

FPI Regulations 2.0

November 2019



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History and Background



History and Background

2014

- **07 January:** FPI Regulations notified by SEBI
- **25 March:** Implementation framework for FPIs notified by RBI
- **28 March:** Commencement of FPI regime deferred to 01 June 2014
- **29 April:** FAQs in respect of the FPI Regulations issued by SEBI

2018

- **15 February:** Easing of access norms for investments by FPIs
- **26 March:** SEBI constituted Working Group (H.R. Khan Committee) to undertake review of the FPI regime
- **10 April:** SEBI circulars on (i) KYC requirements and (ii) Clarification on clubbing limits for FPIs
- **21 September:** SEBI circular on eligibility conditions for FPIs
- **21 September:** SEBI circular on beneficial ownership and KYC requirements for FPIs (KYC Circular dated 10 April superseded)
- **13 December:** Clarification on clubbing of investment limits for FPIs

2019

- **24 May:** Report submitted by Working Group (H.R. Khan Committee) to SEBI
- **21 August:** Press Release following SEBI Board Meeting approving the draft regulations
- **23 September:** FPI Regulations 2019 notified

Operational Guidelines (OG) issued on 5 November 2019



FPI Regulations 2019



FPI Regulations 2019

Eligibility criteria

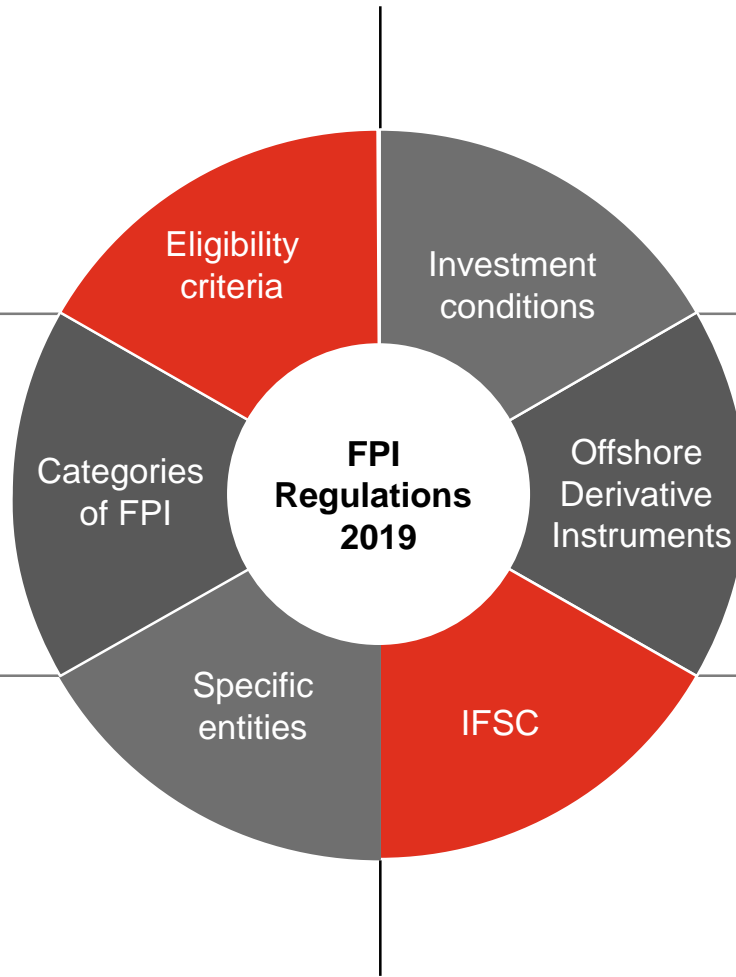
- Applicant cannot be NRIs/ OCIs/ RIs
- Banks from only BIS member countries permitted

Categorisation of FPI

- Categorisation purely based on –
 - a) regulated status and
 - b) whether set-up in a FATF member country or not

Specific entities

- Guidance provided in OG for specific entities such as banks applicant, segregated portfolios, MIM structures etc.



