AAMG comments on RBI Consultation on Rationalisation of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (31 August 2026)

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Comprehensive comments:

We appreciate the Reserve Bank of India's (RBI) efforts to simplify India's foreign investment framework by proposing the Draft Foreign Exchange Management (Foreign Investment) Rules, 2026 ("Draft 2026 Rules") that would supersede the Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 ("2019 Rules"). We strongly support RBI's initiative to streamline procedures, reduce operational complexity, and enhance regulatory clarity, all of which reflect India's ongoing commitment to improving the ease of doing business for foreign investors and will help to further India's attractiveness as a destination for long-term foreign capital.

Concurrent FDI and FPI holdings

In particular, we notice that the Draft 2026 Rules appear to omit the reference under paragraph 2(s) of the 2019 Rules which states that "a person resident outside India may hold foreign investment either as Foreign Direct Investment (FDI) or as Foreign Portfolio Investment (FPI) in any particular Indian company". As this reference has been interpreted by many foreign investors as prohibiting concurrent FDI and FPI holdings in the same Indian company, its omission in the Draft 2026 Rules suggests that a person resident outside India may hold foreign investments as both FDI and FPI in any Indian company, which is welcomed by our members.

RBI's confirmation that a foreign investor may have concurrent FDI and FPI holdings in the same Indian company would remove a longstanding source of ambiguity for foreign investors, allowing them to support high-potential Indian companies across different stages of their growth, such as from pre-IPO to after they get listed.

Clarification of what is FDI and FPI

Under the current framework, foreign investment in an unlisted company is treated as FDI irrespective of the level of shareholding in the unlisted company. While foreign investment in a listed company with shareholdings of below 10% is treated as FPI, foreign investment in a listed company with shareholdings of 10% or more is treated as FDI. The Draft 2026 Rules appear to preserve the foregoing even though the definitions of "foreign Direct Investment", "FDI" and "foreign portfolio investment" do not specify whether the company is listed or unlisted.

As part of the RBI's review of the FDI and FPI regulations with the aim of simplifying them for foreign investors and making it easier for them to invest in India, we suggest that RBI distinguish FDI and FPI based on whether the company is listed or unlisted rather than having foreign investment in a listed company with shareholdings of 10% or above being treated as FDI instead of FPI. This is because the shareholdings of a foreign investor in a listed company above 10% (FDI) may fall below 10% (FPI) due to new share issuances by the listed company or other reasons. We believe that RBI can still address the different foreign investment limits that it may wish to impose for FPIs and FPIs more directly instead of having foreign investment in a listed company being both FDI or FPI.

<u>Definition of "equity"</u>

The definition of "equity" in the Draft 2026 Rules refers to that of applicable accounting standards, which we understand also recognize certain compound (hybrid) instruments. It would be helpful if the definition of "equity" in the final Rules can include such other instruments, such as convertible bonds and other hybrid securities, rather than referring to applicable accounting standards.

<u>Indirect foreign investment</u>

We note that the definition of "foreign investment in equity" includes both direct and indirect (e.g. through an FCE or an Indian resident company, LLP or investment vehicle which is owned or controlled by or under common ownership with a person resident outside India) investment. The introduction of "indirect" investment through an Indian resident company creates more complications for foreign investors as they would need to review carefully their investment structure for potential FEMA implications.

In addition, investments by domestic mutual funds managed by a foreign-owned or foreign-controlled Indian investment manager would be treated as indirect foreign investment based on the above definition even though the subscribers of those mutual funds are primarily Indian investors. If the new FEMA regulations apply to these investment managers, the investments made by them would trigger the following investment restrictions and compliance obligations:

1. <u>Sectoral restrictions and caps</u>: Investments may be made only in permitted sectors and only up to the applicable limits prescribed under the foreign investment policy.
2. <u>Pricing compliance</u>: Units of mutual funds may be allotted only in accordance with pricing conditions, which require a valuation certificate from a valuer for each transaction.
3. <u>Compliance burden</u>: Both the foreign investor together with its foreign-owned or foreign-controlled investment manager in India will have to take into consideration the investments of the latter in India, which will hamper their investments in India.
4. <u>Prior government approval for land-border investments</u>: Investments made by the resident investment manager may require prior government approval just because such manager is foreign-owned or foreign-controlled even though it is making such investments from within India.

