X. CHANGING PARADIGM OF THE FOREIGN PORTFOLIO INVESTMENT REGIME: A STEP INTO THE FUTURE?

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ABSTRACT

Certainty of laws for investment purposes is not merely a desirable trait but a prerequisite. The importance of foreign investment in a historically capital-starved country like India can hardly be overstated. In this regard, the ever-changing legal webs that foreign investors have had to untangle have been a huge deterrent. Taking cognizance of the urgent need to provide an efficacious regulatory framework, the Reserve Bank of India and the Securities and Exchange Board of India after years of incremental changes have finally come up with a coordinated policy for Foreign Portfolio Investors. A new set of rules and regulations have been enacted with the objective of streamlining the legal process for the investor. The following research paper studies the changes brought forth by these new rules and assesses their impact on the investment regime of the country. A comprehensive and detailed discussion has been undertaken to provide an analysis of all the major changes effected.

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I. INTRODUCTION

A developing nation like India has a perpetual and never-ending need for capital not fulfilled domestically. The burgeoning population along with a plethora of opportunities make it an attractive destination for investors outside the country. There has been a constant effort on the part of the government, both the centre and the states, to increase India's visibility in the global markets. From the opening up of the economy to becoming one of the most preferred destinations for foreign investment,[1] it has been a long and eventful journey spanning close to three decades. From absolute prohibition to conducive and enabling regulations, the legal regime governing foreign investment[2] has undergone a complete transformation. Foreign portfolio investment is a subset of foreign investment, the other being Foreign Direct Investment ("FDI"). Foreign Portfolio Investors ("FPI") invest through the portfolio route. A characteristic feature of investment by FPIs is the presence of extremely liquid securities in their portfolios providing easy entry and exit opportunities from the market which may lead to volatility and speculation in the stock market of the home country. This is where the role of the regulators, i.e., the Securities and Exchange Board of India ("SEBI") and the Reserve Bank of India ("RBI"), along with the implementation of the law assume great significance. Merely regulating the conduct of FPIs is not enough the interests of the Indian economy also need to be protected. This fine balancing act has

[1] Reuters, *India Becomes Investment Darling For Sovereign Wealth And Pension Funds As US-China Trade War Deepens*, BUSINESS TODAY (June 22, 2019, 10:39 IST), https://www.businesstoday.in/current/world/india-becomes-investment-darling-for-sovereign-wealth-and-pension-funds-as-us-china-trade-war-deepens/story/358157.html (Last accessed on December 19, 2020).

[2] Rule 2(s), Foreign Exchange Management (Non-Debt Investment) Rules, 2019, PART II SEC. 3(II), THE GAZETTE OF INDIA, http://egazette.nic.in/WriteReadData/2019/213332.pdf.

not been easy. The matters are exacerbated further by the existence of dual regulators each with a set of their own laws containing conflicting mandates at times. In an inherently risky business of investing in securities, the risks are increased manifolds due to the constant policy changes. Until recently, the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulation, 2014[3] ("FPI Regulations 2014") read in conjunction with RBI's Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017[4] provided the framework under which the FPIs operated. Presently, however, both the regulations stand repealed, and have been replaced by the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulation, 2019[5] ("FPI Regulations 2019") and Foreign Exchange Management (Non-debt Instruments) Rules, 2019[6] ("NDI Rules") read with Foreign Exchange Management (Debt Instruments) Regulations, 2019 ("Debt Instrument Rules").[7]

In the light of the recent changes with wide-ranging ramifications, this article is an exhaustive research on the regulations governing the workings of the FPIs and their investment decisions. It is divided into four parts. *Part I* is a brief history of the regulations that have been part of the legal landscape

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[3] Securities and Exchange Board of India (Foreign Portfolio Investors) Regulation,2014, Notification No. LAD-NRO/GN/2013-14/36/12, PART III SEC. IV, THE GAZETTE OF INDIA, (January 7, 2014), https://www.sebi.gov.in/sebi_data/attachdocs/1389083605384.pdf.

[4] Foreign Exchange Management (Transfer or Issue of a Security by a Person resident Outside India) Regulations, 2017, Notification No. FEMA 20(R)/ 2017-RB.

[5] Securities and Exchange Board of India (Foreign Portfolio Investors) Regulation, 2019, No. SEBI/LAD-NRO/GN/2019/36, PART II SEC. 3(IV), https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[6] Foreign Exchange Management (Non-debt Instruments) Rules, 2019, PART II SEC. 3(II), THE GAZETTE OF INDIA, http://egazette.nic.in/WriteReadData/2019/213332.pdf.

[7] Foreign Exchange Management (Debt Instruments) Regulations, 2019, PART II SEC. 3(I), THE GAZETTE OF INDIA, http://egazette.nic.in/WriteReadData/2019/213316.pdf.

since allowing of FPIs investments. It chronicles the changes in response to the constantly evolving market and its shortcomings which ultimately led to the enactment of the most recent regulations. *Part II* deals with the entry conditions that the FPIs need to comply with, post which they can start dealing with Indian securities. A hallmark of the amendments; easing of the documentation and compliances to obtain registration as well as simplification of categories has been discussed at length in this part. *Part III* analyses the motley of stocks, bonds, and other securities that the investors can invest in. It is in this section that both SEBI and RBI regulations have been studied to understand the level of symmetry and the changes brought forth. Discussion revolves around the debt and equity instruments wherein foreign investment is permissible. Moreover, changes made to the issuance of the Offshore Derivative Instruments ("ODI") and the conditions to be satisfied for subscription have been discussed. *Part IV* is the concluding part of the article that dwells upon the overall effect of the changes introduced and an assessment of their impact on furthering of investment by the FPIs.