Investment conditions

- Investment avenues widened
- Position limits for derivatives relaxed
- Certain relaxation for debt securities

Offshore Derivative Instruments

- Eligible Category I FPIs to subscribe ODIs
- Certain clarification regarding the hedging of ODIs with Indian derivative positions

IFSC

- Entity incorporated or established in IFSC eligible for FPI registration
- Entities incorporated or established in IFSC deemed to be appropriately regulated

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Eligibility criteria



Eligibility criteria

Eligibility

- Applicant not to be a NRI/ OCI/ RI
- NRI / OCI/ RI can be constituents, subject to certain conditions
- Applicant to be a resident of only specified countries
- Bank to qualify only if its Central Bank is a BIS member
- Central Bank of any country can apply for FPI registration (irrespective of its BIS membership)
- Offshore funds floated by Indian AMCs
- Obligation of DDP to ensure FPI does not have opaque structure done away with

Foreign bank from non-BIS member country whether eligible for registration?



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Categorisation of FPIs



Re-categorisation of FPIs

Re-categorisation of Categories

- Broad basing conditions done away with
- Categorisation of FPI purely based on – a) regulated status and b) whether set-up in a FATF member country or not
- Erstwhile Category I/ II/ III FPIs have been re-categorised as Category I and II FPI
 - No deemed re-categorisation from Category III to I FPI

FPIs desiring re-categorisation to provide requisite information/documents and pay fees



Categories of FPI



Category I

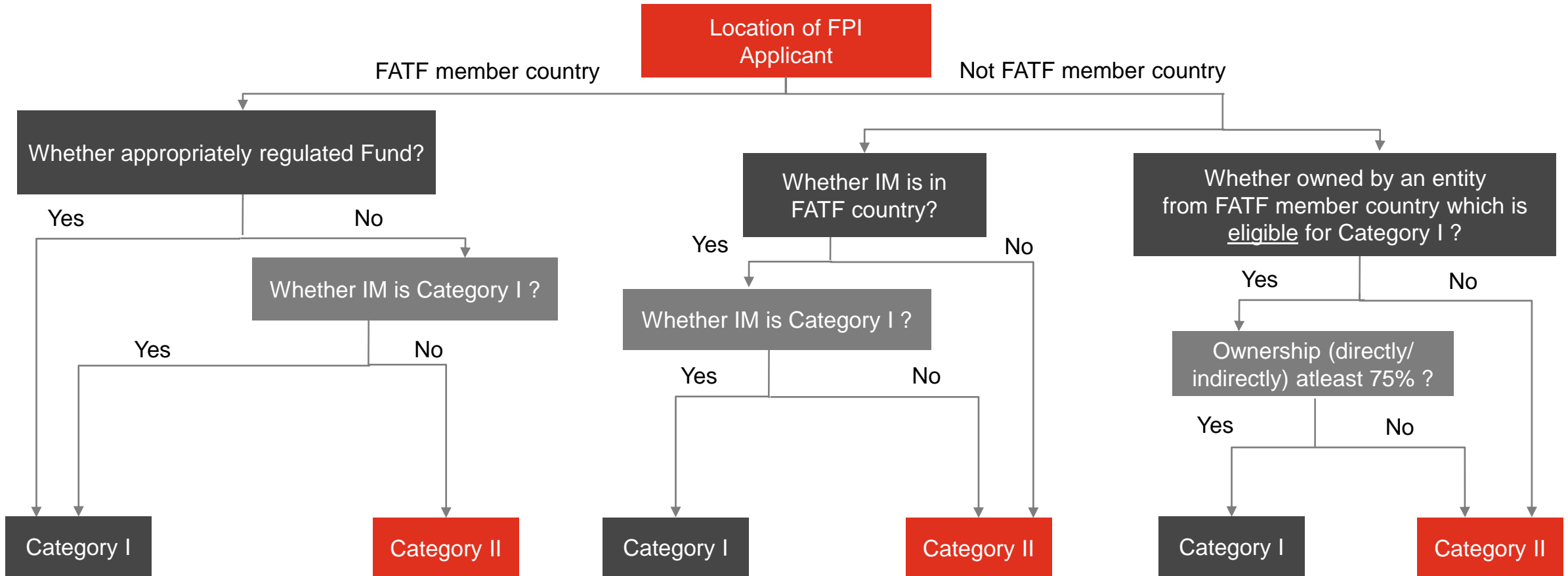
- i Government and government related investors, Central Banks, SWFs, International or Multilateral agencies, etc.
- ii Pension funds and university funds;
- iii Appropriately regulated entities such as insurance or reinsurance entities, banks, AMCs, Investment Manager (IM), IAs, PMs, broker dealers and swap dealers;
- iv Entities from **FATF member countries** which are:
 - Appropriately regulated funds;
 - Unregulated funds whose IM is appropriately regulated and registered as a Category I FPI;
 - **University related endowments of such universities that have been in existence for more than five years**
- v An entity :
 - Whose IM is from FATF member country and the IM is registered as a Category I FPI; or
 - **Which is at least 75% owned, directly/indirectly, by another entity eligible for Category I FPI**



