

November 2, 2022

To,
The Deputy General Manager,
Division of Funds - 1,
Investment Management Department,
Securities and Exchange Board of India (SEBI),
SEBI Bhavan
Plot No.C4-A, 'G' Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051

Dear Sir / Madam

Sub: Request for interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003, in relation to the provisions of the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations 2019

This is a request for an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 (hereinafter referred to as the "SEBI Informal Guidance").

1. INTRODUCTION & BACKGROUND

- 1.1. Kotak Mahindra Bank Limited ("KMBL") is registered with the Securities and Exchange Board of India ("SEBI") as: (a) a depository participant (DP) under the Securities and Exchange Board of India (Depositories and Participants) Regulations, 2018, (b) a Custodian under the Securities and Exchange Board of India (Custodian) Regulations, 1996 (*"Custodian Regulations"*); (c) bankers to an issue (BTI) under the SEBI (Bankers to an Issue) Regulations, 1994 and (d) a designated depository participant ("DDP") in accordance with the SEBI (Foreign Portfolio Investors) Regulations 2019 (*"FPI Regulations"*). KMBL is registered as Professional Clearing Member (PCM), of NSE Clearing Ltd. (NCL) in Future & Option (F&O) Segment and CM/TM (Clearing Member/Trading Member) with National Stock Exchange (NSE) and Bombay Stock Exchange (BSE) in Currency Derivatives (CD) segments. KMBL is also a distributor of mutual fund products and other third party products including insurance.
- 1.2. KMBL acts as DDP to multiple foreign portfolio investors ("FPIs") and also acts as custodian to the Indian securities held by such FPIs in accordance with the FPI Regulations and Custodian Regulations. As DDP for multiple FPIs, KMBL also collects information in respect of the beneficial ownership of the FPIs and monitors investor groups in accordance with the FPI Regulations, Operational Guidelines For Foreign Portfolio Investors, Designated Depository Participants And Eligible Foreign Investors (*"Operational Guidelines"*) and various circulars issued by SEBI from time to time and also as per the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 (*"PMLA Rules"*).

2. RELEVANT EXTRACTS OF "FPI REGULATIONS" AND "OPERATIONAL GUIDELINES" ON CLUBBING OF INVESTMENT LIMITS

We have highlighted below the provisions of the *"FPI Regulations"*, the *"Operational Guidelines"*, *"PMLA Rules"* and the Foreign Exchange Management (Non-Debt Instruments) Rules 2019 (*"NDI Rules"*) that deal with the directions, procedures and restrictions applicable to FPIs forming part of an investor group.



2.1. Regulation 22(3) of the FPI Regulations sets out the meaning of an “investor group” to mean as follows:

“(3) Multiple entities registered as foreign portfolio investors and directly or indirectly, having common ownership of more than fifty per cent or common control, shall be treated as part of the same investor group and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single foreign portfolio investor:

Provided that in case the limit is breached due to transaction(s) by foreign portfolio investors under these regulations, the excess holding shall be divested within five trading days from the date of settlement of the trades causing the breach.

Provided further that in case the foreign portfolio investor fails to divest the excess holding, the entire investment in the company by such foreign portfolio investors including its investor group shall be considered as investment under the Foreign Direct Investment as per the procedure specified by the Board and the foreign portfolio investor and its investor group shall not make further portfolio investment in that company under these regulations.”

2.2. This establishes that aggregation of investment limits applicable to FPIs is on the basis of common ownership of more than 50% or based on common Control¹ i.e. multiple entities having common ownership, directly or indirectly, of more than 50%, or common Control shall be treated as being part of the same “investor group” (“Investor Group”) and the investment limits of all such entities shall be clubbed at the investment limit as applicable to a single FPI.

2.3. Therefore, FPIs that directly or indirectly:

- (a) have common ownership of 50% or more; or
- (b) are controlled by a common person;

would form part of a single Investor Group.

2.4. However, in accordance with Regulation 22(4), aggregation of investment limits of FPIs having common Control is not done in case of: (i) FPIs which are appropriately regulated public retail funds or (ii) FPIs which are public retail funds majority owned by appropriately regulated public retail funds on look through basis; or (iii) FPIs which are public retail funds and investment managers of such FPIs are appropriately regulated.

2.5. The FPI Regulations, NDI Rules and the Reserve Bank of India (“RBI”) stipulate various investment restrictions for FPIs, which are applicable on a consolidated basis to the FPI and its Investor Group. Regulation 20(7) of the FPI Regulations specify that the purchase of equity shares of a company by a single FPI including its Investor Group, shall always be below 10% of the total paid-up equity capital on a fully diluted basis of the company (“Investor Group Limit”). Similarly, the RBI has stipulated limits on corporate bond investments by FPIs and its Investor Group.

