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Name	Eugenie Shen	Email	eshen@asifma.org	Mobile no.	+852 25316570
Country	Hong Kong S.A.R.	State	Central and Western	City	Admiralty
Organization Type	Industry Association	Organization name	ASIFMA Asset Management Group (AAMG)		
Consultation Paper	Consultation Paper on investment by Foreign Investors through Segregated Portfolios/ P-notes/ Offshore Derivative Instruments				
Description	Investments made by foreigners via Offshore Derivative Instruments (erstwhile P-notes) or through segregated portfolios of Foreign Portfolio Investors (FPIs) are currently not subject to the same set of disclosure and other regulatory requirements as regular FPIs under the SEBI (Foreign Portfolio Investors) Regulations, 2019 (FPI Regulations, 2019). The proposals in this paper seek to address this regulatory arbitrage.				
Regulation	FPI Regulations				

Question 1: Do you agree with the proposal to make the additional disclosure framework, provided under the August Circular, applicable to ODI subscribers directly?

Level of Agreement Strongly Agree/ Agree/ Partially Agree/ Disagree/ **Strongly Disagree**

Comments	Rationale
<p>We strongly disagree with the proposal to apply the additional disclosure framework to ODI subscribers directly.</p> <p>1. While we understand SEBI's desire for increased transparency in use of ODIs by foreign investors and concern with regulatory arbitrage, we believe that the existing requirements on ODI issuers are sufficient.</p> <p>2. If the additional disclosures are applied directly to ODI subscribers, our</p>	<p>1. This is because ODIs, by their nature, confer their subscribers neither voting rights nor any other form of control over the underlying security. Therefore, the proposal would not prevent the circumvention of regulatory requirements or policy, such as under the Substantial Acquisition of Shares and Takeovers Regulations 2011.</p> <p>Moreover, it would be difficult for SEBI to ensure compliance by ODI subscribers which typically do not have a presence in India. This is</p>

members are concerned about para 4.1.6.2.1 which requires ‘clubbing of investments across FPI and ODI subscribers’ and includes group entities with common ownership or under common control of more than 50 percent. Global investment/asset/fund management group may have many entities under it managing numerous funds and segregated portfolios, each with their own investment objective and governance.

We urge SEBI to consider and clarify that the ‘clubbing of investments’ requirement under the FPI Regulations would not apply to funds where the only connection is that they are managed by an investment manager that is under ‘common control’ where such manager operates separately or independently from other members of the group. It should also be noted that the ambit of the term ‘control’ is not absolutely clear and divergent views amongst DDPs exist in the market. Our members suggest that SEBI adopt the ‘investor group’ definition under the 2014 FPI Regulations, i.e. ‘in case the same set of ultimate beneficial owners invest through the multiple entities, such entities shall form part of the same investor group’.

We also suggest that SEBI clarify that the exemptions available to FPIs from the clubbing and additional disclosure requirements should be available to the ODI subscribers. In addition, we assume that the clubbing requirement would not be applied to the investment of a sub-fund or segregated portfolio managed by a different investment/asset/fund manager that is not part of the same group.

3. We also suggest that issues regarding investor grouping are considered in parallel with this proposal. Under the current grouping rules, there are instances whereby entire sub-funds of non-public retail umbrella funds, managed by separate investment managers, are grouped together due to a common material shareholder on one FPI registration.

acknowledged in the consultation as para 4.1.6 leaves compliance with the ODI issuers, DDPs and Depositories. Applying the additional framework to ODI subscribers directly would increase regulatory uncertainty and compliance costs for foreign investors that may not be ready to register as an FPI but may just want to gain some exposure to Indian equities before doing so.

