SEBI'S NEW DISCLOSURE NORMS FOR FOREIGN PORTFOLIO INVESTORS: BALANCING MARKET INTEGRITY AND CAPITAL FACILITATION IN INDIA'S SECURITIES MARKET

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ABSTRACT

The beneficial ownership of Foreign Portfolio Investors (FPIs) investing in Indian listed companies has, for over a decade, remained one of the more opaque corners of India's securities regulation architecture. The row stimulated by the Hindenburg Research report released in January 2023 which accused that a group of FPIs acted as undisclosed means for own-party promoter holdings in the Adani group of companies has compelled the Securities and Exchange Board of India (SEBI) to take notice of this obscurity at once. This led to the issuance of Circular No. SEBI/HO/AFD-PoD-2/CIR/P/2023/148 on August 24, 2023, which details the requirements for the disclosure of beneficial ownership for foreign portfolio investors subject to certain threshold conditions in terms of concentration and size. This article outlines the formation of the Circular while contextualizing it within the scope of the already existent Know Your Customer and Beneficial Ownership Structure that has been established under the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, in addition to analyzing its usefulness in protecting the minimum public shareholding rules and the Press Note 3 rules. It also gives an account of the judicial recognition received by the Circular from the Supreme Court of India during the Adani-Hindenburg litigation. It showcases the rapid evolution of the structure until 2024-2025 – it notes the particular exemptions for FPIs investing into companies without a known sponsor, the transition onto risk-based criteria, a change in the threshold amount for disclosures based on size from Rs. 25,000 crore to Rs. 50,000 crore in 2025, as well as the introduction of the look-through obligation for owners of the Offshore Derivative Instruments. According to the paper, this adjustment indicates an ungrasped and repeated conflict in the regulatory approach of SEBI – the conflict between the necessity of improving the transparency of markets following the credibility crisis and the need to create an attractive, low-friction environment for investments during a time period characterized by the big capital outflows. It concludes with recommendations for a more calibrated, risk-differentiated disclosure architecture that preserves the integrity gains of 2023 without imposing indiscriminate compliance costs on legitimate, diversified institutional investors.

Keywords: SEBI, Foreign Portfolio Investors (FPIs), Beneficial Ownership Disclosure, Minimum Public Shareholding, Press Note 3, Prevention of Money Laundering (Maintenance of Records) Rules 2005, Adani-Hindenburg Litigation, Offshore Derivative Instruments, Risk-Differentiated Disclosure, Securities Regulation.

I. Introduction

Foreign portfolio investors play a crucial role in the Indian Capital Market, as they bring a large amount of funds that are traded on National Stock Exchange and Bombay Stock Exchange through their offshore investment structures registered under the SEBI (Foreign Portfolio Investors) Regulations, 2019 ('FPI Regulations'). Unlike Foreign Direct Investment which usually involves a direct capital investment is more fluid and often involves the use of numerous levels of pooled capital, subsidiary accounts and offshores established for tax efficiency rather than transparency. Unlike Foreign Direct Investment which usually involves a direct capital investment in which control is established, portfolio investment is more fluid and often involves the use of numerous levels of pooled capital, subsidiary accounts and offshores established for tax efficiency rather than transparency.[1]

During a considerable portion of the posy-liberalisation phase, the trade-off that formed the basis of this structure was quite simple: FPIs would be granted easy access to the Indian markets through the procedure of registration, while registrations are based on KYC regulations instituted by Designated Depository Participants (DDPs) and Custodians, provided they gave some sort of depth and diversification to the Indian equity market on account of foreign investment. This agreement was based on a silent assumption that either the identity of the final beneficial owners of the FPI was really heterogeneous, as in the instance of large-sized pooled investments, or it had no relevance for systemic risk as long as the traditional anti-money laundering checks were in place.

[1]SEBI (Foreign Portfolio Investors) Regulations, 2019, Regs. 4, 22; see also Report of the Working Group on FPI Regulations (Chairman: Dr. Harun R. Khan, Reserve Bank of India, 2019), on the rationale for a distinct, lighter-touch entry route for portfolio, as opposed to strategic, foreign investment.

This theory has been subjected to unrelenting scrutiny since January 24, 2023, when the American short-seller Hindenburg Research released a report claiming that the conglomerate Adani had utilized a chain of offshore companies, out of which multiple were created and provided with registration as foreign portfolio investors (FPIs), in order to artificially increase its float price of shares and avoid MPS (Minimum Public Shareholding) regulations and the limitations on foreign investments in accordance with Press Note 3 from 2020. The report led to an abrupt drop in market capitalization of Adani group companies, a serious problem for the Supreme Court, and – what is most relevant for the present purposes – a full overhaul of SEBI's knowledge about the FPI owners operating on its market.[2]

