

27 February 2024

Name	Eugenie Shen	Email	eshen@asifma.org	Mobile no.	+852 25316570
Country	Hong Kong S.A.R.	State	Central and Western	City	Admiralty
Organization Type	Others	Specify Organization Type	Capital Markets Industry Association		
Organization name	Asia Securities Industry & Financial Markets Association (“ASIFMA”)				
Consultation Paper	Consultation Paper on Relaxation in Timelines for Disclosure of Material Changes by Foreign Portfolio Investors				
Description	The objective of the consultation paper is to seek comments/views/suggestions from the public on the proposal to give relaxation in timelines for disclosure of material changes by Foreign Portfolio Investors				
Regulation	FPI Regulations				

Question 1: Do you agree with the proposal to have different timelines for disclosure of material change by the FPI based on the type of change?	
Level of Agreement	Strongly Agree
Comments	Rationale
<p>We are deeply appreciative that SEBI has taken into consideration our representations on the challenges faced by our members in making Beneficial Ownership disclosures within the prescribed timelines, especially for public retail funds, and has proposed the relaxation of disclosure timelines in this Consultation Paper.</p> <p>Different timelines for different types of material change</p> <p>We strongly agree with the proposal to have different timelines for disclosure</p>	<p>Different timelines for different types of material change</p> <p>The reason we agree with the proposal is because there are certain changes (i.e., Type I changes) that an FPI is clearly aware of and more likely to have control over so that it should be able to meet the disclosure timeline while there are other changes (i.e., changes of beneficial ownership of a public retail fund that is traded on a daily basis in multiple jurisdictions through numerous intermediaries) that an FPI is not able to track on its own and must rely on reporting from third parties (e.g., intermediaries, fund transfer</p>

of material change by FPIs based on the proposed two types of material change.

Standardized approach

We agree that it would be helpful to prepare a comprehensive list of Type I material changes in consultation with industry participants/stakeholders, which should include FPIs directly or their designated representative (such as industry associations like ASIFMA).

A standardized approach would be most beneficial for all parties. As FPIs continue to encounter different applications of the reporting requirements from the DDPs, it is critical that FPIs be directly involved in the standardization of how material changes should be reported. For example, DDPs may differ in terms of their speed to review/approve supporting documentation (which FPIs can help standardize). We would suggest that the standards for reporting should include a deadline for DDPs to acknowledge and provide comments on documentation which should not exceed 5 working days for example).

Clarification on notification requirements

Type I and Type II changes require the FPI to “inform” DDPs, but DDPs may take differing views of what type of notification is sufficient. We suggest that SEBI clarify how the 7 days/30 days notification requirements by FPIs are considered to be satisfied, and when FPIs’ responsibilities are considered to be discharged.

One of our members pointed out that the requirement to provide physical wet ink signed documentation to report each change is overly burdensome especially given that FPIs are not in India and the reporting timeline is short. We would suggest that SEBI clarifies that email or digital notifications or updates to the DDPs by the FPI or its authorised or designated representatives (e.g., custodian) are allowed, which can be followed up with

agents, etc.) and therefore more time to report such changes is needed.

Standardized approach

It is very important for FPIs to be directly involved in the determination of what should be considered Type I and Type II material changes and the standardization of how they should be reported because different application of the reporting timelines (which is often shorter than the time periods prescribed by SEBI) by the DDPs as well as different reporting formats required by them and from whom such reports should come (e.g., compliance officers, custodians/sub-custodians) continue to be a major problem for many FPIs.

Clarification on notification requirements

It is very important for FPIs to know when their obligation to notify Beneficial Ownership changes is satisfied.

hard copies in due course (i.e., within the prescribed time period) if necessary. This would be broadly in line with India’s aspiration to become a more digitally driven market and facilitate the ease of doing business.	
Question 2: Do you agree with the proposal to mandate disclosure of Type I material changes by FPIs within seven working days and submission of supporting documents (if any) within 30 days?	
Level of Agreement	Agree
Comments	Rationale
<p>We generally agree with this proposal as the examples of Type I materials changes listed in the Consultation Paper are significant events that should be within the FPI’s knowledge and control.</p> <p>Delay in the review of DDPs/custodians</p> <p>However, due to the nature of the changes and the supporting documentation typically requested by the DDPs, we request that SEBI consider instances where documentation is submitted past this deadline due to lengthy review/response times from DDPs rather than the fault of the FPI.</p> <p>The Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors (19 December 2022) states that where there is a delay of more than six months in intimation of material change by the FPI to the DDP, the DDP shall, forthwith, inform all such cases to SEBI for appropriate action, if any, along with reason for delay. We sincerely hope and would like SEBI to confirm that the introduction of the 30-day period to submit supporting documents in this proposal does <u>not</u> change this arrangement.</p>	<p>Delay in the review of DDPs/custodians</p> <p>One of our members experienced two incidents last year where they informed the DDP of a name change for their FPI funds in advance, but it took so long for the DDP/custodian to reply that they ended up having to sign letters to advise why they did not meet the SEBI requirement to disclose the changes in time. FPIs are concerned that they are being penalised for the delays on the part of the DDPs, which is often not within the FPIs’ control.</p> <p>We understand from some other members that in practice DDPs often take more than 30 days to review and “approve” supporting documentation which causes the FPI to miss the reporting deadline. Delays may also be due to communications between the FPI’s global custodians and the client-facing teams of local custodians rather than the FPIs themselves. The foregoing is equally important to both Type I and Type II reporting requirements.</p> <p>Hence, it is important that FPIs be directly involved in the development of standardized reporting of Beneficial Ownership changes and that they be deemed to have given notice to the DDP, at least within the seven working days period, regardless of what supporting documents may be required by the DDP to be submitted thereafter.</p>

Question 3: Do you agree with the proposal to mandate disclosure of Type II material changes and submission of supporting documents (if any) by FPIs within 30 days?

