FIIs may get more time to follow structural norms

Mehul Shah/Mumbai 02 Oct 10 | 12:52 AM

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Sebi bars non-compliant FIIs from taking fresh positions

The Securities and Exchange Board of India (Sebi) may give more time to foreign institutional investors (FIIs) and sub-accounts which have failed to comply with the new norms on their structure.

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Sebi says 197 FIIs and 342 sub-accounts have failed to comply with the norms. Of these, 12 FIIs and 120 sub-accounts have applied for surrendering registration. There are 1,726 FIIs and 5,529 sub-accounts registered in India.

The non-compliant FIIs include Allianz Global Investors (Hong Kong and Singapore), Citigroup Pension Plan, Credit Suisse Asset Management, Fortis Bank, JP Morgan Securities, Mellon Asset Management, Mirae Asset Investment Trust, Schroder Investment Management Australia and Standard Chartered Trustees (UK). Sebi has barred them from taking fresh positions in the stock market from on Friday.

Sebi's circular of September 29 did not specify what would happen to FIIs and sub-accounts that wanted to continue their registration but could not comply with the norms. "We are yet to take that policy decision," said a Sebi official.

An official at a leading law firm said Sebi might come out with some kind of an "amnesty scheme" for FIIs and sub-accounts which did not want to surrender their registration.

On April 15, Sebi asked new applicants and existing FIIs and sub-accounts to give more information about their structures. It sought declarations that they were not a protected cell company (PCC) or a segregated portfolio company (SPC). They were also told to declare that they were not a multi-class share vehicle (MCV) under their constitution. If yes, they were told to undertake that common portfolios would be allocated across various share classes and be broad-based.

A PCC or an SPC segregates assets and liabilities of investors by providing for distinct assets, either in the form of a separate class of shares or a dedicated sub-fund attributed to each investor.

An MCV has the flexibility to issue multiple classes of shares with differential benefits attached, so that each class has the ability to represent the interest of a particular investor or for specific investments.

Legal experts believe the regulator may give some more time for compliance. "A large number of FIIs and sub-accounts in this list, to the extent they have active interest in India, will restructure to meet these requirements. Those who have not been able to do so by September 30 can complete the restructuring and go back to Sebi again," said Siddharth Shah, head of the corporate and securities practice group at Nishith Desai Associates, a law firm. "The regulator will allow them to trade once they comply with the norms," he added.

He said Sebi would also give FIIs and sub-accounts which had applied for surrendering registration time to wind down their positions.