This paper analyze the response of the regulator, namely the Securities and Exchange Board of India (SEBI) to the implementation of a new elaborate disclosure regime about beneficial ownership by foreign portfolio investors (FPIs), and serves as a case study of advantages and disadvantages of reactive rule-making in the context of unrelenting public, market and judicial scrutiny along with a peculiar case of the difficulties inherent to the regulators in pursuing the difficult task of striking he right balance between the obligations pertaining to transparency and the need to be attractive for foreign capital. Part II outlines the prior existing regulatory framework, showing how the FPI regime evolved from its beginnings in 2014 until it was reclassified in 2019, while placing the issue of beneficial ownership in the context of both the Minimum Public Shareholding and Press Note 3, which were instrumental in giving it legal relevance. Part III examines the Circular from August 2023 in depth, including its requirements, exemptions, and enforcement mechanism. In Part IV, the impact of the Supreme Court's decisions in the Adani-Hindenburg litigation on due process in SEBI's actions is explored. Part V outlines the rapid recalibration which will occur in the period between 2024-2025 while describing the no-promoter exemption, the application of risk-based criterion, the introduction of the relaxed threshold, and the extension of the regime for covering Offshore Derivatives. Part VI discusses this evolution in a critical manner by placing it in the framework of the conflict between capital promotion and market integrity and providing an overview of the respective comparative landscape. Part VII includes recommendations, while Part VIII presents the conclusion.

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[2]Hindenburg Research, 'Adani Group: How the World's 3rd Richest Man Is Pulling the Largest Con in Corporate History' (24 January 203). This paper does not rely on, quote, or reproduce the content of the Hindenburg report itself; it is referenced here only to identify the report as the factual trigger for the subsequent regulatory and judicial developments discussed.

II. Background: The FPI Framework and the Road to 2023

A. From the 2014 Regime to the 2019 Recategorisation

The present FPI regime in India can be traced to SEBI (Foreign Portfolio Investors) Regulations, 2014, which merged three foreign investment channels – Foreign Institutional Investors, Sub-Accounts, and Qualified Foreign Investors into the framework of FPI classification which has three risk categories. The first group of FPI is under category I, consisting of stable institutions working under strict regulation. This includes government investment companies, central banks, and government-owned organizations. Category II FPIs include government-approved funds and banks and are classified as moderate-risk organizations. Category III FPIs include different forms of non-governmental funds, charities, private investors, and family offices[3].

In 2019, SEBI introduced the SEBI (Foreign Portfolio Investors) Regulations, 2019 according to the suggestions put forward by a committee led by Dr. Harun R. Khan. This new framework revolved around simplifying regulations from the existing three-tier structure to a simplified two category structure. Under this new amendment, SEBI scrapped the requirement termed as 'broad-based' which earlier existed, making it mandatory for the Category II funds to prove that it possesses a minimum number of 20 investors who do not own more than 49% of the fund. This new regulation has also put an end to the previous prohibition concerning FPIs with opaque structures, which was based on existing KYC processes.[4]

The statement above is relevant to the discussion in this article. Before 2019, a foreign portfolio investor could only register if the beneficial ownership was established. However, ever since that date, not being able to establish ownership has ceased to pose a problem in registering due to KYC requirements. At the same time, establishing KYC compliant beneficial owners has been done as per the requirements of anti-money laundering rules than under regulations designed to maintain the integrity of securities markets.

[3]SEBI (Foreign Portfolio Investors) Regulations, 2014 (since repealed and replaced); Mondaq, 'The FPI Regulations 2019: New Regime And Relaxations' (2019), describing the three-tier risk classification under the 2014 Regulations and the corresponding KYC burden attached to each category.
[4]SEBI (Foreign Portfolio Investors) Regulations, 2019; Trilegal, 'New Rules Of The Game: SEBI (Foreign Portfolio Investors) Regulations, 2019', Asian Legal Business (2019); Shardul Amarchand Mangaldas & Co, 'SEBI FPI regulations review' (2024), noting SEBI Board approval of the 2018 amendments at its meeting on 21 August 2019.

B. Beneficial Ownership Under the Pre-2023 KYC Regime

The identification and verification of beneficial owners are required in accordance with the Rule No. 9 of the Prevention of Money Laundering (Maintenance of Records) Rules, 2005 ('PMLR'). It has been enforced since 2005 and is still required by law as a part of FPI registration in India. Under this framework, the concept of beneficial ownership is determined by two tests which include one test of quantitative nature known as materiality threshold of ownership/beneficial interest and the other test qualitative in nature which is based on the concept of controlling the right to appoint majority directors.[5]

According to the Circular of 2020 released by SEBI, FPIs need to adhere to the materiality level in identifying beneficial owners as per prescribed PMLR guidelines that depend on the category of the said FPIs. This means that if an FPI falls below the relevant percentage limit, the investors of that FPI may not qualify as beneficial owners, irrespective of linkages with their stock holdings. Underlying the threshold proposal is the standard procedure used in anti-money-laundering activities so as to detect those individuals who manage or own substantial part in a company in relation to the search of the names in the sanctions lists and lists of the interested persons.[6]

However, this does not speak to the separate question that inspired the 2023 reforms, which is: Is the FPI being used by the promoters of a company to violate promoter ownership restrictions as well as to company to violate promoter ownership restrictions as well as to transmit funds from a country that is prohibited without passing the permitted limit? For example, a promoter family that controlled 40% of the corpus of an FPI through different intermediate holding entities, whose holdings in FPI are all below the relevant materiality threshold as set out under PMLR rules, would have been able to circumvent the requirement of disclosing beneficial ownership prior to 2023, even though the authority was interested in information pertaining to exactly that 40% investment from the viewpoint of market integrity.

[5]Prevention of Money Laundering (Maintenance of Records) Ruled, 2005, r. 9; India Corporate Law, 'New SEBI FPI Beneficial Owner Disclosure Norms' (2024), summarizing the quantitative and control-based criteria for beneficial owner identification under the PMLR framework applicable to FPIs prior to the 2023 reforms.

