



CIRCULAR

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April 05, 2018

To

1. All Foreign Portfolio Investors (through their designated Custodian of Securities)
2. The Depositories (NSDL and CDSL)
3. The Stock Exchanges (BSE, NSE and MSEI)

Dear Sir / Madam,

Sub: Monitoring of Foreign Investment limits in listed Indian companies

1. Foreign Investment in India is regulated in terms of clause (b) of sub-section 3 of section 6 and section 47 of the Foreign Exchange Management Act, 1999 (FEMA) read with Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017 issued vide Notification No. FEMA 20(R)/2017-RB dated November 7, 2017. FEMA prescribes the various foreign investment limits in listed Indian companies. These include the aggregate FPI limit, the aggregate NRI limit and the sectoral cap. The RBI Master Direction (FED Master Direction No. 11/2017-18) dated January 04, 2018 provides a compilation of the instructions issued on Foreign Investment in India and its related aspects under FEMA.
2. As per FEMA, the onus of compliance with the various foreign investment limits rests on the Indian company. In order to facilitate the listed Indian companies to ensure compliance with the various foreign investment limits, SEBI in consultation with RBI has decided to put in place a new system for monitoring the foreign investment limits. The architecture of the new system has been explained in Annexure A.
3. The depositories (NSDL and CDSL) shall put in place the necessary infrastructure and IT systems for operationalizing the monitoring mechanism described at Annexure A. The Stock Exchanges (BSE, NSE and MSEI) shall also put in place the necessary infrastructure and IT systems for disseminating information on the available investment headroom in respect of listed Indian companies.
4. The depositories shall issue the necessary circulars and guidelines for collecting data on foreign investment from listed companies. The system for collecting this data from the companies shall



go live on the date of the issuance of this circular. The companies shall provide the necessary data (details of which have been mentioned in Annexure A) to the depositories latest by April 30, 2018.

5. The new system for monitoring foreign investment limits in listed Indian companies shall be made operational on May 01, 2018. The existing mechanism for monitoring the foreign investment limits shall be done away with once the new system is operationalized. RBI shall issue the necessary guidelines in this regard.

This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992.

A copy of this circular is available at the web page "Circulars" on our website www.sebi.gov.in. Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

Yours faithfully,

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Annexure A

Architecture of the System for Monitoring Foreign Investment Limits in listed Indian companies

Housing of the System

1. The system for monitoring the foreign investment limits in listed Indian companies shall be implemented and housed at the depositories (NSDL and CDSL).

Designated Depository

2. A Designated Depository is a depository which has been appointed by an Indian company to facilitate the monitoring of the foreign investment limits of that company. As defined at Regulation 2(xxiii) of FEMA, the term 'Indian company' means a company incorporated in India and registered under the Companies Act, 2013.
3. The Designated Depository shall act as a lead depository and the other depository shall act as a feed depository.

Company Master

4. The company shall appoint any one depository as its Designated Depository for the purpose of monitoring the foreign investment limit.
5. The stock exchanges (BSE, NSE and MSEI) shall provide the data on the paid-up equity capital of an Indian company to its Designated Depository. This data shall include the paid-up equity capital of the company on a fully diluted basis. As defined at Regulation 2(xvii) of FEMA, the term "fully diluted basis" means the total number of shares that would be outstanding if all possible sources of conversion are exercised.
6. The depositories shall provide an interface wherein the company shall provide the following information to its Designated Depository:
 - i. Company Identification Number (CIN)
 - ii. Name
 - iii. Date of incorporation
 - iv. PAN number
 - v. Applicable Sector
 - vi. Applicable Sectoral Cap
 - vii. Permissible Aggregate Limit for investment by FPIs
 - viii. Permissible Aggregate Limit for investment by NRIs



- ix. Details of shares held by FPI, NRIs and other foreign investors, on repatriable basis, in demat as well as in physical form
- x. Details of indirect foreign investment which are held in both demat and physical form
- xi. Details of demat accounts of Indian companies making indirect foreign investment in the capital of the company
- xii. Whether the Indian company that has total foreign investment in it, is either not owned and not controlled by resident Indian Citizens or is owned or controlled by person's resident outside India (Yes or No)
- xiii. ISIN-wise details of the downstream investment in other Indian companies

The information provided by the companies shall be stored in a Company Master database. The Designated Depository, if required, may seek additional information from the company for the purpose of monitoring the foreign investment limits. The companies shall ensure that in case of any corporate action, the necessary modification is reflected immediately in the Company Master database.

