

7 March 2024

<b>Name</b>	Eugenie Shen	<b>Email</b>	<a href="mailto:eshen@asifma.org">eshen@asifma.org</a>	<b>Mobile no.</b>	+852 25316570
<b>Country</b>	Hong Kong S.A.R.	<b>State</b>	Central and Western	<b>City</b>	Admiralty
<b>Organization Type</b>	Industry Association	<b>Organization name</b>	Asia Securities Industry & Financial Markets Association (“ASIFMA”)		
<b>Consultation Paper</b>	Consultation paper on proposals to improve ease of doing business with respect to the additional disclosure framework for FPIs				
<b>Description</b>	The objective of this consultation paper is to seek comments/ views/ suggestions from the public on proposals to amend the additional disclosure framework for FPIs specified under the August 24, 2023 circular.				
<b>Regulation</b>	FPI Regulations				

<b>Question 1: Do you agree that the proposal to exempt university funds and universities related endowments, registered or eligible to be registered as Category I FPI, from the disclosure requirements prescribed under the August Circular is in line with the principles outlined in para 2.2 of the consultation paper?</b>	
<b>Level of Agreement</b>	Agree
<b>Comments</b>	<b>Rationale</b>
We are supportive of SEBI’s principles outlined in para 2.2 of the consultation paper to provide additional relief to certain FPIs that are a pooled structure with broad-based, diversified investors from the disclosure requirements prescribed under SEBI’s Circular dated August 24, 2023 mandating additional disclosures by FPIs that fulfil certain objective criteria (the “August Circular”). Therefore, we agree with the proposal to exempt university funds and universities related endowments, registered or eligible to be registered as a Category 1 FPI from the disclosure requirements under the August Circular.	<p>We agree that for facilitating the ease of doing business and investments by FPIs in India, additional relief to FPIs that are pooled structures with a broad-based and diversified investor base is very much welcomed.</p> <p>The risk of any one person or entity controlling a broad-based fund is very small and disclosures of beneficial ownership of such funds become very challenging operationally especially if such funds are sold widely in multiple jurisdictions by numerous intermediaries and whose investors and their</p>

**Tax-exemption should not be a prerequisite**

Para. 4.2.1 of the consultation paper mentioned that university funds and endowments generally enjoy tax-exempt status in their home jurisdictions, which may not necessarily be the case for all such funds. Availing the exemption only to tax-exempt university funds and endowments may greatly reduce the number of eligible funds/endowments from being able to benefit from the exemption. See our response to Q2.

**Additional relief for unregulated funds managed by a regulated manager**

For the same principles that SEBI is proposing to exempt university funds and universities related endowments, we would urge SEBI to consider providing additional relief to unregulated funds whose investment manager is appropriately regulated and registered as a Category 1 FPI if it can be shown that such funds are a broad-based pooled structure with a widespread investor base. In fact, there are many such funds which are unregulated or unregistered in their home jurisdiction (e.g., Canada) which regulates only the investment manager of such funds and which funds are still subject to a certain amount of regulation.

**Extension of current deadline for making additional disclosures**

For FPIs to benefit from the proposed exemptions in the consultation paper, it would be most helpful if SEBI could consider extending the current deadlines for making additional disclosures. Alternatively, it would be helpful if SEBI could retroactively apply the exemptions so that FPIs whose registrations have been marked as invalid due to non-compliance after the deadlines could have such invalidity reversed without having to undergo a new registration process if they qualify for the new exemption proposed in this consultation paper.

interest in the funds will change often due to daily subscriptions and redemptions of such funds.

**Tax-exemption should not be a prerequisite**

Non-tax-exempt university funds and endowments will have to file tax returns which will contain information that can be very helpful, which can be submitted to SEBI for review.

**Additional relief for unregulated funds managed by a regulated manager**

We are urging SEBI to consider providing additional relief to unregulated funds whose investment manager is appropriately regulated and registered as a Category 1 FPI because there are many jurisdictions (e.g. Canada) that regulate the investment manager rather than the funds themselves. In some jurisdictions, funds are not “registered” with or “authorized” by a regulator. However, they are required to have an offering memorandum which is subject to the securities laws of the jurisdictions in which they are sold. Such laws require the filing of the funds’ offering memorandum with, preparation and delivery of annual audited financial statements, and/or the filing annual report with the relevant regulators which are tantamount to regulation. We hope that SEBI will consider these funds to be eligible for exemptions in the near future.