[6]SEBI Circular SEBI/HO/IMD/FPI&C/CIR/P/2020/177(2020); Bhatt & Joshi Associates, 'SEBI FPI Regulations 2019: Foreign Portfolio Investor Rules', noting the alignment of FPI beneficial-owner identification with PMLR materiality thresholds and describing this as balancing legitimate privacy concerns against transparency objectives.

C. Minimum Public Shareholding and Press Note 3: Why Ownership Identity Matters

The ultimate beneficial owners of an FPI are of lawfully substantive importance due to two structural rules applicable to an FPI. The first applicable rule is Rule 19A made under the Securities Contracts (Regulation) Rules, 1957, prohibiting more than 75% of the total paid capital to be held by promoters and their group which means that there should be a minimum 25% of public shareholding in every listed company. The rule is intended to ensure a sufficiently liquid and widely-held free float, reduce the scope for price manipulation by a concentrated promoter group, and protect minority shareholders[7].

The government of India has stated in Press Note Number 3 of the year 2020, released by the Department for Promotion of Industry and Internal Trade (DPIIT), that any investment directly or indirectly made by any entity incorporated in a country that shares a land border with India, or by any beneficial owner of such entity, should be approved by the government prior to such investments. The underlying motive of this regulation was the outbreak of the COVID-19 pandemic and its aim was to stop the takeover of the Indian firms by corporations located in the neighbouring countries of India. Currently this regulation mainly focuses on regulating the investments from China.[8]

If an FPI effectively turns out to be a means for the promoters of a listed company to hold shares indirectly, the promoter's actual, overall holding may be higher than the limit of 75% specified under the MPS rule, even when the company seems to be in full compliance on paper, as the FPIs holdings will have been categorized as public and thus non-promoter shareholdings. Likewise, if an FPI is practically in charge of persons from a nearby country, then the funds that Press Note 3 was to regulate can go to Indian companies through the portfolio investment channel without requiring approval from the government, which is otherwise necessary for direct investments. The understanding of problems relies entirely on the ability of the authorities to see through the corporate veil of the FPI and find out who its actual owners are.

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[7]Securities Contracts (Regulation) Rules, 1957, r. 19A, as amended; SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, reg. 38, prescribing continuous compliance obligations for listed companies with respect to minimum public shareholding.

[8] Press Note 3 (2020 Series), Department for Promotion of Industry and Internal Trade, Government of India (17 April 2020), amending para 3.1.1 of the Consolidated FDI Policy to require government approval for investments from entities of countries sharing a land border with India, or where the beneficial owner of an investment is situated in or is a citizen of any such country.

D. The Hindenburg Report and Its Regulatory Fallout

The controversy that exposed this gap arose from allegations that a cluster of Mauritius- and other offshore-based FPIs, holding substantial and concentrated stakes in individual Adani group companies, were in substance controlled by or affiliated with the Adani promoter family, thereby artificially inflating the free float reported for MPS purposes and potentially breaching the 25% public shareholding requirement in substance if not in form. The allegations led to a significant decrease in the overall market value of the Adani Enterprises which was believed to peak at over $ 100 billion at the time of the sell-off of shares, and in March 2023, the Supreme Court of India asked SEBI to investigate if there were any breaches of the Security Act. At the same time, the Supreme Court formed a separate committee under the leadership of a retired Hon'ble Supreme Court Justice A.M. Sapre to inquire into the matter of whether or not SEBI had acted in breach of the regulations.[9]

In May 2023, expert committee's interim report provided no correctional evidence for price manipulation or regulatory malfunction by SEBI while the structural weakness in SEBI's investigation into the actual ownership of FPIs has been recognized. It has been described as a manhunt without a clear target due to unclear ownership structures caused by previous liberalization measures with regard to FPI rules, including abolishment of the prohibition of the so-called 'opaque structure' entities earlier in 2019[10].

Given the circumstances, while a real-time Supreme Court-assisted investigation is being undertaken, expert opinions are being sought to find the basis for the issue coupled with the public outcry over promoter-owned shell firms, SEBI has issued its most recent circular with the strictest obligations in terms of ownership disclosure in regard to FPIs.

III. The August 2023 Circular: Genesis, Criteria, and Consequences

A. SEBI Board Approval and the Circular

[9] In Re: Adani Group, W.P.(C) No. 162/2023, Order dated 2 March 2023 (Supreme Court of India), directing SEBI to investigate the allegations and constituting an expert committee; Gulf News, 'Adani-Hindenburg case: India's top court asks SEBI to close probe in three months' (3 January 2024), reporting that the Hindenburg report was associated with a reported loss of more than USD 150 billion in Adani Group market value at its peak.

[10] Report of the Expert Committee constituted by the Supreme Court of India (May 2023); as reported in Business Standard, 'Adani Group adds Rs 1 trillion in mcap, biggest single-day jump since April' (28 November 2023), nothing the Committee's finding that SEBI's investigation was hampered by challenges in obtaining information and by 'opaque structures' in foreign portfolio investors traceable to earlier regulatory amendments.