Category II

- i **Appropriately regulated funds not eligible as Category I FPI**
- ii Endowments and foundations
- iii Charitable organisations
- iv Corporate bodies
- v Family offices
- vi Individuals
- vii **Appropriately regulated entities investing on behalf of their client, as per conditions specified by SEBI from time to time;**
- viii Unregulated funds in the form of limited partnership and trusts

Categories of FPI - Categorisation based on location of FPI



Meaning of entity "from a FATF member country" – an entity that has its primary place of business in a FATF member country

Category I vs. Category II FPI – Key differences

Particulars	Category I FPI	Category II FPI (Institutional investors)	Category II FPI (Individuals /body corporate /family offices)
Issue or subscription of ODIs	Allowed	Not allowed	Not allowed
KYC requirement	Less stringent ¹	More stringent ²	More stringent
Qualified Institutional Buyer status	Granted	Granted	Not granted
Margining of trades	T+1	T+1	Upfront
<u>Position Limits</u>			
- Equity stock derivatives	20% of market wide position limits of stock derivative	10% of market wide position limits of stock derivative	5% of market wide position limits of stock derivative
- Equity index derivatives ³	Higher of - INR 5 billion or 15% of total open interest of the market in index derivatives	Higher of - INR 3 billion or 10% of total open interest of the market in index derivatives	Higher of - INR 1 billion or 5% of total open interest of the market in index derivatives
Applicability of overseas transfer provisions	Relaxed	Likely to be relaxed ⁴	Unlikely to be relaxed ⁴
Safe harbour provisions	Relaxed	Likely to be relaxed ⁴	Unlikely to be relaxed ⁴

1. KYC equivalent to Category II FPIs shall apply to FPIs from high-risk jurisdiction 2. KYC equivalent to Category I FPIs shall apply to appropriately regulated Category II FPIs
3. Separate position limits applicable to equity index futures and equity index options 4. Clarification from CBDT may be required

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Specific entities



Categories of FPI – Specific entities



Entities investing on behalf of clients

- Separate Category II FPI registration required
- Only individuals and family offices [eligible for FPI registration] allowed as clients
- FPI to undertake KYC/Identify BO of clients
- Investments made by clients (holding more than 50% in the FPI) to be clubbed with their direct FPI/ investor group investments



Segregated portfolio

- Each sub-fund/ share class/ equivalent structure investing in India to provide BO declaration



Bank FPIs

- Deemed to be appropriately regulated if regulated by unified financial sector regulator – relaxation in OG



Insurance Companies

- Deemed to be appropriately regulated, if they are regulated/supervised by relevant regulator in their concerned foreign jurisdiction in the same capacity



Pension funds

- PF shall include Superannuation or similar schemes that provide retirement benefits to employees/ contributors included



Multiple Investment Managers

- Entity can obtain multiple FPI registrations mentioning name of IM in case of MIM.
- If they appoint external IM, they can appoint different DDPs for each registration.
- Investments clubbed for monitoring of limits

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Registration and KYC



Registration



Certificate

- Existing certificates will continue to be valid – subject to change in category
- FPI certificate will now include sub-category and address
- FPI whose registration is not valid and is holding securities / derivatives in India shall be allowed to sell / wind-up within one year
- Deemed to apply for surrender if –
 - FPI fails to pay fees within specified due date, and
 - such FPI does not have cash / security / derivative position in India



Fees, renewal and change in name

Fees

- USD 3,000 for Category I and USD 300 for Category II

Renewal

- Have to apply prior to 15 days
- Documents not submitted – no further purchase permitted

Change in name

- Board Resolution (BR) or equivalent document authorising the name change, will now be accepted as proof of change
- Should be mere name change and not involve change in BO/ Category/ structure

At renewal, declaration by FPI stating no change should suffice



Key relaxation

Key points

- Category II FPIs which are appropriately regulated funds to provide KYC documentation equivalent to Category I FPI
- Category I FPI from a high-risk jurisdiction to provide KYC documentation equivalent to Category II FPI