7. In the event of any change in any of the details pertaining to the company, such as increase/decrease of the aggregate FPI/NRI limits or the sectoral cap or a change of the sector of the company, etc. the company shall inform such changes along with the supporting documentation to its Designated Depository. Such documentation may include:
 - i. Board of Directors resolution approving the increase/decrease
 - ii. General body resolution approving the increase/decrease
 - iii. Company Secretary certificate for compliance with FEMA, 1999

Reporting of trades

8. At present, as per SEBI guidelines, the custodians are reporting confirmed trades of their FPI clients to the depositories on a T+1 basis. This reporting shall continue and the data shall be the basis of calculating FPI investments/holding in Indian companies.
9. With respect to NRI (repatriable) trades, Authorized Dealer (AD) Banks shall report the transactions of their NRI clients to the depositories. The AD Banks shall be guided by the circulars issued by RBI in this regard.

Activation of a Red Flag Alert

10. The monitoring of the foreign investment limits shall be based on the paid-up equity capital of the company on a fully diluted basis to ensure that all foreign investments are in compliance with the foreign investment limits.



11. A red flag shall be activated whenever the foreign investment within 3% or less than 3% of the aggregate NRI/FPI limits or the sectoral cap. This shall be done as follows :

Aggregate NRI investment limit in the company

- 11.1. The system shall calculate the percentage of NRI holdings in the company and the investment headroom available as at the end of the day with respect to the aggregate NRI investment limit
- 11.2. If the available headroom is 3% or less than 3% of the aggregate NRI investment limit, a red flag shall be activated for that company.
- 11.3. Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
- 11.4. The data on the available investment headroom shall be updated on a daily end-of-day basis as long as the red flag is activated.

Aggregate FPI investment limit of the company

- 11.5. The system shall calculate the percentage of FPI holding in the company and the investment headroom available as at the end of the day with respect to the aggregate FPI investment limit
- 11.6. If the available headroom is 3% or less than 3% of the aggregate FPI investment limit, a red flag shall be activated for that company.
- 11.7. Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
- 11.8. The data on the available investment headroom shall be updated on a daily end-of-day basis as long as the red flag is activated.

Sectoral cap of the company

- 11.9. The system shall calculate the total foreign investment in the company by adding the aggregate NRI investment on the stock exchange, the aggregate FPI investment in the company and other foreign investment as provided by the company in the company master.
- 11.10. If the total foreign investment in a company is within 3% or less than 3% of the sectoral cap, then a red flag shall be activated for that company.
- 11.11. Thereafter, the depositories and exchanges shall display the available investment headroom, in terms of available shares, for all companies for which the red flag has been activated, on their respective websites.
- 11.12. The data on the available investment headroom shall be updated on a daily end-of-day basis as long as the red flag is activated.



12. The depositories shall inform the exchanges about the activation of the red flag for the identified scrip. The exchanges shall issue the necessary circulars/public notifications on their respective websites. Once a red flag has been activated for a given scrip, the foreign investors shall take a conscious decision to trade in the shares of the scrip, with a clear understanding that in the event of a breach of the aggregate NRI/FPI limits or the sectoral cap, the foreign investors shall be liable to disinvest the excess holding within five trading days from the date of settlement of the trades.

Breach of foreign investment limits

13. Once the aggregate NRI/FPI investment limits or the sectoral cap for a given company have been breached, the depositories shall inform the exchanges about the breach. The exchanges shall issue the necessary circulars/public notifications on their respective websites and shall halt all further purchases by :

- 13.1. FPIs, if the aggregate FPI limit is breached
- 13.2. NRIs, if the aggregate NRI limit is breached
- 13.3. All foreign investors, if the sectoral cap is breached

14. In the event of a breach of the sectoral cap/aggregate FPI limit/aggregate NRI limit, the foreign investors shall divest their excess holding within 5 trading days from the date of settlement of the trades, by selling shares only to domestic investors.

Method of disinvestment

15. The proportionate disinvestment methodology shall be followed for disinvestment of the excess shares so as to bring the foreign investment in a company within permissible limits. In this method, depending on the limit being breached, the disinvestment of the breached quantity shall be uniformly spread across all foreign Investors/FPIs/NRIs which are net buyers of the shares of the scrip on the day of the breach. The foreign investors are required to disinvest the excess quantity by selling them only to domestic investors, within 5 trading days of the date of settlement of the trades that caused the breach.

