as a means to determining risk. ASIFMA buy-side members are highly regulated Investment Managers with regulated funds. They cater to an institutional client base and these large institutions are not all pensions or other vehicles for which they can count underlying investors in order to reach a count of 20. Further, with the expanded KYC and disclosure requirements, SEBI can now see all BOs and is free to ask questions in order to gain comfort and assess risk at any time. Broad-based criteria should be eliminated as a mechanism for determining FPI Category and, at the least, broad-based categorization should not be made more cumbersome as this will impact current funds and funds that wanted to launch. For example, with Recommendation 12 (see further below), India is not taking a positive step towards more ease of doing business.

11	**4.6 Deemed Broad based Status to Category I eligible entities** *Recommendation 6:* *In addition to the current provisions, FPIs shall also be deemed to be broad based, if majority of its investors are, directly or indirectly, constituted by Category I eligible entities.*	This recommendation should be merged with existing regulations that allow FPIs that are majority owned by a certain investment type (e.g. banks). Some suggested language if needed could be as follows: "In addition to the current provisions, FPIs shall also be deemed eligible for Category II registration, if majority of its investors are institutional investors, as defined below, and that such institutional investor(s) shall, jointly or separately, hold more than fifty percent of the shares or units of the fund in the applicant fund at all times. (a) Institutional investors are defined as Bank, Sovereign Wealth Fund, Insurance/ Reinsurance company, a Pension Fund, regulated charitable entities and University related endowments, regulated charitable entities from FATF	

		member countries wherein the entity has been in existence for 5 years are eligible or Category I eligible institutional investors".	
12	**4.7 Entities owned by Category I eligible investors** *Recommendation 7:* *In order to provide parity to such entities, it is recommended that the entities which are owned 75%, directly or indirectly or controlled by investors eligible for Category I FPI registration at all times, shall be eligible for Category I FPI registration.*	We recommend that the percentage threshold in Recommendation 7 should be changed from 75% to majority owned.	Recommendation #6 above affords an FPI to be broad based (Category II) if Category I eligible investors own a majority of the FPI and Recommendation #7 affords an FPI to be considered Category I if Category I eligible investors own at least 75% of the FPI. The existence of two percentage thresholds for funds with Category I investors creates an additional burden of monitoring shareholder activity (i.e., subscriptions and redemptions) to determine if re-categorization from Category I to Category II, and vice versa, is needed.
13	**4.10 University related endowments eligible for Category II FPIs** *Recommendation 10:* *University related endowments from FATF member countries wherein the university has been in*	1) We recommend that not only should these entities be eligible for Category II registration but so should FPIs in which such endowments have a majority stake jointly or separately, directly or indirectly with other institutional investors.	1) This will provide parity to entities majority owned by university related endowments from FATF member countries wherein the university has been in existence for more than five years, (See also comments under Recommendation 6 above.)

	existence for more than five years be eligible for Category II registration. Existing university related endowments registered as Category II FPI shall be grandfathered.	2) We are supportive of this recommendation and in addition recommend that this category of investors be eligible to hold ODIs.	2) This is in line with proposals that the ODI issuers groups has made over many years to permit these types of investors. We are pleased to see that there is recognition that this category of investors is rightly considered appropriate for access to Indian markets through the FPI (and also the ODI) route.
14	**4.12 Modification in the criteria of broad-based fund** *Recommendation 12:* *Broad based funds shall include entities set up as collective investment vehicles. Further, the broad basing should be on basis of economic ownership interest either by way of holding units / shares or other instruments. Further, in order to rely on an investor fund for satisfying broad based criterion, such investor fund(s) singly or together should at least be 25% in order to achieve broad based status for the fund. Existing FPIs not meeting this condition will be grandfathered for a period of three years from the date of notification of this change.*	1) We strongly suggest to delete this recommendation in its entirety. 2) The recommendation says that broad basing should be on basis of economic ownership interest either by way of holding units / shares or other instruments. In principle, we agree with this. There was however recently the introduction of an accommodation for ETFs and their ability to provide necessary information on their senior managing officials for KYC purposes. We would like to ensure that this clarification would not frustrate that.	1) This recommendation makes registration even more difficult for certain institutional funds and for newly launched funds. Recommendation 12 will make registration harder for funds that cater to an institutional client base which will negatively impact time to market.

