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September 14, 2018

*Submitted electronically to kycforfpi@sebi.gov.in*

Achal Singh  
Deputy General Manager  
Division of Foreign Portfolio Investors and Custodians  
Securities and Exchange Board of India

Dear Mr. Singh,

ICI Global<sup>1</sup> has a keen interest in the Securities and Exchange Board of India (SEBI) regulations that are applicable to foreign portfolio investors (FPIs). On August 1, 2018, we submitted a letter to SEBI<sup>2</sup> expressing our significant concerns with certain of the know your client (KYC) requirements included in SEBI Circular No. CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 (Circular), as they apply to FPIs that are regulated funds.<sup>3</sup> Our member firms, regulated funds publicly offered to investors in jurisdictions worldwide, invest in markets throughout the world, including India, and have significant experience complying with SEBI's KYC requirements for FPIs, as well as with similar requirements in various jurisdictions around the world.

We are very pleased that SEBI has requested the working group it constituted in March to review FPI regulations, led by Chairman Shri Harun R. Khan (Retd. Deputy Governor of Reserve Bank of India), to prepare an interim report containing recommendations on the issues arising out of the Circular, and that SEBI has requested industry feedback on the recommendations provided in the interim report.

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<sup>1</sup>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\$29.7 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.

<sup>2</sup> Letter from Dan Waters, ICI Global Managing Director, to Ajay Tyagi, SEBI Chairman, and Achal Singh, SEBI Deputy General Manager, dated August 1, 2018, available at <https://www.iciglobal.org/pdf/31311a.pdf>.

<sup>3</sup> 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)).

Due to the nature of SEBI's request and the one-week consultation period, we have limited our responses to the issues raised in the interim report.

To avoid industry confusion or uncertainty, if SEBI determines to revise the FPI KYC requirements, we request that SEBI clearly specify the exact date of the implementation deadline for the requirements.

We look forward to continuing to engage with SEBI as it considers further revisions to the FPI regulations.

**Name: ICI Global**

<b>Sr. No.</b>	<b>Relevant Section and Sub-heading</b>	<b>Comments and Suggested Changes</b>	<b>Rationale</b>
A.1	Recommendations relating to NRIs/OCIs/RIs  Eligibility conditions where NRIs/OCIs/RIs are constituents of FPIs	We support the recommendations in the interim report.	We support the recommendations in the interim report for the reasons articulated in the report.
A.2	Recommendations relating to NRIs/OCIs/RIs  PIOs not to be subject to restrictions imposed by the April 10 Circular	We support the recommendations in the interim report.	We support the recommendations in the interim report for the reasons articulated in the report.
B.3	Recommendations relating to clubbing of investment limit of FPIs having common ownership or control	We support the recommendations in the interim report.	We support the recommendations in the interim report for the reasons articulated in the report.  For additional support for this position, please see ICI Global's August 1 comment letter at page 4. The August 1 letter is enclosed following this letter.
C.5	Recommendations on identification and	We support the recommendations in the interim report.	We support the recommendations in the interim

	<p>verification of Beneficial Owners</p> <p>Definition of Senior Managing Official</p>		<p>report for the reasons articulated in the report.</p>
C.6	<p>Recommendations on identification and verification of Beneficial Owners</p> <p>Identification of BO of listed entities</p>	<p>We support the intent of the recommendations in this section; however, we request that references to “listed company” instead be changed to “listed entity.”</p>	<p>We support the recommendations in the interim report for the reasons articulated in the report.</p> <p>Certain entities that otherwise meet the specified requirements are established as trusts or other types of entities – and not as companies – because of local requirements or practices in that entity’s jurisdiction (<i>e.g.</i>, trusts in the United States, France and the United Kingdom). The term “listed entity” would include such entities.</p>
D.8	<p>Other Aspects</p> <p>Time for compliance</p>	<p>We request that the compliance date for existing FPIs be the later of (1) six months from the time the revised circular is published (as recommended in the interim report) or (2) the date of the FPI’s next registration renewal.</p>	<p>As noted in the interim report, remediation based on the KYC circular will be a significant undertaking for approximately 10,000 FPIs globally, along with their global custodians and the associated designated depository participants (DDPs) or local custodian banks. A remediation period spread out over time would facilitate a smoother transition and appropriate compliance. We therefore recommend that the compliance date for existing FPIs be the later of date of their registration renewal or six months from the time the revised circular is published. This change would afford FPIs and DDPs adequate time and provide a manageable</p>

