

MEMO# 25945

February 29, 2012

Draft Letter to Indian Regulators Regarding Know Your Customer Requirements

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TO: INTERNATIONAL COMMITTEE No. 6-12
INTERNATIONAL INVESTING SUBCOMMITTEE No. 1-12 RE: DRAFT LETTER TO INDIAN
REGULATORS REGARDING KNOW YOUR CUSTOMER REQUIREMENTS

The Institute has prepared the attached draft letter to the Reserve Bank of India, the Securities and Exchange Board of India 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. investment company clients. The draft letter states that the detailed KYC information that Indian financial institutions are now requiring from low-risk investors, such as U.S. investment companies, is outside international norms, and presents compliance and privacy challenges without offering any commensurate benefit. In the draft letter, the Institute urges the Indian authorities to allow Indian financial institutions to follow a more simplified approach for certain low risk clients, including U.S. investment companies.

Please review the draft letter and provide any comments to Susan Olson (202-326-5813; solson@ici.org) or Eva Mykolenko (202-326-3537; emykolenko@ici.org) by noon on Tuesday, March 6, 2012.

KYC Requirements and Information Requests

The Indian Prevention of Money Laundering Act 2002 (“PMLA”) imposes an obligation on Indian financial institutions to verify the identity of investors and to maintain records of transactions with investors. Since 2006, Indian financial institutions have been required to obtain the following minimum KYC information from their clients:

- (1) A power of attorney, as granted to the sub-custodian through the global custodian;

(2) A license issued by the relevant statutory bodies or jurisdiction, where applicable, or a certified copy of constitutive documents (e.g., a deed of trust or partnership agreement); and

(3) A tax identification number [\[1\]](#) in the name of the investor. [\[2\]](#)

We understand, however, that SEBI currently interprets Rule 9 of the PMLA to require foreign entities to provide additional KYC documentation to SEBI registered intermediaries.; On October 5, 2011, SEBI introduced uniform KYC standards that must be followed by all SEBI registered intermediaries. We understand that foreign entities, such as U.S. investment companies, are now required to provide new detailed KYC information to SEBI registered intermediaries, including but not limited to copies of passports and certain other personal information about each of their directors. [\[3\]](#)

While we support reasonable efforts to enforce international anti-money laundering and counter-terrorist financing standards, we believe it is unnecessary and unreasonable to request detailed and highly personal KYC information from low-risk investors such as U.S. registered investment companies. In the draft letter, the Institute urges the Indian authorities to follow a more simplified approach for low risk clients such as U.S. registered investment companies.

As noted above, please review the draft letter and if you have any questions or comments, please contact me (202-326-5813; solson@ici.org) or Eva Mykolenko (202-326-3537; emykolenko@ici.org) by noon on Tuesday, March 6, 2012.

Susan Olson
Senior Counsel - International Affairs

[Attachment](#)

endnotes

[\[1\]](#) We understand that a Permanent Account Number (“PAN”) Card issued by the Income Tax Department of India is mandatory to conduct any type of investment or financial transaction in India.

[\[2\]](#) SEBI Circular ISD/CIR/RR/AML/1/06 (Jan. 18, 2006).

[\[3\]](#) See, e.g., October 5 Circular: KYC Form for Non-Individuals (Instruction A.7).