To,
Mr. Deep Mani Shah
DGM
Securities and Exchange Board of India
SEBI Bhavan, Plot No. C4- A, "G" Block,
Bandra Kurla Complex, Bandra (East),
Mumbai - 400 051

Via email to: Mr. Deep Mani Shah, DGM (deepmanis@sebi.gov.in),
Mr. Anjan Patel, AGM (anjandr@sebi.gov.in),
Mr. Prateek Arora, Manager (prateeka@sebi.gov.in)

Sub: Report of the Expert Committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and vice versa

At the outset, we, at Indian Association of Investment Professionals (IAIP), a member society of the CFA Institute appreciate the opportunity to submit our response to the CONSULTATIVE PAPER ON REPORT OF THE EXPERT COMMITTEE FOR LISTING OF EQUITY SHARES OF COMPANIES INCORPORATED IN INDIA ON FOREIGN STOCK EXCHANGES AND OF COMPANIES INCORPORATED OUTSIDE INDIA ON INDIAN STOCK EXCHANGES.

IAIP is an association of over 2000 local investment professionals who are CFA charter holders and about 4000+ professionals who have cleared exams, eligible and awaiting charter. The Association consists of valuation professionals, portfolio managers, security analysts, investment advisors, and other financial professionals, that; promote ethical and professional standards within the investment industry, facilitate the exchange of information and opinions among people within the local investment community and beyond, and work to further the public's understanding of the CFA designation and investment industry.

CFA Institute is a global non-profit association of investment professionals with over 149,000 members in over 140 countries. In India, the community of CFA charter holders is represented by the Indian Association of Investment Professionals.

Through our global research and outreach efforts, CFA Societies around the world endeavour to provide resources for policy makers, financial services professionals and their customers in order to align their interests. Our members engage with regulators in all major markets.

With regards to the above mentioned consultative paper, we have proposed a few suggestions.

We would be happy to hear and discuss the merits / demerits of suggestions proposed by other practitioners and request to be included in the deliberation process.
Our responses to the various points are mentioned below in the requested format –

1. **Details on our Association:**
   - **Name:** Indian Association of Investment Professionals (CFA Society India).
   - **Contact number:** +91 98196 30042
   - **Email address:** advocacy@iaipirc.org
   - **Postal address:** One BKC Tower, Bandra Kurla Complex, Mumbai

2. **Key Contributors to this response:**
   - Umesh Kudalkar, CFA
### 3. Suggestions/Comments:

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Recommendation in the report to which the comment pertains</th>
<th>Comment</th>
<th>Rationale for the Comment</th>
</tr>
</thead>
</table>
| 1       | Chapter 1 - I. Introduction 1.2 and II. Benefits to the Indian Economy: Listing of companies incorporated outside India on Indian stock exchanges, with a view to benefit the Indian economy, the companies incorporated in India as well as the Indian investors. | Economic Case could be elaborated to include ‘Trade in India’ as a parallel initiative to ‘List in India’. Moreover, we could also spell out ‘Strategic Imperative’ for enabling ‘List in India’ in addition to the economic case. | Why ‘Trade in India’ proposal is a strategic imperative  
The traditional view considered Foreign Direct Investment (FDI 1.0) as desirable irrespective of whether its equity structure included public shareholding. Since then, the world has undergone a regime change with the emergence of Internet MNCs Microsoft, Google, Facebook and Twitter etc. that are based on winner-takes-all platform business models. In this regime, it is impossible to have a competing operating system or search engine startup in India. Web services markets are permanently ceded to Internet MNCs so much so that ironically some Government data now resides on Amazon Web Services. Platform businesses at this scale resemble nation-states and control economic systems that are bigger than many national economies. No wonder Brad Burnham, at Union Square Ventures, responded to the introduction of Facebook Credits—a short-lived system of virtual currency for use in playing online games—by wondering what the move said about Facebook’s monetary policy.  
China pro-actively designed her FDI strategy that banned Internet MNCs. U.S. has also been very strategic in selectively blocking Alibaba and Tencent. Learning from the global FDI MNC policy experience, India must pursue ‘Trade in India’ that would segue in to FDI 2.0 in that rather than... |
accepting the current situation of ‘winner MNC takes it all’ status as fate accompli, it seeks to harmonize interests of all stakeholders including Indian Consumers, Government and Investors by pursuing an equitable logic, i.e. Global Multinational Companies’ market value must be equitably distributed across nations in such a way that value derived out of a particular nation must be available to investing citizens of that nation.