**Extension of current deadline for making additional disclosures**

According to the Standard Operating Procedures for seeking additional disclosures from certain objectively identified FPIs, FPIs that exceed the disclosure threshold as of 31 October 2023 and have not liquidated such excess investment by 29 January 2024 should make additional disclosures to its DDP by 11 March 2024. Non-disclosure by the 11 March 2024

	<p>deadline would lead to the surrendering of the FPI registration and liquidation of the FPI positions within 180 days thereafter.</p> <p>As the consequences of non-disclosure (without the benefit of an exemption which is still being clarified and defined) are serious, we would be grateful if SEBI can consider extending the start date for the 180 days liquidation period until such time as the exemptions from additional disclosures by FPIs have been clarified and operationalized.</p>
<p><b>Question 2: Do you agree that the additional conditions listed in para 4.2.3 of the consultation paper are sufficient to avoid misuse of the proposed exemption?</b></p>	
<p><b>Level of Agreement</b></p>	<p>Disagree</p>
<p><b>Comments</b></p>	<p><b>Rationale</b></p>
<p>We understand that the additional conditions in para 4.2.3 of the consultation paper are to ensure that the exemption is not misused and that only well-funded and diversified university funds or endowments are eligible for the exemption.</p> <p>However, we feel that the risk of misuse of this exemption is low and that the additional conditions would create complexity for university funds or endowments to use the exemption. In fact, we believe the additional conditions will greatly limit the number of funds or endowments eligible for the exemption and make the proposed exemption not helpful to many well-recognized university funds or endowments.</p> <p>Therefore, we suggest removing, relaxing or clarifying some of the conditions.</p>	<p>Registration or eligibility to register as a Category I FPI already requires the university related endowments in a FATF member country to have been in existence for more than five years. Any additional conditions would just limit the number of university funds or endowments that can benefit from the exemption.</p> <p>Our reasons to remove, relax or clarify some of the additional conditions are set out below:</p> <p>(1) <u>Top 200 Universities in the QS World University Rankings</u>: The QS World Rankings may change every year, which means that a university fund or university related endowment may be in scope for the exemption one year and then not in scope the next year while there is no change to its broad-based nature. The number of eligible universities based on this ranking is already small. With the other conditions, the number will be reduced further which means that the proposed exemption may be of little benefit to many university funds or endowments.</p>

	<p>(2) <u>Global AUM more than INR 10,000 crore (appx. USD 1.2 billion):</u> According to the <a href="#">2023 NACUBO-Commonfund Study of Endowments</a>, less than 20 per cent of the 688 university and college respondents had over USD 1 billion in their endowment as of 30 June 2023. Many of the renowned universities' funds and endowments which could have enjoyed the exemption may be excluded just because their global AUM is not as high as INR 10,000 crore.</p> <p>(3) <u>Proof of tax filing in home jurisdiction:</u> This condition should not be a problem but the requirement that it has to provide evidence that the entity is in the nature of a non-profit organization and is exempt from tax may exclude a lot of top university funds or endowments.</p> <p>We would suggest that there are many well established and well recognized universities in the world that are not within the top 200 in the QS World University Rankings and that it is to the advantage of India and them that they can benefit from the proposed exemption. We also think that the risk of people setting up funds or endowments at universities just to avoid additional disclosures is fairly low.</p>
<p><b>Question 3: Do you agree with the proposal to keep the companies with no identified promoter and low holdings of identified FPIs, outside the scope of the granular disclosure framework?</b></p>	
<p><b>Level of Agreement</b></p>	<p>Agree</p>
<p><b>Comments</b></p>	<p><b>Rationale</b></p>

We agree with the proposal to keep the companies with no identified promoter and low FPI holdings outside the scope of the granular disclosure framework.

#### **Clarifications requested**

However, our members have questions about the references in para. 4.2.8 of the consultation paper to “a corporate group where the apex company . . . itself has no identified promoter”.

