

09 March 2020

Shri Y. Garg
The Principal Commissioner, GST Policy Wing
Room No. 220A, Central Board of Indirect Taxes and Customs
Department of Revenue, North Block
New Delhi 110 001



Sub: Representation seeking exemption from E-invoicing compliances for 'stock broking services'

Dear Mr Garg,

We, Asia Securities Industry and Financial Markets Association ('ASIFMA')¹, are an independent regional trade association with over 100 members comprising a diverse range of leading financial institutions including stock brokers, banks, asset managers, and others.

We write to you on behalf of our capital markets members engaged in providing stock broking services and registered with the Securities Exchange Board of India ('SEBI'), in relation to the proposal to introduce the e-invoicing scheme under the GST regime.

OUR REPRESENTATION:

1. We understand that the Indian Government proposes to implement an e-invoicing regime with effect from 1 April 2020, making generation of Invoice Reference Number ('IRN') (through the registered Government portal) mandatory for B2B invoices raised by assessees with aggregate annual turnover of INR 100 crores mandatory. Similarly, the regime mandates generation of a Quick Response Code ('QR Code') for all B2C invoices raised by assesses with aggregate annual turnover of INR 500 crores and above.
2. Given the above, our humble representation is to seek exemption for the stock broking industry from the e-invoicing compliance due to the following:
 - (a) **Stock broking services are fully regulated by the SEBI with a zero probability of intentional misreporting of taxable transactions**
The stock brokers are a highly regulated industry – where all stock brokers are required to register with the SEBI which requires strict adherence to the code of conduct

¹ ASIFMA is an independent, regional trade association with over 120 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.

prescribed under Schedule II of the Securities and Exchange Board of India (Stock Broker and Sub Brokers) Regulations, 1992 ('SEBI Regulations')². All activities are duly undertaken and reported to the SEBI as well as the stock exchanges where the stock brokers are members and are trading. The entire eco-system of trading on the exchange through a stock broker is standardised and controlled by SEBI. Therefore, one of the key objectives of the Government viz to regulate the invoice generation such that there is no duplication of invoices, is already achieved with the strict nature of the regulatory compliances undertaken by stock brokers with the SEBI.

- (b) The issuance and reporting of contract notes are strictly regulated by the SEBI. Since contract notes are generally considered as the GST invoice, building a separate regulating mechanism for GST purposes is not required.**

Most stock brokers are considering the contract notes (issued to investors) as the GST tax invoice. The contract notes contain details of the trades as well as the stock broking commission charged by the broker (which is liable to GST). The issuance of the contract notes is a highly regulated activity both in terms of the content of the contract notes as well as the periodicity within which the same needs to be issued and reported to the regulator. Accordingly, any changes in the format or content of the contract note would require prior approval of SEBI.

- (c) Inclusion of stock broking sector under the e-invoicing regime, would lead to significant business and operational disruption**

As mentioned, the entire operations of a stock broker are regulated by the SEBI such as the entire manner in which the trades need to be undertaken, interaction/ communication with the investors (or their intermediaries such as custodians) needs to be undertaken and reported. For instance, as prescribed by SEBI³, a stock broker is required to issue the contract note within 24 hours from the time of execution of the trade. Any contravention or failure to issue contract note in the form and manner specified, shall render the stock broker liable to a penalty⁴. In the event, e-invoicing is made mandatory, meeting the above prescribed timelines of the SEBI would be extremely cumbersome for the industry given that millions of trades are executed on a daily basis and corresponding contract notes are issued on a daily basis. Insisting that an IRN / QR code be generated and printed on the contract notes prior to issuance, would expose the industry to undue risk of being penalised for any non-compliance of any of the SEBI guidelines.