We understand that a similar issue came up when the 2019 Rules were issued and that the Government, following feedback from the mutual fund industry, amended the definition of "investment vehicle" to exclude mutual funds. As the 2019 Rules will be superseded by the 2026 Rules, we suggest that RBI clarify in the final 2026 Rules that mutual funds and also ETFs managed by FCEs will not be considered indirect investment by foreign investors.

Remittance of proceeds with delayed tax payment

We notice that the Draft 2026 Rules omitted paragraph 22 of the 2019 Rules which states that the remittance of sale proceeds of a security must be net of applicable taxes. As global asset managers want to be able to remit sale proceeds on the trade settlement date, tax payment required before each remittance has often made same day remittance difficult to achieve. Even after SEBI required tax agents to provide tax clearance certificates to FPIs by 9 am on the settlement date, many FPIs are still unable to have their sale proceeds remitted on the same day as the Designated Depository Participants (DDPs) still need time to process the tax clearance and then do the necessary foreign exchange for the FPIs.

If tax payment is not required before each remittance of sale proceeds, then same day remittance of sale proceeds should be achievable for most FPIs. We suggest that while the actual remittance amount by the FPIs should be net of taxes, the taxes do not have to be paid until later, preferably at the end of the year or half-year or each quarter. Separating the timing of tax payment from the process of remittance of sale proceeds would improve liquidity for FPIs and facilitate the implementation of SEBI's new framework for net settlement of funds for FPIs' transactions in the cash market, which is due to take effect by the end of 2026.

We would like to emphasize that delayed tax payment would not change the FPIs' obligations under Indian tax law as suitable arrangements can be put in place for the tax liability to be satisfied later (e.g., through a suitable scheduled payment arrangement with a local tax agent or custodian). China's Qualified Foreign Institutional Investors (QFIIs) used to be subject to not only tax clearance but also tax audit before they can repatriate profits abroad. However, in June 2020, the People's Bank of China and State Administration of Foreign Exchange issued revised regulations to facilitate QFIIs' profit repatriation by replacing the tax clearance and audit requirements with just an undertaking from the QFII that it will fulfil all its tax liabilities.

We respectfully request RBI and the Central Board of Direct Taxes (CBDT) to consider our suggestions above so that sale proceeds (net of applicable taxes) can be more easily remitted abroad on the trade settlement date without such taxes being required to be paid before each remittance.

Annexures II and III

We note that Annexure-II ("Foreign Investment Policy (FDI policy) issued by the Government of India") and Annexure-III ("Regulations, directions issued by the RBI, applicable on foreign investment or transfer thereof") were not included in the Draft 2026 Rules. As these Annexures may contain substantive provisions, qualifications, and/or interpretive guidance that are integral to understanding the practical applications of the Draft 2026 Rules, their absence makes it challenging for foreign investors and other stakeholders to provide fully informed feedback on the proposed foreign investment framework. We would, therefore, greatly appreciate the publication of these Annexures and an opportunity to comment thereon before the Draft 2026 Rules are finalised.

Maximum 65,000 Characters Only.

Paragraph-wise comments:

Extract of draft rules	Comments
In exercise of the powers conferred by sub-section (1) and clauses (aa) and (ab) of sub-section (2) of section 46 of the Foreign Exchange Management Act, 1999 (42 of 1999) and in supersession of the Foreign Exchange Management (Non-debt Instruments) Rules, 2019, except as respects things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:	No comments.
1. Short title and commencement. – (1) These rules may be called the Foreign Exchange Management (Foreign Investment) Rules, 2026. (2) They shall come into force on the date of their publication in the Official Gazette.	No comments.
2. Applicability. – (1) These rules apply to any foreign investment in equity of an eligible investee entity by a person resident outside India or transfer thereof. **Exceptions** (2) These rules do not apply to investments made by a person resident outside India in a financial institution set up or incorporated in an International Financial Services Centre (IFSC) where "financial institution" has the same meaning as defined in the International Financial Services Centers Authority Act, 2019.	We agree with the exceptions proposed for entities incorporated in IFSC.
3. Definitions.– (1) In these rules, unless the context otherwise requires,– a) **"Act"** means the Foreign Exchange Management Act, 1999 (42 of 1999); b) "**eligible investee entity**" means, – i) a company as defined in the Companies Act, 2013 or a body corporate established or constituted by or under any Central or State Act, which is incorporated in India and does not include a society or trust;	**<u>Definition of FPI and FDI</u>** The Draft 2026 Rules define foreign investment of 10% or more in the equity of a company or an LLP as FDI and foreign investment of less than 10% in equity of a company or an LLP as FPI. We support the proposal to move away from the existing definitions, under which all investment in an unlisted company should be treated as FDI, irrespective of the level of shareholding.

