

ASSOCIATION OF GLOBAL CUSTODIANS

Communication of the Association of Global Custodian's Asia Focus Committee ¹

16 September 2018

Mr. Achul Singh,
Deputy General Manager,
Division of Foreign Portfolio Investors and Custodians,
Securities and Exchange Board of India.

(Sent by e-mail to: kycforfpi@sebi.gov.in)

Dear Mr. Singh,

KYC requirements for FPI's

We refer to the publication³ by the Securities Exchange Board of India (SEBI) on 8 September 2019 of the Working Group on "KYC Requirements for FPI's", requesting public comments by noon on 17 September 2018. The Association of Global Custodians (AGC), acting through its Asia Focus Committee, is grateful for the opportunity to comment on the recommendations of the Workgroup under the Chairmanship of Shri Harun R. Khan.

We are pleased that the Workgroup have taken into consideration a number of the comments the AGC raised to SEBI in our letter dated 24 July 2018.

Our further comments following the Working Group's report are attached in the template form requested.

¹ Ms. Karin Quek, Chairman, The Association of Global Custodians, Asia Focus Committee, c/o BNY Mellon Bank, One Temasek Avenue, #04-01 Millenia Tower Singapore 039192. Email: karin.quek@bnymellon.com

² The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company. For more information visit www.theagc.com

³ https://www.sebi.gov.in/media/press-releases/sep-2018/sebi-publishes-interim-report-of-working-group-on-kyc-requirements-for-fpis-for-public-comments_40280.html

Please feel free to contact either the undersigned or our Chairman, Ms. Karin Quek, should SEBI have any questions regarding our submission.
Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal stroke.

Robert Edwards, (as attorney in fact)
For and on behalf of Karin Quek,
Chairman, Asia Focus Committee,
The Association of Global Custodians

(rob@asiafacilitators.com)

The Association of Global Custodians – Asia Focus Committee

SR No:	Relevant Section and sub-heading	Comments and/or suggested changes	Rationale
Section "B" - 3	Recommendation relating to clubbing of investment limit of FPI's having common ownership or control	The clubbing of investment limits as prescribed by SEBI where common BO's hold more than 50% across FPI, should only be on the basis of economic interest. The BO established across FPI by way of control should be excluded from a clubbing perspective. Economic benefits of the fund are available only to the investors who hold participating shares or entitlements in the fund. Accordingly, we recommend that clubbing of investment limits for FPIs not linked with the identification of a BO as per PMLA, should only be on the basis of common economic ownership of more than 50 percent and not on the basis of control.	Clubbing of investment limits for FPIs not linked with the identification of a BO as per PMLA, should only be on the basis of common economic ownership of more than 50 percent, not on the basis of control.
Section "C" - 4	<p>Recommendations on identification and verification of BO's</p> <p>Need to bring uniformity of requirement</p> <p>Disclosure of personal information where SMO is identified as BO:</p>	<p>SMOs from many jurisdictions like US, Canada, Luxembourg, Australia and EU are not comfortable providing their personal information, especially as this information will also be hosted on KRA.</p> <p>Furthermore, we understand that in certain jurisdictions employers are required to obtain explicit written concurrence from their employees before providing their personal information. Moreover, the EU General Data Protection guidelines, effective May 2018, makes it very challenging for funds</p>	There are significant regulatory personal data transfer challenges in many countries where funds are incorporated.

		<p>with EU based investors to share personal data with custodians in India, unless there is legal equivalent data protection requirement in India.</p> <p>We recommend that details of personal information currently required can be rationalized and collection of information like birth date, Nationality and ID number etc. should not be mandated where SMO is identified as BO. Alternatively SEBI could look at only taking the disclosure of name along with organizational details of SMO and accepting the statement from the applicant that SMO details would be provided as and when requested by regulatory authority in India.</p> <p>We recommend that the storing of personal details of a SMO be driven by client requirements: some clients would not like to have their personal data stored at KRA. They would prefer it be kept by the local custodians instead. We suggest the following alternative wording:- "permitting local custodians to collect and store such personal information at their end and not upload the information/documents on the KRA system. This information will be provided to the regulatory authorities and Law Enforcement Agencies on demand".</p>	
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Section "C" - 6	Recommendation on the Identification of BO of listed entities	SEBI has clarified that exemption under Rule 9(3)(f) of the PMLA Rules is only available to a FPI or its BO which is a <u>company</u> listed on a stock exchange from a certain jurisdiction. We request SEBI to specifically clarify that exemption under Rule 9(3)(f) of the PMLA Rules is also applicable to listed Exchange Traded Funds (ETFs) set-up as <u>trust</u> structure.	Need to specifically clarify that ETF's set-up under a trust structure are exempted under Rule 9(3)(f) of the PMLA Rules.
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