‘Trade in India’ is a strategic policy initiative that would enable passive Indian consumers become active owners in MNCs such as Google, Facebook, SAP, Toyota, Samsung, Huawei, Xiaomi and many others that have exploited Indian markets. ‘Listing / Trading of MNCs Stocks’ is in the true spirit of give and take. It is a positive sum game because all stakeholders gain. While Indian consumers buy MNC products and are subject to data colonization by technology MNCs (i.e. with companies such as Facebook, Indian citizen itself is the product, not the customer), their equity ownership would result in capital formation, create wealth for Indians and offer diversification benefits while making capital markets vibrant. Wealth distribution would create a virtuous cycle of innovative ideas, entrepreneurship, employment, consumption, higher taxes, social & physical infrastructure for the benefit of the Indian society. In fact, one could ask the question – Can we afford NOT to enable ‘Trade MNCs in India’ initiative?
| 2 | Chapter 3: II PRINCIPLES FOR IDENTIFYING THE PERMISSIBLE JURISDICTIONS OF COMPANIES INCORPORATED OUTSIDE INDIA AND INDIAN STOCK EXCHANGES | While we look at outside jurisdictions, the low hanging fruit in this case would be multinational companies operating in India without listing. These companies such as Samsung, Toyota, Microsoft and hundreds of well-known companies with India revenue of more than Rs.10 lakh crore could be incentivized to list on Indian Bourses. We should endeavour to repeat the success achieved by Indian Government in 1978 in enabling ‘Listing’ of companies such as Colgate; but this time using Tax Incentives for MNC subsidiaries to List. MNCs where the foreign parent holds more than 51% equity and are listed in India should be eligible to domestic company tax rate whereas MNCs where the foreign parent holds more than 51% equity but are not listed in India should be subjected to suitably higher differential tax rate. This Proposal is the easiest to implement with minimal legislative changes. MNCs are likely to view this proposal in positive light since ‘Listing’ helps MNCs in getting embedded in the psyche of the local markets (customer loyalty) and as academic research has shown- it ‘lowers | Incentivising listing for multinational companies operating in India is a low hanging fruit. Thus, we should look within our national boundaries as a parallel initiative to ‘Trading or Listing companies incorporated outside India’. In fact, the MNCs subsidiaries already present in India could add about 33% to the market cap on Indian bourses. |
MNCs cost of capital’ due to cross listing\(^1\). In fact, India’s Real Cost of Equity is 3% lower than the U.S. if we consider average BSE Sensex Return over seven 20 year rolling periods beginning in the year 1991.

It is also pertinent to note that AB InBev, Royal Dutch shell, Coca-Cola, Walmart and Citigroup are examples of some MNCs that have responded to listing incentives. Mexico, South Africa, Bangladesh apart from the U.S. are examples of few countries that have attracted cross and multiple listings by MNCs. Marico and Berger Paints got listed in Bangladesh responding to tax incentives.

\(^1\) https://en.wikipedia.org/wiki/Cross_listing
To subscribe to securities of companies incorporated outside India listed in India, the investor will have to comply with the prevalent Indian KYC and Beneficial Ownership norms.

**Low Cost Foreign Stocks Index Funds and ETFs:** Apart from listing of securities, the regulator can make trading / listing of ETFs / Index Funds on Indian exchanges simpler. Policymakers should address all impediments in the path of such funds using Indian e-KYC and should make efforts to make Indian e-KYC acceptable to all international financial institutions.

