

Date: 14th December, 2018

To,
Chief General Manager
Market Intermediaries Regulation and Supervision Department
Securities and Exchange Board of India
Plot No. C4 A, 'G' Block,
Bandra Kurla Complex,
Bandra (East)
Mumbai 400 051

Dear Sir,

Sub: Request for an interpretive letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 in relation to certain provisions of Securities and Exchange Board of India (KYC (Know Your Client) Registration Agency) Regulations, 2011 and SEBI's Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 4, 2018.

We submit this application for seeking informal guidance from the Securities and Exchange Board of India ("SEBI") in the form of an interpretative letter under the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003 ("Scheme"), with respect to the provisions of Securities and Exchange Board of India (KYC (Know Your Client) Registration Agency) Regulations, 2011 ("KRA Regulations"), Frequently Asked Questions dated May 23, 2014 published on the SEBI website to guide market participants on KYC Requirements for Eligible Foreign Investors ("EFIs") / Foreign Portfolio Investors ("FPIs") and SEBI's Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 4, 2018.

1. Background of the applicant

- 1.1 DSP Merrill Lynch Limited ("DSPML") is a public company incorporated under the Companies Act 1956 and is a SEBI registered intermediary engaged in Stock Broking, Merchant Banking, Underwriting and Research Analyst activities having its registered office at One BKC, A Wing, Ground Floor, G Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051 India.
- 1.2 DSPML is a subsidiary of GHS Singapore Holdings Pte Limited and the ultimate holding company of DSPML is Bank of America Corporation.

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2. Applicable Regulations and Procedures

- 2.1 SEBI vide KRA Regulations introduced the KYC Registration Agency ("KRA") platform for centralization of the KYC records.
- 2.2 Clause 2 of the SEBI Circular MIRSD/Cir-23/2011 dated December 2, 2011 mentions that the mechanism for centralization of the KYC records in the securities market has been developed to avoid duplication of KYC process by the client with every intermediary.
- 2.3 Clause 3 of the aforesaid circular states that once the client has done KYC with a SEBI registered intermediary, he need not undergo the same process again with another intermediary.
- 2.4 In accordance with the KRA Regulations, an intermediary performs the initial KYC of its clients and uploads the details on the KRA system, thereby enabling the subsequent intermediary to verify and download the client's details from the system of the KRA.
- 2.5 SEBI has published a Frequently Asked Questions (FAQ) dated May 23, 2014 on KYC requirements for Eligible Foreign Investors (EFIs) / Foreign Portfolio Investors (FPIs) on its website. Clause 2 of the aforesaid FAQ requires the Intermediary which on-boards new EFI / FPI, to comply with the KYC requirements as prescribed by SEBI and upload the same on the KRA system.
- 2.6 In accordance with clause 2 of the aforesaid FAQ, SEBI registered Designated Depository Participant ("DDP") / Custodian of the FPI client conducts the KYC due diligence at the time of their onboarding and uploads the KYC documents on the KRA system.
- 2.7 Subsequently, in line with Regulation 14 of the KRA Regulations, the KRA would check the documents uploaded on their system to ensure that the KYC documents are obtained as prescribed by SEBI or other authorities and mark the KYC status for newly on-boarded FPI client as "Verified/Registered".
- 2.8 Clause 2.2.6 of SEBI's Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 4, 2018 allows registered intermediaries to rely on third parties for carrying out Client Due Diligence, provided such third parties are regulated, supervised or monitored.

3. Background of the query

- 3.1 DSPML, in its capacity as a SEBI registered broker, when approached by FPI client for opening an account, downloads the KYC data from the KRA system.
- 3.2 DSPML performs the due diligence on KYC data downloaded from KRA system in accordance with SEBI's circular dated April 13, 2012. However in few instances, we have observed that, although the KYC status of the FPI client is marked as "Verified / Registered" on the KRA system, client's KYC documents may have certain discrepancies. We have provided few illustrations below for your reference –
- a) Non-availability of address proofs where the client has mentioned different registered address and correspondence address in the KYC form.