Simplified requirements - Miscellaneous

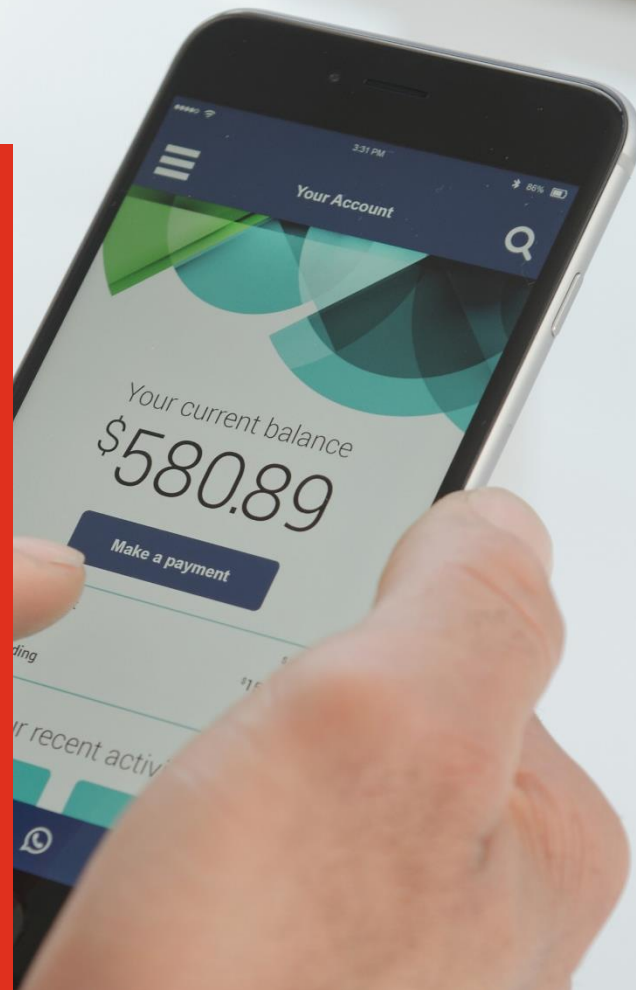
- Local custodian permitted to rely on KYC carried out by custodian's group entity as per home jurisdiction requirements subject to conditions
- Self certification has been done away with
- POA having address provided to custodian is accepted as address proof
- POA to global/local custodian is accepted in lieu of BR
- BR and authorised signatory list is not required, if SWIFT is used as a medium of instruction

Simplified verification of PAN for KYC

- Verification of PAN on specified website of Income-tax authorities is sufficient

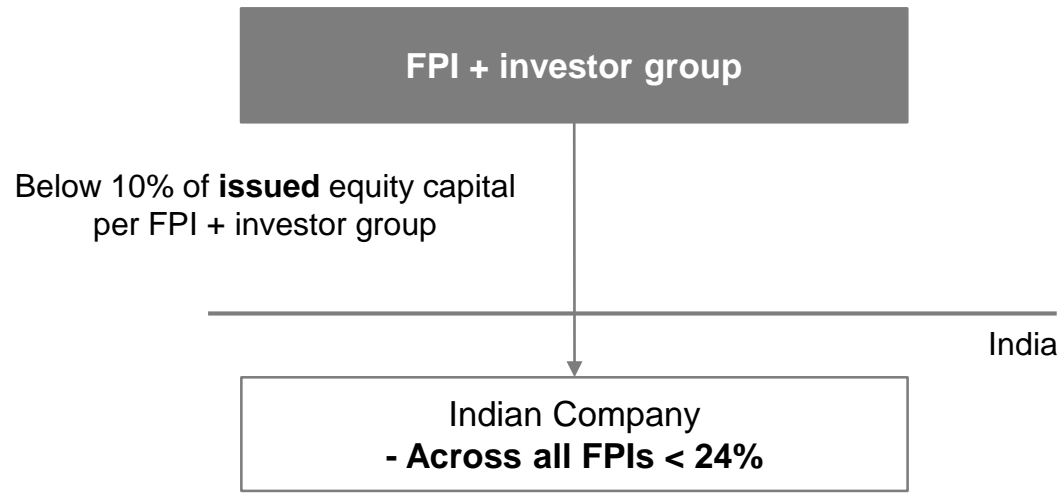
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Investment
conditions

