SEBI/HO/IMD/FPIC/CIR/P/2018/150
December 13, 2018

To,

1. **All Foreign Portfolio Investors ("FPIs") through their Designated Depository Participants ("DDPs")/ Custodian of Securities.**
2. **The Depositories (NSDL and CDSL)**

Sir/ Madam,

Subject: Clarification on clubbing of investment limits of Foreign Portfolio Investors ("FPIs")

1. This has reference to SEBI circulars No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and No SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated April 10, 2018 providing Clarification on clubbing of investment limits of foreign Government/ foreign Government related entities.

2. SEBI Board in its meeting held on December 12, 2018, has after considering the interim recommendations of SEBI Working Group under the chairmanship of Shri H R Khan (hereinafter referred as HR Khan group) in relation to the circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and comments received from public decided that Beneficial ownership criteria in Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (hereinafter referred as PMLA Rules) should be made applicable for the purpose of KYC only and not for clubbing of investments of FPIs.

3. Accordingly, in supersession of the directions contained in SEBI circular No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 and in partial modification of SEBI circular No SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated April 10, 2018 providing Clarification on clubbing of investment limits of foreign Government/ foreign Government related entities, it is clarified that:-

    a. Clubbing of investment limit for FPIs will be on the basis of common ownership of more than 50% or based on common control. However, clubbing of investment limit of FPIs having common control shall not be done in case of (a) FPIs which are appropriately regulated public retail funds or (b) FPIs which are public retail funds majority owned by appropriately regulated public retail funds on look through basis or (c) FPIs which are public retail funds and investment managers (IMs) of such FPIs are appropriately regulated.

Explanation:

(1). Public retail funds mean (i) mutual funds or unit trusts which are open for subscription to retail investors and do not have specific investor type requirements e.g. accredited investors etc, (ii) insurance companies where segregated portfolio with one to one correlation with a single investor is not maintained and (iii) pension funds.

(2) Control includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

b. In case, two or more FPIs including foreign Governments/ their related entities are having direct or indirect common ownership of more than 50% or control, all such FPIs will be treated as forming part of an investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor.

c. In cases where Government of India enters into agreements or treaties with other sovereign Governments and where such agreements or treaties specifically recognize certain entities to be distinct and separate, SEBI may, during the validity of such agreements or treaties, recognize them as such, subject to conditions as may be specified by it.

d. The investment by foreign Government agencies shall be clubbed with the investment by the foreign Government/ its related entities for the purpose of calculation of 10% limit for FPI investments in a single company, if they form part of an investor group.

e. The investment by foreign Government/ its related entities from provinces/ states of countries with federal structure shall not be clubbed if the said foreign entities have different ownership and control.

f. In respect of any breach of the investment limit mentioned above, the FPI's shall have the following two options:-

    i. FPI in breach shall have to divest its holding within five trading days from the date of settlement of the trades to bring its shareholding below 10% of the paid up capital of the company, or,

    ii. The said investments shall be treated as Foreign Direct Investment from the date of breach.

4. The necessary amendments in SEBI (Foreign Portfolio Investors) Regulations, 2014 will be notified separately.

5. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

6. A copy of this circular is available at the links "Legal Framework→Circulars" and "Info for →F.P.I" on our website www.sebi.gov.in. The DDPs/ Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

Yours faithfully,

(Achal Singh)
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