II. BRIEF HISTORY OF FOREIGN INVESTMENT LAW

Foreign investment in India is possible in a multitude of ways one of them being an institutional investment in listed companies through the stock exchanges. The economic reforms witnessed by the country since the 1990s prodded the government to come up with a policy that allowed institutional investment in Indian securities with certain regulations and restrictions.[8] The Government of India's guidelines of 1992 were the foremost regulations governing the entry of foreign players in the Indian securities market

[8] Ministry of Finance, Report of Expert Group On Encouraging FII Flows And Checking The Vulnerability Of Capital Markets To Speculative Flows (Nov. 21, 2005).

providing for an initial registration process with SEBI and a caveat of general permission from RBI under the Foreign Exchange Regulation Act.[9] Through this way, Foreign Institutional Investors ("FIIs") were permitted to invest in all securities traded on the primary and secondary markets, including shares and debentures which were issued by companies that were listed or proposed to be listed on the stock exchanges in India.[10] Later, in the year 1995, these regulations were incorporated in the SEBI (Foreign Institutional Investors) Regulations, 1995.[11] The latter provided a more comprehensive way to regulate foreign investment in the Indian securities market by covering registration, investment conditions and restrictions along with obligations and responsibilities of foreign investors.

However, keeping in mind the dynamic nature of the Indian market along with the need to streamline and facilitate the foreign portfolio investment regime, the government based on the recommendations of the *K.M Chandrashekar Committee* came up with the FPI Regulations, 2014,[12] replacing the 1995 regulations.[13] This regime merged the concept of FIIs and Qualified Foreign Investors into one category called FPIs for increased efficiency in the regime.[14] It also created different categories of FPIs keeping in mind the risk they bring with themselves. The regulatory framework for

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[9] *Foreign Investment in India*, ISMR (September, 2011), https://www.nseindia.com/content/us/ismr2011ch7.pdf, (Last accessed on January 17, 2020)

[10] *Foreign Investment in India*, ISMR (September, 2011), https://www.nseindia.com/content/us/ismr2011ch7.pdf, (Last accessed 17 January, 2020).

[11] Securities and Exchange Board of India (Foreign Institutional Investors) Regulations, 1995, PART II SEC. 3(II), THE GAZETTE OF INDIA, https://www.sebi.gov.in/acts/fiiregu2009.pdf.

[12] Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2014; Notification No. LAD-NRO/GN/2013-14/36/12 (Jan. 7, 2014).

[13] Sharing Insights, *News Alert*, PwC (Jan. 9, 2014), https://www.pwc.in/assets/pdfs/news-alert-tax/2014/pwc-news-alert-9-january-2014-sebi-foreign-portfolio-investors-regulations-2014.pdf (Last accessed on 12 February 2020).

[14] *Id.*

Designated Depository Participants and the contentious ODIs was provided too. Most recently, the FPI Regulations 2019 came into operation based on the recommendations of the *H.R Khan Committee* report to remove the roadblocks surrounding entry requirements and investment avenues for FPIs. This was to make the Indian securities market more lucrative for foreign investors.

III. ENTRY REQUIREMENTS FOR FPIS

It is evident from a simple construction of the FPI Regulations 2019 that for classifying someone as "FPI", registration is mandatory under Chapter-II of the regulations.[15] An application for an offshore fund to be registered by SEBI is filed with the Designated Depository Participant, in response to which it will grant a certificate on behalf of SEBI to the offshore fund so that it can trade on the Indian securities market. The underlying rationale for granting a certificate is to filter out untrustworthy funds and persons who would seek to engage in nefarious activities around the trade of securities, and could potentially fund terrorist organizations, resistance groups, and anti-social elements or be a participant in white-collar crimes.[16] This part divides the entry barriers faced by an FPI into four broad heads: (i) eligibility criteria for an FPI; (ii) merger of FPI categories; (iii) broad-based funds requirement and (iv) registration.

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[15] Regulation 2(1)(j), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. 3(IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.
[16] Siddharth Shah & Mohit Maheshwari, *India: FPI Laws 2.0: Key Changes* (Nov. 15, 2019), http://www.mondaq.com/india/x/864330/Commodities+Derivatives+Stock+Exchanges/FPI+Laws+20+Key+Changes, last accessed on 12 January, 2020.

A. Eligibility Criteria for an FPI

An applicant is considered for the grant of certificate only when certain criteria are met. First and foremost, he should not be a resident of India nor a Non-Resident Indian or Overseas Citizen of India.[17] It is however permitted for a constituent of the applicant to belong to the aforementioned prohibited categories. It appears that the element of foreign nationality needs to be attributed only to the primary applicant as SEBI has terms and conditions on which a Non-Resident Indian or Overseas Citizen of India can be a constituent of the primary applicant and it would not create a hurdle for the grant of certificate of registration.

Another major requirement is that the home security regulator of the applicant, i.e., the country in which the applicant is registered, should be a signatory to the International Organization of Securities Commission's ("IOSCO") Multilateral Memorandum of Understanding (which is found in Annexure A containing the names of signatory countries) or a signatory to the bilateral memorandum of understanding with the SEBI.[18] The aforementioned requirement is important due to the nature of IOSCO as this international organization has a set of core principles that lay down what constitutes a good securities market regulation.[19] Conformity with these principles lends

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[17] Regulation 4(a),4(b),4(c), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. 3(IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[18] Regulation 4(d), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. 3(IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[19] *Objectives and Principles of Securities Regulation*, IOSCO (May 2003), https://www.iosco.org/library/pubdocs/pdf/IOSCOPD561.pdf, (Last accessed on January 21, 2020).

credence to the soundness of the laws governing offshore funds. This also assuages the concerns of SEBI to an extent pertaining to the origin of the fund. Further, it facilitates the signatory countries mentioned in Annexure A and their market regulators to exchange information and witness statements in cases of market manipulation, identification of beneficial owner or controller of an account, etc.[20] Thus, this regulation requirement ensures the credibility of an investor and provides a failsafe for potential regulation breaches.