Further, the contract notes issued by the stock brokers is used as a base for Mutual Funds for calculating their Net Assets Value ('NAV') on daily basis. The Mutual Funds are required to publish their NAV within the prescribed timelines on the same day. Given the stringent timelines imposed by the regulators, it becomes critical for the stock brokers to issue contract notes almost immediately after end of trading day basis if not on almost

² Regulation 7 of the SEBI Regulations

³ SEBI Circular bearing Reference No: SMD/SED/CIR/93/23321 dated 18 November 1993

⁴ 15F. If any person, who is registered as a stock broker under this Act,— (a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to for which the contract note was required to be issued by that broker [SEBI Act, 1992]

real-time basis so that mutual fund can issue their NAV within the prescribed timelines. Additional activity of generating e-invoices would put immense pressure on the systems and processes for stock brokers and could lead to significant amount of failures.

- (d) **Any risk of wrongful input tax credits being claimed on stock broking invoices is minimal**

Large base of B2C customers, such as Foreign Institutional Investors / Foreign Portfolio Investor

Stock broking services are provided to B2C customers and B2B customers. With respect to B2C customers, the question of claiming Input Tax Credit ('ITC') does not arise. Incrementally, several members are primarily rendering broking services to Foreign Institutional Investors ('FII') and Foreign Portfolio Investors ('FPIs') who are located outside India and therefore, the question of availing ITC by such FIIs/ FPIs does not arise. To further emphasise, the investments made by FIIs/ FPIs in India, the manner of holding the securities (ie through custodians) and reporting of the same is also regulated by the SEBI.

B2B customer base primarily involves regulated industries

Further, with respect to B2B customers, the same are typically institutional clients who are using the brokers' services to undertake investments in the equity/ futures & options market. These typically would include customers such as mutual funds who have no taxable GST revenues to claim ITC or companies who may not be eligible to avail of ITC of broking services used for investment activity. Additionally, B2B customers being mutual funds, banks and insurance companies are highly regulated and have strict compliance norms as prescribed by the SEBI/ Insurance Regulatory & Development Authority of India. Accordingly, we submit that any exposure of ITC being claimed wrongfully based on fake invoices/ duplicate invoice, is minimal in this industry.

We have discussed the above points in detail in the **Annexure** enclosed to this letter.

OUR PRAYER:

Stock broking services being highly regulated with minimal risk of leakage of tax or duplicity of input tax credits being availed, should be exempted from the e-invoicing regime (as per Rule 48(4) of the CGST Rules).

Alternatively, an exemption should be extended to B2C customers; specifically, to FIIs and FPIs given that the manner of trades/ reporting are regulated by SEBI and the FIIs/ FPIs are not claiming ITC (being outside India, and thus, not registered for GST).

Alternatively, if the sought exemption is not granted to the sector, it is our humble submission that the date of implementation be deferred by another 6 months. Given that the changes required for the stock broking sector are tectonic, requiring change by the regulators (i.e.

change in format of contract notes to include IRN/ QR Code), systemic changes (IT vendors changing systems for incorporating proposed changes) as well as significant operational changes, the time required would be substantial (with the revised scheme being released only in mid-February 2020).

We request that we be granted an opportunity to meet with you to discuss the above in detail. For further information, please contact ASIFMA Head of Compliance and Tax, Patrick Pang (ppang@asifma.org).

Yours sincerely,



Patrick Pang
Head of Compliance and Tax
ASIFMA

Encl(s): As mentioned above

ANNEXURE – REPRESENTATION BY ASIFMA FOR STOCK BROKERS EXEMPTION FROM E-INVOICING

The Central Board of Indirect Taxes and Customs ('CBIC') vide various notifications (Notification No. 69/2019-Central Tax to Notification no. 72/2019-Central Tax on 13 December 2019) (collectively referred to as 'E-Invoicing notifications') proposed to implement the E-Invoicing regime mandatorily from 1 April 2020.