SEBI introduced the initial idea regarding the extra, objectively-triggered disclosure prerequisites in a consultation document published on May 31, 2023, requesting feedback from the industry on a model that would stop the exploitation of the FPI route to evade the MPS rules as well as Press Note 3. The request was granted by SEBI after a meeting that took place on June 28, 2023, and as a result of that the authority used its powers as outlined in Section 11(1) of the SEBI Act, 1992 to issue Circular No. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148 dated August 24, 2023 (the 'August Circular').[11]

B. The Disclosure Criteria: Two Objective Tests

Circular 2023 mandated that full disclosure be made in regard to every entity with ownership, interest, or control of an FPI, including individuals, without any exceptions. The first, 'Concentration Criterion' applies to all foreign portfolio investors whose assets under management for their Indian equity portfolio are above 50% of the Indian corporate group. The other criterion is termed as the 'Size Criterion', and applies to all FPIs whose Indian equity portfolio assets under management are above Rs.25,000 crores (USD 15 billion at that time).[12]

The fact that there is no materiality threshold for FPIs above the two trigger is the most important difference of the Circular from the existing PMLR framework. After an FPI became above the size or concentration triggers, it would not be able to hide under the guise of a very small stake of shares owned by it in relation to which it was not necessary to make disclosures as per the earlier rules. The full look-through requirement of the Circular was intended to counter the particular weakness of the existing framework highlighted by the Adani-Hindenburg controversy.

C. Exemption and the Realignment Option

The exemptions for this new requirement were made for government and government-affiliated organizations that fell under the category of FPIs and also for certain diversified or broad pooled investments, such as retail funds, pension funds, and university endowments, that fulfilled the criteria of diversification. This reflected SEBI's underlying judgment that the risk

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[11] SEBI, Consultation Paper on Framework for imposing Additional Disclosure Requirements for FPIs (31 May 2023); SEBI Circular No. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148 (24 August 2023); Securities and Exchange Board of India Act, 1992, s. 11(1).

[12] SEBI Circular No. SEBI/HO/AFD/AFD-PoD-2/CIR/P/2023/148 (24 August 2023), paras 3-4; India Corporate Law, 'New SEBI FPI Beneficial Owner Disclosure Norms' (2024), summarizing the Concentration Criterion and Size Criterion under August Circular.

of circumvention was concentrated in narrowly-held, single-group-focused vehicles rather than in diversified institutional capital with no plausible connection to any single Indian promoter group.[13]

It is noteworthy that through this Circular, the FPIs were offered a way out. The FPI, which would have been included within the scope of either Concentration Criterion or the Size Criterion, could completely escape from this reporting obligation through mere rebalancing of its portfolio. The impact of such an approach was that the demand for transparency functioned primarily as an inducement towards diversification rather than as a requirement of transparency because a foreign portfolio investor who either was unable or unwilling to provide beneficial ownership information could simply stay diversified with respect to India.[14]

D. Compliance Timelines and the Severity of Non-Compliance

The Circular becomes effective from 1 November 2023. Any FPIs that already satisfied the conditions as of 1 November 2023 had ninety days to comply, whereas any FPIs that subsequently became liable for either of the thresholds were given thirty trading days from the date of breach. Failure to comply would carry an extremely harsh penalty which, compared to the Indian securities law, was very severe in relation to a breach of the disclosure requirement: the revocation of the FPIs certificate of registration, no further purchase, and a divestiture of all Indian securities and departure from India within 180 days from revocation.[15]

This severity carries significant doctrinal weight. The vast majority of disclosure infractions under Indian securities law are subject either to financial punishment or, at worst, suspension until rectified. In opting to treat ongoing failure to disclose as a reason for market exit, SEBI was making clear that it considered beneficial ownership disclosure for those FPIs which met the risk profile criteria to be a prerequisite to market entry in the first place.

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[13] SEBI Circular No. SEBI/HO/AFD/AFD-Pod-2/CIR/P/2023/148 (24 August 2023), Annexure, setting out the categories of FPI exempted from the additional disclosure obligations.

[14] Lexology, 'SEBI circular on additional disclosures by Foreign Portfolio Investors' (19 September 2023), describing the realignment mechanism permitting FPIs to reduce holdings below the disclosure threshold within a specified timeline in lieu of making granular disclosures.

[15] Lexology, 'SEBI circular on additional disclosures by Foreign Portfolio Investors' (19 September 2023), summarizing the compliance timelines under the 2023 Circular and the consequences of continued default, including cancellation of registration and forced liquidation within 180 days.

E. Operational Implementation: The Standard Operating Procedure

With regard to the vast volume of information on beneficial ownership that DDPs Custodians, depositories, stock exchanges, and clearing firms will have to collect and monitor, a comprehensive SOP has been framed in conjunction with SEBI and jointly by these market infrastructures in March 2024, followed by an updated one in December 2025. It was necessary according to the SOP for each of the intermediate organizations in the ownership chain of an FPI to be individually and clearly identifiable in the reporting process and tracked down till all the ownership, economic, and control interest rested with a natural person or an exempt organization, using the specified spreadsheet until the automated system of the depository became operational.[16]

Industry participants, which included custodians whose responsibility was the operation of collecting and validating such information, noted that the compliance burden created by this regime would create an undue burden on FPIs as the regime would require that FPIs have to keep a continuous watch on any changes in the beneficial ownership even when the underlying position is not large enough to matter and the constant need to monitor and report on material change in the beneficial ownership as compared to monitoring and reporting at registration makes this a never-ending process.[17]

