CIRCULAR

CIR/ IMD/FII&C/3/2012

January 13, 2012

All SEBI registered Intermediaries/ Recognized Stock Exchanges/ Depositories

Sir / Madam,

Sub: Investment by Qualified Foreign Investors (QFI) in Indian equity shares.

1. The Central Government, vide press release dated January 1, 2012 has announced its decision to allow QFIs to directly invest in Indian equity market in order to widen the class of investors, attract more foreign funds, reduce market volatility and to deepen the Indian capital market.

2. In order to facilitate the above and in consultation with the Government and RBI, it has been decided that foreign investors (termed as Qualified Foreign Investors/ QFI) who meet prescribed Know Your Customer (KYC) requirements may invest in equity shares listed on the recognized stock exchanges and in equity shares offered to public in India. In order to enable this they will hold equity shares in a demat account opened with a SEBI registered qualified Depository Participant.

3. The QFI for the purpose shall have the same meaning as that provided in para 3.1 of SEBI circular Cir/IMD/DF/14/2011 dated August 09, 2011[1].

4. To become a qualified Depository Participant (hereinafter referred to as "DP"), a SEBI registered DP shall fulfill the following:
   4.1. DP shall have paid up capital of Rs. 50 crore or more;

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[1] Qualified Foreign Investor (QFI) shall mean a person resident in a country that is compliant with Financial Action Task Force (FATF) standards and that is a signatory to International Organization of Securities Commission's (IOSCO's) Multilateral Memorandum of Understanding (MMOU).

Provided that such person is not resident in India,

Provided further that such person is not registered with SEBI as Foreign Institutional Investor or Sub-account.
Explanation - For the purposes of this clause:

(1) the term "Person" shall carry the same meaning under Section 2(31) of the Income Tax Act, 1961
(2) the phrase "resident in India" shall carry the same meaning as in the Income Tax Act, 1961
(3) "resident" in a country, other than India, shall mean resident as per the direct tax laws of that country.

4.2. DP shall be either a clearing bank or clearing member of any of the clearing corporations;

4.3. DP shall have appropriate arrangements for receipt and remittance of money with a designated Authorised Dealer (AD) Category - I bank;

4.4. DP shall demonstrate that it has systems and procedures to comply with the FATF Standards, Prevention of Money Laundering (PML) Act, Rules and SEBI circulars issued from time to time; and

4.5. DP shall obtain prior approval of SEBI before commencing the activities relating to opening of accounts of QFI.

5. All DPs who have obtained approval of SEBI for undertaking activities relating to accepting investments by QFI in Mutual Fund schemes need not obtain separate approval from SEBI for commencing the activities relating to investments by QFI in equity shares.

6. Eligible transactions for QFI

6.1. The DP shall ensure that transactions of QFI are limited only to the following:

6.1.1. Purchase of equity shares in public issues, to be listed on recognised stock exchange(s).

6.1.2. Purchase of listed equity shares through SEBI registered stock brokers, on recognized stock exchanges in India.

6.1.3. Sale of equity shares which are held in their demat account through SEBI registered stock brokers.

6.1.4. Purchase of equity shares against rights issues.

6.1.5. Receipt of bonus shares or receipt of shares on stock split/ consolidation.

6.1.6. Receipt of equity shares due to amalgamation, demerger or such other corporate actions, subject to the investment limits.

6.1.7. Receipt of dividends.

6.1.8. Tender equity shares in open offer in accordance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

6.1.9. Tender equity shares in open offer in accordance with SEBI (Delisting of Equity Shares) Regulations, 2009.

6.1.10. Tender equity shares in case of buy-back by listed companies in accordance with SEBI (Buyback of Securities) Regulations, 1998

7. Account opening and manner of operation by QFI

7.1. A QFI can open only one demat account with any one of the DPs and shall make purchase and sale of equity shares through that DP only. In case of jointly held demat accounts, each of the joint holders shall meet the requirements specified for QFI and each shall be deemed to be holding a demat account as a QFI. Depositories/ DP shall have adequate systems to ensure the compliance of the same and perform KYC due diligence for each of the joint holders. The DP shall carry necessary due diligence and obtain appropriate declarations and undertakings from QFI to ensure that no other demat account is held by any of the QFI as a QFI or in any other capacity such as NRI, before opening a demat account.

