

Regulatory Hotline

March 17, 2023

INTIMATION OF MATERIAL CHANGES BY FOREIGN PORTFOLIO INVESTORS: THE TIMELINE TURBULENCE

INTRODUCTION:

The Securities and Exchange Board of India ("SEBI") has amended the SEBI (Foreign Portfolio Investors) Regulations, 2019, ("FPI Regulations")¹ by notifying the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023 ("Amendment Regulations")².

Brought into effect from March 15, 2023, the Amendment Regulations, have, inter alia, reduced the timeline for reporting of material changes by FPIs from, effectively six months to seven working days now.

We have captured the changes brought about by the Amendment Regulations in the table below:

AMENDMENTS:

Sr. Event No	Regulation	Erstwhile provision / timeline	Provisions of the Amendment Regulations
Application for FPI certificate			
1 Application for grant of certificate as an FPI	Regulation 3(2)	Application to be made to Designated Depository Participants ("DDP") in the form specified by the government or SEBI, along with the fee specified under the Second Schedule (Part A).	In addition to the erstwhile provision, the application now has to be made - (a) in the manner specified by the government and SEBI, and (b) along with any documents as specified by SEBI.
General obligations and responsibilities of FPIs			
2 Written update to SEBI and DDP upon finding that any information or particulars previously submitted are false or misleading in any material respect	Regulation 22(1)(b)	Forthwith	As soon as possible but not later than seven working days
3 Written update to SEBI and DDP in case of any material change in the information previously furnished	Regulation 22(1)(c)	Factors included in material change – direct or indirect change in the FPIs structure or ownership or control. Timeline – Forthwith ³	Factors included in material change – In addition to the erstwhile provision, any direct or indirect change in the investor group. Timeline – As soon as possible but not later than seven working days
4 General obligations and responsibilities of FPIs	Regulation 22(1)(i)	NA	FPIs to ensure maintenance of accurate details of investor group with the DDP at all times.
5 Notice to DDP	Regulation 22(5)	Requirement to update the DDP in case of any direct or indirect change in structure or common ownership or control of the FPI.	In addition to the erstwhile provision, any direct or indirect change in the investor group has been included. Timeline – As soon as

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Obligations and responsibilities of DDPs

6	Written update to SEBI upon finding that any information or particulars previously submitted are false or misleading in any material respect	Regulation 31(1)(b)	Forthwith	As soon as possible but not later than two working days
7	Written update to SEBI in case of any material change in the information previously furnished	Regulation 31(1)(c)	Forthwith	As soon as possible but not later than two working days
8	Updating SEBI, depositories and stock exchanges of 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 any regulator against the DDP,	Regulation 31(1)(g)	Forthwith	As soon as possible but not later than two working days

OUR VIEWS:

The Amendment Regulations brings SEBI closer to keeping tab on the activities of FPIs and ensuring overall transparency in the system. However, there still prevails some legislative lacunae which may lead to hiccups in the disclosures and overall operations of the FPIs.

Manner of application

The amendment to regulation 3(2) of the FPI Regulations stipulates that FPIs are now required to make the application for grant of certificate to DDPs in the 'manner' specified by the government and SEBI, along with 'any documents' specified by SEBI. We will have to wait and watch for any such directions and documentation requirements from the government and / or the market regulator.

Definition of 'material change'

Neither SEBI's Master Circular for FPIs, DDPs and EFIs⁵ ("**Master Circular**"), nor the FPI Regulations⁶ provide a clear definition of 'material change'. Both the FPI Regulations and the Master Circular⁷ provide an inclusive definition for the term to, inter alia, include any direct or indirect change in the structure / ownership / control, change in regulatory status, merger, demerger or restructuring, change in category / sub-category / jurisdiction/ name of FPI/ beneficial ownership – thereby leaving room for investors and DDPs to have their own interpretations to determine whether any change is a material change. This may lead the FPIs to take a more conservative but safer approach of informing their relevant DDPs of any minor or major change, which may not necessarily be a material change.

Determination of the time of change

Considering the tight timelines, determination of a particular change can be tricky at times. It also remains a bit uncertain that whether intimation should be made upon seven working days from the date of such change or the date on which the change was brought into the FPIs attention, since these two could be different in certain circumstances.

Too short a timeline

The seven working day time-period for updating the DDP and SEBI seems short. The FPIs and their compliance officers would have to be more alert in order to meet the prescribed timelines, else the frequencies of non-compliances by FPIs may go up. Also, in a case where technically seven working days have passed since a material change had occurred and the custodian has not yet been informed (considering the erstwhile timeline was six months), it needs to be seen whether the counting of seven-day period would commence from March 15, i.e. when the Amendment Regulations come into effect.

Amendment to the Master Circular

The Master Circular still provides a timeline of six months for the intimation of material changes to the DDP. We expect SEBI to come up with amendments to the Master Circular at the earliest to clear out the air and remove discrepancy between the FPI Regulations and the Master Circular.

– Ritul Sarraf, Prakhar Dua & Kishore Joshi

You can direct your queries or comments to the authors

¹Available at: https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019-last-amended-on-november-9-2022-_65176.html

²Available at: <https://egazette.nic.in/WriteReadData/2023/244410.pdf>

³Please note that as per the current provision of the Master Circular, in case of delay of more than six months in intimation of material change by the FPI to the DDP, the DDP is required to inform SEBI of all such delays, along with reason for delay, for appropriate action, if any.

⁴Ibid.

⁵Available at: https://www.sebi.gov.in/legal/master-circulars/dec-2022/master-circular-for-foreign-portfolio-investors-designated-depository-participants-and-eligible-foreign-investors_66356.html

⁶Regulation 22 (1) (c)

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