ii) a limited liability partnership or "LLP" registered as such under the Limited Liability Partnership Act, 2008; iii) an investment vehicle registered with the SEBI and shall include (i) Real Estate Investment Trusts (REITs);(ii) Infrastructure Investment Trusts (InvITs) (iii) Alternative Investment Funds (AIFs) (iv) Venture Capital Funds (v) Mutual funds or Exchange-Traded Fund (ETFs) or any other investment vehicle which invest more than fifty per cent in equity which are registered and regulated under the respective Securities and Exchange Board of India (SEBI) regulations; iv) a partnership firm registered under the Indian Partnership Act, 1932 and a proprietary concern registered under the applicable domestic laws; c) **"entry routes"** shall mean the Government route and the Automatic route, as prescribed under the foreign investment policy (Annexure-II); d) **"equity"** means i) Instruments classified as equity by the eligible investee entity, other than an investment vehicle, as per applicable accounting standards; ii) Unit of an investment vehicle as per the respective SEBI regulations; iii) "Participating interest or right" in oil fields or mines of an Indian company or an LLP; e) **"foreign investment in equity" (referred to as 'foreign investment' in these rules)** means: investment in equity of an eligible investee entity by a person resident outside India; A. directly; or B. indirectly through (i) an FCE; or (ii) any other person resident outside India (other than the person resident outside India who is investing directly) which is owned or controlled by the person resident outside India, or through any other person resident outside India which is under common ownership or control with the person resident outside India, In this context, – 2. "ownership" means beneficial holding of more than fifty percent of such person resident outside India;	For simplicity sake, we suggest that all investment in a listed company be treated as FPI rather than distinguishing shareholdings of below 10% to be FPI and shareholdings of 10% or more to be FDI since RBI can impose different foreign investment limits in listed companies and unlisted companies. We also suggest that RBI clarify in the final Rules how current FDI holdings will be reclassified as FPI holdings when the investee company becomes a listed company or when holdings in a listed company fall below 10%. RBI and the Government should encourage and make it easier for foreign investors that invested in an unlisted company as an FDI to continue investing in the company when it becomes listed as it is becoming more common for foreign investors to hold a mixture of private and public investments in the same company. **<u>Scope of equity and treatment of hybrid instruments</u>** The Draft 2026 Rules apply to foreign investment in equity of an eligible investee entity, and "equity" includes instruments classified as equity by the eligible investee entity as per applicable accounting standards. As the accounting standards also recognize certain compound (hybrid) instruments that have an equity feature, we appreciate RBI's clarification on the treatment of these hybrid instruments (such as convertible bonds and other hybrid securities) for classification and FEMA applicability purposes. **<u>Expanded scope of indirect foreign investment</u>** The definition of "foreign investment in equity" under the Draft 2026 Rules has been broadened to include investments made both directly and indirectly, including through resident entities that are owned or controlled by, or under common ownership or control with, the foreign investor.