B. Merger of FPI Categories

Under FPI Regulations 2019, there are two categories under which the applicant may apply: Category I and Category II.[21] A third category namely, Category III was removed and merged with Category-II to simplify the process of FPI registration. Along with the removal of the broad-based fund requirement, this now puts the erstwhile Category-III applicants in the pool of Category-II applicants and all of the erstwhile Category-II applicants in the pool of Category-I applicants.[22] There are some major implications to these changes. Firstly, indirect share transfer provisions and the burden of Indian income tax legislation in form of capital gains tax will now not fall on Category-III FPIs.[23] Further, it is also important to note that this benefit will

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[20] *Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and The Exchange of Information,* IOSCO (May 2002), https://www.iosco.org/about/?subsection=mmou, (Last accessed January 21, 2020).

[21] Regulation 5, Securities and exchange Board of India (Foreign Portfolio Investment) Regulations, 2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. 3(IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[22] Siddharth Shah & Mohit Maheshwari, *India: FPI Laws 2.0: Key Changes,* MONDAQ (Nov. 15, 2019), http://www.mondaq.com/india/x/864330/Commodities+Derivatives+Stock+Exchanges/FPI+Laws+20+Key+Changes, (Last accessed on January 12, 2020).

[23] Rajesh Gandhi & Karamjeet Singh, *SEBI Simplifies Regulations For Foreign Portfolio Investors,* News feed, TAXATHAND (Oct. 18, 2019),

only last until the income tax department does not come up with a circular stating the contrary as it is the discretion of tax authorities on whether they want to levy indirect tax on erstwhile Category-III FPIs. A prudent solution will be to provide a provision that facilitates the transition within the FPI categories. Secondly, under SEBI regulations[24], Category III FPIs were not eligible to be categorised as Qualified Institutional Buyers ("QIBs"), who are entitled to certain benefits at the time of an initial public offer or a follow-on offer. The Category III FPIs are now technically eligible to be QIBs. This leads to confusion pertaining to the very definition of such QIBs as they are deemed to have a high level of financial prudence and certain category-III investors not having the requisite level of prudence by the virtue of their earlier classification can attain this status now.[25] The aforementioned legal limbo will exist until SEBI issues a circular to put light on this issue.

C. Broad-Based funds Requirement

The FPI Regulations 2019 removed the broad-based qualification for funds which required a minimum of twenty investors in the fund and the caveat that no one investor should be holding more than 49% of the shares or units of the fund.[26] However, it is interesting to note that the new standard requirement in the absence of broad-based fund is premised on two requirements:

https://www.taxathand.com/article/12377/India/2019/SEBI-simplifies-regulations-for-foreign-portfolio-investors (Last accessed on Jan. 1, 2020).

[24] SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, No.SEBI/LAD-NRO/GN/2018/31, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/sebi_data/attachdocs/feb-2019/1549864881890.pdf.

[25] Rajesh Gandhi & Karamjeet Singh, *supra* note 22.

[26] Regulation 5, Explanation-II, Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations, 2014, Notification No. LAD-NRO/GN/2013-14/36/12, PART III SEC. IV, THE GAZETTE OF INDIA, (January 7, 2014), https://www.sebi.gov.in/sebi_data/attachdocs/1389083605384.pdf.

'appropriately regulated fund' and 'Financial Action Task Force ("FATF") member country'.[27] In order to understand the flawed logic of broad-based fund,[28] and how it hindered the regulatory framework relating to FPIs, we need to analyse the structural placement of broad-based requirements in the regulatory framework. Firstly, in the case of a segregated portfolio, before the FPI Regulations 2019, there was a need for a sub-fund or additional share classes to be broad-based even if the primary fund met the broad-based requirement.[29] In addition to this, in case that the sub-fund was not found to be broad-based, a prior approval was needed from the depository participant and after such approval, a time limit was given under which the fund or additional share class needs to be converted into a broad-based fund. This aforementioned requirement gave rise to two interrelated problems. Firstly, it acted as a deterrent for potential investors as it is not feasible for every eligible investor to convert its sub-fund/ additional share class such that it meets the broad-based requirement. Secondly, there was an unrealistic time-limit given to such investors for conversion after the said approval. In the case of a single addition of an additional share class, it was 90 days and in the case of more than one additional share class, it was 15 days. This time limit is non-uniform, illogical and a result of poor policy drafting.[30]

It is also pertinent to note that a broad-based status is very volatile as the exit of a group of investors or in some cases even a single global offshore

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[27] Regulation 5, *supra* note 20.
[28] Rajesh Gandhi & Karamjeet Singh, *supra* note 22.
[29] *Frequently Asked Questions 49*, Foreign Portfolio Investors, SEBI, https://www.sebi.gov.in/sebi_data/meetingfiles/jan-2018/1515989011412_1.pdf. (Last accessed on Mar. 20, 2020).
[30] *Id.*

investor could result in the loss of broad based-status.[31] This discouraged FPIs who had established open-funds where exit on redemption is an available option. Therefore, it is a reasonable conclusion from the above discussion that the removal of broad-based classification is in the best interest of both the foreign investors and the healthy growth of the Indian securities market.

D. Registration

The approach that has been adopted regarding the registration of FPIs in the FPI Regulations 2019 is a two-fold approach. In the first instance, it has adopted a territorial method of assessing the *bona-fide* nature of the investing entity/person. The country of residence/incorporation if found to be one among the FATF member countries will be automatically granted Category-I registration to even non-broad-based funds now. In the second instance, the regulatory status of an FPI is also a criterion on which an FPI is assessed for registration in the place of erstwhile broad-based criteria.[32] The phrase used in the regulations is 'appropriately regulated', defined as follows: "Appropriately regulated entity means an entity which is regulated by the securities market regulator or the banking regulator of home jurisdiction or otherwise, in the same capacity in which it proposes to make investments in India."[33]

Now, the apparent observation and the inter-relationship between the two requirements can be made. It is possible for an entity to be unregulated

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[31] Point 5.4.2, SEBI Board Note, Easing of Access Norms for Investment by Foreign Portfolio Investors (FPI), Pg. 27, Jan. 2018, https://www.sebi.gov.in/sebi_data/meetingfiles/jan-2018/1515989011412_1.pdf (Last accessed on Mar. 20, 2020).