16. This method has been illustrated with the help of an example provided below.

Total shares that can be purchased by foreign investors till sectoral cap is not breached	600
Total quantity purchased by foreign investors on T day	1000
Breach quantity	400



Time	Foreign Investor	Purchased quantity	Cumulative Purchase by foreign investor	Quantity to be disinvested by the foreign investor
1000 hrs	ABC	100	100	40
1015 hrs	XYZ	250	350	100
1145 hrs	TYU	50	400	20
1230 hrs	POI	180	580	72
1300 hrs	QSX	120	700	48
1400 hrs	REW	150	850	60
1410 hrs	LOP	150	1000	60
Total		1000		400

17. As can be observed from the above table, the foreign investors/FPIs/NRIs which are required to disinvest shall be identified and shall be informed of the excess quantity that they are required to disinvest.
18. In the case of FPIs which have been identified for disinvestment of excess holding, the depositories shall issue the necessary instructions to the custodians of these FPIs for disinvestment of the excess holding within 5 trading days of the date of settlement of the trades.
19. In the case of NRIs which have been identified for disinvestment of excess holding, the depositories shall issue the necessary instructions to the Authorized Dealer (AD) Banks for disinvestment of the excess holding within 5 trading days of the date of settlement of the trades.
20. The depositories shall utilize the FPI trade data provided by the custodians, post custodial confirmation, on T+1 day, where T is the trade date. The breach of investment limits (if any) shall be detected at the end of T+1 day and therefore, the announcement pertaining to the breach shall be made at the end of T+1 day. The foreign investors who have purchased the shares of the scrip during the trading hours on T+1 day shall also be given a time period of 5 trading days from the date of settlement of such trades, to disinvest the holding accruing from the aforesaid purchase trades. In other words, the purchase trades of such foreign investors which have taken place of T+1 day, shall be settled on T+3 day and thereafter a time period from T+4 day to T+8 day shall be available to them to disinvest their entire holding arising from purchases on T+1 day.
21. If T+1 is a settlement holiday, then the custodial confirmation of the trade executed on T day shall be done on T+2 day and the subsequent settlement of the trade on T+3 day. In such a



scenario, the breach would be detected at the end of T+2 day.

22. A table summarizing the breach-disinvestment scenario is given below

Parameter	Purchase on T Day	Purchase on T+1
<i>Date of breach</i>	T day	T day
<i>Date of trade</i>	T day	T+1 day
<i>Date of detection of breach</i>	T+1 day (End of day) T+2 day (End of Day, if T+1 is a settlement holiday)	T+1 day (End of day) T+2 day (End of Day), if T+1 is a settlement holiday
<i>Date of settlement of transaction</i>	T+2 day T+3 day, if either T+1 day or T+2 day is a settlement holiday	T+3 day T+4 day, if either T+2 day or T+3 day is a settlement holiday
<i>Disinvestment time frame</i>	5 trading days from the date of settlement of the transactions which were executed on the day of the breach i.e. 5 trading days from T+2 day If T+1 day or T+2 day is a settlement holiday, then 5 trading days from T+3 day	5 trading days from the date of settlement of the transactions which were executed on T+1 day i.e. 5 trading days from T+3 day If T+2 day or T+3 day is a settlement holiday, then 5 trading days from T+4 day

23. In the event the foreign shareholding in a company comes within permissible limit during the time period for disinvestment, on account of sale by other FPI or other group of FPIs, the original FPIs, which have been advised to disinvest, would still have to do so within the disinvestment time period, irrespective of the fresh availability of an investment headroom during the disinvestment time period.

24. There shall be no annulment of the trades which have been executed on the trading platform of the stock exchanges and which are in breach of the sectoral caps/aggregate FPI limits/aggregate NRI limits.



Failure to disinvest within 5 trading days

25. If a breach of the investment limits has taken place on account of the FPIs and the identified FPIs have failed to disinvest within 5 trading days, then necessary action shall be taken by SEBI against the FPIs.

Fees

26. The Designated Depository shall levy reasonable fee/charges on the company towards development, ongoing maintenance and monitoring costs at an agreed upon frequency.