15	**4.13 Conditional Registration as Category II FPI** *Recommendation 13:* *It is suggested that:* *i. 180 day validity of conditional registration should be extended for Category II FPI applicants who are well established in home jurisdiction.* *ii. 90 days conditional registration be also granted to unregulated funds seeking registration under Category II, whose IM is registered as Category II FPI or for regulated Category III funds.* *Subject to above that during the period of "conditional" registration, FPIs are not permitted to issue or subscribe to ODIs.*	We suggest this recommendation be simplified and suggest to allow 180 days across the board for all categories (i.e. new/established, regulated/unregulated, launch one/more new share classes) to bring uniformity. Similarly, we suggest a 90-day timeline for retainment of broad-based status as well as all breaches which would make the FPI ineligible to remain under the same category.	Having two time periods makes compliance with these timelines more complicated and negatively impacts ease of doing business. Our suggestions will lead to more uniformity.
16	**4.14. Removal of opaque structure condition** *Recommendation 14:* *All FPIs need to provide BO details and those who failed to provide BO details including on account of bearer shares cannot deal in*	We welcome this recommendation for FPIs. We would like SEBI to clarify whether the opaque structure requirement is still relevant for India ODI given the move to bring ODI subscribers to FPI standards, including requiring them to provide UBO declaration.	The Consultation has recommended removing the term opaque structure under recommendation 14 but in the FPI operating guidelines, the prohibition of opaque structure for ODI subscribers still remains.

	securities market in India. Thus, there is no need for separate definition of "opaque structure". The "opaque structure" clause may therefore be removed from FPI Regulations.		
17	**4.16 Separate registration for sub-funds of a fund with segregated portfolio** *Recommendation 16:* *There should be separate registration for each sub-fund/share class having segregated portfolio investing in India. Also, the matter be taken up with Income Tax Department for separate PAN for each sub-fund or fund in consultation with Income-tax. Existing FPIs shall be provided one year to comply with new provisions.*	We truly appreciate the stance taken in this recommendation which allows funds with segregated portfolio to take multiple registrations. However, for existing FPIs with such structure, it is extremely important to understand the tax implications should they be mandated to split their existing registrations from one to many. We request SEBI to take this up with the Income tax authorities and provide more clarity in this regard.	Investments already made under the current registration may be difficult to split. Further, the requirement to update investors in the fund will have a cost impact and other implications on FPIs.
18	**5.1 KYC Reliance on same group regulated entity of custodian for non-PAN documents** *Recommendation 18:* *For non-PAN related KYC documents, SEBI may consider permitting a local*	1) We request clarification on how this would be operationalised. If the local custodian relies on the KYC done by the GC, then it would ideally not obtain/ upload KYC documents on KRA. Clarity would be required about what would be the obligation on	1) Brokers are obliged to obtain KYC documents during the onboarding process and generally do this by downloading documents from the KRAs. The documents are uploaded on the KRAs by the local custodians. If recommendation 18 comes into effect, brokers would need clarification whether brokers too can rely on the arrangement between the local custodian and the GC by the local custodian uploading an undertaking on the compliance on the

	custodian to rely on KYC carried out by its group entity which is regulated and is from an FATF member country. Where such a reliance is placed, the group entity/ FPI should provide an undertaking to the effect that the relevant KYC documents, as applicable in India, would be submitted to the DDP/ Local Custodian when required by regulator/law enforcement agency/ government departments/ tax authority, etc.	stock brokers while onboarding such FPIs. Changes would also be required on the KRA portal to separately identify such FPIs. 2) We recommend that SEBI consider permitting a local custodian to rely on KYC carried out by an (external) Global Custodian that meets certain standards, in addition to group entities, provided the undertaking specifying the same is uploaded on the KRA portal. In case the said documents are required by the broker under law, the local custodian/GC should be willing to share the documents whenever required. 3) FPI KYC related changes made by SEBI should also be incorporated by RBI and updated in its KYC Master Directions. 4) The recommendation allows a local custodian to rely on KYC carried out by its group entity which is regulated and is from a FATF member country, as	KRAs portal. If brokers are required to obtain these documents from FPIs, then each broker would chase these FPIs thereby defeating the very purpose of these recommendations. 2) The recommendation as it is currently written would seem to benefit certain custodians that use their own local custodians in India over others that do not. If SEBI can also allow local custodians to rely on external global custodians that meet certain standards, that would level the playing field among custodians and this would also create easier access to India for clients that use the global custodians that do not have a presence in India. When a local custodian relies on KYC carried out by GC/ group entity a standard checklist/ undertaking with regards to KYC compliances should be uploaded on the KRA portal and brokers should be permitted to place reliance on the same. 3) RBI KYC requirements for FPIs need to be in sync with SEBI KYC requirements. 4) As India ODI Subscribers have already undergone KYC with their Investment Managers / Investment Advisors, there is need to avoid duplicity of KYC process in India.