II. “control” means the right to appoint majority of the directors or to control management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders’ agreements or voting agreements that entitle them to ten per cent. Or more of voting rights or in any other manner in the entity; f) **“foreign Direct Investment” or “FDI”** means foreign investment of ten per cent or more in the equity of a company or an LLP. g) **“foreign portfolio investment”** means foreign investment of less than ten per cent in the equity of a company or an LLP; h) **“foreign controlled entity”** or **“FCE”** means a resident company or an LLP or an investment vehicle which is owned or controlled by a person resident outside India; where ‘Ownership and Control” shall be governed by the applicable provisions stipulated by the respective sectoral regulators in consultation with the central Government. In the absence of any such stipulations, the ownership and control in the entities shall be determined in accordance with the applicable Indian laws under which such entity is incorporated (the Companies Act, 2013 for Indian companies or LLP Act, 2009 for an Indian LLP or SEBI AIF regulations for AIFs etc.); i) **“foreign investment policy”** (FDI policy) means a policy issued by the Government stipulating the entry routes, sectoral caps, sectoral conditions and prohibited sectors, as applicable to foreign investment in India and provided in Annexure-II to these rules; j) **“overseas Citizen of India”** or **“OCI”** or means an individual resident outside India who is registered as an Overseas Citizen of India Cardholder under the Citizenship Act, 1955; k) **“sectoral cap”** means maximum aggregate amount of foreign investment on repatriation basis in a company or an LLP and shall be as per the foreign investment policy (FDI policy); l) **“sectoral conditions”** means the sector specific conditions/provisions for foreign investment prescribed under the foreign investment policy (Annexure-II).	We believe that RBI also introduced a revised definition of “control” under this section which is quite broad and could include any subsequent investments by an investee entity into another Indian entity being characterized as indirect foreign investment, thereby increasing the need for continuous analysis of transaction structures and potential FEMA implications. **<u>Scope of eligible investee entity</u>** Including investment vehicles such as Mutual Funds, ETFs, Alternative Investment Funds (AIFs), REITs, Infrastructure Investment Funds (InvITs) and Venture Capital (VC) Funds under the definition of “eligible investee entity” may lead to confusion with respect to downstream investments made by them. We suggest that RBI clarify that while the investment received by a fund from non-resident investors on repatriation basis will be considered as foreign investment, the downstream investments made by these investment vehicles will not be considered as direct/indirect foreign investment. In particular, we would like to point out that with more than 60% of the AUM in Indian Mutual Funds being currently managed by foreign-owned or -controlled investment managers, any ambiguity with regard to whether domestic Mutual Funds managed by foreign asset managers are subject to the Draft 2026 Rules may cause chaos. We note that Mutual Funds have already been made out-of-scope under the 2019 Rules per India MOF’s S.O. 4355(E) amendments to the Rules dated 5 December 2019. We suggest that the same approach continues to be adopted for Mutual Funds and extended to ETFs so that they are not subject to the requirements (such as on entry route, sectoral cap, pricing conditions, and reporting obligations) set out in the Draft 2026 Rules.

(2) The words and expressions used but not defined in these rules shall have the same meanings respectively assigned to them in the Act or the rules or regulations made thereunder.	In addition, including investment vehicles within the definition of "eligible investee entity" and applying the pricing conditions set out in paragraph 8 of the Draft 2026 Rules to them would lead to unintended consequences. The units of Mutual Funds are valued as per SEBI prescribed valuation norms and such units are also issued on a daily basis. Hence, it will not be practical for these Funds to follow the pricing guidelines mentioned in paragraph 8. (Please refer to our detailed comments and suggestions on paragraphs 6B and 8). We further suggest that RBI clarify that an investment vehicle will fall under the definition of "eligible investee entity" only if the investment vehicle invests more than 50% in equity and that there is no prohibition on an investment vehicle (such as debt AIF) to receive money from non-resident investors subject to applicable laws. **<u>Definition of "foreign controlled entity" (FCE)</u>** Given investment through a "Foreign Controlled Entity (FCE)" is considered as foreign investment in equity, the current definition of FCE may lead to an unintended consequence where Indian residents' investments in Indian domestic mutual funds or other investment vehicles managed by foreign-owned investment managers are considered as foreign investment. We suggest revisiting the definition of FCE to align it with the approach adopted for insurance entities under the Department for Promotion of Industry and Internal Trade's (DPIIT) *Press Note 1 of 2026 on Review of FDI policy on Insurance Sector*. The Press Note suggests that an Indian insurance entity is determined to be controlled by a Resident Indian Citizen, notwithstanding the entity having 100% foreign ownership, if at least one of the following positions is held by a Resident Indian Citizen:

	- Chairperson of the Board; - Managing Director; or - Chief Executive Officer. A similar requirement may be considered for FCEs and investment vehicles. In particular, given that investment and voting decisions on behalf of an investment vehicle are typically exercised by its Chief Investment Officer (CIO), the determination of ownership and control could be based on the following criteria: - Ownership**-** Foreign capital participation of 50% or more in the AUM of the investment vehicle; or - Control-The citizenship and residential status of the CIO- Equity of the investment vehicle. This approach would better reflect the practical locus of decision-making and control within an investment structure. It is also relevant to note that SEBI (Alternative Investment Funds) Regulations define *"controlling interest"* as a direct or indirect interest representing not less than 50% of the voting rights or economic interest. Adopting a similar framework would promote regulatory consistency across investment-related regimes. For the reasons above, we suggest the following amendment to sub-paragraph (1)(h) of paragraph 3: h) **"foreign controlled entity"** or **"FCE"** means a resident company or an LLP or an investment vehicle which is owned or controlled by a person resident outside India; where 'Ownership and Control" shall be governed by the applicable provisions stipulated by the respective sectoral regulators in consultation with the central Government. In the absence of any such stipulations, the ownership and control in the entities shall be determined in accordance with the applicable Indian laws under which such entity is incorporated (the Companies Act, 2013 for Indian