If Low Cost Foreign Stocks Index Funds and ETFs accept Indian e-KYC, it will greatly benefit Indian small investors in getting ultra-low cost internationally diversified exposure. Not only would this help Indian investors access global markets, it would also help in creating a truly global market portfolio. Apart from that, Indian Investors can benefit from the product innovation & low cost such funds offer.
<table>
<thead>
<tr>
<th>Chapter 4 – RECOMMENDATIONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>4</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
and proven universe of S&P 500 companies. The smallest S&P 500 stock has at least $4 Billion market cap that is approximately equal to the market cap of 35th ranked company in Nifty. Hardly any fake companies without revenues can come into S&P 1500, leave alone S&P 500. NSE / BSE could admit S&P 500 Stocks for trading.

London Stock Exchange (LSE) and Frankfurt Stock Exchange (FSE) allow foreign securities to be “admitted for trading” only. A foreign company already listed on an eligible stock exchange can seek admission to trading only rather than undergo the process of normal listing. We should follow this pragmatic approach of LSE and FSE.

**Mexican Stock Exchange manages the International Trading System (Sistema Internacional de Cotizaciones), an electronic conduit to trade shares listed in other stock exchanges**. In 2017, 124 new foreign companies were listed in this System. [China has set up a stock exchange link between London and Shanghai where HSBC will be listed](https://www.reuters.com/article/hsbc-china/hsbc-on-track-for-shanghai-depository-receipts-listing-ft-idUSL3N1WY2PQ). India could replicate such systems.

In view of the above, ‘Trade in India’ would be more effective in creating vibrant capital market rather than ‘List in India’ - at least during the first few years.

---

3 [https://www.reuters.com/article/hsbc-china/hsbc-on-track-for-shanghai-depository-receipts-listing-ft-idUSL3N1WY2PQ](https://www.reuters.com/article/hsbc-china/hsbc-on-track-for-shanghai-depository-receipts-listing-ft-idUSL3N1WY2PQ)
### Chapter 4: B: Listing of Equity Shares of Companies incorporated outside India on Indian stock exchanges

For successful implementation of the ‘Trade in India’ or the ‘List in India’ initiative, committee could consider the ‘use case’ approach (similar to Software Engineering) to capture the actual user perspective and address each and every issue along the way. We could adopt following **10 measures** to successfully launch ‘Trade in India’ initiative:

1. **Persuade parent MNCs to allow trading** of their shares in India within the next 3 years. Policymakers can make their continued unrestricted India business access conditional to allowing trading of their shares in India. MNCs would readily agree to the proposal as it does not involve issue of any new shares for listing in India. Also, MNCs need not comply with listing norms in India. Make necessary changes in existing regulations across RBI, SEBI and MCA.

2. **Indian Bourses should implement internationally integrated trading system on the lines of Mexico and China as mentioned in the Rationale for comments # 3 above.**

3. **‘Trade in India’ can be implemented in baby steps:**
   - (a) Initially pursue trading of all S&P 500 companies such as Apple, Google, Facebook, Amazon, etc.
   - (b) Restrict Indian Mutual Fund investment in foreign stocks in steps of 5%-10%-25% of their corpus.
   - (c) Allow

Unless we address these real issues mentioned in this comment, the initiative may not take off successfully. We are aware of the history of IDR issue in 2010. We must learn from it and avoid that fate.
investors to invest up to $250,000 within the Liberalized Remittance Scheme (LRS) limit per year.

With these assumptions, it is estimated that over time about $11.1 Billion first-time forex outgo may take place if India allows dollar-denominated foreign stocks to trade on NSE/ BSE. Considering $401 Billion of forex reserves as at the end of Aug 2018, an $11.1 Billion outgo is about 2.77% of forex reserves. In subsequent years, the net foreign exchange outgo may not be as much because many transactions will begin to happen among Indian Investors within India. **High-Quality Foreign Stocks will constitute a distinct asset class with its own characteristics of Risk and Return.** Therefore, it is quite likely that these Stocks may act as a substitute for Gold, at least for some part. As a result, this proposal i.e. ‘Trade in India’ for foreign stocks on Indian bourses may effectively have a negligible effect on Rupee Dollar foreign exchange rate.