		FPIs have already undergone KYC with their GC, there is need to avoid duplicity of KYC process in India. By the same token, we would suggest allowing India ODI issuers to rely on KYC carried out by Investment Managers / Investment Advisors which are regulated and are from a FATF member country.	
19	**5.2 Simplifying certification process for KYC documents** *Recommendation 19:* *The KYC documents should be appropriately certified by the Notary Public, officials of Multinational Foreign Banks, or any bank regulated by RBI. Self-certification of the supporting documents is optional and such self-certification will not invalidate KYC documents.*	We are supportive of this recommendation and this recommendation should apply to India ODI as well.	If a certified standard is acceptable for FPI purpose, it should equally be acceptable for India ODI.
20	**5.4 Simplified verification of PAN for KYC** *Recommendation 21:* *i. For opening of accounts with Local Custodians in a quick time verification of PAN on the specified website of*	Brokers need to have access to the Income Tax website OR Evidence of verification of PAN by the custodian(s) should be uploaded on the KRA to enable other intermediaries	Whilst we are in principle supportive of recommendation 21.i, we would like to point out that NSDL currently does not allow brokers and trading businesses to access the Income tax website because of the large number of brokers. As custodians would verify the PAN from the specified website, then our recommendation would be that the custodian uploads a confirmation to that effect on the KRA portal on

	the Income tax authorities should be sufficient and there should be no need to provide/ receive PAN Cards.; *ii. alternatively, e-PAN issued by CBDT can also be produced by FPI for KYC compliance without requiring any certifications.*	to benefit from the same while performing their due diligence.	which brokers can rely. If brokers are also expected to verify the PAN, then this problem needs to be resolved before brokers and their FPI clients can benefit from this recommendation.
21	**5.5 Power of Attorney as valid address proof for Category III FPI** *Recommendation 22: Power of Attorney duly legalized (appostiled/ consularised and notarized) may be considered as valid address proof document for Category III FPI applicants from non-high-risk jurisdictions.*	We suggest that SEBI clarifies which countries are on the list of high-risk jurisdictions, or alternatively, refers to objective sources (e.g. UN sanctions list, FATF members etc.). This comment is also relevant for other recommendations that refer to the concept of high-risk jurisdiction. The most recent updated recommendations from the H. R. Khan Workgroup, reference in a number of places FATF recommendations, which India fully complies with in regard to AML regulations. We believe this is a good reference point to extract a list of high-risk countries, i.e., those countries that do not currently comply with FATF recommendations should be identified as high-risk. India is also an early adopter of the Common Reporting Standard (CRS). So any country that is not adopting both FATF	As became evident last year, it is impossible for the industry to agree on a common list of high-risk jurisdictions. Also, it is unclear what would happen in case an FPI's custodian considers a client as coming from a low risk jurisdiction whilst the FPIs broker considers that jurisdiction as high risk. In such a case, in addition to a standard checklist/ undertaking uploaded by a local custodian on a KRA portal, brokers should be permitted to rely on the custodian's risk rating. This is because even if the broker requests for incremental documents from FPIs due to their internal country classification, FPIs generally are not willing to share any additional documents with the brokers. (See also comments under Recommendation 18 above.)

		recommendations and CRS, would be an objective list of high-risk jurisdictions.	
22	**5.6 Submission of additional details for enquiry/ investigations** *Recommendation 23:* *The regulator may ask for additional document/ information including complete investor details as required at the time of enquiry/ investigations or enforcement proceedings for Category III FPIs and those Category II FPIs from high risk jurisdictions.*	We are concerned that this is too broadly defined. Clarification would be welcome to establish what type of documents/information would be expected when mentioning "complete investor details"	We are not clear why there is a need for SEBI to be given additional powers as we believe that they are already held. We would be grateful for clarification on this point.
23	**5.7 Simplified Documentation – Miscellaneous** *Recommendation 24:* *To cut down the need for obtaining similar details from multiple documents it is recommended to exempt submission of following documents:* *…*	1) In case of recommendation 24.c, pertaining to board resolution (BR), clarity is needed on how the broker will ascertain whether SWIFT is used as a medium of instruction between its local custodian and FPI or its authorised representative for execution of KYC related documents. Suggest the same to be done away with for brokers.	1) In the absence of a BR / ASL, brokers may not be able to ascertain authenticity of the KYC documentation executed / certified by the client's authorised officials. Hence if the BR / ASL is not available on KRA, brokers would have to assume that SWIFT has been used as a medium of instruction for execution / certification of KYC documentation by the client's authorised officials. Brokers do not receive any signed instructions from FPIs. Also, all the transactions executed for FPIs are

