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CDSL/OPS/RTA/POLCY/2024/235

December 18, 2024

SEBI CIR - MEASURES TO ADDRESS REGULATORY ARBITRAGE WITH RESPECT TO ODIS AND FPIS WITH SEGREGATED PORTFOLIOS

Issuers / RTAs are advised to refer to the SEBI Circular **SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/176** dated **December 17, 2024**, regarding **measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs** [refer Annexure].

Issuers / RTAs are advised to take note of the same.

Queries regarding this communiqué may be addressed to: CDSL – Helpdesk Emails may be sent to: dpertasupport@cdslindia.com and connect through our **IVR Number 022-62343333**.

For and on behalf of
Central Depository Services (India) Limited

sd/-

Nilesh Shah
Asst. Vice President



CIRCULAR

SEBI/HO/AFD/AFD-POD-3/P/CIR/2024/176

December 17, 2024

To,

1. Foreign Portfolio Investors (“FPIs”)
2. Designated Depository Participants (“DDPs”) and Custodians
3. The Depositories
4. The Stock Exchanges and Clearing Corporations

Dear Sir / Madam,

Subject: Measures to address regulatory arbitrage with respect to Offshore Derivative Instruments (ODIs) and FPIs with segregated portfolios vis-à-vis FPIs

1. SEBI vide “Master Circular for Foreign Portfolio Investors, Designated Depository Participants and Eligible Foreign Investors” No. SEBI/HO/AFD/AFD-PoD-2/P/CIR/P/2024/70 dated May 30, 2024, as amended from time to time (hereinafter referred to as the ‘FPI Master Circular’) has, *inter alia*, specified the requirements related to Offshore Derivative Instruments (“ODIs”) by Foreign Portfolio Investors (“FPIs”) and connected matters, under Part D of the FPI Master Circular. Further, requirements related to segregated portfolios are specified in Part A of the FPI Master Circular.
2. It has been decided to modify certain requirements related to ODIs and FPIs with segregated portfolios. In view of the same, the FPI Master Circular stands modified as follows:
 - 2.1. Sub-paras (i) to (iii) of Para 1 of Part D shall be modified as under:

“1. Conditions for issuance of ODIs

 - i. A Foreign Portfolio Investor shall issue ODIs only through a separate dedicated FPI registration with no proprietary investments. Such FPI registration shall be in the name of the FPI with “ODI” as suffix under the same PAN. Where such addition is being requested for an existing FPI, this addition of suffix will not be considered a change in name of FPI. DDP



may process the request in such cases and issue a new FPI registration certificate.

Provided the requirement of separate dedicated registration shall not apply for issuance of ODIs with Government securities as reference/underlying.

- ii. A Foreign Portfolio Investor shall not issue ODIs with derivatives as reference/underlying.*
- iii. A Foreign Portfolio Investor shall not hedge their ODIs with derivative positions on Stock Exchanges in India. Accordingly, ODIs shall only have securities (other than derivatives) as underlying and shall be fully hedged with the same securities on a one-to-one basis, throughout the tenure of the ODI.”*

2.2. The following Para shall be inserted after Para 3 of Part D:

“4. Mandating additional disclosures by ODI subscribers that fulfil certain objective criteria

- i. Granular details of all entities holding any ownership, economic interest, or exercising control in the ODI subscriber, on a full look through basis, up to the level of all natural persons, without any threshold, shall be collected by ODI issuing FPI from its ODI subscribers, that fulfil any of the criteria mentioned below in the specified format, and submitted to the Depositories:*
 - a) ODI subscriber having more than 50% of its equity ODI positions through the ODI issuing FPI in ODIs referenced to securities of a single Indian corporate group;*
 - b) ODI subscriber having equity positions worth more than INR 25,000 crore in the Indian markets. For the purpose of this clause, equity positions shall include:*
 - I. Equity ODI positions taken by the ODI subscriber through one or more ODI issuing FPIs.*
 - II. Equity ODI positions taken by ODI subscribers (through one or more ODI issuing FPIs) having common ownership, directly or*



indirectly, of more than fifty percent or common control, with the ODI subscriber.

III. Equity holdings of such ODI subscriber as a registered FPI.

IV. Equity holdings of FPIs having common ownership, directly or indirectly, of more than fifty percent or common control, with the ODI subscriber.