[32] Rajesh Gandhi & Karamjeet Singh, *supra* note 22.

[33] Regulation 2(1)(b), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations, 2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

and still be able to register if its investment manager is from a FATF member jurisdiction and is registered as Category-I under the FPI Regulations 2019.[34] This leads to the conclusion that the reading of the above two regulatory requirements is disjunctive and not conjunctive in nature because it is not required for an entity to be both 'appropriately regulated' and have an investment manager from a FATF member jurisdiction. However, the real relaxation in the regulatory framework comes from the residuary nature of Category-II. It becomes easy for an applicant to assess whether the application being made by him qualifies for Category-I, if not, it will qualify for Category-II provided the 'minimum eligibility' standards are met. It must be understood that regulations have only been simplified and must not be equated with relaxation at every point. For example, entities based in non-member FATF countries like 'Mauritius' or 'Cayman Islands' would not be able to procure FPI Category-I license. Resultantly, a heavy share of investment that flowed from these jurisdictions is now going to be cut off.[35]

It is evident from the aforementioned regulation that a viable option that the entities situated in the so-called high-risk jurisdiction have is to introduce another FATF criteria approved player having equal or more than 75% stake in the FPI, and then restructure accordingly to have a breathing space in the Indian securities market. However, there are three major consequences to this change if SEBI does not clarify the position of these

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[34] Regulation 5, Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations, 2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[35] Reena Zachariah & Sugata Ghosh, *SEBI's FPI Rules May Leave Mauritius At Sea* (Oct. 08, 2019), ECONOMIC TIMES, https://economictimes.indiatimes.com/markets/stocks/news/sebis-fpi-rules-may-leave-mauritius-at-sea/articleshow/71486078.cms?from=mdr (Last accessed on May 19, 2020).

jurisdictions in the operating guidelines properly. Firstly, the influx of foreign investment from these jurisdictions is going to get re-routed to jurisdictions other than India which do not have similar regulatory compliance because these entities will simply not have enough time to restructure everything in order to get a Category-I status, and it is also important for issuing ODIs under the new regulations.[36] Secondly, there will be pressure on policymakers to strike the correct balance between offsetting the damage from illicit investing and terror financing with links to these high-risk jurisdictions and protecting the existing *bona-fide* investors in such a manner that they are not forced to liquidate their position and exit the market in haste. Thirdly, this policy change would not work in the long run as under the new regulations it is possible for an entity to acquire a Category-I license even if an entity is not from a FATF-member jurisdiction if one of the two aforementioned conditions is fulfilled.

Therefore, more concrete regulations are required to tackle the problem in consonance with the policy objective.

IV. INVESTMENTS AVENUES FOR FPIS

The ever-changing rules and regulations and the securities in which FPIs are allowed to invest create a constant need for evaluation of appropriate legal channels through which money can be poured into the shares or other securities selected by the foreign investor. The frequent modifications incite academic curiosity towards the issue but often forces FPIs to change their investment models and alter their investment structures, thereby increasing compliance costs as well as hampering the implementation of their investment philosophy. As discussed in the introduction there are two regulators SEBI

[36] *Id*.

and RBI, each armed with a new set of regulations, the FPI Regulations 2019 and NDI Rules, read with Debt Instrument Rules respectively. These regulations reflect a significant overhaul of the regime governing FPIs.

Discussion under this part of the article is divided into three parts. *Firstly*, the regulations relating to securities in which investment is allowed are dealt with. It specifically deals with equity investments. *Secondly*, the compliance requirements for investment into debt securities have been analysed. The *third* part deals with ODIs and the changes introduced therein.

A. Investment in Securities-Non-Debt

Unlike FDI, portfolio investors are not permitted to invest in unlisted Indian companies.[37] An individual FPI is allowed to invest up to 10% of the total paid-up equity capital on a fully diluted basis or less than 10% of the paid-up value of each series of debentures or preference shares or warrants issued by an Indian company.[38] Investment has been opened up for FPIs in sectors prohibited for FDI, but only up to the 10% limit. This is termed as the *'individual limit'* for a single FPI. Total investment by an FPI including its investor group cannot breach this 10% threshold. Both SEBI and RBI in their new regulations have come out with clubbing of investment criteria to determine whether multiple entities registered as FPI form part of the investor group. These comprise entities with common ownership directly or indirectly of more than 50% or common control.[39] The common control test has been

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[37] *Question No. 6 Frequently Asked Questions*, Foreign Investment, RBI, https://m.rbi.org.in/Scripts/FAQView.aspx?Id=26#Q6. (Last accessed on March 19, 2020).
[38] Rule 2(f), Foreign Investment Non -Debt Rules, 2019.
[39] Schedule II (1)(a)(i), Foreign Investment Non- Debt Rules, 2019, Regulation 22(3) Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations, 2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA,

tampered with frequently, imposing arduous compliance conditions such as identification of beneficial ownership under Prevention of Money Laundering (Maintenance of Records) Rules, 2005, and subsequent clubbing of investment by FPIs having common beneficial owners.[40] SEBI had courted massive controversy when it introduced the clubbing of investment based on a determination of beneficial ownership.[41] This led to restricting the use of rules for identification of beneficial ownership under Prevention of Money Laundering (Maintenance of Records) Rules, 2005 for the purpose of Know Your Customer ("KYC") norms[42], which was later on done away with[43] thereby re-establishing the status quo.

With regard to the collective investment limit of all the FPIs in a particular company, the RBI has recently introduced certain changes. Prior to the said changes, investment by all FPIs could not exceed 24% of paid-up equity capital on a fully diluted basis or paid-up value of each series of

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https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[40] C*larification On Clubbing Of Investment Limits Of Foreign Government/ Foreign Government Related Entitie*s, SEBI, Circular SEBI/HO/IMD/FPIC/CIR/P/2018/66, (Apr. 10, 2018), https://www.sebi.gov.in/legal/circulars/apr-2018/clarification-on-clubbing-of-investment-limits-of-foreign-government-foreign-government-related-entities_38616.html, (Last accessed on January 5, 2020).