	c) Board Resolution and the authorized signatory list (ASL) if SWIFT is used as a medium of instruction between custodian and FPI or its authorized representative being regulated bank or custodian in FATF member country. However, the FPI has to provide the ASL if they use any other mode of communication.	2) We suggest this recommendation should apply to India ODI as well.	settled only once the same are confirmed by the custodian. Hence, this requirement can be dropped for brokers, as brokers can rely on a checklist/ undertaking uploaded by custodian (See also comments under Recommendation 18 above.) 2) If such relaxation is allowed for FPI purpose, it should equally be applicable to India ODI.
24	**6.6 Strengthening of clubbing restrictions** *Recommendation 30:* *The investor group should consist of all associate entities of FPI who are investing in Indian securities and identified on basis of common ownership of more than 50% or common control. FPI need to ensure that holding of all their group entities in shares of a company shall be below 10%. In case the limit is breached, either all entities of investor group are re-categorised as FDI in accordance with the procedure prescribed by SEBI & RBI or divestment is made*	This will be very difficult requirement to monitor and we suggest rolling back this recommendation. A couple of concerns include: a) How will action be coordinated amongst group entities? Will the DDP inform each FPI of the decision of another? Will the action of one FPI in the group influence what another can do e.g., if Company ABC re-categorizes holdings to FDI, must all others in the group do the same? Note that group entities can be unrelated parties whereby, as an example, Company ABC invests for itself and also invests via an unrelated or unaffiliated mutual fund.	The recommendation would impose constraints on asset managers' holdings at 10%, which will restrict investment strategies which would not be serving clients' best interest. It could also reduce participation in the Indian securities markets by global asset managers which may not be a desired outcome for RBI or SEBI.

	within 5 trading days from date of settlement of the trades causing the breach. SEBI may take this up with RBI and Government to frame further rules in this regard.	b) How to ensure compliance in the case of segregated funds? c) How to comply in case a fund (e.g. a sovereign wealth fund) has different investment managers. Based on the above, we also propose that it be clarified that the obligation to comply with this limit be clarified to rest with the FPI group and not with the DDPs or other parties. Overall, the real issue here is that the clubbing rules have to be improved and should only relate to true affiliates, based on shares alone. If a full rollback of this requirement is not possible, we propose that the current restriction be changed from a full restriction to a disclosure obligation and/or that it does not apply to global asset managers who manage assets on behalf of their clients. Lastly, independent business units should be allowed to have separate investment limits.	This recognises that only the FPI group is able to effectively monitor compliance with this restriction. This is similar to other jurisdictions. This is consistent with Indian disclosure of interest obligations. This is consistent with other jurisdictions.
25	**6.7 Clarity on "to be listed" share** *Recommendation 31:*	We suggest that this guidance be more specific.	There have been cases where a proposed IPO has been shelved (e.g., NSE). If it is clear that that IPO has been shelved for several years or months and unlisted shares were held, can SEBI clarify whether these shares are considered as "to be listed"?

	FPIs shall be permitted to acquire "to be listed" securities only in case of initial public offer (IPO) i.e. when the offer of specified securities by an unlisted issuer has being issued to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer;		
26	**7.1 Liberalization for regulated Category III FPIs** *Recommendation 32:* *KYC requirement for regulated Category III entities, coming from non high-risk jurisdictions, shall be equivalent to KYC requirement applicable to Category II FPIs. All other applicable Category III restrictions shall continue to apply for such FPIs.*	While this is welcome, this further complicates the FPI regulations. We suggest that this be simplified by simply stating that regulated entities are given Category II status as long as long as they are from non-high-risk jurisdictions. Additionally, we suggest that SEBI clarifies which countries are on the list of high-risk jurisdictions, or refers to objective sources (e.g. UN sanctions list, FATF etc).	Currently, Category II FPI's from high risk jurisdictions need to provide KYC on par with Category III requirements but Category III investment restrictions are not imposed. For this recommendation, Category III from non-high-risk jurisdictions can now provide KYC on par with Category II requirements, but other Category III investment restrictions still apply. This is confusing for FPIs. Further, as mentioned above under Recommendation 22, absence of uniform list of high-risk jurisdictions would further complicate the process as FPIs are not willing to share any incremental documents to brokers due to brokers internal risk classification.
27	**7.4 Reclassification of investment from FPI to FDI** *Recommendation 35 v. c.*	Paragraph (v)(c) in this recommendation indicates that in the event of a 10% breach by an investor group that group "…may be permitted	The reality here is that Company ABC will not seek permission from an unrelated/unaffiliated mutual fund, and vice versa. Therefore, it appears that this scenario could result in forced divestment by one party based on the actions by