Notes:

- 1) ODI positions of ODI subscribers and holdings of ODI issuing FPIs corresponding to the same underlying/reference shares may be counted only once so as to avoid double counting.*
- 2) Economic interest means returns from the investments made by the entity.*
- 3) Ownership interest means ownership of shares or capital of the entity or entitlement to derive profits from the activity of the entity.*
- 4) Control shall have the same meaning as mentioned in Regulation 2(f) of the FPI Regulations.*

ii. The detailed mechanism for independently validating conformance of the ODI subscribers with the conditions, exemptions and format for disclosures shall be spelt out in the Standard Operating Procedure (SOP) framed and adopted by Depositories, DDPs/Custodians and ODI issuing FPIs in consultation with SEBI. The SOP shall be made public and updated from time to time, in consultation with SEBI.

iii. ODI subscribers satisfying any of the criteria listed below shall not be required to make the disclosures as specified in Para (i) above:

- a) Government and Government related investors registered as FPIs under Regulation 5 (a) (i) of the FPI Regulations.*
- b) Public Retail Funds ('PRFs') as defined under Regulation 22(4) of the FPI Regulations, subject to independent validation of the same by ODI issuing FPIs.*
- c) Exchange Traded Funds (with less than 50% exposure to India and India-related equity securities) and entities listed on specified*



Exchanges of the permissible jurisdictions as may be notified by the Board from time to time. To start with, the list of permissible jurisdictions and exchanges as mentioned in Annexure A to SEBI circular SEBI/HO/MRD2/DCAP/CIR/P/2019/146 dated Nov 28, 2019 shall be considered as permissible exchanges and jurisdictions for this clause.

d) Pooled investment vehicles registered with/ regulated by a Government/ regulatory authority in their home jurisdiction/ country of incorporation/ establishment/ formation, where:

I. their positions in equity ODIs referenced to securities of a single Indian corporate group is below 25% of their overall global AUM at a scheme level, in case of ODI subscribers meeting the criteria under Para (i)(a) above; or

II. their equity positions in the Indian markets is below 50% of their overall global AUM at a scheme level, in case of ODI subscribers meeting the criteria under Para (i)(b) above;

subject to independent validation of disclosure of such holdings by the ODI issuing FPIs.

‘Scheme’ for the purpose of this clause shall mean pooled investment vehicles with structures similar to ‘Scheme’ as defined in SEBI (Mutual Funds) Regulations, 1996.

e) ODI subscribers that are unable to liquidate their excess ODI positions due to statutory restrictions (such as freeze on accounts or positions due to regulatory orders etc.), till the time such restrictions exist.

f) University Funds and University related Endowments, registered or eligible to be registered as Category I FPI, subject to them fulfilling the following additional conditions:

I. Indian equity ODI positions being less than 25% of global AUM

II. Global AUM being more than INR 10,000 crore equivalent

III. Appropriate return/filing to the respective tax authorities in their home jurisdiction to evidence the nature of a non-profit organisation exempt from tax.

iv. ODI subscribers shall be exempted from making the additional disclosures if any of the entities referred in Para (i)(b) above qualifies for exemption



and the net equity positions of remaining entities referred in Para (i)(b), after deducting the positions of such exempted entities, falls below INR 25,000 crore. Post deduction, if the equity positions of the entities referred in Para (i)(b) above continues to exceed INR 25,000 crore, only the non-exempted ODI subscribers shall be liable for making the disclosures in terms of Para (i) and consequent actions, if any, as stated in the subsequent paragraphs.

- v. Where the entity identified on a look through basis in terms of Para (i) above, satisfies any of the criteria listed in Para (iii) above, further identification of entities having ownership interest, economic interest, or control rights of such an entity on look through basis, shall not be required.*
- vi. In addition to the criteria listed under Para (iii) above, ODI subscriber having more than 50% of its equity ODI positions in ODIs referenced to securities of a single Indian corporate group shall not be required to make the additional disclosures as specified in Para (i) above, subject to compliance with all of the following conditions:*
 - a) The apex company of such corporate group has no identified promoter. For this purpose, the list of corporate groups based on the corporate repository published by the Stock Exchanges and their respective apex companies having no identified promoters has been made public by Depositories.*
 - b) The ODI subscriber does not have more than 50% of its equity ODI positions in ODIs referenced to securities of a single Indian corporate group, after disregarding its positions in ODIs referenced to securities of the apex company (with no identified promoter).*
 - c) The composite positions of all such ODI subscribers (that meet the 50% concentration criteria excluding ODI subscribers which are either exempted or have disclosed) and all FPIs that meet the 50% concentration criteria in that corporate group, excluding FPIs which are either exempted or have disclosed, in the apex company is less than 3% of the total equity share capital of the apex company.*



Note: ODI positions of ODI subscribers and holdings of ODI issuing FPIs corresponding to the same underlying/reference shares may be counted only once so as to avoid double counting.

