



भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

General Manager
Market Intermediaries Regulation and
Supervision Department

SEBI/HO/MIRSD/DOP/OW/P/3665/2019
February 08, 2019

Shri Arbind Maheswari
Managing Director,
DSP Merrill Lynch Limited,
One BKC, A-Wing, Ground Floor,
"G" Block, Bandra Kurla Complex,
Bandra (East)
Mumbai – 400 051

Dear Sir,

Sub.: Request for an interpretive letter under the SEBI (Informal Guidance) Scheme, 2003 in relation to certain provisions of SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 and SEBI's Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018

1. This has reference to your letter dated December 14, 2018 seeking guidance by way of interpretive letter under the SEBI (Informal Guidance) Scheme, 2003.
2. In your letter under reference you have *inter alia* represented as follows:
 - (a) DSP Merrill Lynch Limited (**DSPML**) has been relying on KYC documents available on KRA system while performing client due diligence (**CDD**) in view of the Regulations/ Circulars mentioned below:
 - (i) SEBI vide SEBI {KYC (Know Your Client) Registration Agency} Regulations, 2011 (**KRA Regulations**) introduced the KYC Registration Agency (KRA) platform for centralization of the KYC records.
 - (ii) Regulation 14 of SEBI KRA Regulations, 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".
 - (iii) As per clause 2 of FAQ on KYC requirements for EFIs/FPIs dated May 23, 2014, DDP/ Custodian of the FPI client to conducts the KYC due diligence at the time of their onboarding and uploads the KYC documents on the KRA system.
 - (iv) SEBI Circular dated April 13, 2012 and SEBI Master Circular dated July 04, 2018 which *inter alia* state that, registered intermediaries can rely on third parties for carrying out CDD provided such third parties are regulated, supervised or monitored and the intermediaries is ultimately responsible for CDD.
 - (b) However, while performing due diligence obligation on KYC, you have observed certain discrepancies in the KYC documents of FPI client although the KYC status of such client is marked "verified/ registered" on the KRA system as under:

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दूरभाष : 2644 9950 / 4045 9950 (आई.वी.आर. एस.), 2644 9000 / 4045 9000 फैक्स : 2644 9019 से 2644 9022 वेब : www.sebi.gov.in



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- (i) Non-availability of address proof where the client has mentioned different registered address and correspondence address in the KYC form.
- (ii) Identification document of client's officials (where applicable) have expired viz. Passport copy bearing a date may has expired at the time of downloading the document.
- (iii) Documents like Annual Report or constituent documents may not have all the pages on the KRA system.
- (iv) Mismatch between the date of incorporation as mentioned on the PAN card and KYC form of the FPI entity.

3. In view of the above, you have sought informal guidance from SEBI on the following issues:

"In case the FPI client's status in 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 SEBI circulars".

4. We have considered the submissions made by you in your letter under reference and without necessarily agreeing with your analysis, our view on the issues raised in your letter are as under:

4.1. You have stated in your letter that the Regulation 14 of the KRA Regulations requires the KRA to check the documents uploaded on the system. It is however noted that Regulation 14 of the KRA Regulations states:

"14. The KRA shall obtain the KYC documents of the client from the intermediary; as prescribed by the Board and in terms of the rules, regulations, guidelines and circulars issued by the Board or any other authority for Prevention of Money Laundering, from time to time."

4.2. The responsibilities of intermediary for KYC requirements and CDD as stipulated under PML Rules and SEBI Regulations/circulars are as under:

- (a) In terms of Rule 9 (1) (a) of Prevention of Money Laundering (Maintenance of Records) Rules, 2005 (**PMLA Rules**), every reporting entity (including the intermediaries) shall at the time of commencement of an account-based relationship identify its clients, verify their identity, obtain information on the purpose and intended nature of the business relationship; and determine whether a client is acting on behalf of a beneficial owner, and identify the beneficial owner and take all steps to verify the identity of the beneficial owner.