	If the 10% breach takes places on account FPI and FPI investor group collectively breaching 10% limit, then such security holding of all FPIs in the investor group be considered to be FDI. An investor group may be permitted to hold either FDI (upto applicable sectoral limit) or FPI (below 10%) investment in a particular Indian company, but not both.	to hold either FDI… or FPI investment in a particular Indian company, but not both." In line with our comments on recommendation 30, we would like to point out the complexity of the situation and request rolling back this requirement. Overall, the real issue here is that the clubbing rules have to be improved and should only relate to true affiliates	another (e.g., Company ABC decides to hold FDI but the unrelated/unaffiliated mutual fund does not want to).
28	**7.10 Legal Entity Identifier – LEI** *Recommendation 41:* *All FPIs and ODI subscribers need to provide their LEI in a time bound manner coinciding with RBI requirements in this regard. Further, SEBI may consider utilizing LEIs for monitoring purposes including compliance with clubbing requirements. Further, in due course, SEBI may consider lowering the documentary requirements to verify identity of legal entity for KYC*	We are generally supportive of measures to introduce LEIs to assist in accurate identification of clients accessing the Indian securities markets through FPIs or ODIs. However, clarification is needed on what is meant by a "time bound manner". We note that not all funds have LEIs and we recommend that a transition period be allowed to allow time for both FPIs and ODI holders who do not have LEIs to apply and obtain them. We would also welcome clarification on other proposed uses SEBI may make of LEI.	The LEI provides a standardized identifier to allow SEBI to accurately identify the fund holding either a cash position through the FPI or an OTC Derivatives position through the ODI.

	purpose once use of LEI becomes a common practice.	Also, we would like to point out that LEI cannot in itself be used to facilitate the monitoring of the clubbing requirements.	The LEI provides details of group which the LEI belongs to but the rules are not the same as for SEBI clubbing.
29	**7.14 Strengthening of ODI Framework** **(i) Compliance with SEBI circular dated July 07, 2017** *Recommendation 45:* *"ODIs with derivative as underlying" (as referred in clause 2.1 of SEBI circular dated July 07, 2017) shall mean ODIs hedged directly or indirectly on a one to one basis or portfolio basis in derivatives listed in India.*	We propose that this recommendation be withdrawn. The rationale for the following statement has never been understood by the ODI issuers: "SEBI's concern for introducing said restriction was to discourage build-up in derivative segment in India by ODI issuing FPIs on the back of ODIs issued overseas". If we could understand the reason for this concern we would be in a position to suggest alternative mechanisms which SEBI can consider to address the concern. We are clear in our understanding that this concern is unrelated to client's seeking to take ODI exposure to derivatives for two reasons a) ODIs referencing derivatives were effectively banned by the July 2017 Circular and b) the ODI subscriber cannot specify the manner in which an ODI is hedged. We can only conclude that SEBI is concerned with ODI issuers holding positions in listed derivatives in India.	The holder of an OTC derivative simply obtains economic exposure to the reference asset; the holder is not entitled to nor do they obtain the actual asset itself. The "issuer" of the OTC derivative independently manages the risk it has taken on via various hedging mechanisms. The holder of the OTC derivative is not entitled to determine or instruct how the issuer manages/hedges its risk. Implementing a requirement that the OTC derivative (or ODI) be hedged with stock on a one to one basis impedes upon the issuer's ability to effectively manage its risks across the wide portfolio of OTC derivatives it has entered into and optimize its capital structure and usage, balance sheet, and funding. This negatively impacts the ability of the issuers to attract investment into the Indian capital markets. a) The one for one stock hedging requirement also causes legal, accounting and tax complications for the ODI issuers and their clients. These issues need to be assessed in the context of: The Indian regulatory, accounting and tax environment and b) The ODI issuer home jurisdiction regulatory, accounting and tax environment and c) The ODI holder regulatory, accounting and tax environment The statement "thus intend is to restrict acquiring derivative position in India with the objective of issuing ODIs" does not accurately reflect the way in which OTC derivatives operate. Derivative positions are not acquired in order to issue ODIs.