[41] *Id*.

[42] *SEBI Issues Circulars Prescribing Revised Norms On Know Your Client Requirements For Foreign Portfolio Investors (FPIss) And Eligibility Conditions For FPIs*, SEBI, Circular CIR/IMD/FPIC/CIR/P/2018/131, (Sept. 21, 2018), https://www.sebi.gov.in/media/press-releases/sep-2018/sebi-issues-circulars-prescribing-revised-norms-on-know-your-client-requirements-for-foreign-portfolio-investors-fpis-and-eligibility-conditions-for-fpis_40410.html, (Last accessed on February 13, 2020).

[43] *Clarification On Clubbing Of Investment Limits Of Foreign Portfolio Investors ("FPIs")*, SEBI, Circular SEBI/HO/IMD/FPIC/CIR/P/2018/150, (Dec. 13, 2018), https://www.sebi.gov.in/legal/circulars/dec-2018/clarification-on-clubbing-of-investment-limits-of-foreign-portfolio-investors-fpis-_41281.html, (Last accessed on February 13, 2020).

debentures or preference shares or warrants.[44] Known as the '*aggregate limit'* this threshold could be increased by means of a special resolution[45] and approval of the board of directors of the company. This was subject to the sectoral cap[46] of foreign investment permitted for the particular sector by the government. Violation of the above requirement resulted in the investment being treated as FDI inviting multiple compliances and reporting requirements. Thereafter, even if the investment limit was decreased complying with regulatory requirements, it was continued to be treated as FDI.[47] There was a grace period of five days given to the FPI to dilute the excess shareholding after which it is treated as FDI.[48] The five-day requirement which was absent in the FPI Regulations 2014 now finds a place in the FPI Regulations, 2019, in sync with the NDI Rules.

The *HR Khan Committee* recommended increasing the aggregate limit of FPI holding in an Indian company up to the total foreign investment sectoral or statutory cap instead of limiting it at 24 percent. However, if a company specifically wants to reduce it to 24 percent or any other level below the sectoral cap, it can do that with the approval of its board of directors and

[44] FEMA (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, Notification No. FEMA 20(R)/ 2017-RB, Schedule 2, (2017), https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0.
[45] The Companies Act, 2013, No. 18, Acts of Parliament, 2013, (c 46), § 114(2).
[46] Rule 2(am), Foreign Exchange Management (Non-debt Instruments) Rules, 2019, PART III SEC. 3(II), http://egazette.nic.in/WriteReadData/2019/213332.pdf.
[47] *Question No. 9, Frequently Asked Questions*- Foreign Investment in India (May 07, 2018), RESERVE BANK OF INDIA, https://m.rbi.org.in/Scripts/FAQView.aspx?Id=26, (Last accessed on March 15, 2020).
[48] Schedule II, Foreign Exchange Management (Non-debt Instruments) Rules, 2019; Regulation 20(7) Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations, 2019, No. SEBI/LAD-NRO/GN/2019/36.

shareholders through a special resolution.[49] This would make it more difficult for a company to reduce the aggregate limit of FPI holding and requires an extra step on the part of the company to impose the 24 percent cap. The committee also observed that many listed companies have not taken any initiative to increase the cap or they do so in small incremental portions (fixing limit somewhere between 24 percent and the sectoral cap). The result is a very limited and fragmented investment headroom available to FPIs in a large number of stocks.[50] The revamped foreign investment rules by RBI provide that with effect from April 1, 2020, the aggregate limit shall be the sectoral caps applicable to the Indian company with respect to its paid-up equity capital on a fully diluted basis or such same sectoral cap percentage of paid-up value of each series of debentures or preference shares or share warrants.[51] The Indian companies have the option of decreasing the aggregate limit to a lower threshold limit (24%/49%/74%) before March 31, 2020. Once decreased, this limit may be increased by the Indian company which then attains finality and cannot be reduced again.

Seeing the prospective implementation, RBI has given a fair amount of time to the companies to decide upon the investment limit by FPIs. This will ensure that the company can hold a board meeting and shareholders meeting to pass the requisite resolutions. Disallowing changes in the FPI limit ensures stability for FPIs who would otherwise be subject to the whims and

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[49] Sayantan Dutta, *HR Khan Committee Report: Revamping The FPI Regime In India*, BLOOMBERG QUINT OPINION, (Jun 10, 2019, 7:37 PM), https://www.bloombergquint.com/opinion/hr-khan-committee-report-revamping-the-fpi-regime-in-india (Last accessed on January 24, 2020).

[50] *Report Of The Working Committee On FPI Regulations*, SEBI, (May 24, 2019), https://www.sebi.gov.in/reports/reports/may-2019/report-of-working-group-on-fpi-regulations-seeking-public-comments_43107.html, (Last accessed on January 29, 2020).

[51] Schedule II Rule (1) (a) (i), Foreign Investment (Non-Debt Instruments) Rules, 2019.

fancies of the company board. At the same time, it reduces the flexibility available to an Indian company regarding its fund-raising plans. Difficulties may arise in the sector providing for part automatic route and part government approval route resulting in foreign investors developing a preference for the portfolio investment rather than the FDI.[52] It is not clear if it can be pegged at an odd figure or it must move in steps as indicated.[53] This approach will no doubt increase the access of FPIs to the stock market however it is important for the operational kinks to be worked out.

Regulation 20(1) of the FPI Regulations, 2019 provides a list of securities in which FPIs can invest in. It comprises a litany of securities including shares, debentures, and warrants issued by a body corporate both 'listed' or 'to be listed'. Following the recommendations of the *HR Khan Committee* the word 'company' was substituted by 'body corporate'. The rationale behind this was to enable FPIs to invest in instruments issued by statutory bodies. This change has significantly broader implications than just enabling the aforementioned. A perusal of the definition of a body corporate under the Companies Act, 2013 reveals that it includes a one-person company, small company, foreign company, public company, private company, and Limited Liability Partnerships. Effectively, this implies investment by FPIs is permitted in all the above.