In terms of Rule 9 (1C) of PML Rules, where a client submits a KYC identifier to a reporting entity, then such reporting entity shall retrieve the KYC records online from the Central KYC Records Registry by using the KYC identifier and shall not require



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a client to submit the same KYC records or information or any other additional identification documents or details, unless:

- (i) there is a change in the information of the client as existing in the records of Central KYC Records Registry;
 - (ii) the current address of the client is required to be verified;
 - (iii) the reporting entity considers it necessary in order to verify the identity or address of the client, or to perform enhanced due diligence or to build an appropriate risk profile of the client.
- (b) Regulation 16 (b) of KRA Regulations states that when the client approaches another intermediary subsequently, the intermediary shall verify and download the client's details from the system of KRA; provided that upon receipt of information on change in KYC details and status of the clients by the intermediary or when it comes to the knowledge of the intermediary, at any stage, the intermediary shall be responsible for uploading the updated information on the system of KRA and retaining the physical documents.
- (c) Similarly, Para 3 (d) of SEBI circular "*Uploading of the existing clients' KYC details in the KRA system by the intermediaries*" dated April 13, 2012 states that when the existing client approaches another intermediary, it shall be the responsibility of that intermediary which downloads the data of that client from the KRA system, to update the missing information, do IPV as per requirements (if not done already) and send the relevant supporting documents, if any, to the KRA.
- (d) SEBI circular '*Simplification and Rationalization of Trading Account Opening Process*' dated August 22, 2011 provides for a consolidated documentary requirements in respect of account opening process. As per the "Instructions/ Check list for filling KYC Form" given at "Annexure 2" of the said circular, copies of all the documents submitted by the applicant should be self-attested and accompanied by originals for verification. In case the original of any document is not produced for verification, then the copies should be properly attested by authorized entities.
- (e) Para 2.2 of SEBI circular "*KYC norms for ODI subscribers, transferability of ODIs, reporting of suspicious transactions, periodic review of systems and modified ODI reporting format*" dated June 10, 2016 states that the KYC review shall be done on the basis of the risk criteria as determined by the ODI issuers as follows:
- i. At the time of on-boarding and once every three years for low risk clients.
 - ii. At the time of on-boarding and every year for all other clients.
- In case of existing ODI Subscriber, the KYC review should be done within three years for low risk clients and one year for all other clients.
- (f) Clause 2.2.1 (iv) of the SEBI Master Circular dated July 04, 2018, *inter alia* states that the intermediaries dealing with foreign investors' may be guided by the clarifications issued vide SEBI circulars CIR/MIRSD/11/2012 dated September 05, 2012 and CIR/ MIRSD/ 07/ 2013 dated September 12, 2013, for the purpose of identification of beneficial ownership of the client. The said circular No. CIR/MIRSD/11/2012 dated September 05, 2012 *inter alia* mandates that the



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intermediaries shall strictly follow risk based due diligence approach for both new and existing clients and also conduct ongoing CDD based on the risk profile and financial position of the clients. It also provides for the relevant requirements on KYC Forms for foreign investors. As per the aforesaid Circular CIR/MIRSD/07/2013 dated September 12, 2013, all eligible foreign investors investing under the PIS route shall be subject to KYC review as and when there is any change in material information/disclosure.

5. In view of the aforesaid, the ultimate responsibility to verify and identify the client, as specified by SEBI KRA Regulations, SEBI Circulars and also as per the provisions of PML Rules, is cast upon the registered intermediary, at the time of commencement of an account-based relationship with the client. Therefore, intermediary shall not on-board a client without having complete KYC supporting documents. If intermediary during on-boarding the client finds the certain documents has expired or obsolete or missing, the same needs to be updated onto KRA system in accordance with the aforesaid Regulations and SEBI circulars by DSPML. In case of mismatch in the date of incorporation in PAN and KYC form as indicated by DSPML, the intermediary should immediately refer the matter for corrective action to Custodian and KRA, before such client is on-boarded.
6. In view of the responsibility cast upon intermediary to verify and identify the client as discussed above, DSPML cannot rely on KYC of client whose documents downloaded from KRA system is found to be deficient, obsolete or missing even if such client KYC status is shown as *verified/registered* in the KRA system. DSPML, as part of doing KYC is required to do due diligence by seeking the proper KYC documents, as specified by SEBI vide its various Circulars from time to time and also in accordance with the relevant provisions of PML Rules, of the client before onboarding the client.
7. This above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to different interpretation. Further this letter does not express decision of the Board on the questions referred.
8. You may note that the above views are expressed only with respect to the informal guidance sought in your letter under reference with respect to KRA Regulations, 2011, *SEBI Circular No. MIRSD/Cir-5/2012 dated April 13, 2012* and SEBI's Master Circular SEBI/HO/MIRSD/DOS3/CIR/P/2018/104 dated July 04, 2018 and do not affect the applicability of any other law and requirement of any other SEBI Regulations, guidelines and circulars administered by SEBI or the laws administered by any other authority.

Yours sincerely,


D. Rajesh Kumar