		However, we are unclear as to why this is not a concern for other FPIs.	An ODI subscriber interested in taking an ODI position, seeks only to gain economic exposure to the performance of a particular stock. They have no interest in whether the ODI issuer hedges the stock or not or whether it is hedged with stock or with derivatives. The issuance of ODIs creates an economic exposure which the issuer may hedge with either stock or derivatives or not at all. The ODI holder cannot direct the ODI issuer as to how it hedges the exposure. The ODI issuers group has explained this in detail over many years to SEBI and the Indian MOF. The primary reasons why ODI subscribers want to hold ODIs rather than stock directly are as follows: 1. Many global funds want to focus exclusively on their core skills which are related to picking stocks. 2. They do not want the operational complexity of having to establish custodians in every country and to deal with jurisdictional-specific settlement and FX related regulations. 3. They are interested in leverage and ODI issuers provide this by aggregating positions held across the world and offering financing based on strictly controlled credit standards. 4. They can more effectively utilize positions held in one jurisdiction for managing overall exposure and margining with a single bank.
		We recommend that Recommendation #45 be subject to a sunset clause with the same expiry as Recommendation #46. We recommend that firms be permitted to continue with the	Unless there is an equivalent sunset clause put in place for Recommendation #45 then the sunset clause in Recommendation #46 becomes largely meaningless. It will also immediately result in a forced closure of long single stock futures positions and opening of long stock positions which is

		"inception day hedge" principle which is already in practice today for existing ODIs.	likely to cause market disruption and price dislocation. This is also likely to undermine the liquidity in single stock futures in India.
30	**7.14 Strengthening of ODI Framework** **(ii) Reporting of portfolio hedging** *Recommendation 46: Complete information on ODIs hedged on a portfolio basis should be included in ODI monthly statement and should establish one to one hedge on ODIs issued by FPIs (throughout the life of the ODIs). SEBI may also amend its circular dated June 15th 2011 in this regard suitably. Since, SEBI Circular dated July 7th 2017 has given time till December 31st 2020 for transition, the existing ODIs may be grandfathered subject to sunset clause of December 31st 2020.*	We propose that this recommendation be withdrawn. If SEBI will not withdraw the whole recommendation, then we propose an alternative to satisfy the underlying objective which is complete information. <u>"Complete information"</u> The ODI issuers already provide complete information of ODIs issued. SEBI already receives information on ODI hedged on a portfolio basis so we are unclear what this is recommending for existing ODIs. However, in order to satisfy SEBI's concern regarding the lack of complete information we propose to provide details of every trade, executed by the FPI which issues ODIs, on the Monthly ODI statement. SEBI will easily be able to reconcile this to trades executed on the Indian markets. This should satisfy SEBI's requirement for full transparency. <u>"One to one hedges"</u> We propose that providing SEBI with complete trading information on the Indian markets should obviate the	<u>"One to one hedges"</u> Establishing regulation directing an issuer of OTC derivatives to hedge only on a one for one basis with stock is not in accordance with the legal framework for OTC derivatives

		need to create an artificial link between the ODI and the hedge and that therefore the second part of the proposal should be withdrawn.	globally, including India. We do not understand the rationale why SEBI would seek to impose such an artificial linkage. <u>Impact on clients</u> Clients have zero interest in how the ODI is hedged, but they do care about pricing and flexibility. By mandating a one to one hedge this will negatively impact clients, almost all of whom trade through OTC derivatives across multiple markets and who care about the cost of trading. Mandating one to one hedges will increase costs for clients and will undoubtedly impact investor sentiment with respect to trading on the Indian markets. This segment is important because many of these clients provide good liquidity, (often directionally contrarian to domestic investors), which has the effect of supporting strong markets which SEBI should be supportive of. <u>Impact on ODI Issuers</u> ODI issuers manage the risks associated with balance sheet usage by hedging the exposure with derivatives in accordance with trading and other risks. It is important to note that banks are subject to stringent capital charges on balance sheet usage. Efficient usage of balance sheets to comply with Basel and other requirements thus becomes an imperative. Mandating a one to one stock hedge restricts the ability of banks to manage their risks which we believe fundamentally conflicts with what we believe a regulator should be encouraging firms to be doing.
		If SEBI is not prepared to withdraw this recommendation then we are strongly supportive of the recommendation to permit grandfathering subject to a sunset clause. We recommend that in	Without a similar sunset clause in recommendation #45 then the sunset clause in recommendation #46 becomes meaningless.