- vii. ODI issuing FPIs and Depositories shall track the utilisation of this 3% limit for apex companies, without an identified promoter, at the end of each day. When the 3% limit is met or breached, Depositories shall make this information public before start of trading on the next day.*
- viii. Thereafter, for any prospective positions in equity ODI referenced to securities of the apex company by ODI subscribers, that meet the 50% concentration criteria in the corporate group, the ODI subscribers shall be required to either realign their positions below the 50% threshold within 10 trading days or make additional disclosures prescribed above.
Provided no such requirement, to realign or make disclosure, shall be applicable unless the 3% cumulative limit for the apex company continues to be met through the said 10 trading days.*
- ix. Disclosures specified under Para (i) shall not be required in case ODI subscribers realign their positions with the prescribed thresholds, within the below mentioned timelines/ conditions:*
 - a) ODI subscribers meeting criteria specified at Para (i) (a): 10 trading days from the date of breach of specified threshold. Such ODI subscribers shall not be permitted to take fresh positions in equity ODIs referenced to securities of any company belonging to such Indian corporate group, during the next 30 calendar days from the date on which the ODI subscriber exceeded the threshold. A list of such ODI subscribers along with Indian corporate group shall be made public by the Depositories and ODI issuing FPIs shall ensure compliance with the same.*
 - b) ODI subscribers meeting criteria specified at Para (i) (b): 90 calendar days from the date of breach of specified threshold. Such ODI subscribers shall not be permitted to take fresh positions in equity ODIs until the equity positions are brought below INR 25,000 crore in*



the Indian markets. A list of such ODI subscribers shall be made public by the Depositories and ODI issuing FPIs shall ensure compliance with the same.

- x. After realignment, in case the ODI subscriber's positions exceed the specified threshold on a subsequent date, the timeline for realignment shall restart from such subsequent date.*
- xi. ODI issuing FPIs shall collect the details/disclosures as specified in Para (i) from the ODI subscribers whose equity ODI positions continue to exceed the specified threshold post expiry of timelines mentioned in Para (ix) within 30 trading days from the expiry of such timelines. ODI issuing FPIs shall submit the disclosures made by ODI subscribers to Depositories within 5 trading days from the date of such disclosure made by such ODI subscribers. Non-disclosure by ODI subscriber in this regard shall render the ODI subscriber ineligible to subscribe/hold any ODI positions through any ODI issuing FPI. ODI issuing FPIs shall redeem all ODI positions held by such ODI subscriber(s) within 180 calendar days from the date of such ineligibility. A list of such ODI subscribers shall be made public by the Depositories and ODI issuing FPIs shall ensure that no ODIs are issued to these entities.*
- xii. ODI issuing FPI shall ensure that the details collected from ODI subscribers as specified in Para (i) are updated and informed to the Depositories within 30 days of any change in such details.*
- xiii. For monitoring compliance with the 50% exposure limit in equity ODIs referenced to securities of a single corporate group, a repository of Indian corporate groups is publicly disseminated on the websites of Stock Exchanges/ Depositories.*
- xiv. The Depositories shall put in place appropriate systems, procedures and mechanisms to capture and maintain the details of ODI subscribers based*

on the information provided by ODI issuing FPIs. The Depositories shall monitor the positions taken by ODI subscribers and notify the ODI issuing FPI(s) with respect to their ODI subscribers that are in breach of the thresholds specified in Para (i).

- xv. *The Depositories shall put in place appropriate systems, procedures and mechanisms to capture and maintain the granular details of ODI subscribers as provided to it by ODI issuing FPIs. The Depositories shall monitor the timelines for such submission and in case of non-compliance with disclosure timelines, the Depositories shall send appropriate notification to all the ODI issuing FPIs.”*

2.3. Sub-para (xiii)(b) of Para 1 of Part C and the Note below the same shall be modified as under:

“b. FPIs that individually, or along with their investor group (in terms of Regulation 22(3) of the FPI Regulations) and ODI subscribers having common ownership, directly or indirectly, of more than fifty percent or common control, hold more than INR 25,000 crore of equity AUM/positions in the Indian markets.