7.2. The DP shall ensure that the same set of ultimate/ end beneficial owner(s) are not allowed to open more than one demat account as QFI. For this purpose, the DP shall carry out necessary due diligence and obtain appropriate declarations and undertakings from QFI.

7.3. A QFI can open trading accounts with one or more SEBI registered stock brokers

7.4. The DP shall ensure that only QFI who meet the conditions stipulated in para 3.1 of SEBI circular Cir/IMD/DF/14/2011 dated August 9, 2011 are allowed to invest in equity shares. Additionally, the DP shall ensure that only those entities are allowed to open demat account as QFI whose ultimate/ end beneficial ownership is not resident in India. The DP shall carry out necessary due diligence for the same at the time of account opening. An express undertaking to this effect shall be obtained by DP from the QFI.

7.5. The entities having opaque structure(s) such that the details of ultimate/ end beneficiary are not accessible or where the beneficial owners are ring fenced from each other or where the beneficial owners are ring fenced with regard to enforcement shall not be allowed to open demat account as QFI. The DP shall perform appropriate due diligence at the time of account opening and ensure that such entities are not allowed to open demat account. An express undertaking to this effect shall be obtained by DP from the QFI

7.6. In case of any direct/ indirect change in structure or beneficial ownership of the QFI, it shall bring the same to the notice of its DP, forthwith. The DP shall assess the eligibility of that QFI afresh, before allowing it to undertake any further transactions. .

7.7. The QFI shall, as and when required by the Government, SEBI or any other regulatory agency in India, submit to that agency, as the case may be, any information, record or documents in relation to his activities as QFI. An express undertaking to this effect shall be obtained by DP from the QFI.

7.8. The QFI shall, in relation to his activities as QFI, at all the times, subject themselves to the extant Indian laws, rules, regulations, circulars etc. from time to time, An express undertaking to this effect shall be obtained by DP from the QFI.

7.9. The DP shall open a separate single rupee pool bank account with a designated AD Category-1 Bank, exclusively for the purpose of investments by QFI in equity shares in India.

7.10. The DP shall ensure that funds of each and every QFI in the rupee pool account are clearly segregated from each other at all times. Further, the DP shall maintain appropriate records including audit trails on an ongoing basis regarding such segregation.

7.11. The DP shall open a demat account for the QFI only after ensuring compliance with all the requirements as per PML Act, rules and regulations, FATF standards and SEBI circulars issued in this regard, from time to time and shall also ensure that QFI comply with all these requirements on an ongoing basis.

7.12. The DP shall ensure that every QFI transacts only through one designated overseas bank account and such overseas bank account which QFI has designated for the purpose is based in a country which is compliant with FATF standards and is a signatory to MMOU of IOSCO.

7.13. The DP shall capture, the details of the overseas bank account designated by the QFI and shall ensure that all inward bound investments are received from that overseas account and repatriation/ remittances of proceeds are also transferred into the same overseas account.

7.14. The DP shall require QFI to submit necessary information for the purpose of obtaining PAN. The DP may use the combined PAN cum KYC form as notified by CBDT for this purpose. Each QFI shall obtain a separate and distinct PAN. The DP may take any additional information/ documents from QFI other than those mentioned in the common PAN cum KYC form to ensure compliance with PML rules and regulations, FATF standards and SEBI circulars issued from time to time.

7.15. The DP shall ensure that all the investor related documents/ records of QFI are available with the DP.

7.16. The DP shall ensure that equity shares held by QFI are free from all encumbrances including pledge or lien etc. at all times.

7.17. The DP shall, at all times, ensure compliance with laws, rules and regulations of the jurisdictions where the QFI are based.

7.18. The DP shall ensure that the interests of other clients of DP are not adversely affected in any manner due to transactions done on behalf of QFI.

7.19. In case of any penalty, pending litigations or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against DP/ QFI, the DP shall notify such information forthwith, to the attention of SEBI, depositories and stock exchanges. The DP shall mandate the QFI to furnish the details of any such penalty, pending litigations or proceedings, findings of inspections or investigations to it on an ongoing basis.