Level of Agreement Partially Agree

Comments

We appreciate that this proposal recognizes it may take a longer time for certain material changes (e.g., beneficial ownership change in a public retail fund) to come to the knowledge of an FPI so that such change may be notified or reported within a longer period, i.e., 30 days. Based on the same rationale, we believe that it would be reasonable to extend the timeline for providing support documents. Therefore, we would like to request SEBI to consider extending the timeline for submission of supporting documents to within 90 to 180 days of such changes, especially for changes relating to public retail funds offered in other jurisdictions where it would take time to gather these documents.

Exemption for BO change reversals within the 30-day period

In addition, given that beneficial ownership percentage of an FPI fund may change frequently, particularly for public retail funds, we would suggest that SEBI removes the need to provide supporting documents if a reported Beneficial Ownership change falls below the 10% threshold within the 30-day period.

List of Type II “all other material changes”

We are grateful that SEBI plans to publish a list of material changes under Type 1. Similarly, it would be very useful for SEBI to publish a list of “all other material changes” under Type II so as to ensure that consistent understanding application and treatment of such changes by the DDPs and across the industry. In practice, such a list can be updated from time to time in the Standard Operating Procedures (SOPs) to be developed by the industry group

Rationale

Exemption for BO change reversals within the 30-day period

Some FPIs (e.g. Public Retail Funds) often have thousands of underlying investors, and the percentage holding of such investors in the FPI can fluctuate daily either due to daily redemptions and subscriptions or changes in net asset value of such funds. Therefore, it is not useful or beneficial for any party involved to communicate minor Beneficial Ownership changes which straddle either side of the 10% Beneficial Ownership threshold which we believe is an administrative burden on not only FPIs, their fund distributors, custodians but also the DDPs and even for SEBI.

List of what falls within “all other material changes” under Type II

The consultation paper does not define what is meant by “all other material changes” under Type II which presumably would be left to each DDP to interpret. To avoid confusion among FPIs due to inconsistent application by DDPs, which has been a major complaint of many of our FPI members, it is important that a list of these “other material changes” be agreed and shared publicly.

Other Exemptions to consider

SEBI’s Circular dated August 24, 2023 mandating additional disclosures by FPIs that fulfil certain objective criteria recognizes that FPIs having a broad based, pooled structure with widespread investor based may not pose significant systemic risk and exempts FPIs satisfying any of the criteria listed in paragraph 8 thereof from having to make the more granular additional

<p>comprising of not only DDPs but also FPIs, much like the recent SOPs for the Additional Disclosures by Certain Objectively Identified FPIs.</p> <p>Other Exemptions to consider</p> <p>We would like SEBI to consider exempting the types of funds listed in paragraph 8 of SEBI’s Circular dated August 24, 2023 from being considered Type 1 or Type II material changes for disclosure purposes or at least further extending the timelines for disclosures of material changes of such funds by FPIs to 60-90 days for initial notification and 90-180 days for provision of supporting documents.</p>	<p>ownership disclosures required in paragraph 7 thereof. Among those criteria or exemptions are Public Retail Funds, Exchange Traded Funds and Pooled investment vehicles registered with/regulated by a Government regulatory authority meeting certain conditions. For the same reasons SEBI decided to exempt the above-mentioned types of funds or pooled investment vehicles from having to make additional ownership disclosures by certain “<i>high risk</i>” FPIs, we hope that SEBI would consider providing relief for these types of funds from the short timelines for disclosure of material changes by FPIs.</p>
<p>Question 4: Do you agree with the indicative list of Type I material changes? Suggest inclusions/exclusions, if any.</p>	
<p>Level of Agreement Agree</p>	
<p>Comments</p>	<p>Rationale</p>
<p>We agree in principle with the indicative list of Type I material changes.</p> <p>We would suggest that SEBI clarify if these are the changes that would require an FPI to seek a fresh registration based on the definition of Type 1 in paragraph 4.2 of the Consultation Paper. For example, it is essential that there is clarity regarding what happens in practice to assets held within an FPI vehicle which would require a fresh registration. FPIs’ expectation is that these assets may continue to be held in the same securities account whilst the associated FPI registration changes. We believe that an application for fresh FPI registration should not force the sale of assets, particularly those Type 1 changes that do not involve a change of beneficial ownership.</p> <p>If significant changes will be made to the ‘indicative list’ of Type 1 FPI changes following this consultation, we urge SEBI to consult on these changes ahead</p>	

of the final publication of the rules to avoid any surprise implications for FPIs. We would propose that the regulations not be finalized until the list of Type I changes is determined and shared with all market participants, especially FPIs.