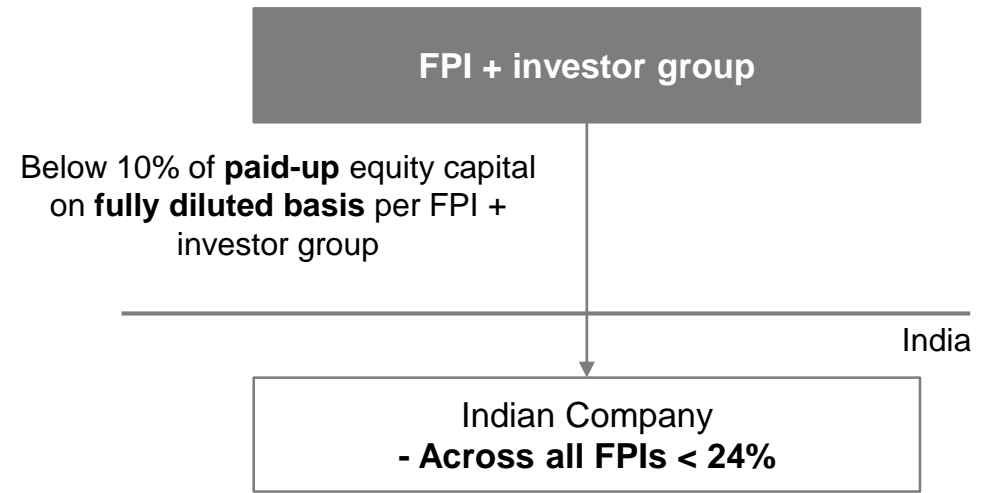


Investment limits

2014 regulations



2019 regulations



Key points:

1. Basis of limit changed from 'issued capital' to 'paid up capital on fully diluted basis' – In line with FEMA
2. "Fully Diluted basis" means the total number of shares that would be outstanding if all possible sources of conversion are exercised
3. If threshold exceeded,
 - a. then FPI shall divest the excess holding within 5 trading days from date of settlement of trades which resulted in breach, or else
 - b. Entire investment (FPI + investor group) to be treated as FDI
4. No further portfolio investment permitted to that FPI once its entire investment is treated as FDI
5. However, FPI will be able to sell these securities only through the route as they were acquired

Investment conditions – limits monitoring

Exchange Traded Instruments

- FPI position limits basis type of FPIs
- Currency futures –
 - Individuals, Corporates, Family Offices – USD 10 mn
 - Others – USD 100 mn

Debt Securities

- FPIs can invest in G-sec and Corporate debt as per the limits stipulated
- FPIs can invest in “to be listed” debt – listing should happen in 30 days
- Debt oriented MFs – treated as corporate debt

REITs, InvITs and AIF

- FPIs are permitted to invest in units of REITs, InvITs and Category III AIFs

Write-off securities

- Permitted to write-off securities, if unable to sell off-market
- Only if registration invalid or intends to surrender registration
- To be reported as sale trade with NIL sale proceeds

Margining of trades

- T+1 basis for Category I and Category II (other than individuals / corporate bodies / family offices)
- Upfront for Category II (individuals / corporate bodies / family offices)

Short sale of securities

- Not allowed except under SLB mechanism
- Previously, intraday transactions were not permitted
- Same restriction continues i.e. sales against open purchases not permitted and FPIs can sell only after settlement

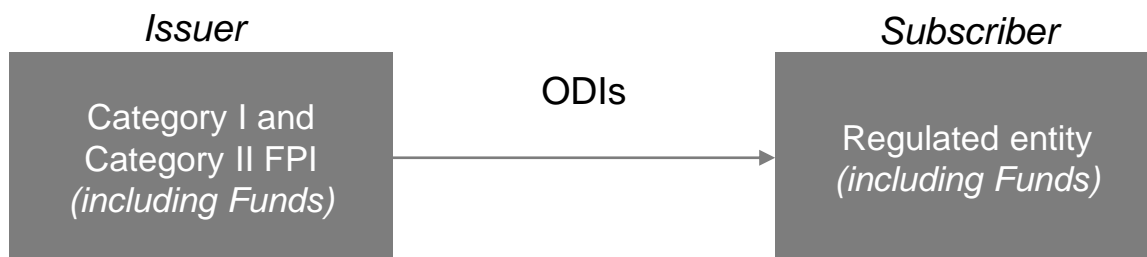
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Offshore Derivative Instruments

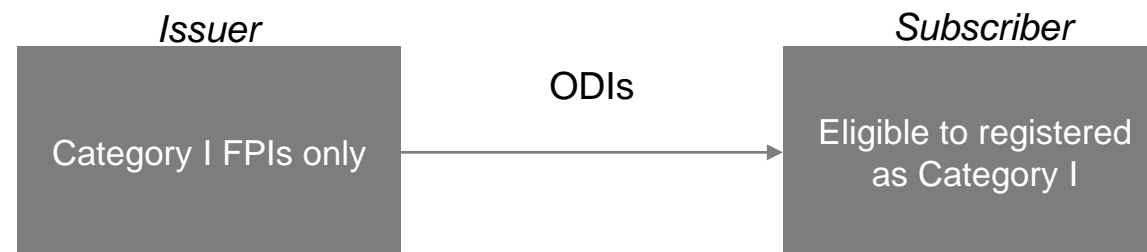


Offshore Derivative Instruments (ODIs)