Another noteworthy change which though not incorporated in the regulations but finds a place in the Operating Guidelines for FPIs released by

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[52] P.K. Bagga, *Non-Debt Instruments -The New Rules for Foreign Flows*, INDIA CORPORATE LAW CYRIL AMARCHAND MANGALDAS BLOG, (Nov. 20, 2019), https://corporate.cyrilamarchandblogs.com/2019/11/non-debt-instruments-new-rules-foreign-flows/ (Last accessed on February 14, 2020).

[53] *Id*.

SEBI is clarity as to the meaning of the phrase 'to be listed'. The guidelines state that FPIs shall be permitted to acquire "to be listed" shares pursuant to the initial public offer, follow-on public offer, rights issue, private placement, or shares received through involuntary corporate actions including a scheme of a merger or demerger.[54] The provisions pertaining to derivative trading on a recognised stock exchange and investment in Indian Depository Receipts have been retained without any change. Moreover, the provisions relating to investments into units of schemes launched by collective investment schemes and mutual funds have also not been changed. The new regulations permit FPIs to invest in units of real estate investment trusts, infrastructure investment trusts and units of Category-III Alternative Investment Funds registered with SEBI.[55] This explicit inclusion was necessary since the introduction of regulations governing real estate investment trusts and infrastructure investment trusts that provide the procedure for their listing on stock exchanges.

A trend that can be seen in the approaches of both the regulators is the expansion in the number and the variety of securities in which FPIs can invest in. Moreover, the laws of RBI and SEBI are synchronised which is a relief from the time when the conflicting policies of the regulators have been known to dent the investor sentiment. Simplification of the law and ingraining it with

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[54] Page 30, *Operational Guidelines for Foreign Portfolio Investors*, Designated Depository Participants and Eligible Foreign Investors, SEBI (Nov. 05, 2019), https://www.sebi.gov.in/sebi_data/commondocs/nov-2019/Operational%20Guidelines%20for%20FPIs,%20DDPs%20and%20EFIs%20revised_p.pdf, (Last accessed on January 19, 2020).

[55] Regulation 20(1)(e), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations, 2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

the ease of doing business will go a long way in increasing coveted foreign investment. Even though certain questions and interpretational issues still remain they will hopefully be worked out in due course of time.

B. Investment in debt securities

Various global factors and the state of the Indian economy have resulted in a sharp sell-off by the FPIs, which has resulted in a more pronounced effect in the debt segment. FPI investment in debt securities is primarily governed by RBI regulations. The FPI Regulations, 2019 apart from the registration and KYC requirements for FPIs yield ground to the framework released by RBI. The regulations state: “Regulation 20: A foreign portfolio investor shall invest only in the following securities…. (g) any debt securities or other instruments as permitted by the Reserve Bank of India for foreign portfolio investors to invest in from time to time…”

There has been continuous tinkering by the RBI in an attempt to determine the right mix of debt securities and the level of FPI penetration that should be permitted. FPIs can invest in debt securities in accordance with the Debt Instruments Regulations. Additionally, there is a Voluntary Retention Route (“VRR”) mechanism through which investment can be made over and above the limit prescribed in the RBI circulars.

The Debt Instruments Regulations contain a list of debt securities under which FPIs can invest. There is a reduction in the number of categories of permissible securities but the use of general terms ends up widening the scope. Some of the eligible instruments remain the same,[56] while on the other

[56] Schedule I, Foreign Exchange Management (Debt Instruments) Regulations, 2019, PART III SEC. 3(I), THE GAZETTE OF INDIA, http://egazette.nic.in/WriteReadData/2019/213316.pdf.

hand, there is consolidation of the new debt securities in which FPIs can invest in along with clarification with respect to others. In conjunction with investment in units of the domestic mutual funds which was permitted earlier investment in Exchange-Traded Funds has been allowed subject to an investment of less than or equal to 50 percent in equity. The 50 percent threshold will restrict the possible concentration of decision-making power in the hands of FPI and at the same time gives them influence enough to block actions that adversely affect their interests. FPIs are eligible to invest in security receipts issued by Asset Reconstruction Companies ("ARCs"). The condition of investment up to 100 percent in each tranche issued by the ARCs subject to the directions or guidelines of the RBI has been done away with. This will be a huge positive for the fledgeling business of ARCs who have received a boost following the enactment of the Insolvency and Bankruptcy Code, 2016 making the market more vibrant and dynamic. The regulations simplify norms for investment in banks by removing the different requirements[57] for investment in different tiers of a bank's capital. Now FPIs can invest in debt instruments issued by banks eligible for inclusion in regulatory capital.[58] Subscribing securitised debt instruments is permitted and it includes such certificates or instruments issued by a special purpose vehicle established for the purpose of securitisation of assets with banks or other financial institutions.

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[57] Schedule 5(1)(A)(f), Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017, PART II SEC. 3, THE GAZETTE OF INDIA, https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11161&Mode=0.

[58] Schedule I, Foreign Exchange Management (Debt Instruments) Regulations, 2019, PART III SEC. 3(I), THE GAZETTE OF INDIA, http://egazette.nic.in/WriteReadData/2019/213316.pdf.

A noticeable exclusion is the certificates or instruments issued and listed in terms of the Securities and Exchange Board of India (Regulations on Public Offer and Listing of Securitised Debt Instruments), 2008. This is a perplexing move particularly when the trend of continuous liberalisation of the foreign investment regime is considered. Nevertheless, it falls within the jurisdiction of SEBI as well and FPIs will have to conform to SEBI requirements pertaining to maturity and end-use restriction. Yet another significant addition to the category is municipal bonds. Permitted by the RBI[59] and SEBI[60] by means of a circular, it has been given statutory shape now. It will increase access to funds at the lowest level of the government whose importance cannot be underestimated considering the important projects such as SMART cities and infrastructure development undertaken at the local level. As for the FPIs, it is a source of diversification whose attractiveness is at best questionable.