IV. Judicial Endorsement: The Supreme Court's Adani-Hindenburg Verdict

A. The January 2024 Judgment

The Supreme Court of India, a panel of three judges comprising of Chief Justice D.Y. Chandrachud, and Justice J.B. Pardiwala and Manoj Misra, pronounced its verdict in the batch of writs pertaining to the Hindenburg issue on 3rd January, 2024. The petitioners had filed the writs for the appointment of an investigative body to look into the matter with or without the involvement of the Court, or the transfer of the investigation to a Special Investigation Team

[16] Standard Operating Procedure for Granular Reporting (12 March 2024) and its subsequent update, Standard Operating Procedure for Additional Disclosures for Foreign Portfolio Investors and Segregated Portfolios (15 December 2025), both issued pursuant to SEBI Circular No. SEBI/HO/AFD-PoD-2/CIR/P/2023/148 dated 24 August 2023, prescribing the iterative reporting methodology and interim excel-based submission format for granular beneficial-ownership data.

[17] Lexology, 'SEBI circular on additional disclosures by Foreign Portfolio Investors' (19 September 2023), noting industry concern over the significant, ongoing compliance burden imposed by the requirement to constantly track and disclose all beneficial owners regardless of the materiality of their holding.

or the Central Bureau of Investigation, in view of the lack of objectivity of the investigation by SEBI.[18]

The Court rejected all three appeals on the grounds that judicial interference in the regulatory domain of SEBI would be called for only if there is evidence of willful and deliberate inaction by the regulator, which was not present here. It was explicitly noted that there was no evidence in the record to indicate inadequacy in the investigation carried out by SEBI. Further, the court held that documents from independent agencies, including the report of the short seller, could not be considered to be conclusive evidence of regulatory malfeasance[19].

However, the Court was not oblivious to the pace of investigations conducted by SEBI. The Court directed SEBI to finish the two pending investigations in a period of three months, with one being in respect of determining the real ownership of certain FPIs which held the stock of the Adani group companies and the other one concerning the practice of short selling that happened after the release of the Hindenburg report. It is clear from this that although the credibility of SEBI was not questioned, it still needed to complete the pending investigation[20].

B. The Subsequent Review Petition

A petition for review in respect of the order passed on 5 January 2024 was later filed on grounds that the order contained evident errors and ignored certain facts that indicated regulatory failure of SEBI. The Supreme Court rejected this petition on 16 July 2024 after pursuing the petition, as there was nothing erroneous on the face of the record that would have required reconsideration of its previous findings.[21]

[18] Vishal Tiwari v. Union of India, 2024 SCC OnLine SC 4, Judgment dated 3 January 2024 (Supreme Court of India).
[19] Vishal Tiwari v. Union of India, 2024 SCC OnLine SC 4; Organiser, Adani Hindenburg Row: SC endorse probe saying, "SEBI is capable…." (3 January 2024), reporting the bench's finding that there had been no regulatory failure by SEBI and that the regulator could not be expected to act on the basis of press reports alone, though such reports could serve as investigative inputs.
[20] Business Today, 'Adani Hindenburg issue: Review petition filed against SC's judgment' (13 February 2024), reporting that of twenty-four total lines of inquiry SEBI had undertaken, two remained pending at the time of the January 2024 judgment – one concerning FPI ownership and one concerning alleged violations of Acquisitions and Takeovers regulations.
[21] Business Today, 'Adani Hindenburg issue: Review petition filed against SC's judgment' (13 February 2024); News on Air, 'SC dismisses review petition filed against its January 3 verdict refusing to form any SIT to conduct investigation into Adani-Hindenburg issue' (16 July 2024).

C. Significance for the Disclosure Reform

This series of judicial opinions is relevant to the current discussion in two ways. First, by refraining from declaring any failure of regulation on the part of SEBI but at the same time obliging SEBI to complete the investigation into FPI ownership within a deadline, the Court has implicitly upheld the remedial actions already taken by SEBI in the period prior to the judgment, because by January 2024 the detailed disclosure requirements of the Circular had become effective and were designed specifically to address the problem of ownership transparency brought up in the litigation. Second, the Court's stance on judicial restraint in the field of SEBI regulation – interference only in instances of manifest inactivity – implies that there have not been any judicial tests of the adequacy of SEBI's disclosure regime so far, which means that further development of the regime in 2024 and 2025 took place exclusively through SEBI's consultative procedures.

V. The Framework's Evolution: 2024-2025

A. The 'No Identified Promoter' Exemption (March 2024)

This discrepancy within the framework of the Circular was brought to the notice of the regulatory authorities through industry feedback once the Circular was released in August 2023. In the case of listed companies where there is no promoter, which is the case with most of the professionally managed and widely held Indian companies, the entire equity in the company is considered to be public float under the regulations since there is no promoter shareholding against which the maximum permitted shareholding limit can be benchmarked.[22]

As a result, SEBI came up with a circular on 15 March 2024 to the effect that FPIs would be exempt from the detailed disclosure obligation in respect of any concentrated holding situation in which the trigger was a corporate group lacking a promoter, provided that the following three conditions were satisfied: the parent company of the concerned corporate group lacked a promoter; the proportion held by the FPI in the other companies of the corporate group excluding the parent company, which lacked a promoter, remained below the threshold level

