

**MEMO# 25978**

March 13, 2012

## **Letter to Indian Regulators Regarding Know Your Customer Requirements**

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 7-12 RE: LETTER TO INDIAN REGULATORS REGARDING KNOW YOUR CUSTOMER REQUIREMENTS

The Institute has submitted the attached letter to the Reserve Bank of India, the Securities and Exchange Board of India (“SEBI”), and the Ministry of Finance (the “Regulators”) regarding know your customer (“KYC”) documentation being required by Indian banks, financial institutions and intermediaries from U.S. registered investment company clients. The letter states that, while we appreciate the efforts of the Regulators to fight money laundering and terrorist financing and to bring uniformity to the varied KYC approaches historically followed in the Indian financial sector, the specific and detailed KYC information that SEBI registered intermediaries are now requiring from U.S. registered investment companies – including copies of passports and other personal information about directors of U.S. registered investment companies – is outside international norms, and presents serious compliance and privacy challenges without offering any commensurate benefit. [\[1\]](#)

The letter urges the appropriate Indian authorities to provide clarification to SEBI registered intermediaries about their KYC obligations with respect to their U.S. registered investment company clients. Specifically, the letter states that the KYC Form appears to contemplate that U.S. registered investment companies comply with the requirements for foreign institutional investors (“FIIs”), which do not include obtaining copies of passports from registered investment company directors. Moreover, even if U.S. registered investment companies are required to provide the information required for corporate entities, directors of U.S. registered investment companies serve in an oversight role such that they are neither “whole time directors” nor “directors in charge of day-to-day operations,” which must provide personal information. Accordingly, the KYC Form should not be interpreted to require U.S. registered investment companies to submit KYC information and forms for their directors.

The letter provides that, as an alternative, the Regulators could require KYC information only of individuals who are authorized signatories of U.S. registered investment companies, meaning those individuals designated by the FII investing in India. This approach would be consistent with the Indian KYC obligations of individuals associated with foreign broad-based investment funds that do not have boards of directors. The letter states that we do

not believe that there is a compelling reason to treat U.S. registered investment companies in a manner different from other broad-based investment funds, simply because U.S. registered investment companies have boards of directors with limited oversight responsibilities. Allowing a more flexible KYC approach would mean foreign broad-based funds would be treated similarly, and would ensure AML/CFT risks are effectively addressed consistent with international standards. [2]

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#### [Attachment](#)

#### **endnotes**

[1] On October 5, 2011, SEBI introduced uniform KYC standards that must be followed by all SEBI registered intermediaries effective January 1, 2012, including a “KYC Application Form for Non-Individuals” (the “KYC Form”) that must be completed by registered investment company clients of SEBI registered intermediaries. See, e.g., October 5 Circular: KYC Form for Non-Individuals (General Instructions, Section A).

[2] The new FATF Recommendations specifically contemplate the use of “simplified customer due diligence measures” in circumstances “where the risk of money laundering or terrorist financing may be lower.” See Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation: The FATF Recommendations (February 2012), available at <http://www.fatf-gafi.org/dataoecd/49/29/49684543.pdf>, at Interpretive Notes #16-17 to FATF Recommendation 10.