Govt moves to make FPI reporting quicker, more transparent

Any material change to be notified within seven working days

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Tighter regulatory compliance (File)

In a bid to improve transparency and ensure quicker reporting, the government has said that any material change in structure, common ownership or control of the foreign portfolio investors (FPIs) or investor group, should be brought to the notice of the Securities and Exchange Board of India (Sebi) not later than seven working days.

For new FPI registrations, the government has given the Sebi board the power to ask for any additional documents which may be required.

In a March 15 Gazette notification, the government said the Sebi board and the designated depository participants (DDPs) will have to be informed about “any material change in the information, including any direct or indirect change in its structure or ownership or control or investor group previously furnished” in writing within seven days. FPIs will also have to furnish information that has been found to be misleading or false in any material respect. The custodians, in turn, get two days to submit the information to Sebi.

Earlier, FPIs and custodians took up to six months to furnish information of this kind as the timelines were not strictly prescribed.

“With this change, the cost of India regulatory compliance for an FPI would go up significantly. All FPIs would need to put in place appropriate tracking and reporting mechanisms, failing which they run the risk of non-compliance,” said Suresh Swamy, partner, Price Waterhouse & Co.

Change in structures could include a fund changing from a trust to a company or any other corporate actions such as mergers and acquisitions where a fund is impacted.

"The timeline of seven working days (from the current six months) for intimating material change seems to be too short. In addition to specifying the timeline, Sebi should have provided a clear definition of 'material change'. Currently, the FPI regulations as well as the master circular for FPIs provide an inclusive definition of material change to, inter alia, include change in structure or ownership or control or regulatory status. A clearer exhaustive definition would have closed the room for interpretation by the investors," said Kishore Joshi, leader, FSR Practice, Nishith Desai Associates.

The new guidelines would imply that the new prevention of money laundering (PMLA) rules which prescribe lower thresholds for beneficial owners will now have to be furnished within seven days as well, according to market watchers.

The new norms for PMLA, issued last week, have lowered the threshold for identifying beneficial owners in FPIs to 10% for companies and trusts. This threshold was 25% and 15% earlier for companies and trusts respectively, and only entities from high risk jurisdictions were subject to a 10% threshold.

"The move will lead to greater transparency and is being done to ensure that all investor details come in accurately. FPIs will need to put in a proper process in place to monitor any changes because they will no longer have the flexibility to take it easy and report it whenever they think it is appropriate or ready to disclose. They will need to identify the changes in real time and report the same to Sebi. The onus on custodians will also go up significantly," said an industry official.

Sebi has recently also started asking for details of senior managing officials of FPIs on a look-through basis for fresh registrations.

According to experts, Sebi's guidelines for identification and disclosure of the ultimate beneficial owners have not been effectively implemented in the past, resulting in minimal follow-through. Consequently, FPIs have been able to limit their disclosures to certain layers, thereby avoiding disclosures in the spirit of the law.

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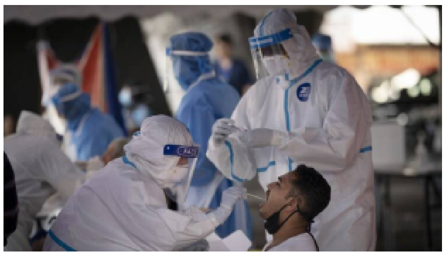

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