2. As global asset managers manage numerous funds and segregated portfolios, it could be practically difficult for them to effectively monitor the positions held by their many funds and/or segregated portfolios especially if investment decisions have been sub-delegated to other managers. The additional disclosures will also be extremely challenging for funds with broad based investors given the breadth of their investor base and the challenges of obtaining data from third parties, such as the fund distributors, private wealth platforms, aggregators, etc.
3. The investor grouping rules have led to unintended consequences where it is impractical or illegal for separate investment managers to share trading information. We are extremely concerned that the issues currently encountered in relation to groupings will be exacerbated if ODIs subscribers are brought into scope of the additional disclosures.
4. If an ODI issuer’s LBC/non-LBC identification and categorization depends on that of their ODI subscribers, and if this would apply notwithstanding the size/concentration criteria of the ODI subscribers, ODI Issuers may then require all ODI subscribers to prove their LBC status. We fear that ODI issuers may be discouraged from having ODI exposures exceeding INR 25,000 crore which would trigger additional due diligence on their subscribers’ LBC status. This increases the availability and costs to ODI subscribers and could reduce foreign investors’ access and exposure to the India market.

<p>4. In addition, we suggest SEBI clarify that the LBC/non-LBC related exemptions shall also apply to ODI subscribers to ensure FPIs and ODI subscribers are on a level playing field. However, we note that it would be very difficult to achieve as it would require ODI subscribers to disclose to ODI issuers sensitive information such as their investor base, which may be very large, and identities of their underlying investors where such information may be subject to confidentiality agreements or data privacy law protections. This would amount to requiring all ODI subscribers, regardless of the size of their interest, to make a determination of its LBC status, which we believe would be an unintended consequence of SEBI's expectations.</p>	<p>We recognize the importance of reducing regulatory arbitrage but we also believe that it is important to ensure that measures put in place are proportionate to the risks that ODIs/P-notes present, especially after taking into consideration that the total value of ODIs/P-notes as a percentage of AUC for FPIs has dropped significantly from 44.4 percent in 2006-07 to 2.1 percent in 2023-24 and has remained consistently below 2.5 percent.</p>
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Question 2: Do you agree with the proposal to mandate submission of ODI subscriber information including the positions held by ODI subscribers, by ODI issuer to the respective custodian/ DDP for onward transmission of the same to the Depositories for monitoring of the size criteria as per the August Circular?

Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree
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Comments	Rationale
<p>We strongly disagree with this proposal but if information of the ODI subscriber is required, it should only be at the ODI subscriber level and not on a look-through basis due to the reasons mentioned herein.</p> <p>Moreover, for assessment of breach of concentration criteria, it will be helpful if SEBI can clarify how will DDPs manage or work together to aggregate an FPI's direct and indirect positions in the India equities market.</p> <p>We are also mindful that the additional administrative burden on ODI issuers to collect and share detailed beneficial ownership information from ODI subscribers will discourage many ODI issuers from providing such products.</p>	<p>While ODI subscribers may have an 'economic interest' in the hedge positions held by the ODI issuer, i.e., the FPI, they do not have an 'economic interest' or control in the ODI issuer itself nor how the ODI issuer manages their ODI business or offering.</p> <p>There are serious market structure and data privacy implications that need to be addressed as well. For example, ODI subscribers do not have unique identifiers in the same way as FPIs or ODI issuers since most of them are not FPIs. This makes it difficult for DDPs to aggregate the positions of each ODI subscribers unless they are each assigned an identifier. If the ODI subscriber has to submit to every ODI issuer with whom it has a position the positions</p>