2014 regulations



2019 regulations



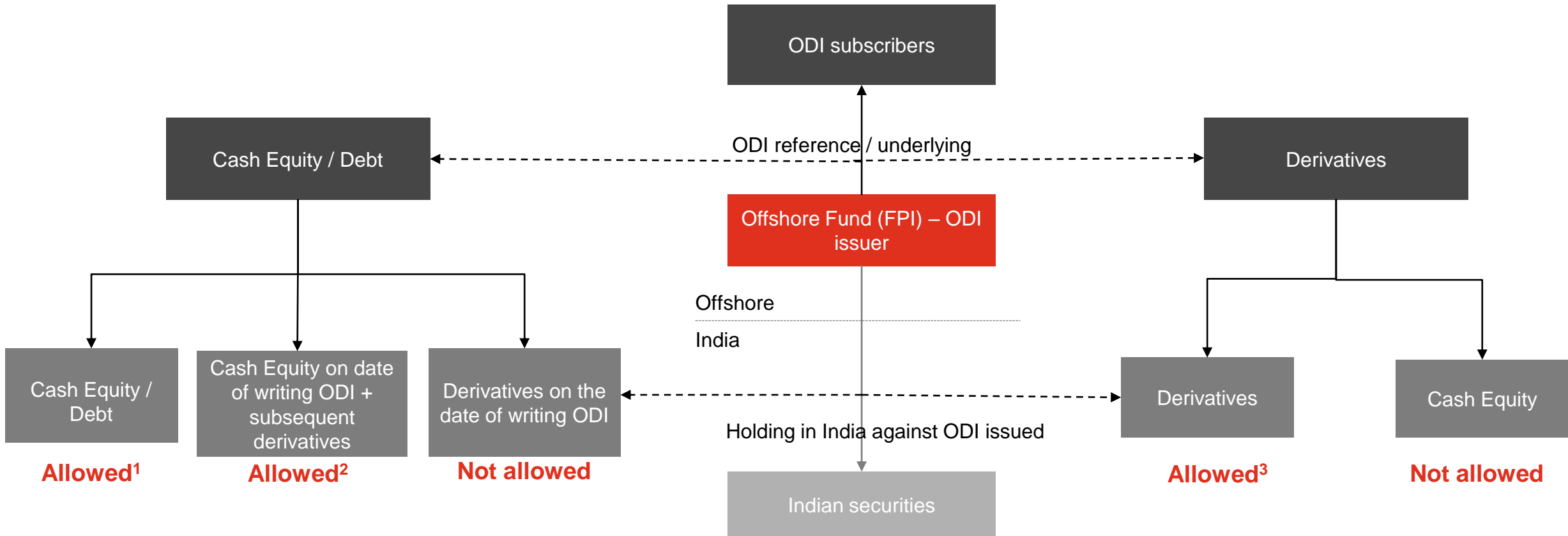
Issue/subscription

	2014 regs	2019 regs
Issue of ODIs by Category I FPI	✓	✓
Issue of ODIs by erstwhile regulated Category II FPI [but currently registered as new Category II FPI]	✓	✗
Subscription by entity eligible for Category I registration	✓	✓
Subscription by regulated Category II Fund under new regime [Category II FPI as per old regime]*	✓	✗

* Regulated Fund from Non-FATF member country - needs to be re-categorised as Category I FPI to subscribe to ODIs

ODIs issued under earlier regulation to be deemed to have issued under the new FPI regulations

Conditions for trading in ODI



1. Separate FPI registration to undertake any proprietary derivative transactions by such ODI issuing FPI
2. Separate FPI registration, subject to position limit of 5% of market wide position limits for single stock derivatives
3. Separate FPI registration, if FPI is holding cash equity (to retain for the life of ODI) and has short future position against cash equity in same security (one-to-one basis), else not allowed

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IFSC



FPI related relaxations

- Entity incorporated or established in IFSC eligible for FPI registration
- Entities incorporated or established in IFSC deemed to be appropriately regulated



Q&A



Thank you

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