

Public Comments

The Consultation Paper for seeking comments / views of public on Handling of Client Funds for Portfolio Management Services in IFSC was issued by IFSCA on 15.02.2023. The following comments have been received:

S. No.	Regulation No.	Sub-Regulation No.	Text of the Regulation	Comments / Suggestions	Rationale
1	77	2	A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.	The funds of clients of portfolio management services may be maintained in- (a) a specific bank account of the FME in a Banking Unit; (b) a specific bank account of client(s) in Banking Unit, banks in India or a Foreign Jurisdiction; (c) any other manner as may be specified by the Authority. Provided that when the funds are maintained in the specific bank account of a client, the FME shall ensure that it is duly authorised to operate the said bank account and shall provide the details of all such accounts including transactions carried out thereunder, to the Authority, whenever directed to do so.	While we agree with all the suggestions provided by you in the consultation paper, for the sake of clarity such that people don't misinterpret the 'account' to be any account other than the bank account, we suggest the words in red may be considered to be included in your final version of the regulation

2	77	2	<p>A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.</p>	<p>In the proposed text of the regulation, there is a proviso prescribed to the Regulation 77 (2). The Proviso requires that “when the funds are maintained in the bank account of a client, the FME shall ensure that it is duly authorised to operate the said bank account”.</p> <p>We humbly submit that the proposed text in the Proviso should be amended to give liberty to the FME, that it is having an authority to issue instructions to the Custodians appointed by the clients (Custodians in turn have right to operate the client’s Bank accounts).</p> <p>Proposed Text on the Proviso of the Regulation 77 (2) should be amended as follows:</p> <p>“Provided that when the funds are maintained in the bank account of a client, the FME shall ensure that it is duly authorised to operate the said bank account <u>or to provide instructions to the Custodians of the Client pursuant to portfolio management agreement / authorisation and/or such other equivalent agreement</u> and shall provide the details of all such accounts including transactions carried out thereunder, to the Authority, whenever directed to do so.”</p>	<p>We would like to highlight that, Client’s investing into India and registered as FPI are mandatorily required to appoint Custodians to operate their Bank accounts in India. The powers to operate the FPI Bank account in India are with Custodians. As Portfolio Managers for such FPIs who have custodians only authorisation is issued to the Portfolio Manager vide PMS agreement or such other equivalent agreement to provide instructions to Brokers and Custodians. Thus, Custodians operates Bank accounts after receiving the instructions from the designated Portfolio Manager.</p> <p>In light of this practical point, we would like you to consider our request and amend the proposed text of the Proviso.</p>
---	----	---	--	--	--

3	73	2	<p>A FME in its capacity as a portfolio manager may have the following categories as clients: (a) a person resident outside India; (b) a non-resident Indian; (c) a non-individual resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted; and (d) an individual resident in India who is eligible under FEMA to invest funds offshore, to the extent allowed under the LRS of RBI.</p>	<p>It is suggested to clarify that the eligible category of clients of a Portfolio Manager includes Foreign investors such as Foreign Portfolio Investors (FPIs)</p>	<p>Regulation 25 of SEBI (PMS) Regulations 2020 allows FPIs to avail services of a Portfolio manager.</p> <p>Similar addition in the language would provide clarity on the eligibility of the FME to manage FPI money in its capacity as a portfolio manager.</p>
4	77	2	<p>A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.</p>	<p>It is suggested to clarify that the clients cover all foreign investors, including FPIs and clients investing through the PIS scheme.</p>	<p>This would provide clarity in terms of the category of clients for whom a separate bank account is required to be maintained.</p>

5	77	3	A FME shall segregate each portfolio management client 's holding in securities in separate accounts	It is proposed to clarify that with regard to India investments, there is no requirement to open a separate demat account in IFSC and that the Portfolio Managers (PMs) managing portfolios for FPIs or clients investing through the PIS scheme could hold the securities of each client in the Demat account opened / being maintained in India.	As per the SEBI FPI Regulations, 2019, FPIs are allowed to open only one demat account per depository except in the case of MIM structures. Given this requirement, we understand that having a separate Demat account in IFSC (for India investments) are envisaged. Accordingly, PMs holding the securities of FPIs / clients in the Demat account in India should be considered for compliance with the said regulations.
6	78	7	The FME operating as a portfolio manager (except those providing only advisory services) shall appoint a custodian in respect of securities managed or administered by it.	It is suggested to clarify that there is no requirement to have a custodian appointed in IFSC with regard to India investments.	FPIs / clients investing in India through the PIS scheme would have a custodian appointed in India for settling trades on their behalf. In case there is a requirement to have a custodian appointed in IFSC, the investors may be required to route their investments through custodian in IFSC which may be inconvenient and may serve limited purpose.