	companies or LLP Act, 2009 for an Indian LLP or SEBI AIF regulations for AIFs etc.); *provided that in the case of SEBI registered investment vehicles, the ownership thereof shall be determined based on the value of investment by non-resident investors being 50% or more of their AUM and the control thereof being based on the citizenship and residential status of their Chief Investment Officer-Equity;*
4. Powers of the Reserve Bank under these rules. – (1) These rules shall be administered by the Reserve Bank. While administering the rules, the Reserve Bank may interpret the rules and issue such regulations, directions, circulars, instructions, clarifications, as it may deem necessary, for effective implementation of the provisions of these rules. (2) Notwithstanding anything contained in sub-rule (1), the powers related to interpretation of the foreign investment policy and issuance of directions, circulars or clarifications in relation thereto, shall be vested with the Department for Promotion of Industry and Internal Trade (DPIIT), Government of India. The mode of payment, reporting requirements and other operational requirements for foreign investment or the transfer of foreign investment shall be specified by the Reserve Bank from time to time.	No comments
5. Restriction on foreign investment and transfer thereof. – Save as otherwise provided in these rules or the regulations and directions issued thereunder as listed in Annexure-III, no person shall make, transfer or receive any foreign investment. Provided that the Reserve Bank may on an application made to it and for sufficient reasons permit any foreign investment or transfer of foreign investment subject to such terms and conditions as may be considered necessary.	Since the 2026 Rules apply to foreign investments in equity, we suggest that paragraph 5 be amended as follows: Save as otherwise provided in these rules or the regulations and directions issued thereunder as listed in Annexure-III, no person shall make, transfer or receive any foreign investment *in equity*.
6A. Acquisition or transfer of equity by a person resident outside India or an FCE. –	No comments

In accordance with the conditions provided under Rule 8, a person resident outside India or an FCE may make foreign investment on repatriation or non-repatriation basis, in any of the following manner: (1) by way of subscription to an issue; (2) by way of purchase from any person; (3) by way of gift between natural persons; Provided that where the gift is being made on repatriation basis, from a person holding the investment on a non-repatriation basis, the same shall be subject to the following conditions: - i) such person shall be a close relative as per the Companies Act 2013, and ii) the value of equity transferred in a financial year shall be within the limits as applicable under the Liberalized Remittance Scheme. (4) by way of pledge, Provided that the transaction consequent to invocation of such pledge is in accordance with the conditions of foreign investment prescribed in Rule 8. (5) An erstwhile OCB may transfer equity in accordance with the Foreign Exchange Management [Withdrawal of General Permission to Overseas Corporate Bodies (OCBs)] Regulations, 2003, in accordance with the conditions prescribed in rule 8 and directions issued by the Reserve Bank. **(6) Other permissible investments:** (a) A person resident outside India may acquire or transfer depository receipt issued by an eligible investee entity against its equity, in accordance with the Depository Receipts Scheme 2014. (b) A person resident outside India being an NRI or an OCI may subscribe to the National Pension System governed and administered by Pension Fund Regulatory and Development Authority (PFRDA), provided such person is eligible to invest as per the provisions of the PFRDA Act. The annuity/ accumulated saving will be repatriable. (c) Foreign investment by a person resident outside India or transfer thereof, on an international stock exchange, shall be in	

