

CIRCULAR

IMD/ FPIC/CIR/P/2018/53

March 21, 2018

To,

Designated Depository Participants ("DDPs")/ Custodians of Securities.

Sir/ Madam,

Subject: Due diligence and reporting requirements under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS)

1. This is in continuation of SEBI circulars No. CIR/MIRSD/2/2015 dated August 26, 2015 and No. CIR/MIRSD/3/2015 dated September 10, 2015 wherein SEBI has informed all intermediaries regarding due diligence and reporting requirements under Rules 114F to 114H of the Income- tax Rules (hereinafter referred as Rule) and Guidance Note on FATCA and CRS issued by the CBDT, New Delhi, vide F.No.500/137/2011-FTTR-III dated August 31, 2015 (Available at http://www.incometaxindia.gov.in/communications/notification/guidance_notes_on_implementation_31_08_2015.pdf)
2. In terms of Rule 114G(11), the regulators are required to issue necessary instructions and guidelines from time to time for:
 - a) Incorporating the requirements of reporting and due diligence
 - b) Providing the procedure and manner of maintaining the information by the Reporting financial institution (RFI). RFI is defined in Rule 114F (7).
 - c) Ensuring the availability of the information with the reporting financial institution for meeting their reporting obligation, if such information is not maintained by it under any rule or regulation issued by the regulator
3. Accordingly, all RFIs are advised to take following necessary steps to ensure compliance with requirements specified in the aforesaid rules for carrying out the necessary due-diligence and reporting for Foreign Portfolio Investors (FPIs):-
 - i. Obtain valid self-certifications/ FATCA and CRS declaration forms with documentary evidence as part of the account opening documentation in relation to FATCA/ CRS as specified in Rule 114H. Indicative self-certifications for individuals and entities are provided as Appendix D and E in the Guidance Note on FATCA and CRS.
 - ii. In accordance with CBDT clarification dated February 19, 2016, Custodian are required to carry out the due diligence on the accounts held by Global Custodian (GC) end-clients. However, for carrying out due diligence, the Custodian may rely on the FATCA/CRS documentation done by GC for the account holders including the self-certification. Further, it may be clarified that the obligations for due diligence and reporting remain that of the

Custodian who should also be able to access all documents in relation to an account holder.

- i. Create a process/system to capture and validate the information collected through valid FACTCA/ CRS declaration forms.
 - ii. Develop framework for carrying out due diligence procedures and for maintaining reporting information, as provided in Rule 114G and 114H
 - iii. Furnish the relevant information in Form 61B in respect of the identified reportable accounts as defined in Rule 114F(6) on or before the date prescribed in accordance with sub-rules (7), (8) and (9) of Rule 114G for every calendar year.
 - iv. Develop a system of audit for compliance with Rules 114F, 114G and 114H of Income-tax rules.
 - v. Ensure compliance with updated rules/ circulars/ notifications/ instructions/ / guidance notes issued on the subject by Central Board of Direct Taxes (CBDT) from time to time.
4. RFIs are required to certify to SEBI on annual basis regarding compliance with the provisions of Rules 114F to 114H of Income-tax rules relating to FATCA / CRS. This certificate would be a part of the audit report on internal controls submitted to SEBI annually.
 5. DDPs should grant SEBI registration to a foreign Portfolio Investor (FPI) only after obtaining valid self-certification/ dully filled in forms. DDPs shall submit a certificate in respect of new registration(s) granted during every month at the end of the month that all due –diligence procedures, including obtaining of valid self-certification/ FATCA/ CRS declaration, have been followed before granting the said registration to FPI.
 6. During inspection of DDPs/ Custodians, SEBI will examine the compliance with the certificate to SEBI regarding self-certification and due-diligence at the time of new registration.
 7. This circular is issued in exercise of powers conferred under Section 11(1) of the Securities and Exchange Board of India Act, 1992 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market read with Rule 114G(11) of Income Tax Rules.
 8. A copy of this circular is available at the links “Legal Framework→Circulars” and “Info for →F.P.I” on our website www.sebi.gov.in. The DDPs/Custodians are requested to bring the contents of this circular to the notice of their FPI clients.

Yours faithfully,

(Achal Singh)