			<p>volume of work to address properly compliance on a more orderly, rolling basis, and avoid overburdening the industry through the imposition of a single compliance date.</p>
D.10	<p>Impact of not meeting the stipulations of KYC circular</p>	<p>We support the recommendations in the interim report.</p>	<p>We support the recommendations in the interim report for the reasons articulated in the report.</p>
D.11	<p>Disclosure of personal information</p>	<p>The interim report recommends that the last column in the beneficial owner (BO) table may also mean equivalent national ID number and SEBI may formulate a suitable policy for sharing of personal information of the BOs. The recommendation regarding a suitable policy for sharing information does not, in our view, sufficiently address the serious security concerns raised by the requirement for a senior managing official (SMO) to provide personal information.</p> <p>As we expressed in our August 1 letter, in the case of an SMO that is designated as a beneficial owner of a regulated fund 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. We request</p>	<p>The designation of an SMO as a beneficial owner is due solely to his/her position with an entity that is an FPI and not in any personal 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. We request that SEBI reconsider the purpose of requiring this information from an SMO of an institution such as a regulated fund. We believe that, when the applicant is an institution such as a regulated mutual fund, the goal should be to prove the legal existence of the fund and not to prove the existence of an SMO with a business relationship with a regulated fund.</p> <p>A concern exists for many FPIs because the SMO's confidential information will be posted to the India KYC Registration Agency (KRA) database, which currently allows for any SEBI registered intermediary, such as a broker, to obtain the FPI's KYC</p>

		<p>that SEBI either (1) limit the personal information that is required to be provided by an SMO or (2) adopt an alternative means for verifying an SMO's identity or having access to this information as described below.</p> <p>If SEBI retains the requirement for an SMO to provide personal information in the Annexure, we recommend that SEBI limit the personal information that is required to be provided to such individual's name, address, age, year of birth, 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 business capacity.</p> <p>Alternatively, we recommend that SEBI either (1) allow this information to be held solely at the local custodian<sup>4</sup> (where SEBI would have access to it if needed) or (2) permit the use of a notary that would review the personal and confidential documents of the SMO to confirm the SMO's identity,</p>	<p>information without any advance warning, consent, or prior agreement from the FPI. The current KRA process is for notification to be provided to the FPI about information obtained from the KRA <u>after</u> the information has been released to the requestor. We strongly believe that this process is not an effective control to safeguard personal and confidential SMO information.</p> <p>Most personal business transactions within India, such as obtaining a loan, typically occur face-to-face and in a manual manner, which effectively limits the problem of personal identity theft. However in many other locations outside of India, and in the jurisdictions of the FPIs, there are high incidents of on-line identity theft that could pose financial as well as physical safety concerns.<sup>5</sup> 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 or passport number because they want to prevent their own identity theft.</p>
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<sup>4</sup> The local custodian typically maintains a data privacy/security agreement with the global custodian.

<sup>5</sup> 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>.

		which would avoid releasing this information into the market.	<p>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 to commit their crime.<sup>6</sup> Personal information, therefore, should be carefully guarded and provided only in very limited circumstances.</p> <p>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.<sup>7</sup> 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.</p>
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<sup>6</sup> 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 Identify 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).

<sup>7</sup> 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>.

Letter to Mr. Achal Singh, Deputy General Manager  
Securities and Exchange Board of India  
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September 14, 2018

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We believe that these suggested changes will encourage additional foreign investment in India. 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](mailto:dan.waters@iciglobal.org); Jennifer Choi, Chief Counsel, ICI Global, at +1 (202) 326-5876 or [jennifer.choi@iciglobal.org](mailto:jennifer.choi@iciglobal.org); or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or [eva.mykolenko@iciglobal.org](mailto:eva.mykolenko@iciglobal.org).

Sincerely,

/s/ Dan Waters

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Managing Director  
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August 1, 2018

*Submitted electronically*

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Shri Achal Singh  
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Re: SEBI Circular on Know Your Client Requirements for Foreign Portfolio Investors (FPIs)

Dear Mr. Tyagi and Mr. Singh,

ICI Global<sup>1</sup> 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.<sup>2</sup> Our member firms, regulated funds publicly offered to investors in jurisdictions worldwide, invest in markets throughout the world, including India, and have significant experience

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<sup>1</sup> 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.

<sup>2</sup> 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.<sup>3</sup> 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

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<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>4</sup> 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>.

<sup>5</sup> 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 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).

<sup>6</sup> 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>.

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

<sup>8</sup> 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

Shri Ajay Tyagi, Chairman, SEBI  
Shri Achal Singh, Deputy General Manager, SEBI  
August 1, 2018  
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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](mailto:dan.waters@iciglobal.org); Jennifer Choi, Chief Counsel, ICI Global, at +1 (202) 326-5876 or [jennifer.choi@iciglobal.org](mailto:jennifer.choi@iciglobal.org); or Eva Mykolenko, Associate Chief Counsel, ICI Global, at +1 (202) 326-5837 or [eva.mykolenko@iciglobal.org](mailto:eva.mykolenko@iciglobal.org).

Sincerely,

/s/ Dan Waters

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ICI Global