

# EY Regulatory Alert

**SEBI Consultation paper on proposals to improve ease of doing business with respect to additional disclosure framework for Foreign Portfolio Investors**

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## Executive summary

This alert summarizes a recent consultation paper (CP) released for public comments by the Securities and Exchange Board of India (SEBI) on 27 February 2024. The CP is in furtherance to SEBI Circular dated 24 August 2023<sup>1</sup> (August Circular), which outlines a framework for mandating additional granular disclosures by Foreign Portfolio Investors (FPIs) fulfilling certain criteria.

The CP seeks comments from public on two proposals to amend the additional granular disclosure framework for FPIs specified under the August Circular:

- I. To exempt University Funds and University related Endowments registered/ eligible to be registered as Category I FPIs that meet certain objective criteria from the requirement of enhanced disclosures.
- II. To exempt enhanced reporting requirements for some FPIs with concentrated holdings in entities with no identified promoter subject to meeting certain prescribed conditions.

The last date to provide comments is 8 March 2024.

<sup>1</sup>Please refer to EY Alert dated 29 August 2023, summarising the circular issued by SEBI.



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## Background

- ▶ FPIs are regulated by the SEBI and are permitted to invest in, *inter-alia*, shares of listed companies.
- ▶ The SEBI (FPI) Regulations, 2019 (FPI Regulations 2019) provide that investment by FPIs and its investor group<sup>2</sup> in equity shares of each company cannot exceed 10% of the paid-up equity capital of such company.
- ▶ To ensure that FPIs do not (a) concentrate a substantial portion of their equity portfolio in a single investee company/ company group thereby circumventing regulatory requirements under Substantial Acquisition of Shares and Takeovers Regulations, 2011 (SAST Regulations) or maintaining Minimum Public Shareholding (MPS)<sup>3</sup>; or (b) circumvent the restrictions imposed by Press Note 3<sup>4</sup>, the August Circular was issued by SEBI.
- ▶ The August Circular, which became effective from 1 November 2023, mandated FPIs to disclose granular details of all entities holding any ownership, economic interest, or exercising control<sup>5</sup> in an FPI, on a full look through basis up to the level of natural persons, in the following cases:
  - ▶ FPIs holding more than 50% of their Indian equity Assets Under Management (AUM) in a single Indian corporate group; or
  - ▶ FPIs that individually, or, along with their investor group, hold more than INR 250 billion of equity AUM in the Indian markets.

Additionally, the August Circular also provided that FPIs meeting certain prescribed conditions shall be exempted from the increased disclosure requirements.

- ▶ Further, a Standard Operating Procedure (SOP) was also framed by the Custodians and DDPs Standard Setting Forum (CDSSF), in consultation with SEBI to

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<sup>2</sup> Investor Group is defined in the SEBI (FPI) Regulations, 2019 to mean multiple FPIs, directly or indirectly, having common ownership of more than 50% or common control. Further, 'control' has been defined to mean right to appoint majority of directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

<sup>3</sup> The Securities Contracts (Regulation) Rules, 1957 read with Regulation 38 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 make it mandatory for entities who have listed their equity shares on a stock exchange to maintain MPS of 25%. This ensures balance of promoter and public shareholding and reduces volatility in the market.

outline the detailed mechanism for independently validating conformance of FPIs with the conditions and exemptions as provided in the August Circular.

- ▶ During the course of implementation of the granular disclosure framework, SEBI received suggestions from industry participants to enhance ease of doing business by certain FPIs. In this connection, SEBI has released the CP to expand the category of exemptions provided in the August Circular.
- ▶ This alert summarizes the key aspects of the CP.

## Proposal

### ***Proposal I - Exemption from making additional disclosures to university funds and universities related endowments.***

- ▶ University funds and endowments receive contributions from various donors. The returns from such investments accrue to the university, rather than to the donors. Such funds also generally enjoy tax-exempt status in their home jurisdictions and are therefore, subject to disclosure requirements to ensure that the corpus is used for the purposes for which the fund was set up.
- ▶ Further, university related endowments of such universities that have been in existence for more than five years and based in FATF member countries, are eligible for registration as Category I FPI.
- ▶ Thus, SEBI proposes to exempt university funds and university related endowments, registered/ eligible to be registered as Category I FPIs, from additional disclosure requirements prescribed under the August Circular, subject to the following additional conditions:
  - ▶ University is listed in the Top 200 ranking as per the latest QS World University Rankings

<sup>4</sup> Press Note 3 dated 17 April 2020 provides that investment by an entity from a country which shares land border with India or where the beneficial owner of an investment into India is situated in/ citizen of any such country, shall only be under the Government route. Press Note 3 currently does not apply to FPI investments.