Explanation: For the purpose of this clause, holdings shall include:

- I. Equity holdings of the FPI*
- II. Equity holdings of the FPIs that are part of the investor group of the FPI (in terms of Regulation 22(3) of the FPI Regulations)*
- III. Equity ODI positions taken by such FPI as an ODI subscriber through one or more ODI issuing FPIs*
- IV. Equity ODI positions taken by ODI subscribers (through one or more ODI issuing FPIs) having common ownership, directly or indirectly, of more than fifty percent or common control with the FPI*

Notes:

- 1. ODI positions of ODI subscribers and holdings of ODI issuing FPIs corresponding to the same underlying/reference shares may be counted only once so as to avoid double counting.*
- 2. Economic interest means returns from the investments made by the FPI.*



3. *Ownership interest means ownership of shares or capital of the entity or entitlement to derive profits from the activity of the entity.*
4. *Control shall have the same meaning as mentioned in Regulation 2(f) of the FPI Regulations.”*

2.4. Sub-para (xv) of Para 1 of Part C shall be modified as under:

“xv. The constituents of FPI investor group that collectively hold more than INR 25,000 crore of equity AUM/positions in the Indian markets, referred to in Para (xiii)(b) above, shall be exempted from making the additional disclosures if any constituent of investor group and ODI subscriber(s), referred to in Para (xiii)(b) above, qualifies for exemption and the net equity AUM/positions of the remaining constituents of the investor group & ODI subscribers, after deducting the AUM/positions of such exempted FPIs/ODI subscribers, falls below INR 25,000 crore.

After making the aforesaid deductions of AUM/positions of such exempted FPIs/ODI subscribers, in case the equity AUM/positions of the remaining FPIs of the investor group and the remaining ODI subscribers continues to exceed INR 25,000 crore, only the non-exempted FPIs of the investor group shall be liable for making the disclosures in terms of Para xiii and consequent actions, if any, as stated in the section below.”

2.5. Sub-para (xvii)(iii) of Para 1 of Part C shall be modified as under:

“iii. The composite holdings of all such FPIs (that meet the 50% concentration criteria excluding FPIs which are either exempted or have disclosed) and all ODI subscribers that meet the 50% concentration criteria in that corporate group, excluding ODI subscribers which are either exempted or have disclosed, in the apex company is less than 3% of the total equity share capital of the apex company.

Note: ODI positions of ODI subscribers and holdings of ODI issuing FPIs corresponding to the same underlying/reference shares may be counted only once so as to avoid double counting.”

2.6. The following proviso shall be inserted after first proviso to sub-para (xiii)(a) of Para 1 of Part C:

“Provided further that in case of FPIs with segregated portfolio(s), the criteria shall apply individually to each segregated portfolio(s) of the FPI and each segregated portfolio of such FPI shall be treated as separate FPI for the purpose of compliance with disclosure requirements in terms of Regulation 22(6) and 22(7) of the FPI Regulations.”

2.7. The following proviso shall be inserted after sub-para (xxi) of Para 1 of Part C:

“Provided further that in case of breach of criteria mentioned in sub-para (xiii)(a) by a segregated portfolio(s), the liquidation requirement, if applicable, shall apply only to such segregate portfolio(s).”

3. In order to provide for smooth operationalisation of the aforementioned provisions, the following transitory measures are being provided:

3.1. ODIs with derivatives as underlying/reference, issued and outstanding as on the date of this Circular, shall be permitted to be redeemed within a period of 1 year from the date of this Circular. However, no renewal of such ODIs shall be permitted.

3.2. ODIs with securities (other than derivatives) as underlying/reference and hedged with derivatives, issued and outstanding as on the date of this circular, shall be permitted to be redeemed or hedged with same securities as the underlying/reference on a one to one basis, within a period of 1 year from the date of this Circular.

3.3. ODI issuing FPIs that have ODIs outstanding as on the date of this Circular shall obtain separate dedicated registration, if required to do so, within a period of 1 year from the date of this Circular. Off-market transfer of assets/ positions will be allowed for FPIs intending to transfer assets/ position from one FPI account to another FPI account to comply with this requirement.

4. The provisions of this circular except Para 2.2 to 2.7 shall come into force with immediate effect. Para 2.2 to 2.7 shall come into effect after 5 months from the date

of this Circular. SOP required to be issued in terms of provisions under Para 2.2 above shall be framed and made public within 2 months from the date of this Circular.

5. Depositories are advised to put in place appropriate systems, procedures and mechanisms to ensure compliance with the provisions of this Circular within 5 months from the date of this Circular.
6. This Circular is issued in exercise of the powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with Regulations 21, 22(1), 22(6), 22(7) and 44 of SEBI (Foreign Portfolio Investors) Regulations, 2019, and Sub-rule 14 (i) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, to protect the interest of investors in securities and to promote the development of, and to regulate the securities market.
7. This Circular is available at www.sebi.gov.in under the link “Legal ---Circulars”.

Yours faithfully,

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