<p>ODI issuers often produce influential research notes that help attract foreign investors to invest in the India equities market and we would like to see them continuing to offer such products.</p>	<p>it holds across all ODI issuers for onward submission to the DDPs, this would involve the transfer of commercially sensitive information that is not appropriate to be shared amongst competitors or a large group of entities.</p>
<p>Question 3: Do you agree with the proposal to make the additional disclosure framework, provided under the August Circular, applicable directly at segregated portfolio level of the FPI?</p>	
<p>Level of Agreement</p>	<p>Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree</p>
<p>Comments</p>	<p>Rationale</p>
<p>To many global investment/asset/fund managers, 'segregated portfolios' refer to the assets of individual clients as well as sub-funds under an umbrella fund or different share classes designed for a specific purpose or for a specific group of investors.</p> <ol style="list-style-type: none"> 1. If the FPI that is an umbrella fund exceeds the concentration or size criteria for additional disclosures, we agree with applying the additional disclosure framework at those segregated portfolios of FPIs that are sub-funds or separate share classes or equivalent structure where they also exceeded the concentration or size criteria. 2. However, it will be problematic in the case of FPIs with a single pool of underlying investors but which have allocated responsibility to multiple investment managers, are no longer treated as a single portfolio. In this case it is impossible to figure out the India equities holdings by each underlying investor. 	<ol style="list-style-type: none"> 1. If 'segregated portfolio' refers to sub-funds under an umbrella fund structure, once the FPI exceeded the concentration or size criteria mandating additional disclosures, then the additional disclosures should only be applied to those sub-funds which themselves meet the concentration or size criteria. 2. We understand that SEBI had previously referred to 'segregated portfolios' as pooled investment vehicles structured as umbrella funds consisting of several ring-fenced sub-funds but have chosen to register as an FPI at the umbrella fund level. We understand also that SEBI means the same when referring to 'segregated portfolios' in this consultation. However, we strongly suggest that this is made explicitly clear in the final rules that are issued to ensure consistent understanding/ interpretation/ application of the requirements on 'segregated portfolios' of FPIs.

Question 4: Do you agree with the proposal to make ODI subscriber ineligible for subscription/holding any positions through ODIs, for non-disclosure in terms of the August Circular and to make the ODI issuer responsible for ensuring compliance with the same?	
Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree
Comments	Rationale
We strongly disagree that ODI subscribers should be subject to the additional disclosure requirements under the August Circular for the reasons stated in our response to Q1. Hence, we do not agree with the proposal to make ODI subscribers ineligible for subscription/holding any position through ODIs for non-disclosure under the terms of the August Circular.	Practically this proposal poses difficulty with implementation and enforcement, i.e., unless SEBI intends to establish a blacklist of ODI subscribers which ODI issuers will have to check each time before it offers its product to an ODI subscriber. This proposal would greatly increase the compliance cost for both the ODI issuer and the ODI subscriber and for the ODI issuers, regulatory risk.
Question 5: Do you agree with the proposal to discontinue the exceptions for ODIs with derivatives as reference/underlying?	
Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree
Comments	Rationale
Question 6: Do you agree with the proposal to discontinue the exceptions for ODIs hedged with derivatives?	
Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree / Strongly Disagree
Comments	Rationale
We disagree with this proposal as ODI issuers may choose to hedge their ODI positions using the best available (most liquid, most cost effective, best tracking) tools at their disposal. Eliminate their ability to hedge with derivatives will increase risks to them, which will inevitably be passed on to ODI subscribers in the form of wider spreads or higher costs. Furthermore,	Allowing ODI issuers to continue to hedge their ODI positions will enable them to offer tighter spreads on the ODIs that they offer, which is beneficial to ODI subscribers.

the proposal to mandate that ODIs be fully hedged with the same securities on a one-to-one basis throughout their lifetime unnecessarily and unreasonably dictates how an ODI issuer should manage its risks, which could again lead to higher costs for ODI subscribers.		
Question 7: Do you agree with the proposal to provide a time period of 1 year for redemption of existing ODIs with derivatives as underlying/reference?		
Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree	
	Comments	Rationale
Question 8: With respect to existing ODIs hedged with derivatives, do you agree with the proposal to provide a time period of 1 year for either redemption or hedging with the actual referenced cash securities on a one to one basis?		
Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree	
	Comments	Rationale
	We disagree with this proposal for the reasons stated in our response to Q6.	Please refer to the rationale in our response to Q6.
Question 9: Do you agree with the proposal to permit issuance of ODIs by FPIs only through a separate dedicated FPI registration?		
Level of Agreement	Strongly Agree/ Agree/ Partially Agree/ Disagree/ Strongly Disagree	
	Comments	Rationale