Under the VRR, investments will be free of the macro-prudential and other regulatory prescriptions applicable to FPIs in debt markets, provided they voluntarily commit to retain a required minimum percentage of their investments in India for a period of their choice.[61] Prior to the notification of VRR rules, the RBI released a discussion paper providing the skeletal

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[59] Investment by Foreign Portfolio Investors (FPI) in Debt – Review, RBI, RBI/2018-19/176 A.P. (DIR Series) Circular No. 33, (Apr. 25, 2019), https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11545&Mode=0, (Last accessed on March 2, 2020).

[60] SEBI Circular Permitting Foreign Portfolio Investors (FPI) to invest in Municipal Bonds, SEBI, IMD/FPIC/CIR/P/2019/62, (May. 8, 2019), https://www.sebi.gov.in/legal/circulars/may-2019/permitting-foreign-portfolio-investors-fpi-to-invest-in-municipal-bonds_42927.html, (Last accessed on March 2, 2020).

[61] *Voluntary Retention Route' (VRR) For Investment by FPIs – Discussion Paper*, RBI, (Oct. 05, 2018), https://rbidocs.rbi.org.in/rdocs/PublicationReport/Pdfs/VRESCH05102018348341460024433 8BB5CD760E8B38121.PDF, (Last accessed on March 2, 2020).

framework intended by the regulator to be put in place. After receiving input from the industry, the VRR mechanism was enacted. Any SEBI registered FPI can make a decision to invest under it voluntarily and exemption is given to the FPI from the concentration limits applicable under the other investment options. Additional investment limits have been allocated for investment in government securities[62] (up to Rs 40,000 crores) and corporate debt[63] (up to Rs 35,000 crores). The investment amount to be utilised by FPI (called a Committed Portfolio Size or CPS) is allotted to each FPI by the RBI through auctions or an on-tap window.[64] FPIs have to place their bids for the amount to be invested along with the retention period which cannot be less than the mandated three-year requirement. Preference is given to FPIs with a higher retention period. After allotment, an FPI has to commit 25% of its CPS within 1 month of allotment, while the remaining (up to 75% of its CPS) is required to be committed within 3 months thereafter.[65] At the end of the retention period, FPIs may either transfer their VRR portfolio to the general FPI category or liquidate and sell holdings.[66] There is some confusion with regards

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[62] Voluntary Retention Route' (VRR) For Foreign Portfolio Investors (FPIs) Investment In Debt, RBI, RBI/2018-19/135 A.P. (DIR Series) Circular No. 21, (Mar. 01, 2019) https://m.rbi.org.in/Scripts/BS_CircularIndexDisplay.aspx?Id=11492, (Last accessed on January 20, 2020).

[63] *Id.*

[64] Avinash Umapathy, Vardaan Ahluwalia & Ramya Chandrasekhar, *Investment through the Voluntary Retention Route: Fresh Push for FPI in Corporate Debt?*, INDIA CORPORATE LAW CYRIL AMARCHAND MANGALDAS BLOG (Apr. 10, 2019), https://corporate.cyrilamarchandblogs.com/2019/04/investment-voluntary-retention-route-foreign-portfolio-investment/, (Last accessed on January 20, 2020).

[65] Avinash Umapathy, Vardaan Ahluwalia & Ramya Chandrasekhar, *Investment through the Voluntary Retention Route: Fresh Push for FPI in Corporate Debt?*, INDIA CORPORATE LAW CYRIL AMARCHAND MANGALDAS BLOG (Apr. 10, 2019), https://corporate.cyrilamarchandblogs.com/2019/04/investment-voluntary-retention-route-foreign-portfolio-investment/, (Last accessed on January 20, 2020).

[66] Vaswar Mitra, *VRR Has Potential To Widen Bond Markets*, Opinion Piece, LIVEMINT (Mar. 06, 2019), https://www.livemint.com/mutual-fund/mf-news/opinion-vrr-has-potential-to-widen-bond-markets1551893635525.html, (Last accessed on January 12, 2020).

to sales to domestic investors as the framework fails to mention it. FPIs investment through VRR will be eligible to participate in repos for liquidity management, provided that the amount borrowed or lent under repo does not exceed 10% of their investment under VRR.[67] Foreign portfolio investors will be allowed to participate in any currency and interest rate derivative instrument, OTC or exchange-traded, to hedge their interest rate or currency risk. [68]

This is a structural step towards broadening and deepening the onshore bond markets.[69] It helps to meet dual ends: provide flexibility to the investors and at the same time potentially enhancing the opportunities for resolution of stressed assets. One of the highlights of the VRR mechanism is the threshold limit in both government and corporate debt is calculated independently of the existing investment of FPIs. Proper implementation without frequent changes is imperative to ensure that the policy objective is achieved.

C. Offshore Derivative Instruments.

It is evident and flows logically by the class restructuring of the current FPI that there will be new restrictions with respect to the issuance of ODIs by FPIs. Furthermore, it is conspicuous from the regulations that they were developed to limit the scope and operation of ODIs and are aimed at bringing forth a defensive policy structure. Now, a basic introduction of ODI or participatory notes as they are sometimes referred to is required before a

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[67] Nasrin Sultana, *RBI Proposes New FPI Norms In Bid To Attract Long-Term Investments*, LIVEMINT (Oct. 05, 2018), https://www.livemint.com/Money/ul6dtTscMgzER49nlxUaxI/RBI-proposes-voluntary-retention-route-to-attract-FPI-invest.html, (Last accessed on January 12, 2020).