Qualifying threshold	Proposed Mandatory Compliance
Annual aggregate turnover of Rs 100 crores	Generation of IRN for all invoices raised on GST registered customers through the Government notified Invoice Registration Portal (IRP)
Annual aggregate turnover of Rs 500 crores	Generation of QR Code for all supplies made to unregistered customers

**As per Notification No. 69/2019-Central Tax to Notification no. 72/2019-Central Tax on 13 December 2019)*

As per the proposed change, every registered person to whom the E-Invoicing notifications apply, are required to generate IRN and QR Code from IRP for each invoice. The IRP will validate the invoice details, generate IRN and QR Code, add digital signature and return the same to the supplier. It is only after generation of the IRN and QR Code will the invoice issued by the supplier be considered as a valid Tax Invoice as per Central Goods and Services Tax Rules, 2017 ('CGST Rules').

However, with the release of concept note, schema and the test module and further clarifications provided by the Government, the members are extremely anxious about the additional compliance burden in an already heavily regulated sector. By introduction E-invoicing, the same could cause tremendous risk of business disruption, non-compliance with regulatory authorities and would be an immense technological challenge considering the strict timeline which would not help in achieving the objective of introducing E-Invoicing.

We have outlined the nature of stock broking services' sector and corresponding undue hardships that would be caused to the industry in particular. Accordingly, we seek that an exemption be issued to Stock Brokers by invoking powers granted under Rule 48(4) of the CGST Rules.

We humbly request that the ensuing submissions be considered in light of the impact on the industry.

1. **The stock broking sector is highly regulated by the SEBI and therefore, the larger objective of curbing duplicate invoices through the e-invoicing regime, are already met through the SEBI regulations**
 - 1.1. The concept document released by the Goods and Services Tax network ('GSTN') states the key objective for E-invoicing is machine readability and uniform interpretation. This would ensure complete inter-operability of e-invoice across entire GST ecosystem so that e-invoice generated by one software can be read by any other software eliminating the need of fresh data entry – which is a norm and standard expectation today.

The other important objective for introduction of E-invoicing from GST perspective is to provide better tax payer services by one-time reporting of B2B invoice data, substantial reduction in Input Tax Credit ('ITC') verification issues, reduction in tax evasion and elimination of fake invoices, thereby providing complete trail of B2B invoice.
 - 1.2. We wish to outline the peculiar structure of the stock broking services sector and request that the same be considered for extending an exemption from E-invoicing for the sector. The stock broking sector is highly regulated by Securities and Exchange Board of India ('SEBI') and are liable to strictly adhere to the code of conduct prescribed under Schedule II of the Securities and Exchange Board of India (Stock Broker and Sub Brokers) Regulations, 1992 ('SEBI Regulations')⁵. One of the mandatory requirements under the said Regulations includes a Stock Broker to issue a contract note for all the transactions without any delay to his clients. A copy of SEBI Regulations is attached herewith as *Exhibit 1*.
 - 1.3. We would like to highlight here that at present, the Stock Brokers are required to undertake various compliances as prescribed by SEBI. Reference is drawn to Regulation 17 to Regulation 24 of the SEBI Regulations for stock broking activities wherein SEBI have directed the stock brokers to adhere to various operational instructions. We have attached the compliances that needs to be adhered to by the Stock Brokers as *Exhibit 2*.
 - 1.4. In addition to the compliances required as per the SEBI Regulations, the stock brokers are supposed to maintain books of accounts as per Securities Contracts (Regulations) Rules, 1957 ('SCRA') and shall submit half yearly internal audit certificate to Stock Exchange as well as SEBI. A stock broker is also required to obtain a complete KYC of their customer and maintain a member's contract book showing details of all contracts entered by him and other members of the same exchange.

⁵ Regulation 7 of the SEBI Regulations

1.5. Failure to follow the aforementioned regulations are liable to monetary penalty. Some of the key violations under Regulations 26 of the SEBI Regulations includes:

- Failure to issue contract notes in the form and manner specified by the stock exchange of which the broker is a member (Regulation 26(v))
- Failure to deliver any security or make payment of the amount due to the investor within 48 hours of the settlement of trade unless the client has agreed in writing otherwise (Regulation 26(vi))

1.6. Further, the stock brokers are also required to undertake various other reporting to the exchanges on a weekly/monthly/quarterly/ half year basis⁶. We have provided below few of the compliances to be undertaken by stock brokers:

SL No	Type of Compliance	Periodicity
1	Uploading of Holding Statement	Weekly
2	Submission of Details of client assets data	Weekly
3	Client Funding Reporting	Monthly
4	Client Funds and Securities Balance	Monthly
5	Quarterly Compliance Certificate	Quarterly

1.7 The primary intention of introduction of E-invoicing is to reduce tax evasion and eliminate issuance of duplicate invoices. As mentioned above, business of Stock brokers is highly regulated and accordingly, the risk of tax evasion and duplicate invoices in this highly regulated business is unlikely. Therefore, for already highly compliance driven business, the additional compliance in form of E-invoicing and self-generation of QR code for B2C invoices would lead to undue hardships.

2. **Applicability of E-invoicing under GST would cause tremendous business disruption and undue hardship given that Stock Brokers functions under a time-sensitive environment (as prescribed by SEBI and the exchanges)**

2.1. As discussed above, it is fairly evident that Stock Brokers sector is highly regulated. Further, it is to be noted that even the format of contract note is regulated by the SEBI Regulations which is then prescribed by each of the stock exchanges⁷. Accordingly, any changes in the contract note to capture any additional details would require prior approval of SEBI.

2.2. Further, as per SEBI guidelines, a stock broker is required to issue a contract note within 24 hours from the time of execution of the trade. Any contravention or failure to issue

⁶ Compliance calendar for FY 2019 – 20 as provided by Bombay Stock Exchange - <https://www.bseindia.com/static/members/compliancecalendar.aspx>

⁷ SEBI Circular No. DNPD/ Cir-9/04 dated 03 February 2004

contract note in the form and manner specified, shall render the stock broker liable to a penalty⁸.

- 2.3. With the introduction of E-invoicing, tax invoices would require authentication from IRP before it is issued to end customers resulting in real time transmission of data and would mean dependency on the IRP portal. In the event where IRP portal is not functioning smoothly due to various reasons like higher traffic on the portal, system maintenance or any other reason, this would lead to increased turn-around time for customers which could also result into loss of business or non-adherence to the SEBI regulations.
- 2.4. The time lag required in generation of IRN and correspondingly printing the same on the contract note along with QR code after being validated by the IRP may lead to delay in issuing a contract note thereby leading to undue hardship and unprecedented losses to the industry in the form of higher statutory penalties/ loss of business etc.
- 2.5. Further, where the contract note is not issued within the prescribed timelines, the trade may not be confirmed by the customers. Where the trade not confirmed by the customer, the stock broker would have to settle the same on its own account and accordingly would be exposed to loss (if any) on such trade.
- 2.6. As per the statistics available on the Bombay Stock Exchange, the total number of contracts issued for the financial year 2018-19 is around 190 crores⁹. Assuming out of the total number of contracts issued, around 25 percent of the trades are covered under the ambit of e-invoicing (i.e. supply to B2B), the number of e-invoices to be generated and processed would be approximately 48 crores per annum. This would be a significant volume which would be processed for the purpose of E-invoicing. Please note that the said data is only for Bombay Stock Exchange and we would be dealing with other stock exchanges like National Stock Exchange etc.
- 2.7. In addition to the above, one of the B2B customer base for a stock broker includes Mutual Fund companies. In this regard, we would like to highlight that in terms of the SEBI guidelines issued for Mutual Funds¹⁰, the Mutual Funds are required to upload their Net Assets Value ('NAV') for a particular day by 9 Pm on the same day. Similarly, the insurance company (with regards to unit linked insurance plans) would also be computing its NAV and is required to publish the same. It is to be noted that the calculation of the NAV is fairly a complex exercise and accordingly, mutual funds and insurance companies would required sufficient time to compute the same.
- 2.8. Accordingly, a stock broker is required to issue a contract note almost on real-time basis to Mutual Funds and Insurance Companies post execution of the trade for the same to be confirmed by them. If the same is not issued within the tight timelines as prescribed,

⁸ 15F. If any person, who is registered as a stock broker under this Act,— (a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to for which the contract note was required to be issued by that broker [SEBI Act, 1992]

⁹ https://www.bseindia.com/market_data.html#!#mem13

¹⁰ SEBI Circular No. SEBI/IMD/CIR No. 5/63714/06 dated 29 March 2006

the Mutual Funds and Insurance Companies would not be able to publish their NAV on the same day causing business disruptions for them. This would also impact millions of investors who would not be able to know their positions as per the current practice. Further, failure to publish the NAV within the prescribed timelines requires a separate intimation to Association of Mutual Funds of India, wherein the reason for the delay is also to be provided.

