

CIRCULAR

SEBI/HO/MRD/DCAP/CIR/P/2020/190

October 01, 2020

To,

1. All recognized Stock Exchanges
2. All recognized Depositories
3. All recognized Custodians

Dear Sir / Madam,

Subject: Framework for monitoring of foreign holding in Depository Receipts

1. The framework for issuance of Depository Receipts ('DRs') by a Listed Company was notified by SEBI vide [Circular dated October 10, 2019](#).
2. The said Circular, at Para 2.19 to 2.21, inter-alia, provided the obligations of Indian Depository and Domestic Custodian, whereby, Indian Depositories were required to develop a system to monitor the foreign holding, including that held by way of DRs, as per the limits prescribed under the Foreign Exchange Management Act, 1999 and applicable SEBI Regulations, and disseminate the information regarding outstanding DRs and available limit for conversion. For this purpose, the Circular provided that Indian Depositories shall have necessary arrangement with the Domestic Custodian and / or Foreign Depository.
3. Based on discussion with market participants, the broad operational guidelines for the above purpose are placed at **Annexure**. Indian Depositories, in consultation with each other and market participants, may prescribe the formats and other details, as may be necessary to operationalize the above.
4. Stock Exchanges and Depositories are advised to:
 - a) make necessary amendments to the relevant bye-laws, rules and regulations for the implementation of the above circular; and
 - b) bring the provisions of this circular to the notice of the issuers, Domestic Custodians and also to disseminate the same on the website.
5. This circular is being issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992.

Yours faithfully,

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Annexure

1. Listed Company shall appoint one of the Indian Depository as the Designated Depository for the purpose of monitoring of limits in respect of Depository Receipts.
2. The Designated Depository in co-ordination with Domestic Custodian, other Depository and Foreign Depository (if required) shall compute, monitor and disseminate the Depository Receipts (DRs) information as prescribed in the framework. The said information shall be disseminated on website of both the Indian Depositories. For this purpose, the Designated Depository shall act as a Lead Depository and the other depository shall act as a Feed Depository.
3. Domestic Custodian shall:
 - 3.1. Provide one-time details of DRs in the format and manner as may be prescribed by the Indian Depositories.
 - 3.2. Provide the requisite information as may be prescribed by Designated Depository for the purpose of computation of information in respect of Depository Receipts as and when requested.
 - 3.3. Ensure that the underlying permissible securities, pertaining to a listed company, against which DRs are issued in the Permissible Jurisdiction, are held in a demat account, under a separate Type & Sub-Type as prescribed by the Indian Depositories for the purpose of issue of DRs.
 - 3.4. Provide certificate / declaration / information, to the Designated Depository in the prescribed format upon termination/cancellation of DR program. For this, the issuer or Foreign Depository shall be required to report such termination / cancellation to the Domestic Custodian.
4. **Procedure for the purpose of monitoring of limits**
 - 4.1. The Designated Depository shall forward the list of such companies (ISINs) for which it will be monitoring the DR issuance to Feed Depository. For any addition or deletion of ISINs, the Designated Depository shall communicate to the Feed Depository regarding the same through Incremental information sent on a periodic basis.
 - 4.2. Feed Depository shall provide the ISIN wise demat holdings of investors tagged with separate sub-type to the Designated Depository on a daily basis.

4.3. The Designated Depository shall ascertain the details of holdings pertaining to Foreign Depository lying under demat account(s) tagged under such separate Type & Sub-Type as well as other investors with 'DR' sub type held at both depositories and consolidate such holdings to arrive at the outstanding Permissible Securities against which the DRs are outstanding.

4.4. Calculation of headroom i.e. 'the limit up to which Permissible Securities can be converted to DRs', may be undertaken in the following manner:

| | Particulars |
|-----------------------------------|---|
| (A) | Number of DRs originally issued including corporate action |
| (B) | Outstanding Permissible Securities against which the DRs are outstanding |
| (C) | Re-issuance approval granted by Domestic Custodian (unutilized) at End of Day |
| Headroom = A – (B + C) | the limit up to which Permissible Securities can be converted to DRs |

4.5. The Indian Depositories shall exchange with each other their respective list of companies, for dissemination of DR headroom related information, which shall be consolidated by both depositories and thereafter published on their respective websites.

5. Re-issuance mechanism

5.1. For the purpose of re-issuance of permissible securities, a Foreign Investor shall request SEBI registered Broker with requisite quantity of securities (based on available headroom) required for re-issuance of depository receipts which shall be forwarded to the Domestic Custodian.

5.2. Based on last available headroom disseminated by Designated Depository, the Domestic Custodian shall grant approval (*T- day where T is date of approval granted by Domestic Custodian*) to such request received from SEBI registered Broker for re-issuance purpose which shall be valid for a period of 3 trading days (T+3) from the date of approval of request granted by Domestic Custodian.