[22] India Corporate Law, 'New SEBI FPI Beneficial Owner Disclosure Norms' (2024), describing industry feedback that no-promoter listed companies present no risk of MPS circumvention through concentrated FPI holdings.

of 50%; and the total proportion held by such FPIs utilizing this exemption in the parent company was below a certain threshold, as will be stated later as 3%.[23]

B. The Proposed Shift to a Risk-Based, Land-Bordering-Country Test (July 2024)

SEBI, in its consultation paper dated 30 July 2024, has highlighted the more serious problem related to the design of the policy itself. The fact that the Size Criterion of Rs. 25,000 crore AUM is capturing extremely large and diverse funds with broad investor bases purely because of the sheer size of the fund and without any kind of connection between the investors and the risk addressed by this specific policy reform – land-border-related ownership or control. SEBI has highlighted that several large and diverse funds not covered under exemptions have already met the Size Criterion and have been compelled to undergo an elaborate procedure of compliance for no apparent reason.[24]

The proposed mechanism of the SEBI would have replaced the crude size-based trigger test with a more fine-tuned and risk-based approach involving a two-limb test on the make-up of the FPIs investor base. The FPI would be designated a land-bordering-country (LBC) entity, and therefore continue to fall under the obligation of making detailed disclosures, only in the event that more than 50% of the AUM of the FPI was held, owned, controlled by, or had economic interest in LBC investors. On the other hand, an FPI would be considered a non-LBC entity, and therefore free from the obligation of disclosing any more information regardless of the absolute size of the FPI in the event that more than 67% of the FPIs AUM came from non-LBC investors.[25]

C. Doubling the Size-Based Threshold (April 2025)

Instead of jumping straight to the risk-based reform that was recommended in July 2024, SEBI

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[23] SEBI Circular (15 March 2024) on exemption from beneficial ownership disclosure for FPIs invested in companies without an identified promoter; Business Standard, 'SEBI proposes further exemptions of granular disclosures for select FPIs' (28 February 2024), reporting the proposed 3% composite-holding ceiling and the rationale of preventing circumvention of takeover regulations through the no-promoter exemption.

[24] SEBI, Consultation Paper on 'Alternative to Requirement of Additional Disclosures for FPIs, Basis Objective Criteria of Concentration and Composition of Investors' (30 July 2024); India Corporate Law, 'SEBI Proposes to Replace "Size Criteria" for FPIs with "Risk-Based Approach" for Granular Disclosure Requirement for Underlying Investors' (2024).

[25] India Corporate Law, SEBI Proposes to Replace "Size Criteria" for FPIs with "Risk-Based Approach" (2024), setting out the proposed 50%/67% LBC and non-LBC thresholds; EY, 'SEBI on additional disclosure mandates for FPIs (2025), describing a subsequent consultation paper classifying FPIs into low, medium, and high-risk categories with only high-risk FPIs remaining subject to additional disclosure.

took another step forward in April 2025. According to Circular No. SEBI/HO/AFD/AFD-POD-3/P/CIR/2025/52, issued on 9 April 2025, the SEBI Master Circular for FPIs, DDPs and Eligible Foreign Investors was modified in relation to the amount under management required to apply the Size Criterion. Accordingly, the amount in question was increased from Rs.25,000 crore to Rs.50,000 crore effective from the date of amendment, i.e., 9 April 2025. The amendment affected six specified paragraphs of Parts C and D of the Master Circular, while, according to a related circular of 17 December 2024, it was extended in parallel to subscribers of Offshore Derivative Instruments.[26]

The justification offered for this relaxation was to reduce the burden of compliance for large and diverse funds and to make India more investor-friendly at a time when there was continuous outflow of foreign investments from Indian stocks. It has been pointed out that the threshold had been increased even before the LBC regime based on risk had been worked out and implemented by a year, thus leaving open the possibility that some of the large funds which were actually concentrated in their shareholding structure could be excluded from the duty of disclosure just because of the increase in the rupee threshold.[27]

D. Extending Look-Through to Offshore Derivative Instruments

An equally relevant issue that was tackled at this time related to the use of offshore derivative instruments, often referred to as participatory notes (ODIs), which enabled offshore investors to have economic exposure to Indian securities without being required to register as FPIs. These could potentially be used to transfer the same kind of concentrated or land-border-related funds via this route without having to go through the whole process of disclosures for an FPI. The SEBI circular dated 17 December 2024 entitled ‘Measures to address regulatory arbitrage with respect to ODIs and FPIs with segregated portfolios vis-à-vis FPIs made similar provisions for ODIs subscribers.[28]

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[26] SEBI Circular No. SEBI/HO/AFD/AFD-POD-3/P/CIR/2025/52 (9 April 2025), amending the SEBI Master Circular for FPIs, DDPs and Eligible Foreign Investor dated 30 May 2024; Sarthak Law, ‘SEBI Update: SEBI Amends Threshold for Additional Disclosures by FPIs’ (2025), identifying the specific paragraphs of the Master Circular amended by the April 2025 Circular.

[27] IndiaCorpLaw, ‘SEBI’s FPI Disclosures Shift Overhaul: Viability of the Trade-Off’ (11 May 2025), arguing that the threshold relaxation weakens SEBI’s supervisory toolkit and creates a window in which sophisticated investment structures below the new threshold could escape scrutiny, at a time when the industry was already reporting large, sustained FPI outflows from Indian equities.