¹ **Note:** The FPI Regulations define “Control” to mean and include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of shareholding or management rights or shareholders agreements or voting agreements or in any other manner.



2.6. DDPs and custodians are responsible for ascertaining the Investor Group and reporting investments made by Investor Groups. Regulation 31(2)(a) of the FPI Regulations requires DDPs to ascertain at the time of granting registration and whenever applicable, whether the applicant forms part of any Investor Group. Also, Regulation 25(2)(d) of the FPI Regulations stipulate the obligation of the custodian to:

"report the holdings of foreign portfolio investors who form part of investor group to the depositories and the depositories shall club the investment limits to ensure that combined holdings of all these foreign portfolio investors remains below ten per cent of the total paid-up equity capital on a fully diluted basis of a investee company at any time"

2.7. The Operational Guidelines specify the detailed mechanism of how Investor Groups should be monitored under paragraph 1 of Part C of thereunder.

3. CLARIFICATION AND INTERPRETATION SOUGHT

3.1. KMBL has been monitoring these Investor Groups and reporting the holdings of FPIs forming part of such Investor Groups to the depositories, in accordance with all applicable regulations, guidelines, and circulars. However, there are certain operational questions that have emerged in relation to clubbing of FPIs under Investor Groups where the financial interest is owned by a Person / group of Persons, and the Control is held by another Person / group of Persons as described below. Therefore, we seek guidance from SEBI by way of this informal guidance letter.

3.2. We provide below the details of the control and ownership of the FPIs in question for which the clarification is being sought.

3.3. Client details:

3.3.1.1. The FPIs in question are as follows:

Sr. No	FPI Name	FPI Registration no.
1	Infinity Investment Management	INMUFP048119
2	Infinity Holdings Sidecar I	INMUFP040322
3	Infinity Holdings	INMUFP024920
4	Novo Holdings A/S	INDNFP073221
5	Kapitalforeningen Investin Pro, Arohi Aktier Asien	INDNFP085422
6	Kapitalforeningen Investin Pro, Emerging Local Currency Debt	INDNFP334516
7	Kapitalforeningen Investin Pro, Velliv Emerging Markets Equity Index	INDNFP005922
8	Kapitalforeningen Investin Pro, Ppim Global Equities	INDNFP046319
9	Kapitalforeningen Investin Pro, Dalton Aktier Asien Ex Japan	INDNFP069317

3.3.2. In the above list of FPIs, some of them have common control (common entity having controlling interest) under a particular controlling entity, some of them are under the control of another separate controlling entity. Further only a few among the mentioned entities have common ownership. The above has been illustrated in detail in the



diagram annexed herewith as Annex 1.

3.3.3. The entities that have common ownership are:

- i. **Infinity Holdings;**
- ii. **Novo Holdings A/S;**
- iii. **Kapitalforeningen Investin Pro, Arohi Aktier Asien; and**
- iv. **Kapitalforeningen Investin Pro, Dalton Aktier Asien Ex Japan.**

3.3.4. The entities under the common control of Infinity Investment Management are:

- i. **Infinity Holdings Sidecar I; and**
- ii. **Infinity Holdings.**

3.3.5. The following entities are under common control of Kapitalforeningen Investin Pro:

- i. **Kapitalforeningen Investin Pro, Arohi Aktier Asien;**
- ii. **Kapitalforeningen Investin Pro, Dalton Aktier Asien Ex Japan;**
- iii. **Kapitalforeningen Investin Pro, Ppim Global Equities;**
- iv. **Kapitalforeningen Investin Pro, Velliv Emerging Markets Equity Index; and**
- v. **Kapitalforeningen Investin Pro, Emerging Local Currency Debt.**

3.3.6. It would be pertinent to note that Infinity Holdings Sidecar I as an FPI has neither common ownership nor common control with any of the FPIs mentioned below:

- i. **Novo Holdings A/S;**
- ii. **Kapitalforeningen Investin Pro, Arohi Aktier Asien;**
- iii. **Kapitalforeningen Investin Pro, Dalton Aktier Asien Ex Japan;**
- iv. **Kapitalforeningen Investin Pro, Ppim Global Equities;**
- v. **Kapitalforeningen Investin Pro, Velliv Emerging Markets Equity Index; and**
- vi. **Kapitalforeningen Investin Pro, Emerging Local Currency Debt.**

3.3.7. Further it would be pertinent to note that Infinity Holdings as an FPI has neither common ownership nor common control with any of the FPIs mentioned below:

- i. **Kapitalforeningen Investin Pro, Ppim Global Equities;**

A handwritten blue ink signature of the bank's name, 'Kotak Mahindra Bank', located at the bottom right of the page.