4. **Resolve the U.S. Estate Tax Issue:** For the ‘Trade in India’ to be successful, we need to resolve the U.S. Estate Tax issue. US stock market makes up around 40% by market capitalization of the whole World and hence, addressing U.S. Estate Tax issue is very important. US stock markets have about 3,500 companies
listed on them and around 45%-50% of their revenues are non-US. This means that taking exposure to US-listed companies provides exposure to the rest of the developed and emerging markets through their international operating revenues. If someone is going out of their home markets, then the single market they need to focus on investing in is the US. (Of course, one should invest in other markets too). The U.S. Estate Tax issue is highlighted in the following web links:

Web link - **Official IRS information on U.S. Estate Taxes**

Web link - **E&Y Worldwide Estate and Inheritance Tax Guide 2018: see page 159**

Web link to PDF: **PLANNING FOR U.S. SITUS ASSETS AND U.S. INBOUND TRANSACTIONS**

Web link: **US Estate Tax on US foreign trusts**

Web link: **IRS Confirms that American Depositary Receipts are Non-US Situs Property**:

**Fortunately, we have a solution for the U.S. Estate**

---

Tax issue that is based on the following Key Statement in the above web link: If American depositary receipts are held by the trust, on the settlor’s death, the IRS ruled that the assets will not be property in the United States and will not be included in the settlor’s gross estate for US estate tax purposes. The solution in the paragraphs below is based on this ruling:

Both NSDL and CDSL can form an NSDL International Depository Operation (NIDO) and CDSL International Depository Operation (CIDO). Both can be formed inside a trust (or each can have their own trust), say Bharat Sovereign Global Securities Holding Trust (BSGSHT).

As soon as someone in India wants to purchase a US (or any other country) stock, the order is translated into an order on behalf of the BSGSHT. The order hits NYSE or LSE etc. as an order for the same share and quantity that the Indian investor has ordered but is seen as an order given by BSGSHT. As soon as the stock is received in a fully disclosed manner in the name of BSGSHT and held in the US depository in its name, it creates an equivalent virtual share of the same quantity and price for the Indian citizen in India. However, this virtual share is held in either NIDO or CIDO depending on which platform
the client used to place the order initially.

So the client will see a **fully disclosed** virtual share (say BharatShare) of the same stock in his international demat managed by NIDO/CIDO. Let’s say he buys Google (GOOGL), he will see a share (GOOGL:IND), i.e. the Google-Bharat share.

This will help take care of the U.S. estate tax issues (or any other country too). Further, this will also help in any legal process since BSGSHT will have huge financial resources and sovereign backing. So any issues coming up in any country can be taken up without each and every retail Indian investor having to figure out what to do.

An interesting consequence of this Sovereign Trust Structure is that Government of India would get to enjoy voting rights in Parent MNCs on behalf of Indian Citizens.

An alternative to the above structure could be negotiation of new Estate Tax Treaty with the U.S. perhaps on the lines of U.K. However, this could be easier said than done.

5. **Make available ‘Fully Disclosed Model’** for holding Foreign Stocks in a cost effective way on the lines of NSDL / CDSL so as to address issue of U.S. govt. Influence and credit risk of U.S. Broker.
Internationally there are two models, i.e. Omnibus Model and Fully Disclosed Model under which an individual / institution can hold foreign shares. Individuals end up choosing the cheaper Omnibus Model wherein the foreign shares are held in something called as the ‘Street Name,’ i.e. Broker’s name. The broker can pledge those shares to raise money, and therefore the investor also takes the credit risk of the broker. For some reason, this model has worked in the U.S. However, in India, Investors hold shares in NSDL depository directly through a Depository Participant. The Indian model is akin to the expensive fully disclosed model in the U.S.

Omnibus model has 3 problems:

- The U.S. authorities may direct the U.S. broker (who holds the Indian Investors’ shares) to deduct estate taxes (TDS) before any pay-out in case of death of investor.