[28] SEBI Circular, ‘Measures to address regulatory arbitrage with respect to ODIs and FPIs with segregated portfolios vis-à-vis FPIs’ (17 December 2024).

The deadlines for some of the requirements stipulated by the present Circular 2024 were further extended due to a new circular that was introduced on 16 May 2025, while the total harmonization of the disclosure requirements in relation to both ODI subscribers and FPIs became mandatory as of 17 November 2025. This is the perfect example of how difficult the task of extending the particular disclosures regime architecture designed originally for the FPIs corporate structure to a new completely different instrument such as ODI can be.[29]

VI. Critical Analysis: Transparency Versus Capital Facilitation

A. Genuine and Overdue Correction

From its own perspective, the Circular from August 2023 filled a real and substantive regulatory gap rather than just a cosmetic one. If the role of the regulator is to ensure compliance with a requirement of a minimum public float of 25% and with a requirement that the investment should come from beyond a land border, then such a regulator cannot be expected to accomplish this goal when, structurally, it is unable to look through the corporate veil to determine who the natural persons behind the investment vehicle are. In this context, the look-through and zero threshold nature of the Circular was perfectly reasonable because of what is known regarding the PMLR approach to materiality exceptions via structured arrangements.

The seriousness of the consequence in case of the failure to comply further – namely, that the registration will be cancelled and the entity will be made to leave the market – was in accordance with the seriousness of the matter that SEBI considered this to be, and can usefully be contrasted with the softer, penalty-based consequences that usually follow a disclosure default in other parts of Indian securities legislation. The linking of continued market access with the fulfillment of this obligation made SEBI demonstrate that it took the disclosure obligation seriously, as one of fitness to operate.

B. The Cost of Overbreadth and the Case for Refinement

However, in contrast, the very Size Criterion, as pointed out by SEBI itself in its July 2024

[29] SEBI Circular (16 May 2025) extending certain implementation timelines under the December 2024 Circular; Lexology, 'Mid-Year FPI Wrap 2025: Developments in The Foreign Portfolio Investor Regime' (1 July 2025), noting the revised threshold applied across both FPI and ODI disclosure provisions and the November 2025 deadline for full alignment of ODI-subscriber disclosure with FPI-level obligations.

consultation paper, in itself turns out be a very crude measure indeed. A cut-off figure of Rs.25,000 crore AUM is a method that will just end up placing large and diversified international funds into its purview purely on the basis of its mere size, without giving a thought to whether the investors underlying such funds have anything to do with the promoter and/or land-border issue addressed by the regulation. A pension fund diversified across the globe with many underlying investors and having no connection whatsoever to a specific Indian promoter or land jurisdiction can get subjected to the same natural persons test as one which is under suspicion of promoter or cross-border circumvention.

It becomes clear from the above discussion that the later introduction of the risk-based threshold framework for LBC would have been a more logical approach towards calibrating the test because here the test is calibrated with respect to the risk involved and not only size. This is an example where SEBI's own process of consultation appears to work – there was an industry concern over the overbreadth of the rule and SEBI fixed the trigger to meet its objective.

C. The Timing Problem: Relaxation Amid Outflows

The rising rupee limit in April 2025, however, can be faulted on the grounds of risks arising from it, for the very same reason – because the rising rupee limit did not precede but was, on the contrary, antecedent to the new risk-based approach suggested nine months prior to it. The fact that the rupee limit rose ahead of the risk-based measure being put into practice means that in the interval between April 2025 and the implementation of the new risk-based measure, there were funds where the ownership structure was such that they could not be considered within the disclosure obligation just because of the higher rupee limit.

Taking into account the fact that there is an ongoing outflow of the FPI from the Indian market, the correlation of this relaxation with it enables one to claim that the reason for the introduction of this amendment in April 2025 is the ease in compliance rather than the recalibration of risks. Another important point that should be mentioned in regard to the introduced amendment is that the fact the threshold will double up in the moment when the necessity of monitoring a big FPI structure arises is noteworthy.[30]

[30] IndiaCorpLaw, 'SEBI's FPI Disclosure Shift Overhaul: Viability of the Trade-Off' (11 May 2025), arguing that doubling the disclosure threshold reduces DDPs' supervisory visibility into large FPI structures and citing the FPI

D. The Operational Burden as an Independent Design Constraint

First of all, it must be said that compliance costs resulting from the implementation of the granular reporting system are not just a rhetorical question asked by those FPIs which are concerned about the process, it is also a real problem for the market infrastructures organizations responsible for the implementation of SOP. It is due to the fact the process of iterative reporting at the natural person level of the look-through reporting specified by the SOP involves the tracking and continuous updating of the information regarding the ownership chains, which in turn can go from one up to several tiers deep in case of large funds using intermediate holding structures. With regard to prior occurrences of the situation whereby there are confidentiality and record-keeping concerns of FPI group entities that are clients of a different custodian, custodians have brought up these concerns. The confidentiality and record-keeping concerns have an even greater relevance with respect to the natural person look through requirements stipulated by the 2023 Circular.[31]

E. Comparative Note

India's look through technique is much more sophisticated compared to the thresholds that are set in other comparable jurisdictions for beneficial ownership reporting. In the US, for example, the thresholds for reporting of the investor regarding the securities listed in stock exchanges are determined using the static threshold of 5%, irrespective of the type of the investing vehicle or its jurisdiction, as well as without any requirement for natural person look through of diversified institutional investors that have investments below the threshold. The thresholds of the European Union's Transparency Directive start at 5% and are tiered, but do not include any natural person look through.[32]

On the other hand, the Indian system does not operate using an ownership threshold which applies universally. Rather, India relies on risks related to concentration and country of origin

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Operational Guidelines' requirements that DDPs maintain adequate mechanisms for monitoring and evaluating controls over FPI structures.