- 2.9. Due to the reasons stated above, where there would be time lag required in generation of IRN and correspondingly printing the same on the contract note along with QR code after being validated by the IRP may lead to delay in issuing a contract note thereby leading to undue hardship and unprecedented losses to the industry.
- 3. Any risk of wrongful input tax credits being claimed on stock broking invoices is minimal**
- 3.1. It is also pertinent to note that majority of the customer base for the stock broking industry in India include retail customers who are unregistered customers and hence in the absence of any registration under the GST legislation do not claim any ITC. Another major customer base for stock brokers include FIIs and FPIs located outside India who are again not registered under the GST provisions and hence do not claim ITC of the said services.
- 3.2. Considering the above, since the major customer base for the stock broking industry are unregistered under GST who does not claim any ITC on the invoices raised, this segment of customers would not benefit from E-invoicing.
- 3.3. Further, with respect to B2B customers, the same are typically institutional clients who are using services to undertake investments in the equity/ futures & options market. The B2B customers would typically would include mutual funds who have no taxable GST revenues to claim ITC or companies who may not be eligible to avail of ITC of stock broking services used for investment activity. Furthermore, the other B2B customers includes insurance companies and banks, which are also a highly regulated sector by various regulatory bodies. Accordingly, we submit that any exposure of ITC being claimed wrongfully based on fake invoices/ duplicate invoice, is minimal in this industry.
- 3.4. Further, given that the person registered under GST also generally do not claim ITC on the invoices raised, the risk of tax evasion and fake invoices is unlikely and thus would defeat the entire objective of introducing E-invoicing as stated above in case of the stock broking industry.
- 3.5. With the introduction of the new returns from 1 April 2020, a response i.e. accept/ reject/ pending would have to be provided against each tax invoice appearing Annex 2 of the respective tax payers. Accordingly, there would be a proper trail created of the payment of GST and the subsequent availment of ITC. For covering customers who potentially

would be claiming ITC on stock broking services, a very large volume of transactions will get impacted, which can severely affect business.

4. Without prejudice, exemption to be extended to broking services provided to Foreign Institutional Investors and Foreign Portfolio Investors

- 4.1. For a large number of our members, a significant customer base are FPIs and FIIs who are not registered under GST. The FIIs and FPIs are outside India and therefore not registered for GST. As reiterated above, the question of claiming ITC by such customers does not arise.
- 4.2. Further, the SEBI through the SEBI (Foreign Institutional Investors) Regulations, 1995 or SEBI (Foreign Portfolio Investors) Regulations, 2019, *inter alia* prescribes “the framework for registration and procedures with regard to foreign investors who propose to make portfolio investment in India”. As per the aforesaid regulations, SEBI mandates that all investments be made through a designated depository participant ie custodian. Further, the procedure of executing trades, documentation of such trades and reporting the same, are all regulated through the aforementioned guidelines.
- 4.3. Given the high level of governance and procedures prescribed by the SEBI for FIIs/ FPIs investing in India, the trade transactions and the all stock broking services as well as the contract notes for already reported to the SEBI separately. We therefore submit, the need to have an e-invoicing mechanism for reporting and certification of the same transactions for GST purposes is not necessary.

