

11 February 2021

To:

Shri Narendra Rawat
General Manager
Market Intermediaries Regulation and Supervision Department, Division of Policy
Securities and Exchange Board of India (SEBI)

Ms. Sushma Upadhyayula
Assistant Manager
Market Intermediaries Regulation and Supervision Department
Securities and Exchange Board of India (SEBI)

Dear Sir, Madam,

RE: SEBI Consultation Paper on Role of KRAs/MIs in performing KYC of the client in securities market

ASIFMA¹ and its members welcome the opportunity to comment on the SEBI Consultation Paper on “Role of KYC Registration Agencies (KRAs)/Market Infrastructure Institutions (MIs) in performing KYC (Know Your Client) of the client in securities market” (Consultation Paper) published on 13 January 2021. We understand that the goal of the proposed new framework is to standardize the KYC process. In order to make the KYC process more robust, avoid duplication, save cost to Registered Intermediaries (RIs) etc., and to ensure that the end-to-end secured KYC process including Aadhaar authentication, independent verification of Officially Valid Document (OVD)/Income Tax Permanent Account Number (PAN), document safekeeping, technological innovations, standardization, cyber security norms etc., it has been contemplated that the KYC and account opening process may be separated in the securities market.

We appreciate the opportunity to provide feedback on the proposed framework outlined in the Consultation Paper and we have outlined our comments in what follows.

Scope

We understand from Laurence Van der Loo (ASIFMA)’s email exchanges with Shri Sunil Kumar Singh (DGM, MIRSD – DoP, SEBI) on 21 and 22 January, that FPIs do not come under the scope of the consultation paper. Shri Singh also confirmed that non-individual domestic clients are in scope of the consultation paper.

¹ ASIFMA is an independent, regional trade association with over 140 member firms comprising a diverse range of leading financial institutions from both the buy and sell side, including banks, asset managers, law firms and market infrastructure service providers. Together, we harness the shared interests of the financial industry to promote the development of liquid, deep and broad capital markets in Asia. ASIFMA advocates stable, innovative, competitive and efficient Asian capital markets that are necessary to support the region’s economic growth. We drive consensus, advocate solutions and effect change around key issues through the collective strength and clarity of one industry voice. Our many initiatives include consultations with regulators and exchanges, development of uniform industry standards, advocacy for enhanced markets through policy papers, and lowering the cost of doing business in the region. Through the GFMA alliance with SIFMA in the United States and AFME in Europe, ASIFMA also provides insights on global best practices and standards to benefit the region.

We very much welcome the fact that the existing framework for FPI KYC will continue. For the sake of clarity, we suggest that SEBI clarifies the scope and the fact that FPIs, any FPI-linked accounts and all foreign non-individual clients (including FDIs, FVCI/DR and FCCB) are excluded from the scope, when drafting the final proposed framework and circular.

RBI Guidelines

The 2019 FPI Operating Guidelines are very much welcomed by foreign investors. However, the provisions have not been blessed by the Reserve Bank of India (RBI) yet and hence, FPIs are not fully benefiting from the advantages of these new Guidelines. As banks still need to comply with RBI rules for cash accounts, FPIs need to provide two sets of documents, i.e., one to the KRAs and one to the banks for their cash accounts, which increases document requirements and negatively impacts ease of doing business for FPIs. Whilst we recognise this is outside of SEBI's regulatory remit, we hope that SEBI can liaise with RBI on this, so there will be unified KYC processes, as suggested by the Khan Committee. Also, currently many foreign investors such as FPIs, FDIs, and FVCIs are requesting if they can sign documents using digital signatures rather than wet signatures. This would require blessing both from SEBI and RBI.

Scope of documents to be collected by KRAs

For non-individual clients the KYC documentary requirement is primarily governed by SEBI KYC Circular (CIR/MIRSD/16/2011) dated August 22, 2011 wherein KYC documents are required to be obtained depending on the 'Type of Entity' like corporates, trusts, HUF, etc. There is also a separate category for Banks/Institutional Investors to which simplified KYC process is applied by specifying minimal KYC documents viz., Copy of the constitution/registration or annual report/balance sheet for the last 2 financial years and authorized signatories list with specimen signatures and only these limited documents are available on the KRA portal for domestic institutional clients and brokers have to reach out to clients for obtaining the additional Corporate/Trust related documents depending on the type of the entity. In order to support ease of doing business for non-individual domestic clients and standardize the KYC requirements, we suggest only simplified KYC should be applied for domestic Institutional Investors and a consolidated checklist for other Non-Individuals should be provided by SEBI that captures all documents that are required to onboard domestic clients. This should also include all documents pertaining to individuals associated with non-individual clients (e.g., beneficial owners, senior managing officials, directors, authorized signatories). KRAs should review the documents against the checklist and implement this checklist. This is to avoid situations where KRAs would only collect part of the documents and where brokers would therefore need to separately reach out to the clients for collecting additional documents that are required by SEBI or the PMLA. The KRA assigning a unique number to the client would imply that the client is KYC compliant.

