



CIRCULAR

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November 24, 2014

To,
All Foreign Portfolio Investors
through their designated Custodians of Securities

Dear Sir/Madam

Sub: Conditions for issuance of Offshore Derivative Instruments under SEBI (Foreign Portfolio Investor) Regulations, 2014.

1. It has been decided to align the applicable eligibility and investment norms between Foreign Portfolio Investor (FPI) regime and subscription through the Offshore Derivative Instruments (ODI) route. Accordingly, it is clarified as under.
2. An FPI shall issue ODIs only to those subscribers which meet the eligibility criteria as laid down in Regulation 4 of the SEBI (Foreign Portfolio Investor) Regulations, 2014. Regulation 4 requires that an FPI applicant shall not be granted registration unless it satisfies inter alia the following conditions namely:
 - a. the applicant is resident of a country whose securities market regulator is a signatory to International Organization of Securities Commission's Multilateral Memorandum of Understanding (Appendix A Signatories) or a signatory to bilateral Memorandum of Understanding with the Board;
 - b. the applicant being a bank, is a resident of a country whose central bank is a member of Bank for International Settlements;
 - c. the applicant is not resident in a country identified in the public statement of Financial Action Task Force as:
 - i. a jurisdiction having a strategic Anti-Money Laundering or Combating the Financing of Terrorism deficiencies to which counter measures apply; or
 - ii. a jurisdiction that has not made sufficient progress in addressing the deficiencies or has not committed to an action plan developed with the Financial Action Task Force to address the deficiencies;
3. An FPI shall issue ODIs only to those subscribers which do not have opaque structure(s), as defined under Explanation 1 of Regulation 32(1)(f) of SEBI (Foreign Portfolio Investors) Regulations, 2014.
4. Regulation 21(7) of SEBI (Foreign Portfolio Investor) Regulations, 2014, lays down the investment restrictions which are applicable to FPIs. It is clarified that:
 - a. These investment restrictions shall apply to ODI subscribers also. For this purpose, two or more ODI subscribers having common Beneficial Owner



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(BO) shall be considered together as a single ODI subscriber, in the same manner as is being done in the case of FPIs.

- b. Further, where an investor has investments as FPI and also holds positions as an ODI subscriber, these investment restrictions shall apply on the aggregate of FPI investments and ODI positions held in the underlying Indian Company. In other words, the investment as FPI and positions held as ODI subscriber will be clubbed together with reference to the said investment restrictions.
5. FPIs which issue ODIs shall put in place necessary systems to ensure compliance with above provisions as mentioned in paragraph 2, 3 and 4.
6. Existing ODI positions, if they are not in accordance with paragraph 2, 3 and 4, may continue till the expiry of the ODI contract. No additional issuances/renewal/rollover of such positions shall be permitted. Fresh issuance of ODIs shall be made only to the eligible subscribers subject to the compliance with paragraph 5 of this circular and with SEBI (Foreign Portfolio Investors) Regulations, 2014 and other applicable norms.
7. This circular shall come into effect immediately. This circular is issued in exercise of powers conferred under SEBI Section 11 (1) of the Securities and Exchange Board of India Act, 1992.
8. A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. The custodian of securities are requested to bring the contents of this circular to the notice of their FPI clients.

Yours Faithfully

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