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August 1, 2018

Submitted electronically

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Securities and Exchange Board of India
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Re: SEBI Circular on Know Your Client Requirements for Foreign Portfolio Investors (FPIs)

Dear Mr. Tyagi and Mr. Singh,

ICI Global¹ is writing to express our significant concerns with certain of the know your client (KYC) requirements included in Securities and Exchange Board of India (SEBI) Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 (Circular), as they apply to FPIs that are regulated funds.² Our member firms, regulated funds publicly offered to investors in jurisdictions worldwide, invest in markets throughout the world, including India, and have significant experience

¹ ICI Global carries out the international work of the Investment Company Institute, the leading association representing regulated funds globally. ICI's membership includes regulated funds publicly offered to investors in jurisdictions worldwide, with total assets of US\$29.6 trillion. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of regulated investment funds, their managers, and investors. ICI Global has offices in London, Hong Kong, and Washington, DC.

² The term "regulated funds" includes "regulated US funds" (or "US mutual funds" where appropriate), which are comprehensively regulated under the Investment Company Act of 1940 (Investment Company Act), and "regulated non-US funds," which are organized or formed outside the US and substantively regulated to make them eligible for sale to retail investors (e.g., funds domiciled in the European Union and qualified under the UCITS Directive (UCITS)).

complying with SEBI's KYC requirements for FPIs, as well as with similar requirements in various jurisdictions around the world.

We respect and appreciate SEBI's efforts to develop an even more robust KYC framework in India. However, the requirements to (1) provide personal information about a senior managing official (SMO) that has been designated as the beneficial owner (when one has not otherwise been identified), and (2) club (aggregate) the investments of FPIs based on a common SMO as a beneficial owner raise serious concerns for regulated funds depending on their structure and are, in our view, neither necessary nor further the goal of SEBI to develop a rigorous KYC program.

Regulated funds see great potential in the Indian capital market and are eager to participate in the Indian securities markets. However, we have heard from many members that, absent a favorable resolution of the issues that we have identified in this letter at a minimum, meeting the revised KYC requirements could be extremely challenging either now or in the future as regulated funds continue to grow, and may detract from the desirability of investing in Indian securities.

We respectfully request SEBI to consider the concerns that we raise below and to act urgently, as the deadline for providing the list of beneficial owners and remediation if an FPI is not in compliance is October 9, 2018, and custodians/designated depository participants (DDPs) are already asking FPIs to provide evidence of compliance.

A. SEBI Should Not Require Disclosure of Personal Information of Senior Managing Officials

Under the Circular, if an FPI is unable to identify a beneficial owner based on controlling ownership (economic) interest or on a control basis, the FPI must designate an SMO of the FPI as the beneficial owner.³ For all identified beneficial owners, including those that are deemed a beneficial owner by virtue of being the SMO of an FPI, SEBI requires the disclosure of personal information in a defined format. The information required includes the beneficial owner's name, address, date of birth, nationality, and either tax residency number, social security number or passport number.

We understand that, with respect to each FPI, SEBI desires to have certain information about the designated beneficial owner, enabling SEBI to confirm such individual's identity. However, in the case of an SMO that is designated as a beneficial owner solely by virtue of his or her position within an FPI, requiring such individual to disclose sensitive, personal information to the custodian/DDP presents serious privacy concerns and is not necessary. In particular, an SMO should not be required to disclose (1) his/her date of birth (SEBI could alternatively require the SMO's age on that date) and (2) either his/her tax residency number, social security number or passport number. The designation of an SMO as a beneficial owner is due solely to his/her position within an entity that is an FPI and not in any personal

³ We understand that the intent of identifying beneficial owners of FPIs is to control round tripping of funds by nonresident Indians and to prevent undisclosed indirect acquisition of substantial share capital of Indian companies. Requiring regulated funds to designate an SMO as beneficial owner does not appear to advance SEBI's goals in this regard. Because we have been informed that SEBI is unlikely to consider removing this provision and given the impending compliance deadline, we are requesting more limited relief at this time to mitigate the impact of this requirement. However, we strongly urge SEBI to reconsider this requirement altogether.

capacity. Therefore, it is not necessary or appropriate to require an SMO to disclose personal information when the individual is being identified in his business capacity with an FPI.

With high incidents of identity theft that could pose financial as well as physical safety concerns,⁴ employees and senior company officials in the United States and elsewhere are very wary about sharing personal information, such as their date of birth and social security number/passport number for a number of reasons. Identity theft (when someone pretends to be someone else by assuming that person's identity, typically to access resources or obtain credit and other benefits in that person's name) is a significant threat around the globe, and perpetrators of identity theft use information such as that requested in the Annexure to commit their crime.⁵ Personal information, therefore, should be carefully guarded and provided only in limited circumstances.

Recognition of the sensitivity of personal information has grown in recent years with many new laws being enacted to establish specific responsibilities and liabilities when handling personal data.⁶ There has been a clear acknowledgement that the need to collect or hold this data must be carefully weighed against alternatives and, if collected, an entity must ensure it is protected and remains confidential.