We also wanted to ask whether any quality assurance will be implemented on the KRAs? From our members' experiences, document packs on the KRAs are often not complete (e.g., pages of constitutional documents missing in KRA downloads). And in the case of Institutional Investors/Banks only limited documents mentioned in Annexure 2 of the aforementioned circular of this category are available. Further, the Annexure 3 is presently not required to be uploaded on the portal and each broker has to obtain the same separately from the client. We propose even Annexure 3 should be uploaded given that any intermediary can download the documents only post client consent, if the client has opted for it.

Client dealings by the RIs that are sourcing the KYC documents

Clause 5.2.1. Any person who approaches the RI for opening an account shall first complete its KYC with KRA, after which the account may be opened by the concerned RI.

Clause 5.2.6. In case the client approaches RI for initial KYC, after collecting the initial KYC documents of the new clients, the RI shall forthwith upload the KYC documents i.e Proof of identity (PoI), Proof of Address (PoA), PAN, KYC form and other supporting documents on the online system or App of the KRA. The RI shall allow the

operation/dealings in the investment/trading account of the client only after receipt of the confirmation from the KRA with respect to completion of KYC of such client.

Clause 5.2.10. If there is any update required in the KYC information downloaded from KRA website, the RI shall allow transactions/dealing in the account only after updating the information in the KRA system and receiving a confirmation from KRA that the KYC has been updated. While updating these client's data, the RI shall ensure that no duplicate record is created in KRA system.

- i. The RI's turnaround time for account opening/allowing client's transactions may increase as it is now proposed that KRA confirmation for KYC completion is required before clients can execute transactions in their trading account. Further, block deal transactions which are normally time sensitive might be impacted. If a particular entity is not on KRA then the turnaround by KRA completing KYC may impact the timing of such transactions.
- i. The present practice in such cases is that when all the KYC documents are provided by the client directly to the RI as per SEBI requirements, then the trading account can be opened by that RI and transactions are allowed by the RI even when the confirmation of KYC documents on KRA System/verification by KRA is pending. Presently a window of 10 working days is permitted by SEBI for uploading of KYC documents on KRA system by that RI. As per the existing KRA requirements [point 2 (vii) of SEBI circular dated 23 Dec, 2011], a client can start trading/investing/dealing with the intermediary and its group/subsidiary/holding company as soon as the initial KYC is done and other necessary information is obtained while the remaining process of KRA is in progress.
- ii. Also, during the refresh process of the respective RIs, if the RI identifies a requirement for any updated document from a client, the RI may have to halt trading for such client in the aforesaid account until the KRA has verified and confirmed the documents.
- iii. To avoid any unnecessary delays and disruptions for clients, we therefore suggest that the existing process should stay in place where RIs that source the KYC documents should still be able to start dealing with clients and these "sourcing" RIs should not have to wait for the KRA confirmation. The timelines for independent verification by KRAs should be well defined.
- iv. For existing clients for whom updated documents are required during periodic review, sufficient time should be provided and client dealings should not be halted. Alternatively, timelines for periodic reviews should be defined for KRAs based on their risk categorisation and KRAs should ensure the documents are updated on a timely manner to avoid any impact to the client's trading activities. Also, until the completion of refreshing KYC documents on the KRA portal, the RI should be able to continue dealing with the client with the existing documents available on the KRA portal.

OTP Mechanism and timeline for RI to download documents

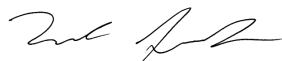
Clause 5.2.11. In case the client's KYC has already been done by the KRA, the RI before opening of the account of the client for trading/investment purposes, shall fetch the KYC documents from KRA based on the PAN/unique number (provided by KRA post completion of KYC to client) with OTP based authentication by the client and shall carry out its own due diligence to ensure that the person is same whose KYC documents have been fetched from the KRA.

- i. We note that OTP-based authentication requirement has now been extended to all clients on the KRAs, including domestic clients. Experience with the OTP mechanism for FPI clients over the last 18 months has shown that the OTP mechanism is leading to a lot of operational issues and delays. Implementing OTP-based authentication for domestic clients would delay the account opening process. We therefore suggest that it should not be mandatory for domestic clients to implement the OTP mechanism.

- ii. Clarity is required on clause 5.2.11 about the need to for RIs to fetch KYC documents from the KRA before opening a client account as clause 7.1.a) of the Discussion Paper allows for 2 days for RIs to obtain the due diligence information from a third party (KRA). Does clause 7.1.a) mean that documents can be downloaded within 2 days of opening of the account or within 2 days of execution of the transactions?

Again, we thank SEBI for the opportunity to provide feedback and we are grateful SEBI is consulting the industry on this important development. We do hope SEBI finds this feedback useful. Do not hesitate to reach out to myself or Laurence Van der Loo, at lvanderloo@asifma.org for any questions. In the meantime, we remain at your disposal if you wish to discuss any further details.

Yours sincerely,



Mark Austen
Chief Executive Officer
Asia Securities Industry & Financial markets Association