7.20. The DP shall be responsible for the deduction of applicable tax at source on account of profits or gains or dividends or any other income accruing to or received by QFI before making any reinvestment/ repurchase or repatriation/ remittance to QFI, and remit and report the same to the relevant tax authorities.

7.21. In case a QFI desires to change the DP with whom he holds the demat account, he shall be allowed to operate a new demat account with another DP only after closure of the earlier demat account. At the time of opening a new demat account with a different DP, the QFI shall furnish the details regarding the existing demat account with the earlier DP and the details of the shareholdings in the earlier demat account. Simultaneously, the QFI shall issue transfer instructions to the earlier DP with a copy to the new DP. With regard to the funds of the QFI lying in the rupee pool account of the earlier DP, the same shall be remitted back to the designated overseas bank account of the concerned QFI. At any point of time, a QFI shall operate through only one demat account with a DP.

8. Investment restrictions and monitoring of investment limits for QFI:

8.1. The QFI shall transact in Indian equity shares only on the basis of taking and giving delivery of shares purchased or sold.

8.2. Each transaction by QFI shall be cleared and settled on gross basis.

8.3. QFI shall not issue offshore derivatives instruments/ participatory notes. A declaration and undertaking to this effect shall be obtained by DP from the QFI.

8.4. The DP shall provide on a daily basis, QFI wise, ISIN wise and company wise buy/ sell information and any other transaction or any related information to their respective depositories on the same day i.e the day on which the transaction was carried out, before the time stipulated by the depositories.

8.5. The stock exchanges shall provide the details of paid up equity capital of all the listed companies, ISIN wise, to the depositories once in six months, periodically and also provide information regarding change in paid up equity capital in any listed company, immediately.

8.6. The QFI and DP shall ensure that the total shareholding held by a QFI shall not exceed five percent of paid up equity capital of the company at any point of time. This investment limit shall be applicable to each class of equity shares having separate and distinct ISIN.

8.7. The depositories shall put in place appropriate systems and procedures to monitor the above limit by using PAN and/ or other unique identity number of the QFI.

8.8. The depositories shall administer and monitor, so as to ensure, that aggregate shareholding of all QFIs shall not exceed ten percent of the paid up equity capital of the company at any point of time, in respect of each equity share class having separate and distinct ISIN.

8.9. The depositories shall jointly publish/ disseminate the ISIN wise and company wise aggregate shareholding of QFIs to public, on daily basis.

8.10. The information regarding ISIN wise and company wise aggregate QFI shareholding shall also be provided by the depositories to the RBI in a manner and format as stipulated by the Reserve Bank of India from time to time.

8.11. When the aggregate shareholding of all the QFIs in a company reaches 8% of the equity paid up capital, the company's name along with ISIN shall be published in caution list by the depositories and no fresh purchases shall be allowed without prior approval of the depositories. The same shall be informed by the depositories to the DPs and recognized stock exchanges having nationwide terminals. The depositories shall also inform the DPs and such stock exchanges when any company is removed from the caution list.

8.12. For fresh purchases by QFI in equity shares of companies in the caution list, prior approval of the depositories shall be obtained. The QFI shall make such request for prior approval to the concerned depository through the DP specifying therein the name of the QFI, PAN and other unique identification number relating to that QFI, number of shares to be purchased and the ISIN, by way of any mode of communication as specified by the depositories in consultation with each other. The concerned depository shall provide the details of prior approval requests received by it to the other depository.

8.13. After market hours, the depository shall give prior approval to request for purchase of equity shares of companies in the caution list on a first-come-first-served basis in co-ordination with the other depository, based on time of receipt of the prior approval requests by the depositories,. The validity of the approval shall be for the next trading day only.

8.14. In case the aggregate shareholding of the QFI exceeds the limit of ten percent in respect of any ISIN, the depositories shall jointly notify the respective DPs regarding the breach along with the names of the QFI due to whom the limits have been breached. For this purpose, the stock exchanges shall provide the required information so as to enable the depositories to identify the transaction details of the QFI including the name of QFI, PAN and/ or other unique identification number relating to that QFI, purchase quantity and time or any other information as may be required by the depositories.