7	73	2	<p>A FME in its capacity as a portfolio manager may have the following categories as clients: (a) a person resident outside India; (b) a non-resident Indian; (c) a non-individual resident in India who is eligible under FEMA to invest funds offshore, to the extent of outward investment permitted; and (d) an individual resident in India who is eligible under FEMA to invest funds offshore, to the extent allowed under the LRS of RBI.</p>	<p>It would be great if we can include one clarification to include any NRI under PIS scheme and FPI registered with SEBI as a client.</p>	<p>The global custodian's, the management companies and advisor / lawyers often require clarity in the host regulations which enables the portfolio manager to manage the said FPI accounts. The same clarity is available in SEBI PMS Regulations and thus is requested in FME regulations.</p>
8	77	3	<p>A FME shall segregate each portfolio management client's holding in securities in separate accounts</p>	<p>For an FPI or NRI under the PIS scheme, the custody/DEMAT account may already have been opened in India as per local regulations for active investors. We shall appreciate we if it can be clarified that for inbound investment in Indian Market, the same account would be considered sufficient for the compliance of the said regulations without requiring the a new account to be opened again in IFSCA.</p>	<p>This explanation would help clarify and solve operational difficulties and make it abundantly clear on the industry</p>

9	78	7	<p>The FME operating as a portfolio manager (except those providing only advisory services) shall appoint a custodian in respect of securities managed or administered by it.</p>	<p>For portfolio manager managing accounts for FPI or NRI under PIS scheme, it is most likely that the custodian would already be appointed in India. The said requirement of appointing another custodian will be challenging and cumbersome. Further, the Portfolio manager managing only In-bound investments would typically be appointing a custodian in India for all their inbound trades and not in IFSCA. Thus, the said aspect needs to be clarified.</p>	<p>For Clients who already have FPI/PIS accounts, it is most likely that they would have an Indian custodian settling the trade on their behalf. Hence a global-local custodian setup would be cumbersome and will be duplication.</p>
10	77	2	<p>A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.</p>	<p>To clarify the position with respect to applicability of the proposed regulation in case of non-discretionary portfolio management services (PMS) where the portfolio manager does not have control over the client's bank accounts.</p>	<p>Practically, different models are followed by portfolio managers offering non-discretionary PMS to their clients. There could be instances where the portfolio managers have limited/ no control over the client's funds/ bank accounts for transaction execution. This model is akin to rendering of advisory services. The proposed text of the regulation does not distinguish between discretionary PMS and non-discretionary PMS. Thus, a suitable clarification could be added to clarify that the proposed regulation does not apply to portfolio managers rendering non-discretionary PMS.</p>

11	77	2	<p>A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.</p>	<p>The funds of clients of portfolio management services may be maintained in-</p> <p>(a) a specific account of the FME in a Banking Unit;</p> <p>(b) a specific account of client(s) in Banking Unit, banks in India or a Foreign Jurisdiction; or</p> <p>(c) any other manner as may be specified by the Authority.</p> <p>Provided that when the funds are maintained in the bank account of a client, the FME shall ensure that <u>the FME / Custodian</u> is duly authorised to operate the said bank account and shall provide the details of all such accounts including transactions carried out thereunder, to the Authority, whenever directed to do so.</p>	<p>Although, it is a welcome move by IFSC Authority in the direction of easing the portfolio management services business in GIFT IFSC, our suggestion is to allow the custodian to operate the bank account of the clients on behalf of the portfolio managers.</p> <p>Role of custodian in the PMS is very significant. In simple terms, they maintain client's assets for safekeeping and also having an advantage of divesting some power from the manager. They may build and perform additional checks and balances over the managers and hence, significant to allow to operate the bank account of the client.</p> <p>However, there could be some operative challenges at client's jurisdiction while obtaining the power of attorney from the client with regard to operate his bank account opened in his jurisdiction. Gift City entity having client's bank account access in a jurisdiction outside (foreign/India) might lead to the regulators in these jurisdictions considering it as marketing/offering of financial products, leading to certain compliance approvals in those jurisdictions. It's therefore important to study such practices in existence across the other locations and incorporate the best practices being used in these jurisdictions for the benefit of the Gift City entities.</p>
----	----	---	--	--	--