accordance with the conditions prescribed in Annexure-I.	
6B. Issue of equity by an eligible Investee entity: An eligible Investee entity may issue its equity to a person resident outside India or an FCE subject to conditions prescribed in Annexure-I and Annexure-II of these Rules, as applicable.	As mentioned in our comments under paragraph 2, the definition of "eligible investment entity" includes investment vehicles such as Mutual Funds, AIF, VC funds, ETF, REITs, InvITs, etc. These vehicles are regulated by SEBI and follow the valuation principles required by SEBI. Since they may create units on a daily basis, complying with the valuation principles and reporting obligations mentioned in the Draft 2026 Rules will be impractical as the obligations may also arise on a daily basis. Therefore, it would be helpful if RBI exempts the SEBI-registered eligible investee entities from the pricing conditions and reporting obligations mentioned in the FDI policy.
7. A person resident outside India may transfer the equity of an eligible investee entity to a person resident in India by way of sale or gift or pledge. Provided that the investment in equity of a company may also be made by way of swap of equity of a company or equity capital of a foreign company, where the 'equity capital' shall have the same meaning as assigned to it under the FEM (Overseas Investment) Rules, 2022. Provided further that an investment vehicle may issue its units to a person resident outside India against swap of equity of a Special Purpose Vehicle (SPV) proposed to be acquired by such investment vehicle.	This section does not have any provision enabling redemption of units by the investment vehicles which is the most used liquidity mechanism in the case of investment vehicles and Mutual Funds. We suggest that RBI consider enabling such redemption of units by the investment vehicles in this section.
8. Conditions applicable on foreign investments. – **(1) General Conditions:** (a) Foreign investment shall be in compliance with the conditions prescribed in the foreign investment policy (Annexure-II), including conditions of entry routes, sectoral caps and sectoral conditions, as applicable. Provided that foreign investment by an FCE shall comply with the applicable conditions only for	**Adverse Consequences of the Proposed Framework on Domestic Operations** Unless the definition of "eligible investee entity" is amended as proposed above and/or appropriate clarifications are provided in paragraph 6B, investments made by domestic investment vehicles, including Mutual Funds and ETFs, would be subject to significant regulatory and operational constraints

sectors which are specifically prescribed in the foreign investment policy (Annexure-II) for such purpose. Provided further that the conditions prescribed above shall not apply to the issue of equity to a person resident outside India on bonus or rights basis, if the shareholding pattern of such investors does not change pursuant to the issue. (b) Unless otherwise exempted under applicable SEBI regulations, foreign investment by a person resident outside India, not being an individual person or a foreign central bank or any other person resident outside India notified by the RBI, shall comply with the necessary registration in accordance with the SEBI regulations for investment on a recognised stock exchange in India. (c) Foreign investment on a recognised stock exchange in India by a person resident outside India holding rupee vostro account shall be in the manner as specified by the RBI. (d) Foreign portfolio investment made on a recognised stock exchanges in India which results in a person resident outside India holding ten percent or more of the equity of a company may be reclassified to FDI by complying with the applicable conditions for FDI as prescribed in Annexure-II and directions issued by the RBI and SEBI. **(2) Pricing Guidelines. –** Foreign investment and transfer thereof, shall be at a price: (a) Determined in accordance with the relevant SEBI Regulations in case of a company listed on a recognised stock exchange in India or an investment vehicle; (b) Determined in accordance with the conditions prescribed in Annexure-I, in case of a public company listed on an international stock exchange. (c) Determined, in all other cases, as per any internationally accepted pricing methodology for valuation on an arm's length basis. This shall be duly certified by a Chartered Accountant or a Merchant Banker registered with the Securities and Exchange Board of India or a Cost Accountant.	(see detailed constraints/burdens listed below). We believe these consequences would be inconsistent with the policy objective of facilitating investment and simplifying India's foreign investment framework. In addition, we wish to note that most of the investment vehicles in India are managed by resident Indian fund managers with majority of the contributions coming from domestic investors. Hence, imposing additional restrictions on investment vehicles, purely based on the ownership and control of their investment manager and disregarding the beneficial ownership of the unitholders, would lead to unintended consequences that are disproportionate to the risk. As the objective of the new Rules is to simplify the current requirements, we respectfully request RBI To consider our suggested amendments to the definition of FCE under our comments on paragraph 2. We also wish to take the opportunity to note that India's foreign investment policy has consistently encouraged global asset management firms to establish and operate local asset management businesses by permitting up to 100% foreign investment under the automatic route. Several foreign-sponsored asset managers have operated in India for decades, making substantial investments in local talent, infrastructure and market development. Introducing a framework that significantly restricts the investment management capabilities of their Indian entities would be inconsistent with the policy objective underlying such liberalisation and could discourage future investment into India's asset management sector. Below are some detailed regulatory constraints and burdens that the current Draft 2026 Rules may cause for domestic investment vehicles.