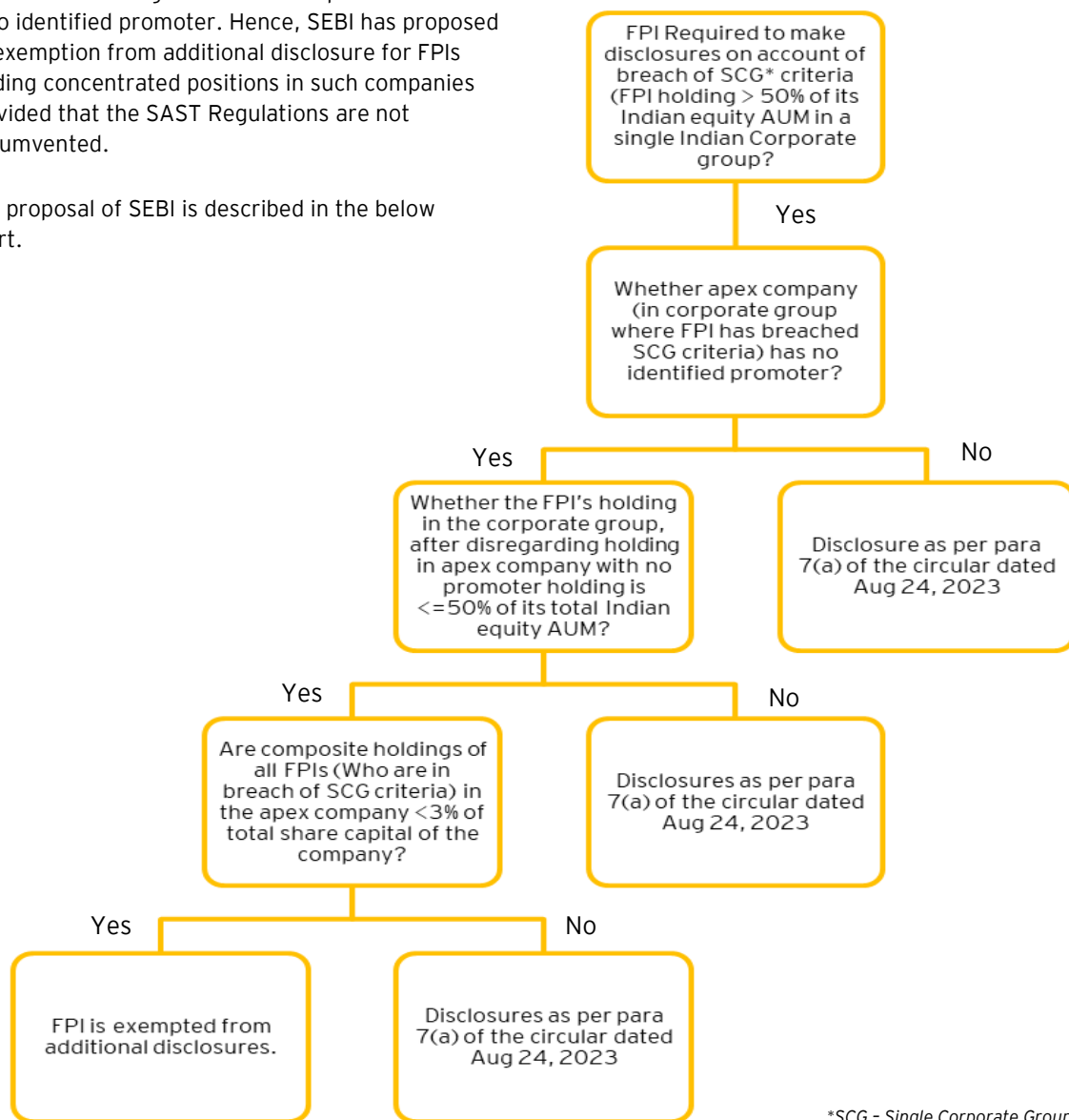
<sup>5</sup> Ownership interest means ownership of shares or capital of the entity or entitlement to derive profits from the activity of the entity. Economic interest means returns from the investments made by the FPI. Control - Please refer definition in note 2.

- ▶ issued by QS Quacquarelli Symonds Limited.
- ▶ Its India equity AUM is less than 25% of its global AUM.
- ▶ Its global AUM is more than INR 100 billion.
- ▶ It has filed appropriate returns/ filings with the respective tax authorities in its home jurisdiction to evidence that the entity is in the nature of a non-profit organization and is exempt from tax.

- ▶ The 3% limit shall be tracked by custodians and depositories at the end of each day. When the 3% limit is met or breached, depositories and custodians will make this information public before start of trading the next day. Thereafter, FPIs that breach the 50% concentration criteria in the corporate group will be required to either realign such positions below the 50% threshold within 10 trading days, or submit disclosures prescribed in the August Circular provided the 3% cumulative FPI limit for the listed company continues to be in breach through the 10 trading days.

**Proposal II - Exemption in case of companies with no identified promoter and low FPI holdings**

- ▶ As indicated above, the August Circular was issued by SEBI to ensure that FPIs, *inter-alia*, do not circumvent the SAST Regulations<sup>6</sup> or MPS rules.
- ▶ However, in case of certain listed companies, the entire shareholding is classified as 'public' as there is no identified promoter. Hence, SEBI has proposed an exemption from additional disclosure for FPIs holding concentrated positions in such companies provided that the SAST Regulations are not circumvented.
- ▶ The proposal of SEBI is described in the below chart.



\*SCG - Single Corporate Group

<sup>6</sup> SAST Regulations require any investor along with persons acting in concert, acquiring more than 5% shares or voting rights in a listed company to make disclosures prescribed therein.

Disclosures are further to be made for increments/ decrements in holding of 2% thereafter. Holdings above 25% would require an open offer to be made.

## Comments

With the stated objective of fostering greater trust and transparency in the Indian securities market ecosystem and for greater investor protection, SEBI had released the August Circular to obtain granular information of persons having any ownership, economic interest, or control in some objectively identified FPIs. The August Circular had also provided a list of FPIs who would be exempted from the additional disclosure requirements. This includes FPIs having a broad based, pooled structure with widespread investor base and those having ownership interest by Government or Government related investors, subject to certain conditions.

Based on interactions with industry participants, and to reduce compliance burden on FPIs, SEBI has released this consultation paper expanding the list of exemptions provided in the August Circular to now cover Category I university funds/ university related endowment funds and certain FPIs with concentrated holdings in listed entities without identified promoters meeting prescribed requirements.

The release of the consultation paper is a welcome move by SEBI to facilitate ease of doing business and should provide some relief to certain FPIs from the additional disclosure requirements.

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