Under these circumstances, we respectfully request that SEBI limit the personal information that is required to be provided for Category I and II entities by an SMO that is identified as the beneficial owner of the regulated fund to such individual's name, address, age and nationality. We believe that this information should suffice for the purposes of the revised KYC requirements, particularly because the SMO is acting in his/her official capacity. SEBI could additionally require a notarized declaration from the FPI verifying the SMO's identity and position with the organization.⁷ Alternatively, SEBI could require an FPI to make a declaration that it agrees to provide the personal information of an SMO without delay, as and when requested by SEBI.⁸

⁴ A report prepared by the United States Department of Justice estimates that in 2014, 17.6 million persons (or 7% of all US residents age 16 or older) were victims of one or more incidents of identity theft in 2014. See, *Victims of Identity Theft, 2014*, U.S. Department of Justice, Bureau of Justice Statistics, revised November 13, 2017, available at <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=5408>.

⁵ The website of the United States Department of Justice, for example, includes a section on identity theft, available at <https://www.justice.gov/criminal-fraud/identity-theft/identity-theft-and-identity-fraud> and USA.gov, an official website of the United States government, includes a section advising persons how to prevent identity theft (including providing an SSN only when absolutely necessary), available at <https://www.usa.gov/identity-theft#item-206114>. See also *The Top 16 Pieces of Your Information Identity Thieves Crave*, <http://manvsdebt.com/top-16-pieces-of-your-information-identity-thieves-crave/> (the list includes full name, date of birth, social security number, passport number, driver's license number, and residential address).

⁶ See, for example, the European Union's recently adopted General Data Protection Regulation, available at <https://eur-lex.europa.eu/legal-content/EN/AUTO/?uri=CELEX:02016R0679-20160504&qid=1532348683434>.

⁷ A notary would serve to confirm the identity of the SMO by verifying the SMO's personal information.

⁸ Such a change would align with the Declaration section of Annexure K of the KYC Application Form (for Non-Individuals) part II, page 5, which states, "We confirm that in the event of any requirement/enquiry from law enforcement agencies, exchanges or regulators, copies of the relevant customer documents and KYC details as prescribed/requested by the applicable Indian regulators shall be provided without delay."

B. SEBI Should Not Club Investments Based on Senior Managing Official Beneficial Owner for Purposes of the Investment Limits

The Circular states that clubbing (aggregating) of investments by FPIs will be on the same basis as the manner of identifying beneficial owners, meaning that the investments of FPIs that have the same beneficial owner – including when an FPI designates an SMO as the beneficial owner – will be clubbed for the purpose of monitoring investment limits. Aggregating the holdings of regulated funds based on a common SMO, however, makes no sense because it has no relation to economic interest in or control of the FPI.

Many global fund managers operate multiple regulated funds (domiciled in one or more jurisdictions) that invest varying amounts of their assets in India. In many cases, these managers establish the regulated funds under an umbrella structure, with each sub-fund registered as a separate FPI. Each sub-fund has different investors, and the assets and liabilities of each sub-fund are ring-fenced from the other sub-funds. Depending on the operational structure of the fund manager and the funds within the same fund complex, the same individual may be designated as the SMO of multiple FPIs. This individual – who may, for example, be an officer or director/trustee of the regulated fund – is identified as a beneficial owner solely due to his/her function with respect to an FPI when no beneficial owner has been otherwise identified based on economic interest or control. Clubbing investments solely because of a common designated individual where no other beneficial owner can be found and applying the restrictions on holdings of Indian securities in this situation do not achieve the purpose or goal of the investment limit provisions.

We therefore respectfully request SEBI to specify, through revision of the Circular or otherwise, that investments of regulated funds with a common SMO are not required to be clubbed.

C. SEBI Should Extend the Compliance Deadline

All FPIs in both low and high risk jurisdictions are currently required to provide the list of beneficial owners (in the specified format) by October 9, 2018, and FPIs that are not otherwise in compliance with the requirements specified in the Circular must take corrective action by October 9, 2018 (*i.e.*, beneficial owner that is a Non Resident Indian (NRI) or Overseas Citizen of India (OCI) or holdings in excess of the investment limits). Given that SEBI has only provided six months to come into compliance with these requirements and the significance of these changes, we respectfully request that SEBI extend the compliance deadline to be the later of (1) April 10, 2019 (one year after adoption of the Circular), or (2) the date of the FPI's next registration renewal. To the extent that SEBI does not grant relief with respect to the two issues raised above, this request is even more pressing.

The changes adopted by SEBI in the Circular are significant and, as described above, may pose serious challenges and concerns for regulated fund FPIs. These changes were adopted without advance warning or consultation and effectively have provided existing FPIs with only a few months to comply, as custodians/DDPs have already begun requesting beneficial owner documentation from existing FPIs. Additionally, although the Circular allows for the possibility of an FPI's shareholdings in excess of investment limits being treated as Foreign Direct Investment from the date of breach, further operational guidance or clarification is needed to address market uncertainty regarding this situation. Depending on

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the particular circumstances and structure of an FPI and its affiliates, significant consideration may need to be given, and action taken, to comply with the requirements, and the time provided is not adequate.

We urge SEBI to, at a minimum, immediately rescind the October 9 deadline to allow sufficient time for consideration of the issues that we and other industry stakeholders have raised regarding the Circular, and to subsequently impose a deadline that provides FPIs sufficient time to comply.

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We greatly appreciate your consideration of these issues. If you have any questions, please contact the undersigned at +44-207-961-0831 or dan.waters@iciglobal.org; Jennifer Choi, Chief Counsel, ICI Global, at +1 (202) 326-5876 or jennifer.choi@iciglobal.org; or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or eva.mykolenko@iciglobal.org.

Sincerely,

/s/ Dan Waters

Dan Waters
Managing Director
ICI Global