5. Without prejudice, applicability of E-Invoicing should be deferred by atleast 6 months in order to ensure system readiness

- 5.1. Further, the stock broking industry is privy to error trades occurring due to various reasons for which the Contract Note be required to be cancelled on T+1 / T+2 basis before settlement of the payment for the trade initiated. The timeline of 24 hours for cancellation of IRN may prove to be detrimental to the industry as the stock brokers will be required to undergo an additional compliance of issuing credit note to reverse such trades. This would lead to additional compliance for an industry already reeling under heavy regulatory compliance burden affecting smooth functioning of the sector.
- 5.2. In addition to the above, as per SEBI Circular DNPd/Cir-22/04 dated 1 April 2004, the SEBI mandated use of straight through processing (‘STP’)¹¹ for all institutional trade executed on the stock exchanges. A copy of the Circular is attached herewith as *Exhibit 3*.

¹¹ STP is generally understood to be a mechanism that automates the end to end processing of transactions of financial instruments. STP allows electronic capturing and processing of transactions in one pass from the point of order origination to final settlement

- 5.3. Such STPs are issued in lieu of Contract Notes for all institutional trades executed on the stock exchanges. STPs are .TXT files containing all the details to be captured in an invoice. In case of stock broking members whose turnovers exceed INR 500 crores, there will be a practical challenge in including QR code on such STPs which are .TXT files. Accordingly, with SEBI regulations in place with respect to trades initiated for institutions, the stock broking industry will be exposed to non-compliance under GST by the reason of technological challenge in affixing QR code on a STP.
- 5.4. In view of the above, it is requested that due time should be given to the Stock Broking industry for upgrading the system for faster and real time processing of contract notes with IRN.
- 5.5. Further, Notification no. 69/2019 – Central Tax dated 13 December 2019 notified a list of common Goods and Services Tax electronic portal for the purpose of preparing E-Invoice. Such websites were to go live on 1 January 2020 to be complied voluntarily. However, these websites have yet not gone live and the members of the stock broking industry are unable to access the same.
- 5.6. The National Informatics Centre (NIC), the only notified IRP, shortlisted certain GSTINs for testing of E-Invoicing in its sandbox for APIs on 2 January 2020. The said sandbox was enabled only in the month of February 2020. Further, the shortlisted GSTINs were for entities having turnover above INR 500 crore leaving out majority of the members of stock broking industry from testing for E-Invoicing. It is to be noted that the implementation of E-invoicing is a substantial change and requires system overhaul. Such system overhaul requires development and testing and post which the same could go live. In the absence of any testing environment made available it would be extremely challenging to implement the same.
- 5.7. Further, it is to be noted that changes in the format of the contract notes/ STPs would require SEBI's approval and only post such approval would the stock brokers be in a position to make changes to the system.
- 5.8. Further, there is still lot of ambiguity around the implementation of E-invoicing such as:
- Multiple variances in the fields as published between the JSON Schema and Notification no. 02/2020-Central Tax dated 1 January 2020
 - Whether IRN and/ or QR Code to be printed on the invoices
 - Multiple variances in the fields marked as mandatory between the Notification and JSON schema issued by the GSTIN
 - Attributes to be provided in the Dynamic QR Code (for B2C invoices)
- 5.9. Based on the above and given the fact that the updated JSON Schema was only published on 14 February 2020, it will be impossible for the members of the industry to upgrade their ERP for the purpose of E-invoicing on real time basis and to obtain the required regulatory approval for modification in the standard format of contract notes.

- 5.10. Considering the same, we plead that in case the exemption is not granted to us, at least, the requirement to generate IRN and QR code be made optional or be deferred by atleast a further 6 months.

6. OUR PRAYER

- 6.1. Based on the above, we wish to emphasize that in the context of stock broking sector, considering the nuances and the regulatory framework as stated above, the stock brokers shall be given an exemption from complying with the generation of IRN and QR code prior to raising the invoice given that the primary intention of introducing E-invoicing is not met for the stock broking sector.
- 6.2. Alternatively, an exemption should be extended to B2C customers; specifically, to FIIs and FPIs given that the manner of trades/ reporting are regulated by SEBI and the FIIs/ FPIs are not claiming ITC (being outside India, and thus, not registered for GST).