		addition this sunset clause be linked to a similar sunset clause to be put in place for recommendation #45.	
31	**7.14 Strengthening of ODI Framework** **(iii) Review of ODI reporting format** *Recommendation 47: Monthly ODI reporting format in which ODI issuing FPIs provide their reports to SEBI need to be appropriately amended.*	We propose that this recommendation be amended in accordance with the previous submissions from the ODI issuers group on this subject.	Please see attached our earlier submission on this subject ODI - SEBI proposed report chá Transition Period: If SEBI is minded to proceed with these changes we respectfully recommend that an appropriate transition period be provided for these changes. The production of the monthly ODI report requires a highly complex system of technology and operational controls. This is required given that the report is combination of a) transaction b) positional information and c) a requirement to link together OTC derivatives and hedges when in fact no such direct linkage exists in the legal form of these instruments. In order to meet the changes proposed by SEBI ODI issuers will need to prepare and execute complex changes for the various different technology systems which are in place to produce this report. We are also conscious that budgets for 2020 are being prepared for 2H 2019 and that an IT freeze will be put in place in late Q4 2019. Accordingly we propose that a transition period be provided of 12 months to allow the firms to budget, plan and implement the execution of such changes whilst ensuring that robust operational controls are maintained. We believe that SEBI will be supportive of a measured and controlled process to transition to a new format of reporting.

32	**7.14 Strengthening of ODI Framework** **(iii) Review of ODI reporting format** 9. "Any netting done by ODI issuing FPI for its ODI subscriber clients are disclosed by a separate series of serial number. There is no other instance of netting."	We do not understand the rationale for this additional change. This refers to Annexure A, ODIs. The ODI issuers already fully disclose ODIs and there is no netting of ODIs.	We request SEBI to please provide an explanation of what is being proposed here so that we may understand the concern and provide a response accordingly.
33	**7.15 Modification in SEBI circular on eligibility conditions for FPIs** *Recommendation 49:* *The clause 2.7 of the SEBI circular dated September 21, 2018 be modified as under:-* *"The FPI applicant shall be given a time of 180 days from the date of registration to satisfy these eligibility conditions. The existing FPIs (as on notification of amended clause) shall be given a time upto December 2020 to ensure compliance with eligibility conditions."* *DDPs should monitor all FPIs owned or controlled by Indians and submit a monthly report to SEBI.*	We recommend rolling back the monthly reporting requirement of all FPIs owned or controlled by Indians.	1) This will be extremely cumbersome for DDPs 2) We are concerned that this recommendation is discriminatory in nature. 3) If entities that are fast tracked do not have to provide NRI/RI/OCI related information nor a government issued ID number, how will DDPs monitor these clients? And if there is sufficient information for DDPs to monitor this for fast tracked applicants based on other information, why is this same information not sufficient to monitor this for clients that can't use fast tracked applications? (see comments from Recommendation 1)

34	**8.3 FPI Investment in mutual fund**	A mutual fund is a diversified investment vehicle and has the broad-based rule in place. In India, it is a fair mix of retail and institutional investors investing in various mutual fund schemes. Though currently the investment by FPIs in mutual funds is low, we believe that prohibiting such investments would not benefit the local market ecosystem. What we could suggest is to limit investments by a single / common group of FPI(s) into locally domiciled mutual funds to a maximum of 10% of its AUM, as a mean to mitigate any control concern SEBI may have.	While the thought process may look reasonable for an accredited or broad based fund, currently the regulations also allow other types of investors viz; Individuals, Family Office, Corporate Houses etc. to register as FPIs who may choose mutual funds as a route to diversify their portfolio instead of choosing individual portfolios for themselves. Further, this approach also contradicts with the provisions of section 1 - 4.1 where the Committee is in favour of putting in place a fast track mechanism for investments by FPIs in mutual funds.

ANNEX 2: Additional recommendations (not in the Consultation paper)

Sr. No.	Relevant Section and sub-heading	Comments and suggested changes, if any	Rationale
A		• Can regulated public/retail funds be excluded from the FPI "Investor Group" for the purpose the 10% FPI limit in the same way as the Consultation proposes to exclude regulated public/retail funds from the "clubbing" provisions; and • Can regulated public/retail funds not be treated as "Parties Acting in Concert" either for the purpose of	

		the 2% limit on FPIs investing into Indian stock exchanges under the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012	
B	KRA OTP consent mechanism for BO details	The new KYC consent mechanism instituted by SEBI creates a lot of issues for the brokers and custodians as we had previously outlined in a submission to SEBI. The email id used by KRA for consent is the one provided by client while filing up the KYC form which usually is dated. Moreover, FPIs and its investors are weary of clicking on a mail that is sometimes perceived as a phishing email. In this day and age of email phishing and other misdeeds, there has to be another way for FPIs to provide consent. In addition, we request that the current expiration of consent request timeframe of 48 hours be removed and that automatic reminders be installed. There are quite a few other operational issues around consent which were brought out in the submission like FPIs need to provide consent within 'x' number of days else the link lapses, no clarity where consent mail bounces back and not delivered to FPIs, consent made applicable even to existing clients, consent needs to be provided by the same client again for next download, etc.	Often times, people are out of the office or may miss an email requesting consent. These suggestions would help mitigate that.

