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January 24, 2024

By email

Aparna Thyagarajan

Chief General Manager

Alternative Investment Fund and Foreign Portfolio Investors Department

Securities and Exchange Board of India

RE: FPI beneficial owner additional disclosure requirements - impending deadline

Dear Chief General Manager Thyagarajan,

ICI Global¹ has a keen interest in the Securities and Exchange Board of India (SEBI) regulations that are applicable to foreign portfolio investors (FPIs). Our member firms invest in markets throughout the world, including a substantial amount in India.

Following the issuance of SEBI circular no. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148 dated August 24, 2023 (Circular), Standard Operating Procedures (SOPs) were issued regarding seeking additional disclosures from certain objectively identified Foreign Portfolio Investors (FPIs) outlining the specifics of the disclosures that would need to be made under the Circular.

As certain aspects of the SOPs have raised significant confusion, we are writing today to request that SEBI act urgently to:

- 1) Recognize that collective investment trusts (CITs)/common trust funds (CTFs) for which a United States state-chartered bank or trust company serves as trustee and/or manager are “Pooled investment vehicles registered with / regulated by a Government / regulatory authority in their home jurisdiction or country of incorporation / establishment / formation” as described in Section 3.3.5, and accordingly support an addition to SOP Annexure D regarding “Collective Investment Trusts (CITs)/Common Trust Funds (CTFs) for which the state-chartered bank or trust company serves as trustee and/or manager” (as indicated in the language suggested in the attachment to this letter); and

¹ ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated investment funds. With total assets of \$40.3 trillion, ICI’s membership includes mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in Europe, Asia, and other jurisdictions. ICI’s mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor. ICI Global has offices in Brussels, London, and Washington, DC.

- 2) Delay by at least one month (e.g., at least February 29th), the date by which FPIs that are in breach of the investment limits must bring down their exposure, unless otherwise exempt, in order to give SEBI, FPIs, DDPs, and other market participants adequate time to resolve questions regarding whether certain types of FPIs are exempt.

Collective investment trusts (CITs)/common trust funds (CTFs) for which a United States state-chartered bank or trust company serves as trustee and/or manager should be considered exempt “Pooled investment vehicles registered with / regulated by a Government / regulatory authority in their home jurisdiction or country of incorporation / establishment / formation” under Section 3.3.5.

The SOPs require FPIs breaching the threshold mentioned in Para C (7) of the Circular to provide additional granular data of all entities with any ownership, economic interest, or control in the FPI, on a full look through basis, unless they are otherwise exempt. The SOPs appropriately recognize that certain types of entities present minimal risk of misusing the FPI route to circumvent various SEBI requirements, including pooled investment vehicles registered with / regulated by a Government / regulatory authority in their home jurisdiction or country of incorporation / establishment / formation (see Section 3.3.5) , Public Retail Funds (PRF) - Pension Funds (see section 3.3.2), Public Retail Funds – Insurance/ Reinsurance entity (see Section 3.3.3), and Public Retail Funds in the nature of Mutual Funds and Unit Trusts (see 3.3.4). For this reason, these types of entities are exempt from the additional disclosure requirements.

Section 3.3.5.1 of the SOPs describes qualifying pooled investment vehicles as those vehicles in which a common portfolio is maintained across investors, and the profits and losses generated by the portfolio are distributed amongst the investors based on their proportionate ownership / economic interest in the fund. A list of regulated pool structures from various jurisdictions along with the names of regulators and relevant web – links is provided in Annexure D to the SOPs.

The initial SOPs included in Annexure D “Collective Investment Trust/ Common Trust Funds managed by OCC regulated national banks” for which the Office of the Comptroller of the Currency (OCC) is the regulator, but was silent regarding Collective Investment Trusts (CITs) / Common Trust Funds (CTFs) for which state-chartered banks or trust companies regulated by US state regulators act as trustee and/or manager. This lack of clarity appears to have led some DDPs to conclude that such CITs/CFTs are not exempt.

We are pleased to note that Annexure D was subsequently revised to also include CITs/CFTs for which the Department of Financial Services (DFS) for State of New York is the regulator, and that in the most recent revisions that the Maryland Office of Financial Regulation (OFR) was also added.

The justifications included in the revised SOPs for these additions note the nature of the US dual banking system, under which parallel state and federal banking systems co-exist in the United States, and recognize that the regulation of the state-chartered banks or trust companies that serve as trustee and/or manager of a CIT/CFT is analogous to the regulation of federally-chartered banks by the OCC.

In light of this system, we urge you to extend this same logic and consideration to the other US state banking regulators that oversee the state-chartered banks and trust companies serving as trustee and/or manager of a CIT/CFT that invests in Indian securities, in addition to the Department of Financial Services (DFS) for the State of New York and the Maryland Office of Financial Regulation (OFR). Under the current terms of the SOPs, CITs/CFTs overseen by these other state banking regulators – which serve the same function as the New York and Maryland state banking regulators and similarly operate under a regulatory framework for CITs/CFTs that is analogous to the OCC – are not explicitly exempt from the disclosure requirements. This omission has created significant challenges and confusion for those CITs/CFTs regulated by other states and disparate treatment of analogous CITs/CFTs by DDPs. Such CITs/CFTs are now required to either provide the required additional disclosure – which is not practically feasible – or divest of their Indian securities holdings – which is not desirable.