[68] *Id.*

[69] *Id.*

discussion pertaining to the changes can be entertained. The FPI Regulations 2019 defines ODI as "any instrument, by whatever name called, which is issued overseas by a foreign portfolio investor against securities held by it in India, as its underlying."[70]

It is possible for foreign players to get a back-door entry into the stock market. The aforementioned involvement is possible if an FPI issues them an ODI for the underlying asset it holds in the Indian market and opens a backdoor entry into the market. Under the new regulations, it is not possible for a foreign investor to issue, subscribe or in any manner deal with ODI if certain strict conditions are not complied with. The conditions are as follows: Firstly, the issuer must be a registered Category-I investor[71] and secondly, the acquirer must be eligible for Category-I investor, hence, it is not necessary for an acquirer of ODI to be registered with SEBI but should merely be eligible for registration.[72] This condition ensures the credibility of the acquirer as category-I eligibility is more stringent.

However, if the investment manager ("IM") of such an entity is from a FATF member country then the category-I requirement is not mandatory for the entity and moreover, the IM need not be registered as category-I FPI. This

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[70] Regulation 2(1)(o), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[71] Regulation 21(1)(a), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[72] Regulation 21(1)(b), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

non-compulsion of registration of either the FPI or the IM is in consonance with the objective of the ODI scheme, i.e., uninterested in dealing with the market regulator Thirdly, the KYC norms issued by the board must be complied with.[73] The rationale of KYC norms in simplest terms is firstly, to increase transparency and ensure the legitimacy of the investor associating itself with the Indian market and secondly, to prevent criminal activities like money-laundering and round-tripping. Fourthly, in the event of a transfer of the ODI issued by the FPI, it has to ensure that the category-I requirement or the IM requirement is being complied with, the transferee can either be approved by consent of the FPI or may be mentioned in its pre-approved list.[74] It is an obligation on the part of the FPI to disclose all the terms and information pertaining to the ODI and the parties involved, this provision ensures that in case of any breach, the FPI automatically becomes the defaulting party.

Due to the abovementioned changes and the general structure of the ODI, there are new implications with respect to the involvement of the foreign players in the domestic market. Firstly, entities based out of countries such as Mauritius and the Cayman Islands are non-FATF member countries and hence cannot deal with ODI. However, it is possible for them to deal in offshore derivatives if they have an Investment manager who belongs to one of the 39 countries of the FATF. However, this is only a possibility that has been

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[73] Regulation 21(1)(c), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

[74] Regulation 21(2)(a), 21(2)(b), Securities and Exchange Board of India (Foreign Portfolio Investment) Regulations,2019, No. SEBI/LAD-NRO/GN/2019/36, PART III SEC. (IV), THE GAZETTE OF INDIA, https://www.sebi.gov.in/legal/regulations/sep-2019/securities-and-exchange-board-of-india-foreign-portfolio-investors-regulations-2019_44436.html.

provided by the regulation and not a practical solution because of the fact that most of the investment funds choose to hire an investment manager of the same jurisdiction in which they are based in.[75] Secondly, an entity that is from a non-FATF country but that country subscribes to a regional anti-money laundering compliance group and is compliant with the FATF recommendations, would still be not allowed to acquire ODI.[76] This highlights the major problem with the FATF qualifier in the 2019 regulations. It can be reasonably predicted that in absence of any further clarifications by SEBI regarding the same, volatile reactions can be expected in the ODI market and could significantly affect the investment regime but to ascertain this impact would require more time and data from the market.

V. CONCLUSION

It is a well-known maxim that "Change is the only constant", whether it is with respect to the market conditions or regulatory framework. The radical changes introduced by SEBI and RBI deserve credit although they come with their own ramifications. The merger of categories will reduce the hassle around the FPI registration process and will definitely streamline the process. However, the problem of differentiation between the prudence level of erstwhile Category-III investors and QIB as underlined earlier in the paper needs to be resolved. In addition, the territorial classification in FPI

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[75] Payaswini Upadhyay, *SEBI Restricts The Ability Of Certain FPIs To Issue Offshore Derivative Instruments* BLOOMBERGQUINT (Sept. 30, 2019), https://www.bloombergquint.com/markets/sebi-fpi-norms-sebi-restricts-the-ability-of-certain-fpis-to-issue-offshore-derivative-instruments,(Last accessed on January 13, 2020).

[76] Garima Joshi, *Revised Norms For FPIs: New Wine In A New Bottle*, INDIA CORPORATE LAW: CYRIL AMARCHAND MANGALDAS BLOG (Oct. 07, 2019), https://corporate.cyrilamarchandblogs.com/2019/10/revised-foreign-portfolio-investors-regulations-sebi/#more-3145 (Last accessed on January 13, 2020).

registration appears to be a myopic solution to a far-reaching problem. It is suggested that this problem be addressed by employing an investor-centric approach so as to avoid triggering market volatility. Despite some pertinent disadvantages taken together with doing away with the broad-based fund requirement along with simplification of eligibility and registration requirements, there will be a positive effect on FPI inflows.

Widening the scope of investment instruments through which FPIs can deploy the funds by both SEBI and RBI is a step towards making the Indian securities market more competitive and incorporating the most recent types of securities like municipal bonds, real estate investment trusts, etc. An issue that could arise is that some of these esoteric market securities may become a source of misuse or deception. The most significant change is the synchronisation of SEBI and RBI rules regarding the debt and equity instruments FPIs can invest in. The increase of the aggregate investment limit will go a long way in opening up of the market and increase the array of companies available for investment. Further, an important implication of the changes with respect to the ODI system is the indirect provision that allows an entity having an IM from FATF member country to issue ODI despite the possibility that the entity itself may not be from a FATF member country. It is also important to address the concern that it is possible for a country to comply with FATF recommendations without being a member of it, especially if it enforces a regional mechanism regarding the same. The aforementioned points address the conflict between developing a protective legal regime and bringing a radical change at the same time. It is time that SEBI realizes that the optimal policy would strive to attain a balance between the two.

Enacted with the best of intentions and after a comprehensive dialogue with industry professionals and experts, it remains to be seen how the new regulations will function over time. In the current business environment with increasing global uncertainty and funds from overseas investors to emerging markets drying up, it is very important for India itself as a popular investment destination to sustain its growth momentum.