5.3. The Domestic Custodian shall report such request approvals along with requisite quantity granted to Designated Depository on same day (i.e. T day) and based on which the Designated Depository shall block the quantity for the purpose of calculation of Headroom.

5.4. The Domestic Custodian shall report the status of utilisation of such approved request to the Designated Depository upon receipt of securities in the demat account of Foreign Depository for the purpose of calculation of Headroom. The domestic custodian shall report the final utilisation status of such approved request with respect to receipt of securities on D+1 basis (where D is a date of credit of security in the Foreign Depository's account) before such time as may be prescribed by Designated Depository. In case of non-receipt of securities within the specified timeline, Custodian shall unblock the requisite quantity of approval granted and report the same to Designated Depository.

6. Monitoring of Investor group limits

6.1. FPI shall report the details of all such FPIs forming part of the same investor group as well as Offshore Derivative Instruments (ODI) subscribers and / or DR holders having common ownership, directly or indirectly, of more than fifty percent or on the basis of common control, to its Designated Depository Participant (DDP). The investor group may appoint one such FPI to act as a Nodal entity for reporting the aforesaid grouping information to its DDP in the format enclosed at **Annexure A**. Further, such Nodal FPI shall report the investment holding in the underlying Indian security as held by ODI subscriber and / or as DR holder, including securities held in the Depository Receipt account upon conversion ('DR conversion' account), to its Domestic Custodian on a monthly basis (by the 10th of every month) in the format enclosed at **Annexure B**. Similarly, the FPIs who do not belong to the same investor group shall report such investment holding details in the underlying Indian security as ODI subscriber and / or as DR holder, including securities held in the 'DR conversion' account, to its Custodian in the aforesaid format on a monthly basis (by 10th of the month).

6.2. The DDP shall report FPI grouping information as reported by Nodal FPI to such Indian Depository (by 17th of the month) where FPI group demat accounts are held in the manner and format as specified by such Indian Depository. Similarly, the Custodian of Nodal entity (who also happen to be the DDP) shall report the investment holdings in the underlying Indian security as held by the ODI subscriber and / or DR holder in respect of the aforesaid FPI group on monthly basis to such Indian Depository (by 17th of the month) where FPI group demat accounts are held in the manner and format as specified by such Indian Depository.

6.3. The Depository which monitors the FPI group limits shall club the investment pertaining to DR holding, ODI holding and FPI holding of same investor group and monitor the investment limits as applicable to FPI group in a Listed Indian company on a monthly basis. However, in respect of FPIs which do not belong to

the same investor group, responsibility of monitoring the investment limits of FPI shall be with the respective DDP / Custodian. The Custodian of such FPIs not forming part of investor group shall club the investment as held by FPIs as well as investment as held by such FPI in the capacity of ODI subscriber and / or DR holder and monitor the investment limits as applicable to single FPI. In case where the investment holding breaches the prescribed limits, the Indian Depository / Custodian, as the case may be, shall advise the concerned investor / investor group, to divest the excess holding within 5 trading days similar to requirement prescribed under SEBI Circular dated November 05, 2019 on 'Operational Guidelines for FPIs & DDPs under SEBI (Foreign Portfolio Investors), Regulations 2019 and for Eligible Foreign Investors.

Annexure – A

| Sr. No. | Name of reporting FPI (Nodal Entity) | Registration No. of Reporting FPI (Nodal Entity) mentioned in column B | Name of FPI / ODI Subscriber with whom the applicant shares, ownership of more than 50% common control | Type of Client viz. FPI or ODI subscriber or DR holder | Registration No. of FPI mentioned at Column D | LEI No. of entity mentioned at Column D (for ODI subscriber or DR holder) | If ODI subscriber, please mention name of dealing FPI | Jurisdiction / Country of entity mentioned at Column D |
|---------|--------------------------------------|--|--|--|---|---|---|--|
| A | B | C | D | E | F | G | H | I |
| | | | | | | | | |

Annexure – B

| Sr. No. | Name of reporting FPI (Nodal Entity) | Registration No. of Reporting FPI (Nodal Entity) mentioned in column B | Name of ODI Subscriber or DR holder having investment in Indian Securities through ODI or DR route | LEI No. of ODI subscriber or DR holder mentioned at Column D | ISIN of the Indian Security | ISIN Description or name of the security | Quantity of securities held (in ratio as being held in India) | Value of securities held | As on date (DD-MMM-YYYY) |
|---------|--------------------------------------|--|--|--|-----------------------------|--|---|--------------------------|--------------------------|
| A | B | C | D | E | F | G | H | I | J |
| | | | | | | | | | |

Note

1. Reference ISIN No. – ISIN of the underlying Indian Security (ISINs issued by NSDL for underlying security).
2. The quantity of securities in the requisite ISIN / or Indian Security shall be reported in the ratio as being held in India.
3. The securities shall be reported as at the end of the month.
4. For the purpose of valuation, the closing price of such security as at the end of the month in India be considered for the computation of value of securities held.