In order to align the requirements for US state banking regulators, we request that SEBI recognize that CITs)/CTFs for which a United States state-chartered bank or trust company serves as trustee and/or manager are “Pooled investment vehicles registered with / regulated by a Government / regulatory authority in their home jurisdiction or country of incorporation / establishment / formation” as described in Section 3.3.5 and support the addition to SOP Annexure D of “Collective Investment Trusts (CITs)/Common Trust Funds (CTFs) for which the state-chartered bank or trust company serves as trustee and/or manager.” We provide suggested language in the attachment.

SEBI should delay until at least the end of February, the date by which FPIs that are in breach of the investment limits must bring down their exposure, unless otherwise exempt, in order to give SEBI, FPIs, DDPs, and other market participants adequate time to resolve questions regarding whether certain types of FPIs are exempt.

As of late January, significant confusion still exists regarding whether certain types of entities or certain specific entities qualify for an exemption from the disclosure requirements. To afford time for SEBI’s further consideration of these issues and for DDPs and FPIs to continue working to resolve issues and questions surrounding the applicability of the disclosure exemption to certain FPIs, we request that SEBI issue an extension of the deadline. Absent an extension, which would provide SEBI and market participants an opportunity to address remaining issues and questions, many FPIs that may otherwise ultimately be determined to be exempted may be forced to liquidate their holdings in Indian securities to avoid non-compliance.

We urge SEBI to act swiftly, as we understand that several FPIs that are CITs/CFTs have begun preparing to divest their positions in Indian securities in response to DDPs imposing a divestment deadline of January 29th or sooner. Because unnecessary divestment would be detrimental to both investors and the Indian capital market, we request an extension of the deadline for compliance for at least one month.

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We sincerely appreciate your consideration of the concerns that we raise. Should you have any questions regarding our request, please reach out to Matthew Mohlenkamp (matthew.mohlenkamp@ici.org) or Eva Mykolenko (emykolenko@ici.org).

Sincerely,
/s/ Matthew Mohlenkamp

Matthew Mohlenkamp
Managing Director, Asia and Analytics
ICI Global

ATTACHMENT 1:

- Recommended Addition to Annexure D of the Standard Operating Procedure for seeking additional disclosures from certain objectively identified Foreign Portfolio Investors (FPIs), in accordance with SEBI circular no. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148 dated August 24, 2023

ATTACHMENT 1

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Jurisdiction	Regulator	Website	Types of Eligible Entities	Justification
The United States of America	The relevant state regulatory authority that oversees and supervises banks and/or trust companies domiciled or chartered in each of the fifty states and the District of Columbia.	A list of state bank supervisors, including contact information, is maintained by the Conference of State Bank Supervisors (CSBS, https://www.csbs.org/). The directory is available at - https://www.csbs.org/state-bank-directory .	Collective Investment Trusts (CITs)/Common Trust Funds (CTFs) for which the state-chartered bank or trust company serves as trustee and/or manager.	<p>CITs/CFTs are pooled investment vehicles organized as trusts and maintained by a bank or trust company, designed to facilitate investment management by combining assets from eligible investors into a single investment portfolio (or “fund”) with a specific investment strategy. Each participating account (e.g. investor/participant in the fund) has a proportionate interest in all of the CIT fund’s assets. The CIT’s fund is managed and operated in accordance with the applicable trust’s governing documents, which generally include a declaration of trust (or plan document) and the fund’s statement of characteristics.</p> <p>The United States operates under a dual banking system in which banks and trust companies can be chartered (or licensed) on either the national or state level. Under this</p>

			<p>system, both federal and state regulated banks exist side by side and operate under analogous regulatory frameworks. National banks and trust companies are chartered and regulated under federal law and supervised by federal agencies. State banks and trust companies are chartered and regulated under state laws and supervised by their respective states' banking departments. The Federal Reserve also has some regulatory authority over certain state-chartered banks, as does the Federal Deposit Insurance Corporation (https://www.investor.gov/introduction-investing/investing-basics/glossary/banking-regulators). In addition, the Consumer Financial Protection Bureau (CFPB), created in 2010, regulates both state and national banks with assets of \$10 billion or more to ensure their compliance with consumer laws.</p> <p>The OCC's collective investment funds regulations are a primary source of banking regulations relevant to CITs/CTFs. These regulations, codified at Title 12: Banks & Banking (12 CFR 9.18), apply to CITs/CTFs sponsored by national banks and trust companies. While CITs/CTFs sponsored by state-chartered institutions are not directly subject to OCC regulation, many states apply the OCC's rules either by statute, rule, other guidance or as best practices in examining state bank collective trust activities.</p> <p>In addition, CITs/CTFs are subject to the Employee Retirement Income Security Act (ERISA) to the extent there are ERISA (i.e. pension and retirement) plan assets invested in the CIT/CTF and therefore are also subject to the</p>
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