C	Identification of BO of listed entities: *"It is suggested that SEBI may specifically clarify that exemption under Rule 9(3)(f) of the PMLA Rules is only available to an FPI or its BO which is a company listed on a stock exchange in following kinds of jurisdictions and such stock exchange is recognized and supervised by its home regulators.."*	The SEBI FPI circulars refer to the PMLA. Rules. Rule 9(3)(f) exempts clients that are listed companies or owned/controlled by listed companies from identification and verification of the identity of shareholders or beneficial owners. We would urge that SEBI refines this slightly to reference "listed entity" as opposed to "listed company".	It is widely established that there are listed entities meeting the PMLA requirements but which have merely not been set up as a 'company' structure. For example, there are many highly regulated listed entities under the form of trust structures operating in low risk jurisdictions (such as the US, France or Hong Kong), which may have only not been set up as a 'company' due to the market standard of that particular jurisdiction. It would be disproportionate, therefore, to not allow other structure types to avail of this exemption. For trusts, this is especially the case as there is an added benefit of an independent third party trustee effectively acting as an additional 'checkpoint' for governance and prudence. Conclusively speaking, there is no reason to treat an ETF structured as a company and an ETF structured as a trust differently and we would argue that if they are subject to thresholds for KYC purposes, that both types of ETF should be subject to the 25%

			threshold, if not able to enjoy a complete exemption.
D	Foreign Trading Window – Removal of these windows for BSEC 600 series and NSE IL series starting 1 July	Strongly recommend reinstatement of this Foreign Trading Window	These windows permitted until 1 July 2018 inter-FPI transactions on securities that are at their Foreign Ownership Limit (FOL) without exceeding the ownership limit. The removal means that FIIs have no mechanism to own stock in the Breach list, resulting in uneven market access for those FIIs that already own the stock and those that don't. It may also negatively impact liquidity and might have the unintended consequence of moving liquidity offshore through ADRs.
E	FPI investment and trading restrictions	FPI to FPI trades in government and corporate bonds within same category should be allowed when limits (scrip-wise or aggregate) are exhausted akin to the previously allowed Inter-FPI segment in equity capital market of the exchanges (see D above).	This will provide flexibility for FPIs to trade where there is an FPI counterparty willing to sell India debt and release re-investment limit.
F	Currently, the depositories only publish foreign ownership on securities with a red-flag/breach list.	Given that the depositories have the data, we suggest that the depositories publish foreign ownership information for all stocks.	This would allow traders to make more informed decisions when purchasing securities. In addition, other markets provide updated Foreign Ownership

			information or check on pre-trade execution basis.
G	The 5 April 2018 SEBI Circular on Monitoring of Foreign Investment Limits in listed Indian Companies requires the depositories to provide an interface wherein a company shall provide among other things the Applicable Sector and Applicable Sectoral Cap.	We welcome the 5 April Circular but understand from the depositories that the information on Applicable Sector and Applicable Sector Cap is not available to them yet. We suggest SEBI enforces the disclosure of the same.	This will reduce ambiguity due to current divergent lists at the different custodians and reduce potential delays in trade confirmations by the custodians who now have to reach out to the Indian company to obtain exact and most current details in relation to the business of the company and the corresponding sector. This would also help with FC-TRS filings where it is often unclear what foreign investment cap should be listed on the form.
H	Market abuse regulations and enforcement processes	We continue to encourage SEBI to make efforts to increase the effectiveness of the market abuse enforcement regime • We believe that SEBI's transaction data warehouse and surveillance capabilities can be more effectively utilised if the process of investigation and enforcement is appropriately timely. • We recommend that a review should be conducted of the market abuse regime (focusing on insider trading, market manipulation and dissemination of trades by foreign portfolio investors) and associated enforcement process,	

		including identifying opportunities to enhance the effectiveness of the current regime.	
I	Off-market free of cost transfers	In line with other jurisdictions, we suggest SEBI permits off-market free of cost transfers, for example restructuring of funds (e.g. acquisitions, mergers, redomiciliation requiring a new PAN) which SEBI is now pushing to do through the stock exchanges.	Some asset managers are undertaking cross-border mergers and other reorganisations and these funds have exposure to Indian stocks. SEBI is now pushing for these restructurings to happen on the market, which triggers various taxes as well as market volatility.