8.15. In case the aggregate shareholding of the QFIs exceeds the limit of ten percent for whatsoever reason, the QFI due to whom the limit is breached shall mandatorily divest excess holdings within three working days of such breach being notified by depositories to the DP. The DP shall obtain necessary authorization from the QFI at the time of account opening for such divestment of excess holdings.

8.16. The stock exchanges shall amend Clause 35 of the listing agreement on or before June 30, 2012, so as to incorporate another class of investor to disseminate QFI shareholding in equity shares.

8.17. The stock exchanges shall develop a separate segment for intra QFI transactions in the equity shares of companies in the caution list, if they wish to buy without the prior approval of depositories. However, QFI who have obtained prior approval of the depositories as referred in para 8.11 and 8.12 above, may purchase equity shares in the normal segment of recognized stock exchanges.

8.18. The stock exchanges/ depositories/ DPs shall not levy any charges towards services relating to monitoring and administering of investment limits of QFI.

9. **Process flow**

9.1. **Purchase**

9.1.1. The QFI shall place a purchase order with the DP mentioning the name of the company and ISIN, number of equity shares, name of the stock broker and remit foreign inward remittances from the designated overseas bank account of QFI through normal banking channel in any permitted currency (freely convertible) directly to the single rupee pool bank account of the DP maintained with a designated AD category - I bank.

9.1.2. The DP in turn shall forward the purchase order to the SEBI registered stock broker with whom QFI has opened trading account and remits the money to the brokers account after receipt of funds from QFI and as per the instructions of QFI.

9.1.3. If for any reasons, the QFI is not able to purchase equity shares within **five working days** of the inward remittance (including the date of receipt of foreign inward remittance through normal banking channels from the designated overseas bank account of the QFI into the single rupee pool bank account), the DP shall immediately remit the money back to the designated overseas bank account of the QFI.

9.1.4. The DP shall ensure that equity shares purchased on behalf of QFI are credited into the demat account of that QFI on the pay-out date.

9.1.5. In case of QFI' participation in public issues, the QFI shall provide instruction to the DP to make application for public issue. The DP, after obtaining necessary instructions from the QFI and subject to availability of funds on account of that QFI in the rupee pool account, shall make application on behalf of such QFI and remit money to the issuer company.

9.2. **Sale**

9.2.1. On receipt of instruction from QFI containing name of the company and / or ISIN, number of equity shares and name of the stock broker, the DP shall place order for sale of equity shares only after verifying availability of such equity shares in demat account of that QFI. Upon receipt of sale proceeds on account of sale of equity shares made on behalf of QFI, the same shall be retained in single rupee pool bank account of the DP for a period of maximum five working days.

9.2.2. The QFI can instruct the DP to make fresh purchase of equity shares out of sale proceeds on account of sale of equity shares provided that such purchase is made within five working days (including the date of receipt of the sale proceeds in the single rupee pooled bank account) of receipt of money in the pooled bank account. In case no purchase is made within said period, the money shall be remitted by the DPs to the designated bank overseas account of the QFI within five working days from the date of receipt of money in the pooled bank account.

9.3. **Dividend and other corporate actions**

9.3.1. In case of dividend received on account of QFI, the DP shall remit the same to the designated bank overseas account of the QFI within five working days (including the date of credit to the single rupee pool account) from the date of receipt of money in the DP's rupee pooled bank account, unless any fresh purchase of equity shares is made out of such dividend receipts

9.3.2. In case of QFI participation in corporate actions such as buy back, delisting etc. wherein the pool account maintained with DP is credited with funds, such funds shall be remitted back to the designated bank overseas account of the QFI within five days of receipt of same, unless any fresh purchase of equity shares is made out of such funds.

10. The transactions of QFIs, for all purposes, shall be treated at par with that of Indian non-institutional investors with regard to margins, voting rights, public issues etc.

11. This circular is issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

12. The investment by the QFI in listed equity shares as mentioned herein above shall also be subject to the relevant and extant FEMA regulations and guidelines issued by the Reserve Bank of India under FEMA, 1999 from time to time.

Yours faithfully,

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