- ii. Kapitalforeningen Investin Pro, Velliv Emerging Markets;
- iii. Kapitalforeningen Investin Pro, Emerging Local Currency.

3.3.8. Further it would be pertinent to note that Novo Holdings A/S as an FPI has neither common ownership nor common control with any of the FPIs mentioned below

- i. Kapitalforeningen Investin Pro, Ppim Global Equities;
- ii. Kapitalforeningen Investin Pro, Velliv Emerging Markets Equity Index;
- iii. Kapitalforeningen Investin Pro, Emerging Local Currency Debt;
- iv. Infinity Investment Management; and
- v. Infinity Holdings Sidecar I.

3.4. Queries and Our Analysis

In light of the aforesaid background, we understand that:

- Infinity Investment Management, Infinity Holdings Sidecar I, and Infinity Holdings will be clubbed into one Investor Group on account of the common Control of Infinity Investment Management ("Investor Group 1").
- Infinity Holdings, Novo Holdings A/S, Kapitalforeningen Investin Pro Arohi Aktier Asien, AND Kapitalforeningen Investin Pro Dalton Aktier Asien Ex Japan will be clubbed into one Investor Group on account of the common ownership of more than 50% by Novo Holdings A/S in the entities ("Investor Group 2").
- Kapitalforeningen Investin Pro Arohi Aktier Asien, Kapitalforeningen Investin Pro Dalton Aktier Asien Ex Japan, Kapitalforeningen Investin Pro ppim Global Equities, Kapitalforeningen Investin Pro Velliv Emerging Markets Equity Index, and Kapitalforeningen Investin Pro Emerging Local Currency Debt will be clubbed into one Investor Group on account of the common control of Kapitalforeningen Investin Pro over all of these entities ("Investor Group 3").

We request you to confirm the understanding above and request your guidance on the following query:

QUERY 1: Whether one FPI can be a part of two Investor Groups in light of the scenario explained above.

QUERY 2: Whether Infinity Holdings Sidecar I, Infinity Holdings and Novo Holdings A/S that have neither common ownership nor common control with the entities listed in clauses 3.3.7 and 3.3.8, respectively as explained therein, need to be clubbed with such entities in one single Investor Group; leading to clubbing of entities without there being common ownership or common control within them.



Kotak Mahindra Bank

We understand that:

(a) Infinity Holdings Sidecar I that does not have any ownership entitlement of Novo Holdings A/S on one hand and it does not have any control of entities controlled by Kapitalforeningen Investin Pro on the other, will not be clubbed as an Investor Group with Novo Holdings A/S or the other entities under the control of Kapitalforeningen Investin Pro ;

(b) Novo Holdings A/S that does not have any control of Infinity Investment Management on one hand and does not have any control of entities controlled by Kapitalforeningen Investin Pro on the other, will not be clubbed as an Investor Group with Infinity Holdings Sidecar I, Infinity Investment Management, Kapitalforeningen Investin Pro Ppim Global Equities, Kapitalforeningen Investin Pro Velliv Emerging Markets Equity Index, and Kapitalforeningen Investin Pro Emerging Local Currency debt; and

(c) Infinity Holdings that does not have any control of entities controlled by Kapitalforeningen Investin Pro, will not be clubbed as an Investor Group with Kapitalforeningen Investin Pro Ppim Global Equities, Kapitalforeningen Investin Pro Velliv Emerging Markets Equity Index and Kapitalforeningen Investin Pro Emerging Local Currency Debt.

We request you to provide your guidance on the queries set out above.

We have made the payment for INR 25,000 (Indian Rupees Twenty Five Thousand) towards fees payable for seeking an informal guidance by way of electronic funds transfer in favour of Securities and Exchange Board of India, Mumbai to its bank account with Bank of India bearing account number 012210210000007 (IFSC code: BKID0000122) under the UTR reference no. KKBKH22300646392.

We would be grateful for your views and guidance on the aforesaid queries. In case of further clarifications and additional information required, our contact details are as under:

Name	Pourush Kelawala
Designation	Senior Vice President
Email	pourush.kelawala@kotak.com
Mobile / Telephone	+91 9833222726

Thanking you,

Yours faithfully,

For and on behalf of Kotak Mahindra Bank Limited

Name: Pourush Kelawala
Designation: Senior Vice President
Place: Mumbai

Annex 1.

