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Country	Hong Kong S.A.R.	State	Central and Western	City	Admiralty
Organization Type	Industry Association	Organization name	ASIFMA		
Consultation Paper	Consultation paper on Maintenance of Record of Mandatory Communication by Regulated Entities				
Description	The paper proposes to require the regulated entities to maintain the records of mandated communication under the respective governing regulations and the Circulars issued thereunder.				

Proposal: Regulated entities to maintain the record of the communication mandated under the respective governing regulations and the circulars issued thereunder.

Level of Agreement Strongly Agree/ Agree/ Partially Agree/ **Disagree**/ Strongly Disagree

Comments	Rationale
<p>1. Our members understand SEBI's proposal to expand the types of documents that have to be preserved to 'mandatory communication' for securities laws and investor protection purposes. What is unclear is what is included in 'mandatory communication', which appears to mean information that is required to be communicated as mandated under the securities laws and regulations.</p> <p>We assume, for example, that administrative communications required between a regulated entity and a third party (regardless of who is the sender and who is the receiver) as well as communications related thereto (including acknowledgment thereof) would constitute</p>	<p>1. As the proposed changes apply to quite a large and diverse group of regulated entities, it is important to have a consistent understanding and interpretation of what constitutes a 'mandatory communication' to avoid unnecessary confusion and differences in implementation in the market. Moreover, retention of too much information (e.g., a lot of back-and-forth emails between FPIs and DDPs on account opening) for a long period time may be time consuming and costly with only marginal benefit to regulators and investors, and indeed it may also increase other systemic risks.</p> <p>2. For global firms that operate or invest in India, it would be helpful if</p>

‘mandatory communication’. However, there are other categories of document that we would expect to fall below the threshold of a ‘mandatory communication’. Unless SEBI can specify the types of ‘mandatory communication’ that need to be retained for the specified period, there will be market uncertainty and inconsistency of application.

For example, in case of an FPI, is ‘mandatory communication’ limited to Regulation 29(d) (i.e., “communication including in electronic mode from and to the designated depository participants, stockbrokers and depository participants regarding investments in securities”) or does it apply to the entire Regulation 29 (i.e., “Maintenance of proper books of accounts, records and documents”).

2. We understand that the tax record retention period in India is 8 years but for regulatory purposes, most of our members who are FPIs and are/or part of a global firm view 8 years to be longer than usual compared to that in other jurisdictions/markets. Therefore, we would like SEBI to consider a retention period of 5 years or at most 7 years for ‘mandatory communication’.
3. Since FPIs typically invest in India through onshore intermediaries such as brokers and custodians, who are also subject to the proposed record of ‘mandatory communication’ requirement, we urge SEBI to consider the burden of a lengthy retention period on not only onshore brokers and custodians but also FPIs whose ease of doing business in India is a SEBI priority.

We wish to note that many global FPI funds that invest in India deal with global custodians (instead of onshore custodians) which are not subject to SEBI’s regulations. It may be challenging for FPIs to request global custodians to retain communications with DDPs for eight years.

SEBI’s record retention requirements are aligned with other key jurisdictions where they operate to avoid the need to adjust their global record retention practices just for one or two markets. For example, the record retention period in the EU, Singapore and Taiwan is typically 5 years while it is typically 5-6 years in the US and 7 years in Australia and Hong Kong. Hence, our preference is to see SEBI’s proposed 8 years lowered to 5 years and at most 7 years.

3. Retaining the existing 5-year record retention period for FPIs under Regulations 29 and 30 will align India with the record retention period of some of the key jurisdictions in which FPIs operate. Such alignment would reduce the need for FPIs, who are typically based outside India, to keep records for longer than they normally would.
4. Regulated entities may not have kept their ‘mandatory communication’ and acknowledgements thereof before the effective date of the new requirement.

Therefore, for FPIs, we urge SEBI to keep the 5-year record retention period for FPIs as set out in Regulation 30 of the SEBI FPI Regulations, 2019 and not amend Regulation 29 as the onshore brokers and custodians/DDPs will already have a record of 'mandatory communication' of the FPIs.

4. We assume and trust that the new requirement will only apply to 'mandatory communication' made after the effective date of the requirement.