

Regulatory Hotline

June 07, 2024

SEBI RELAXES THE TIMELINES FOR DISCLOSURE OF MATERIAL CHANGES BY FOREIGN PORTFOLIO INVESTORS

- SEBI issues an updated Master Circular for FPIs, DDPs and EFIs.
- SEBI FPI (Amendment) Regulations, 2024 notified.
- SEBI issues a circular on disclosure of material changes and other obligations for FPIs.

INTRODUCTION

The Securities and Exchange Board of India (“SEBI”) recently notified an amendment to the SEBI (Foreign Portfolio Investors) Regulations, 2019¹ (“FPI Regulations”) through the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2024² (the “Amendment Regulations”). Prior to this notification, SEBI also released the Master Circular for Foreign Portfolio Investors (“FPIs”), Designated Depository Participants (“DDPs”) and Eligible Foreign Investors (“EFIs”) (the “Master Circular”)³ on May 30, 2024.

The Amendment Regulations, *inter alia*, relaxed the timelines for FPIs to inform their respective DDPs and / or SEBI of any material change in information. In furtherance to the Amendment Regulations, SEBI also released a circular, detailing the timelines for intimation of the material changes and submission of supporting documents for different types of material changes by FPIs⁴ (“Circular”).

BACKGROUND

Under the provisions of Regulation 22 of the FPI Regulations, an FPI is obligated to *inter alia* inform SEBI and/or its DDP in case -

- (a) any information or particulars previously submitted to the SEBI or DDP are found to be false or misleading, in any material respect,
- (b) any material change in the information previously furnished to SEBI or DDP,
- (c) any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it, and
- (d) any direct or indirect change in structure or common ownership or control of the FPI investor group.

Erstwhile framework

Definition of Material change

The FPI Regulations and the Master Circular provided an inclusive definition for the term ‘material change’. It included any direct or indirect change in the structure / ownership / control, change in investor group, change in regulatory status, merger, demerger or restructuring, change in category/ sub-category/ jurisdiction/ name of FPI and beneficial ownership (“BO”) etc. This left room for investors and DDPs to have their own interpretations to determine whether a change is a material change and led to the FPIs taking a more conservative but safer approach of informing their relevant DDPs of any minor or major change, which may not necessarily have been a material change.

Timeline for intimation

Prior to the notification of the Amendment Regulations and release of the Circular, the timeline for an FPI to inform its DDP of the change in the information mentioned above was “as soon as possible but not later than seven working days”. In case of a delay of more than six months in the intimation by the FPI, the DDPs were instructed to inform SEBI of all such cases, along with the reason for delay. This gap between seven working days and six months led to ambiguity in the market, causing different DDPs to interpret the timeline of intimating, and provision of supporting documents differently. While some DDPs asked for both, the intimation as well as the supporting documents within seven working days, others required only the intimation within seven working days and submission of documents at a later time. This timeline of seven working days posed a hinderance and most of the FPIs found it practically difficult to abide by.

Changes introduced by the Amendment Regulation and the Circular

To resolve the above issues faced by the FPIs and eliminate the ambiguities in the meaning of ‘material change’, the

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A. Type I material changes: Type I material changes include critical material changes that:

1. render the FPI ineligible for registration;
2. require the FPI to seek fresh registration;
3. render the FPI ineligible to make fresh purchase of securities;
4. impact any privileges available or granted to the FPI, like the privileges enjoyed by FPIs in their capacity of qualified institutional buyers;
5. impact any exemptions available or granted to the FPI. For instance, exemption from provision of additional granular information.

Type I material changes	
a. Change of Jurisdiction	b. Name change on account of acquisition, merger, demerger, restructuring, change of ownership/control
c. Acquisition/merger/demerger resulting in cessation of existence of FPI	d. Restructuring of legal form/sub-category
e. Change in regulatory status of the FPI (e.g. regulated to unregulated fund)	f. Change in compliance status of jurisdiction of FPI/BO in terms of Regulation 4(d), 4(e) or 4(f) of the FPI Regulations, 2019
g. Reclassification of the FPI from Category I to Category II	h. Addition of FPI(s) to any existing/new investor group(s)
i. FPIs obtaining registration under Category-I on support of an Investment Manager (IM) and such IM being either removed (temporarily/permanently) or losing its Category I eligibility	j. Breach of prescribed threshold for aggregate contribution of NRIs, OCIs and Ris
k. Any information or particulars previously submitted to the Board or DDP are found to be false or misleading, in any material respect	l. Any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator
m. Changes which impact any exemption granted in terms of SEBI Circular dated August 24, 2023	n. Breach of any of the eligibility criteria as specified under Regulation 4 of FPI Regulations, 2019 unless the FPI has been exempted from complying with the said criteria

Table 1 List of Type I material changes

B. Type II: Any material changes other than the Type I changes listed in Table 1 above shall be considered as Type II material changes. This includes deletion of sub-fund/share classes or any equivalent structure that invests in India.

Timeline for intimation and submission of documents

	Type I material change	Type II material change
Intimation of change to DDP and / or SEBI	Seven working days of the change	Thirty days of the change
Submission of supporting documents (if any)	Thirty days of the change	Thirty days of the change

Table 2 Timeline for intimation of change and submission of documents

Requirement of seeking fresh registration

While examining the material changes informed by the FPIs, the DDPs have been instructed to re-assess the eligibility of the FPI. In case of an FPI undergoing a Type I material change mentioned in points (a) to (f) of Table 1 above, it shall be mandatorily required to seek a fresh registration.

Delay in intimation of material change

In case of a delay in intimation of material change by the FPI to its DDP, the FPIs are required to provide a reason for delay in intimation to the DDP, irrespective of the type of change. The DDPs, then, have to inform SEBI of all such cases of delay, along with the reason for delay, as soon as possible but not later than two working days, for appropriate action by SEBI (if any).

OUR VIEWS

The issuance of the Amendment Regulations and the Circular are a welcome move by SEBI. It was a much awaited and demanded change, especially after SEBI gave its approval in the March board meeting.

The seven working day timeline for intimation (which is now relaxed for Type II changes, including change in BOs)

and for submission of requisite documents to the DDP, applicable prior to the new framework, posed significant challenges, especially to hedge funds having different administrators and service providers based out of different time zones. The 30-day timeline for submission of the documents aligns with the Indian anti-money laundering rules and should provide the requisite comfort to the FPIs in their efforts to comply with the FPI Regulations. Furthermore, the amendment to the Master Circular removes certain inconsistencies between the FPI Regulations and the Master Circular with respect to the intimation timelines.

The removal of these procedural hiccups should eliminate subjectivity and promote ease of doing business in India in its own impactful way.

- Ritul Sarraf, Prakhar Dua and Kishore Joshi

You can direct your queries or comments to the authors.

¹https://www.sebi.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019-last-amended-on-june-03-2024-_84004.html

²https://www.SEBI.gov.in/legal/regulations/jun-2024/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2024_83915.html

³https://www.SEBI.gov.in/legal/master-circulars/may-2024/master-circular-for-foreign-portfolio-investors-designated-depository-participants-and-eligible-foreign-investors-_83689.html

⁴https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jun-2024/1717587627531.pdf#page=1&zoom=page-width,-33,842

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