

ASSOCIATION OF GLOBAL CUSTODIANS

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

24 July 2018

The Hon. Mr. Ajay Tyagi,
Chairman, Securities and Exchange Board of India,
Plot No. C 4-A , G Block,
Bandra Kurla Complex, Bandra East,
Mumbai, India

VIA HAND AND E-MAIL

Dear Mr. Tyagi,

Securities and Exchange Board of India KYC Circular, 10/04/2018

We refer to the captioned circular which stipulates that currently registered Foreign Portfolio Investors (FPIs) are required to provide certain additional details with respect to beneficial ownership (BO) and additional KYC documentation by FPIs from high risk jurisdictions, by 9 October 2018, as required in SEBI circular, "Know Your Client Requirements for Foreign Portfolio Investors" (FPIs), dated 10 Apr 2018¹ .

Member banks of the Association of Global Custodians (AGC)² are actively engaged and working with their FPI clients and custodians in India, to comply with the new requirements. However, as the new requirements require considerable documentary requests from existing clients for remediation and for the difficulties/clarification areas mentioned below, the AGC would like to request for a deadline extension to 9 April 2019.

¹ Source: <https://www.sebi.gov.in/legal/circulars/apr-2018/know-your-client-requirements-for-foreign-portfolio-investors-fpis-38618.html>

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*

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1. Additional KYC information by FPIs from "High Risk Jurisdictions"

FPIs currently registered as Category "I" and Category "II" from "high risk jurisdictions", will be required to provide KYC documentation as currently applicable for category "III" FPIs. In view of the considerable additional documents required, Global Custodians (GC) are facing great difficulty in explaining to and requesting from their impacted clients, the required documents to meet the 9 October 2018 deadline.

2. Identifying who controls the FPI:

Under the PMLA Rules, a BO would be a natural person or persons, who, whether acting alone or acting together, have a controlling ownership interest in the FPI or control over the FPI. If a BO cannot be identified in this manner, the senior managing official of the FPI would be construed to be its BO.

Control is defined very broadly in PMLA rules to include the right to appoint a majority of the directors, or to control the management or policy decisions. This can be determined by shareholding or management rights, shareholder agreements, or voting agreements. Considering the broad definition the question is, would persons who have majority ownership or control over the sponsor or investment manager which controls the FPI (through management shares or otherwise), be considered to be the BO of the FPI?

Furthermore, the term "senior managing official" (SMO) is neither defined in the PMLA rules nor in any SEBI circular. The SMO of an investment manager will be considered to be the BO in cases where the ultimate natural owner is not identifiable. The SMO could be managing several funds and all of them would then have to be "clubbed" and their investments would be collectively restricted to 9.99% in each Indian investee company's equity, across all the funds in the group. This could prove very disruptive.

For BO identification based on a SMO, we recommend that they should be excluded from the clubbing requirements when determining investment limits, as the same SMO can be serving multiple investor groups and have accounts with multiple sub-custodians.

3. FPI's not compliant with new BO restrictions:

If by 10 October 2018 a FPI has not complied with the new restrictions, the SEBI circular, from our member banks' collective read, indicates that they cannot legally trade thereafter until they are compliant. However, this determination of non-compliance, as matters currently stand, would need to be made by the India sub-custodian upon receiving settlement instructions for a trade executed on 10 October or thereafter. The broker will not be aware if a FPI is not in compliance with the new BO restrictions when taking an order for settlement on 10 October. This can cause potential market

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disruptions. In addition it also puts sub-custodians in India in a precarious position regarding financial and legal risks, in failing to follow or following authenticated settlement instructions sent in accordance with client agreements with their GCs and in agreements between the GCs and their sub-custodians.

In view of the above, FPI's and their custodian banks envisage the deadline date of 9 October 2018 for completion of the revised KYC and AML procedures as being extremely challenging. The AGC would, therefore, be grateful for SEBI's consideration to extend the compliance date to 9 April 2019. This will avoid, as-far-as-possible, investment disruption and related issues for FPIs in the market.

We look forward to your response to this letter. Additionally if SEBI would find it helpful to discuss any of the above comments, the AGC would be more than happy to host a telephone call.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Robert Edwards', written over a horizontal line.

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

CC: Mr Achal Singh, DGM, Division of Foreign Portfolio Investors and
Custodians (FPI & C);

Mr. Anand Baiwar, Executive Director

Mr G. Mahalingam, Whole Time Member

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