#### Identification of apex companies

We would appreciate clarity on how “apex companies with no promoters” can be identified or ascertained as the proposed exemption is premised on a corporate group where the apex company has no identified promoter. It would be helpful if SEBI or the exchanges can provide a list of the apex companies with no promoters as well as their ISINs for the ease of FPIs to use the exemption.

#### FPIs holding 50 per cent or less of their Indian equity AUM in a single corporate group after disregarding the holdings of an apex company with no promoter

We understand that this proposal exempts FPIs holding 50 per cent or less of their total Indian equity AUM in a single corporate group after disregarding its holding in an apex company with no promoter. We assume that if an FPI owns 100 per cent of its India equity AUM in a single company that is an apex company with no promoter, it would be able to rely on the proposed exemption. If our assumption is correct, we appreciate if SEBI can so clarify in the final rules.

#### Identification of apex companies

Having SEBI or the stock exchanges make available a list of the listed companies with no promoters will avoid any uncertainty and reduce the need for FPIs to track and/or monitor apex companies which would make it easier for them to take advantage of the new exemption and improve the ease of doing business for them.

#### FPIs holding 50 per cent or less of their Indian equity AUM in a single corporate group after disregarding the holdings of an apex company with no promoter

The proposed exemption does not seem to take into consideration an FPI holding interest in only one apex company with no promoter. Hence, we appreciate if SEBI would clarify the treatment in this case in the final rules.

#### Calculation of FPI’s holding in a single corporate group after disregarding its holding in the apex company with no promoter

An FPI’s India Equity AUM should include all of their India equity investments (including holding in the apex company without a promoter) for calculating the percentage of holdings in a single corporate group after disregarding holding in the apex company.

<p><u>Calculation of FPI's holding in a single corporate group after disregarding its holding in the apex company with no promoter</u></p> <p>We also believe that clarity on how an FPI's holding in a single corporate group as a percentage of its total India equity AUM is calculated when "disregarding the holdings of an apex company" is important.</p> <p>To illustrate, when calculating the percentage of "FPI's holding in the corporate group", the calculation is:</p> $\frac{\text{FPI's Holding in the Corporate Group}}{\text{FPI's India Equity AUM}} * 100$ <p>When "disregarding the FPI's holding in the apex company", we believe that such percentage should be calculated with the holding in the apex company deducted only from the numerator and not the denominator, i.e., as follows:</p> $\frac{\text{FPI's Holding in the Corporate Group} - \text{FPI's Holding in Apex}}{\text{FPI's India Equity AUM}} * 100$ <p>We appreciate if SEBI can clarify the foregoing in the final rules.</p>	
<p><b>Question 4: Do you agree with the proposal to keep the threshold at 3% for holdings by identified FPIs in such companies?</b></p>	
<p><b>Level of Agreement</b></p>	<p><b>Disagree</b></p>
<p><b>Comments</b></p>	<p><b>Rationale</b></p>
<p>We disagree with the proposal to keep the threshold at 3 per cent for holdings by identified FPIs in such companies for the reasons stated in the next column. We would like to see the 3 per cent threshold removed or at a</p>	<p>As individual FPIs will not have visibility on the holdings of other FPIs, they will not be able to track the total equity share capital of all FPIs in the company even though para. 4.2.8.5 of the consultation paper states that</p>

minimum, set a threshold for each FPI's holdings rather than consider the composite holdings of all FPIs in the apex company.

Applicability of the limit of FPI holdings in the apex company with no promoter to not just FPIs subject to granular disclosures

This relaxation, which seems to adopt a risk-based approach, applies only to those FPIs subject to additional disclosures under the August Circular. We would urge SEBI to consider applying the same risk-based approach to all FPIs required to disclose their beneficial ownership above 10 per cent.

custodians and depositories will track this 3 per cent limit for companies without an identified promoter at the end of each day and publish this information when the 3 per cent limit is met or breached.

The foregoing puts the onus on FPIs to monitor information published by the custodians and depositories since they will be required to align their holdings below the 50 per cent AUM threshold in a single Indian corporate group within 10 trading days. This does not make it easier for FPIs to use this exemption.

We suggest removal replacing the 3 per cent composite holdings limit with a better and easier to implement alternative such as setting a limit for each FPI's holdings in order to use this exemption.