12	77	2	<p>A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.</p>	<p>The funds of clients being allowed may be operationally challenging and maintenance of fund accounting done by the PMS provider.</p>	<ol style="list-style-type: none"> 1. If the investor is allowed to keep a separate bank account with authority to operate with FME, the account will remain open for the investor to utilise it for purposes other than PMS. In such scenario, it will become difficult to segregate the balance pertaining to PMS and his own transactions. If at all this segregation is still made possible, then it will become an added activity on the PMS provider to keep these segregated records constantly. This can also become a constant to & fro of information with FME Entity & Investor on the transactions happening in the bank account. 2. The PMS provider would need a constant access to view the balances of such bank accounts of the investor to check the availability of funds for investments, which many of the banks due to their own regulatory requirements are not willing to provide, PMS provider being a third party. Eg of such a bank <u>HDFCPQR (name changed to protect identity)</u>. 3. Though this will bring more visibility for the investors on their own funds, it will pose serious challenges on PMS provider at the time of pooling of such funds from each of these investors account for any investment. In the sense that it will have to make a system such that it will be able to auto debit these funds from all the various bank accounts present because these
----	----	---	--	---	---

				<p>1st suggestion: Not to allow investor-wise separate bank account</p> <p>2nd suggestion: Giving choice to the investor to pool funds with the PMS provider or keep separate bank account but only with a bank specified by the PMS provider</p>	<p>bank accounts could be of any bank. When we think of this in terms of number of investors, it can lead to huge challenges.</p> <p>Though the funds will remain pooled in a single account for all investors, a common mechanism can be added by the PMS provider such that each investor has a constant live access to the funds lying in his name with the PMS provider. This will give a lot of confidence to the investor with an added layer of transparency. And because this system will be utilised for many investors, it will be cost efficient to the PMS provider as well.</p> <p>For doing the setup of having a bank account only with the bank specified by PMS provider –</p> <ol style="list-style-type: none"> 1. The PMS provider will need to have a tie up with the banking unit for ease of bank account opening for each of its investor and to get constant view access of these accounts. 2. Since this setup will be in place with only one bank, the PMS provider may easily use just one online banking platform to pool the funds at the time of investment. 3. Though this bank account may just be an added layer for the investor, he may not
--	--	--	--	--	--

					<p>have larger issues with this setup because of the transparency and fund segregation which is being provided.</p> <p>The challenge of pooling funds from multiple bank accounts will be mitigated and that the investors will also get a comfort for their funds being held separately.</p> <p>With regards to the fact that some larger institutions or in that matter other banking units may have restriction in opening new bank accounts, then for them the option to keep the funds in a common pool with the PMS provider may be kept open.</p>
15	77	2	<p>A portfolio manager shall keep the funds of all clients in a separate account to be maintained by it in a Banking Unit.</p>	<p>Based on the detailed rationale explained below, we seek for the following:-</p> <p>1. Existing Reg 77(2) to continue</p> <p>2. However, a proviso to the said sub-regulation be given as under -</p> <p>a. "Provided that the funds of clients of a portfolio manager maintained in a specific account by an international broker empaneled with India INX GAABC (name <u>changed to protect identity</u>) or any other exchange regulated by the IFSCA, will be treated to be in compliance with the said sub-regulation provided requisite information as may be required by the IFSCA is provided by the portfolio manager".</p>	<p><u>Rationale behind operating through an international broker in IFSC</u></p> <p>1. IBKRXYZ is a renowned global electronic broker that is strictly governed by the U.S. securities laws and regulations. It is registered with the Securities Exchange Commission ("the SEC") and therefore, is subject to strict compliance of regulations. IBKRXYZ is also a member of the Financial Industry Regulatory Authority (the FINRA) and the Securities Investor Protection Corporation (the SIPC). There is a reasonable sense of confidence amongst the global investor community to operate through IBKRXYZ.</p> <p>2. IBKRXYZ is obligated under the rules mandated by its primary US regulators, the SEC, and the Commodities Futures</p>

