



CIRCULAR

CIR/IMD/FPI&C/59/2016

June 10, 2016

To,

All Foreign Portfolio Investors (FPIs)

(Through their Designated Depository Participants/Custodians of Securities)

Dear Sir/Madam,

Subject: Know Your Client (KYC) norms for ODI subscribers, transferability of ODIs, reporting of suspicious transactions, periodic review of systems and modified ODI reporting format.

1. In terms of the SEBI (Foreign Portfolio Investors) Regulation, 2014 (FPI Regulations) and circulars issued from time to time regarding ODI, the Foreign Portfolio Investors (FPIs) issuing ODIs (hereinafter referred to as ODI Issuers) are required to comply with the conditions for issuance of ODIs.
2. The systems and procedures adopted by the ODI Issuers to comply with such conditions, vary from one ODI Issuer to another. In order to bring about uniformity and increase the transparency in this regard, SEBI had held discussions with the stakeholders. Taking into consideration the inputs received during the discussion process, SEBI Board in its meeting held on May 19, 2016 decided that ODI Issuers shall be guided by the following provisions with regard to the norms relating to the issuance and transfer of ODIs:

2.1. Applicability of Indian KYC/AML norms for Client Due Diligence

SEBI vide circular No. CIR/IMD/FIIC/20/ 2014 dated November 24, 2014 had aligned the applicable eligibility and investment norms of FPI regime with norms applicable for subscription through the ODI route.

With regards to KYC of ODI subscribers, ODI Issuers shall now be required to identify and verify the beneficial owners (BO) in the subscriber entities, who hold in excess of the threshold as defined under Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 i.e. 25 % in case of a company and 15 % in case of partnership firms/ trusts/ unincorporated bodies. ODI issuers shall also be required to identify and verify the person(s) who control the operations, when no beneficial owner is identified based on the aforesaid materiality threshold.

It is clarified that:-

- (a) The definition of the term "Beneficial Owner" shall be as per sub-rule (3) of Rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005.
- (b) The KYC documentation to be obtained by ODI Issuers from each of such ODI subscribers in respect of beneficial owner who holds above the threshold limits in such ODI subscriber, should be as per Annexure (I) enclosed with this circular.



- (c) The materiality threshold (referred above at 2.1) to identify the beneficial owner should be first applied at the ODI subscriber level and look through principle shall be applied to identify the beneficial owner of the material shareholder/ owner entity. Only beneficial owner with holdings equal & above the materiality thresholds in the subscriber need to be identified through the aforesaid look through principle. In such cases, identity and address proof as specified in Annexure (I) enclosed with this circular, should be obtained.
- (d) Where no material shareholder/owner entity is identified in the ODI subscriber using the materiality threshold (referred above at 2.1), the identity and address proof of the relevant natural person who holds the position of senior managing official of the material shareholder/owner entity should be obtained (as given in Annexure (I) enclosed with this circular).
- (e) ODI Issuer shall ensure that any transfer of offshore derivative instruments issued by or on its behalf is carried out subject to the following conditions :
- i. such offshore derivative instruments are transferred only to persons in accordance with Regulation 22 (1) of SEBI (Foreign Portfolio Investors) Regulations, 2014 ; and
 - ii. prior consent of the foreign portfolio investor is obtained for such transfer, unless the person to whom the offshore derivative instruments are to be transferred to are pre-approved by the foreign portfolio investor.
- Necessary changes in Regulation 22(2) of SEBI (FPI) Regulations, 2014 are separately being carried out.
- (f) The ODI issuers shall be required to maintain with them the KYC documents as prescribed above at all times and should be made available to SEBI on demand.

2.2. KYC Review

The KYC review shall be done on the basis of the risk criteria as determined by the ODI issuers, as follows:

- (a) At the time of on-boarding and once every three years for low risk clients.
- (b) At the time of on-boarding and every year for all other clients.

It is clarified that in case of existing ODI Subscriber, the KYC review should be done within three years for low risk clients and one year for all other clients from the effective date of this circular and accordingly reported in revised ODI reporting format.

2.3. Suspicious Transactions Report

ODI Issuers shall be required to file suspicious transaction reports, if any, with the Indian Financial Intelligence Unit, in relation to the ODIs issued by it.



2.4. Reporting of complete transfer trail of ODIs

Presently, the details of the holder of ODIs have to be mandatorily reported to SEBI on a monthly basis. The ODI issuers are also required to capture the details of all the transfers of the ODIs issued by them and these can be made available to SEBI on demand. The Board decided that in the monthly reports on ODIs all the intermediate transfers during the month would also be required to be reported.

2.5. Reconfirmation of ODI positions

ODI Issuers shall be required to carry out reconfirmation of the ODI positions on a semi-annual basis. In case of any divergence from reported monthly data, the same should be informed to SEBI in format provided.

2.6. Periodic Operational Evaluation

ODI Issuers shall be required to put in place necessary systems and carry out a periodical review and evaluation of its controls, systems and procedures with respect to the ODIs. A certificate in this regard should be submitted on an annual basis to SEBI by the Chief Executive Officer or equivalent of the ODI Issuer. The said certificate should be filed within one month from the close of every calendar year.

3. The revised ODI reporting format is enclosed at Annexure (II).
4. This circular shall come into effect from July 01, 2016. The reporting of the ODI in new format shall be applicable from the month of July 2016 to be submitted on or before August 10, 2016. This circular is issued in exercise of powers conferred under SEBI 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. The Designated Depository Participants(DDPs)/Custodian of securities are requested to bring the contents of this circular to the notice of their FPI clients for necessary compliance.

Yours faithfully,

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Enclosed: Annexure (I) - KYC Documentation for ODI subscribers
Annexure (II) - Revised ODI Reporting Format