- The Indian Investor would take counterparty risk / credit risk of the U.S. Broker. Although, Securities Investor Protection Corporation (SIPC) covers U.S. broker defaults to the extent of $500,000, this is not yet tested in case of Indian Investors. In all likelihood, SIPC may not reimburse Indian Investor.
• Indian Tax Authorities would treat the income and gains from foreign stock investment as business income and tax it at high rates because the foreign shares are held in U.S. Broker’s name.

To avoid the above 3 problems, Indian Government / NSDL / CDSL must enable ‘Fully Disclosed Model’ for Indian Citizens and Mutual Funds buying foreign stocks that is identical to the system we currently have in India.

6. **Taxation** regime applicable to transactions in comparable domestic securities should apply to transactions in Foreign Securities.

There are some dedicated open-ended equity mutual fund schemes which invest in foreign equities outside India. The total AUM of such funds is INR 4,291 crore (~$0.6 billion) as of 07th September 2018, and many of these funds invest in the funds of their parent mutual funds. These funds can be utilized to acquire the shares of dollar-denominated foreign stocks admitted for trading on Indian bourses. While poor awareness of foreign markets has led to some level of apathy that has resulted in low level of AUMs, it is the relatively higher debt fund taxation compared to domestic equities fund taxation that has put investors off. Therefore,
identical tax treatment for comparable securities must be the guiding principle to provide impetus to Indian Investors’ foreign equity investments.

7. Address all the issues in using Liberalized Remittance Scheme (LRS) for buying foreign stocks. The LRS operation should be smooth and should work like Amazon 1-Click functionality.

8. Educate Indian Investors so as to eliminate ‘home country’ bias and correct the perception that Indian Stock Returns have always been higher than Global Stock Returns. Forex investment in high quality foreign stocks should be considered a qualitative and strategic use with potential for appreciation. This is unlike forex spent on foreign vacation that is lost forever.

9. Till the time ‘Fully Disclosed Model’ is not implemented in India, Income Tax Department should consider foreign shares held in Street Name (Omnibus Model) to be eligible for capital gains.

10. Low Cost Foreign Stocks Index Funds and ETFs: Government should address all impediments in the path of an entity like Vanguard that could offer ultra-low cost (0.04%) S&P 500 Index Funds
such as Admiral Shares (VFIAX)\(^9\) using Indian e-KYC. Indian MFs are 50 times more expensive.

\(^9\) https://investor.vanguard.com/mutual-funds/profile/VFIAX
|   | Chapter 4: B: Listing of Equity Shares of Companies incorporated outside India on Indian stock exchanges | Recommendations should include examination of adverse implications of other countries’ laws that would affect Indian Investors investing in companies incorporated outside India. Such laws would include U.S. Estate Taxes. Unless we implement solution to this U.S. Estate Tax issue, ignorant Indian Investors will be subjected to significant losses in wealth, thus making the subject proposal detrimental to long term investor interests. | Please refer the sub-point #4 under comment #5 above for an explanation on the U.S. Estate Tax issue. |
| 7 | Chapter 4: B: Listing of Equity Shares of Companies incorporated outside India on Indian stock exchanges | Committee could evaluate mode of holding of foreign shares and its implications. **We must make available ‘Fully Disclosed Model’** for holding Foreign Stocks in a cost effective way on the lines of NSDL / CDSL so as to address issue of U.S. govt. influence and credit risk of U.S. Broker. 

Please refer the [sub-point #5 under comment #5](#) above for an explanation on Fully Disclosed Model. | Unless, we make available ‘Fully Disclosed Model’ to Indian Investors, we would be subjecting Indian investors to the credit risk of U.S. Brokers as well as other countries’ undue influence on Indian Investor holdings. This is risky and may result in loss of Indian citizens’ wealth. Indian tax authorities may also insist that foreign shares must be held in the name of Indian investors rather than foreign broker’s name i.e. in a ‘Fully Disclosed Model’ format. |

If you or your staff have questions or seek further clarification, please do not hesitate to contact Mr. Rajendra Kalur, CFA @ +91 98196 30042 or at advocacy@iaipirc.org

Sincerely yours,

Rajendra Kalur, CFA
Director - Research and Advocacy Committee
Indian Association of Investment Professionals, Member Society of CFA Institute