[31] Business Standard, 'Custodians flag concerns to SEBI on monitoring foreign holdings in DRs' (23 April 2021), describing analogous custodian-level implementation difficulties, including confidentiality constraints and challenges in maintaining records for group entities holdings accounts with other custodians, in the context of an earlier SEBI monitoring obligation for ODIs and depository receipts.

[32] Securities Exchange Act of 1934, 15 U.S.C. § 78m(d) (Schedule 13D) and § 78m(g) (Schedule 13G); Directive 2004/109/EC of the European Parliament and of the Council (Transparency Directive), as amended, Article 9, prescribing tiered percentage-based notification thresholds for major holdings in issuers with securities admitted to trading on a regulated market.

that have been created due to India's regulatory requirements, including MPS compliance and Press Note 3 screening, which applies only to foreign portfolio investors who qualify under objective criteria, but which also necessitates a much greater degree of look-through than any equivalent ownership threshold in the West. Where, therefore,, the Indian system may be more suited to meeting the requirements of Indian regulation, it is also a significantly more difficult system to implement and explain as a risk proxy in terms of thresholds, and is vulnerable to the same iterative review process from 2023 until 2025 as describes above, because it is completely new to international regulation.

VII. Recommendations

A. Expedite the Risk-Based Criterion

SEBI should move towards finalizing and fully implementing the risk-based "land bordering country" criteria suggested in the consultation paper issued by SEBI in July 2024, in such a manner that the requirement of disclosure should be based on the actual risk of ownership that the regime is trying to mitigate and not on the size of the funds which, as per SEBI's own consultation paper, is at best an indirect way to do so. The transition measure of raising the size requirement to twice the amount from April 2025 is just a bridge to be crossed.

B. Publish the Empirical Basis for Future Relaxations

The relaxation of the threshold should come together with the evidence that supports it, such as the information concerning the percentage of big funds that have been found out by investigations or surveillance not to pose any land border or concentration risk. This is to show that the relaxation of the compliance standards is based on evidence and not just yielding to the pressure of allowing the capital flight.

C. Complete and Monitor the ODI Alignment

In conjunction with the imposition of Look-Through requirements on Offshore Derivative Instruments subscribers, which need to be fully harmonized with the FPI requirements by November 2025, should be done, and this should be monitored very carefully by SEBI, since Offshore Derivative Instruments serve as a favorable mechanism for creating opacity in terms of ownership, which was the objective behind the FPI rule reforms.

D. Adopt a Standing, Published Risk-Classification Methodology

Rather than changing the risk levels of individuals on the basis of numerous circulars on a case-to-case basis, it would be much better if SEBI could adopt a standard approach for determining the risk levels of FPIs, as has been proposed by SEBI in its recent consultations, whereby the risk-levels of FPIs would be classified into low, medium, and high risk categories on the basis of certain criteria.

E. Strengthen DDP and Custodian Capacity

In light of the proven operational strain placed on DDPs and custodians by the granular look-through approach, SEBI should fund, or compel the creation of, an interface for the depository system that will automatically handle the transmission of information about beneficial ownership, to prevent the possibility of mistakes in the reporting process which may otherwise compromise a potentially good disclosure requirement.

VIII. Conclusion

SEBI's very stringent requirement of beneficial ownership reporting from FPIs could well be regarded as one of the most substantial regulatory reforms in the sphere of securities regulations in India in the past decade, given that it emanated at a time of loss of credibility due to allegations of promoter-controlled opacity of overseas structures being true, as established by the recognition of integrity of SEBI by the Supreme Court in the Adani-Hindenburg case. This regulation filled in a critical gap existing between the threshold-based beneficial ownership regime of India based on anti-money laundering rules and no-threshold regime of MPFS and Press Note 3.

But its subsequent evolution – from a narrowly defined exemption for no-promoter companies, to the proposed move towards truly risk-based criteria, to the relaxation of the size threshold at an odd juncture when risk-based analysis seems to make more sense, to the parallel extension of look-through obligations to Offshore Derivative Instruments – highlights the concrete challenge involved in trying to maintain a consistent and principled line between two competing regulatory goals: preserving the integrity of India's reputation as a welcoming and well-managed country for foreign portfolio investments that give depth and liquidity to its markets, on the other hand. The trend towards adopting risk-based rather than solely size-based criteria for disclosure is, all things considered, the more theoretically sound long-term approach, because the risk in question can then be addressed directly and precisely without resorting to an inadequate proxy. It is the extent to which the path to risk-based criteria is ultimately adhered to and pursued in such a manner as to arrive at a transparent, empirically-grounded conclusion that will determine whether the lessons of the Adani-Hindenburg saga are embedded into the securities regulation regime of India, or if they remain reflected only in an ever-renegotiable framework of market conditions.