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- b) Identification document of client's officials (where applicable), are expired. For example, passport copy bearing a date may have expired at the time of downloading the document.
- c) Document like annual report or constituent documents may not have all the pages on the KRA system
- d) Mismatch between the date of incorporation as mentioned on the PAN card and KYC form of the FPI entity.

As an example, the client may have registered as a category III FPI in the year 2016 and provided complete and valid KYC documents to the DDP / Custodian at the time of registration. Accordingly, DDP/Custodian would have uploaded these documents on the KRA system and the client status would have been marked as "Verified / Registered" on the KRA system. However, when the same FPI client approaches DSPML for opening a stock broking account in the year 2018, some of the KYC documents downloaded from the KYC system (as illustrated in para 3.2 above), may have expired or not be available or would have become obsolete in 2018. In this example, assuming the FPI renewal cycle for a client is 3 years, the client may submit that they will provide updated/missing documents only to their DDP/Custodian during their renewal cycle in the year 2019.

4. Request for guidance

In terms of clause 5(ii) of the SEBI Scheme, we hereby request you to kindly issue an interpretive letter with your guidance on the below –

4.1 DSPML's obligations and responsibilities as a Stock Broker who is performing client due diligence by relying on KYC documentation available on KRA system in view of the below circulars –

- (a) Regulation 14 of the Securities and Exchange Board of India {KYC (Know Your Client) Registration Agency} Regulations, 2011 which requires the KRA to check the documents uploaded on their system, to ensure that the KYC documents are obtained as prescribed by SEBI or other authorities and mark the KYC status for FPI client as "Verified/Registered".
- (b) Clause 2 of the SEBI FAQ dated May 23, 2014 on KYC requirements for Eligible Foreign Investors (EFIs) / Foreign Portfolio Investors (FPIs), pursuant to which SEBI registered Designated Depository Participant ("DDP") / Custodian of the FPI client conducts the KYC due diligence at the time of their onboarding and uploads the KYC documents on the KRA system.
- (c) SEBI Circular MIRSD/ Cir-5 /2012 dated April 13, 2012 and SEBI Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 4, 2018 which inter alia state that, registered intermediaries can rely on third parties for carrying out client due diligence provided, such third parties are regulated, supervised or monitored and the intermediary is ultimately responsible for client due diligence.

4.2 In case the FPI client's status on the KRA system is shown as "Verified / Registered" and if some of the KYC documents are deficient or obsolete or missing, whether DSPML can continue to rely on the KRA status without separately seeking the deficient/obsolete documents from the client and subsequently, download the updated documents as and when they are made available on the KRA system (e.g. at time of renewal of FPI license), for the purpose of ensuring compliance with above mentioned SEBI circulars.

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Compliance officer – Jinendra Shah, Email: Jinendra.shah@baml.com, Tel no.: +91 22 6632 8000



5. Compliance with SEBI Scheme

5.1 We have enclosed along with the application, a cheque bearing reference no. 518802 dated 14/12/2018 drawn on Bank of America of INR 25000/- (Rupees Twenty Five Thousand), in favor of Securities and Exchange Board of India, towards the fee specified under the Scheme.

5.2 All material facts and legal provisions which, in our opinion, are relevant for the purposes of determination of this request are stated herein.

We would be pleased to furnish any additional information as may be required in support of this application for informal guidance in form of an interpretative letter.

Requests for clarification, if any, may be addressed to –

Name – Arbind Maheswari

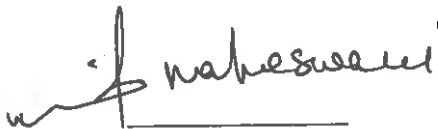
Designation – Managing Director

Phone – +91 22 66328710

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Thanking you,

For and on behalf of DSP Merrill Lynch Limited





Arbind Maheswari

Managing Director