				<p>Our proposed services as a PMS entity in IFSC</p> <ol style="list-style-type: none"> 1. We propose to provide portfolio management services to investors globally for investment in the international markets. 2. For this purpose, we propose to empanel SIML-PQR (name changed to protect identity) as an "Investment Advisor" with an international broker -- XYZ (name changed Interactive Brokers LLC ("IBKR" to protect identity)). a. Kindly note that the nomenclature for "PMS activities" is different in the international markets, especially in the U.S markets. b. IBKRXYZ is a global broker that is regulated by U.S. Securities laws. While IBKRXYZ terms our activities as "Investment Advisory", we are essentially providing PMS services as per the nature of the services as described below. 3. As IBKRXYZ is registered as a broker with India INX-GAABC, we propose to apply for the empanelment through India INX-GAABC. 4. Once empaneled with IBKRXYZ, we will be entering into agreements with IBKRXYZ as well as the investors. 	<p>Trading Commission ("the CFTC"). As per the rules, IBKRXYZ is supposed to segregate the cash/securities belonging to the investors from its own.</p> <ol style="list-style-type: none"> 3. Further, IBKRXYZ is empaneled as an international broker with India INX-GAABC, making it easier for domestic players to empanel with international brokers. 4. We have learnt that many international as well as domestic investors who already invest in international markets have their investment accounts opened with IBKRXYZ. Therefore, with a click of a button, they can authorize us to operate their accounts, without having the need for additional KYC or to open a new bank account. 5. Further, as IBKRXYZ segregates investors' cash from its own funds, and segregates each investor's securities in respective investor's IBKRXYZ accounts, we believe that as portfolio managers, we are in compliance with Regulation 77 of the IFSCA (Fund Management Regulations), 2022, albeit through the broker. 6. Further, as per our analysis, the cost to provide investment services through an international broker such as IBKRXYZ is much lower than the cost involved to provide PMS services independently or through an AIF in IFSC. If we were to
--	--	--	--	---	--

				<p>5. The agreement with the investors will allow us to manage the investors' individual IBKRXYZ broking accounts i.e., we will be taking investment decisions and executing trades on the investors' behalf.</p> <p>6. The investors will be depositing their investment corpus with IBKRXYZ, and once received, IBKRXYZ will map these funds to each investor's virtual broking account in IBKRXYZ. Thus, the investors' funds will be pooled in the broker's bank account which is domiciled in the U.S. This is the standard mechanism of the global broker across all its investors.</p> <p>7. We, as portfolio managers, do not have access to those pooled funds. Pursuant to the agreement entered into with the client, we will have access to the individual investors' broking account through which investments can be made.</p>	<p>provide investment services through an AIF in IFSC, the annual cost of operations is ~ 40 to 60 bps. However, the cost to operate multiple investors' broking accounts through IBKRXYZ is nil. The investors also bear only nominal broking charges for their IBKRXYZ accounts. Therefore, we, as portfolio managers, are able to charge competitive management fees in this structure. The investors are also encouraged to seek our PMS services through IBKRXYZ for an additional fee.</p> <p><u>Possible issues with the IFSCA proposal in the consultation paper (Detailed rationale of our suggestion)</u></p> <p>While we understand the practical challenges faced by the existing portfolio managers as described in the said consultation paper, we believe that the consultation paper focuses only on the woes/challenges faced by Indiabound PMS services and does not consider the resulting impact on investors/portfolio managers who are interested in using GIFT IFSC for outbound investments. We believe that the proposal mentioned in the consultation paper may not be a viable option for many of us for the following reasons:</p> <p>1. As per the extant SEBI PMS Regulations 1993 and the existing SEBI PMS Regulations 2020, portfolio managers are</p>
--	--	--	--	--	--

					<p>required to keep all the investors' funds in a separate account to be maintained by the manager in a scheduled commercial bank. Therefore, historically, the practice in the PMS industry is to keep the funds of all the clients pooled in a separate bank account.</p> <p>2. Further, if the proposal in the consultation paper were to be implemented, some investors may not be comfortable with authorizing the FME to access their existing bank accounts.</p> <p>3. To tackle the above challenge, even if the portfolio manager were to open a separate bank account for each investor, the investors may not be happy to have multiple bank accounts and bear bank charges.</p> <p>4. A portfolio manager may have thousands of investors across the globe and having to maintain a bank account for each investor may cause hassles in the routine operations of the manager.</p> <p>5. Further, IBKRXYZ has been operating in a standard manner for many years. They maintain the funds of all the investors in a separate bank account, and this practice cannot be changed. Therefore, if the proposal as described in the consultation paper were to be implemented, the portfolio managers in IFSC will lose out on the golden opportunity of easily managing</p>
--	--	--	--	--	--

					<p>and investing their investors' funds through international brokers at a reduced cost.</p> <p>6. If the proposal were to be implemented, we believe that international brokers such as IBKRXYZ will be discouraged to continue their service in IFSC since the momentum of business will likely be moved by fund managers who operate through them and not so much by individual investors.</p>
--	--	--	--	--	--

The above comments were considered suitably and the revised draft IFSCA (Fund Management) (Amendment) Regulations, 2023 was placed before the Authority in its meeting held on March 24, 2023.