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P-Notes: Needed more clarity on multiclass structures, says Richie Sancheti, Nishith Desai Associates

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In a chat with ET Now, Richie Sancheti, Partner Investment-Fund Practice Group, Nishith Desai Associates, says large part of the target audience were already complying with some of Sebi .s rules. Edited excerpts

ET Now: The jury is divided on the P-Note by Sebi. Some people believe that a lot of participants were already complying with the major portion of the norms and some people believe this will scare away a significant part of the FII community, your thoughts?

Richie Sancheti: I sort of agree with that community which agrees that large part of the target audience which was subscribing to ODIs and P-Notes were already in compliance with some of the rules that Sebi has formalised as of now. So a bulk of the ODI subscriptions we see in the market is by ETFs who have been dealing with swap dealers which are institutional in nature and we see lot of uniformity in how the India side letters to the ODIs (offshore derivative instruments) have been dealt with in the past.

The ODI swap dealers, the issuers etc. have been engaging with Sebi on a very regular basis to ensure that the rules under which they are issuing the ODIs, have been audited by Sebi and a lot of it Sebi has already been instructing the ODI issuers from time to time either through informal meetings or through other channels. Accordingly some of the key rules that came out to the market yesterday including the one on carrying out the KYC checks as per Indian regulations and ensuring that any transfer of ODIs is done with prior approval of the issuer. All these aspects were something which some of the institutional ODI issuers were already observing through their side letters.

ET Now: From amongst the decisions that have been taken, could there have been some more clarity on certain things or some relaxation on one or two norms that have been announced? There are five or six things that have been done which would have probably helped the P-Note investment route or do you think all of this is at par and there is no need to worry?

Richie Sancheti: I think the key point is it is easier for the issuer to monitor as to who the end beneficiaries of an ODIR is if a prior approval is sought and I believe that the issuers would not be withholding that approval unless there is a KYC red flag. The only point where there could have been some more clarity is around multiclass structures. The Sebi all along has been saying that it is uncomfortable with opaque structures which are intended to mean protected companies and other structures which ring-fence the liability of one beneficial owner from that of the other. There has been some confusion in the market whether a multi-class structure which does not even ring-fence the liabilities -- at least not from a legal perspective -- would be eligible to subscribe to ODIs. The confusion persists and the language in the directions yesterday do not clarify on that regard. So yes, there is a missed opportunity there.