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Provided that the pricing guidelines shall not apply to subscription to equity of an eligible investee entity issued on rights basis.
(3) Foreign investment on non-repatriation basis shall not require compliance with the conditions prescribed in this rule.
Provided that foreign investment on non-repatriation basis shall not be permitted in the prohibited sectors prescribed in the foreign investment policy (Annexure-II) for such investment.
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1. Significant Restriction on Investment Universe
The proposed framework under the Draft 2026 Rules would materially restrict the investment universe available to affected investment vehicles, thereby limiting their ability to pursue investment strategies consistent with their investment mandates and fiduciary obligations to investors.
2. Disproportionate and Impractical Reporting Obligations
As mentioned earlier, applying the reporting obligations to both investments received by investment vehicles and downstream investments made by them will create challenges for Mutual Funds and certain categories of AIFs that invest in highly liquid securities and undertake transactions on a daily basis. Monitoring foreign investment limits and complying with reporting requirements at such frequency may not be operationally feasible, especially since reporting obligations for investment vehicles are administered separately and not through the existing Depository/Custodian framework.
As a result, the current Draft 2026 Rules could create significant compliance challenges without providing a corresponding regulatory benefit.
3. Operational Difficulties in Meeting Valuation Requirements
Eligible investee entities, particularly Mutual Funds, issue and redeem units on a continuous basis based on daily net asset value (NAV) calculations.
The requirement to obtain a valuation certificate from a Merchant Banker or Chartered Accountant for such issuances would be operationally impractical and inconsistent with the valuation framework already prescribed by SEBI for regulated investment vehicles. This could create duplication, increase compliance costs and introduce regulatory
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	inconsistency without any corresponding investor protection benefit. While sub-paragraph (1)(a) of paragraph 8 states that FCE shall comply with the applicable conditions only for sectors which are specifically prescribed in the foreign investment policy in Annexure II, the terminology FCE is not in the existing version of the Consolidated FDI Policy Circular. If such clarification is not made in the final Rules and Annexure II, it may lead to confusion and ambiguity in implementation.
9. **Onus of compliance.** – The onus of compliance with these Rules shall be on the foreign investor and the eligible investee entity or transferor and transferee in a foreign investment.	We suggest implementing a uniform reporting methodology through the depository infrastructure for transactions executed on the stock exchange platform irrespective of the type of entity buying/selling equity shares of listed companies. We suggest further that the respective reporting and compliance responsibilities of each stakeholder should be clearly defined to ensure consistency in implementation and to mitigate against the risk of omissions, ambiguities or disputes at a later stage.
<u>Annexure-I</u> **<u>Direct Listing of Equity of Companies Incorporated in India on International Stock Exchange(s) Scheme</u>** **(3) Foreign investment or transfer of equity, on an international stock exchange.-** (b) Foreign portfolio investment made on an international stock exchange which results in a person resident outside India holding ten percent or more of the equity of a company shall require to be divested as per guidelines of concerned regulator of such international stock exchange or as per guidelines of SEBI, in absence of guidelines of concerned regulator of such international stock exchange. For the purpose of this clause, the equity of the company held in India by such person resident outside India shall also be taken into account to arrive at the limit of ten percent.	This part of the Draft Rules appears to require divestment by an FPI where its investment in an Indian company listed outside India exceeds 10% of the equity of the company as opposed to reclassification as an FDI if its investment is in an Indian company listed on a recognized stock exchange in India. With an FPI's ownership in a listed company likely to fluctuate when stock of such company tends to be traded frequently, requiring divestment by FPIs when the 10% threshold is hit seems to be quite draconian and adds further complications and uncertainty to FPIs' ownership of Indian companies. A consistent framework for dealing with foreign investment that reaches or exceeds 10% of the equity of an Indian company, whether listed in or outside India, would reduce uncertainty and avoid different outcomes for

	foreign investments in Indian companies. We strongly suggest that RBI consider the foregoing to make it easier for foreign investors to invest in Indian companies.
Annexure-II Foreign Investment Policy (FDI policy) issued by the Government of India (as amended from time to time).	We appreciate if our comments and suggestions above could be reflected in the FDI policy and would be grateful if we have the opportunity to review the Annexures before the 2026 Rules are finalised.
Annexure-III Regulations, directions issued by the RBI, applicable on foreign investment or transfer thereof.	We suggest that RBI modify the regulations and directions to reflect our comments and suggestions above and would be grateful if we have the opportunity to review the Annexures before the 2026 Rules are finalised.