Forthcoming Programmes

- 38th National Convention of Company Secretaries at Kolkata on 2-3-4 September, 2010

PCS Updates

- Exposure draft of the referencer on secretarial audit

SEBI Updates

- Circular on Allocation of Corporate debt investment limits to FIIIs
- Circular on Anti Money Laundering (AML) Standards/Combating Financing of Terrorism (CFT)/Obligations of Securities Market Intermediaries under Prevention of Money Laundering Act, 2002 and Rules framed there-under

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Forthcoming Programmes

- 38th National Convention of Company Secretaries at Kolkata on 2-3-4 September, 2010
38th National Convention of Company Secretaries

Dates:

September 2-3-4, 2010

Venue:

Kolkata
The Institute has released the Exposure Draft of the Referencer on Secretarial Audit at the 11th National Conference of Practicing Company Secretaries held at Chandigarh on April 30-May 01, 2010. Members are requested to send their views / suggestions / comments on the Exposure Draft through email at sutanu.sinha@icsi.edu so as to reach the Institute latest by June 15, 2010.

EXPOSURE DRAFT
OF
THE
REFERENCER
ON
SECRETARIAL AUDIT

01. Introduction

The Ministry of Corporate Affairs, Government of India has released CORPORATE GOVERNANCE VOLUNTARY GUIDELINES 2009. The preamble to Guidelines states that “These guidelines provide for a set of good practices which may be voluntarily adopted by the Public companies. Private companies, particularly the bigger ones, may also like to adopt these guidelines.”

The Guidelines, amongst other things, recommended, the introduction of Secretarial Audit. Para V of the Guidelines states that:

“Since the Board has the overarching responsibility of ensuring transparent, ethical and responsible governance of the company, it is important that the Board processes and compliance mechanisms of the company are robust. To ensure this, the companies may get the Secretarial Audit conducted by a competent professional. The Board should give its comments on the Secretarial Audit in its report to the shareholders.”

Companies, which do not adopt these guidelines, either fully or partially, are expected to inform their shareholders about the reasons for not adopting these Guidelines. This is in consonance with the popular doctrine of “Comply or Explain”. The Board should give its comments on the Secretarial Audit in Directors’ Report as provided in Para V of the Guidelines.

02. Need for Compliance Management

Secretarial Audit is compliance audit; it is a part of total compliance management in an organisation. The Secretarial Audit is an effective tool for
corporate compliance management. It helps ensure timely corrective measures when non-compliance is detected.

The multiplicity of laws, rules, regulations, etc. has necessitated introduction of a compliance management system to ensure compliances of laws applicable to a company. This has a two-fold objective:

(a) Firstly, to protect the interests of the customers, employees, revenue, environment and the directors and officers of the company.

(b) Secondly, to avoid any unwarranted legal actions by the law-enforcing agencies and other persons as well.

Under most laws, the persons responsible for compliance and liable for punishment are directors, company secretary and some of the senior officers who have been designated for specific compliances. From amongst the directors, the responsibility of managing and executive directors is greater. Under the Companies Act, a managing and/or whole-time director (besides company secretary) is an officer-in-default liable for penal consequences of defaults under the Act and the rules made under it and thus responsible for compliance, while under most other laws they are a person in charge of, and responsible to, the company for the conduct of the business of the company.

In India a number of statutes contain under the heading “Offences by Companies” an identical provision regarding vicarious liability of directors and other company officers for company’s offences. In Girdhari Lal Gupta v. D.N. Mehta AIR 1971 SC 2162, the Supreme Court has construed the expression ‘a person in charge and responsible for the conduct of the business of the company’ as to mean the person in overall control of the day-to-day business of the company. This ruling has been followed in a number of subsequent decisions.

Sub-clause I(C)(iii) of Clause 49 of the Listing Agreement provides “The Board shall periodically review compliance reports of all laws applicable to the company, prepared by the company as well as steps taken by the company to rectify instances of non-compliances.” Accordingly, all listed companies have to have a system for reporting to the Board compliances with laws applicable to them. Hence, a Legal Compliance Reporting System is necessary to comply with sub-clause I(C)(iii) of Clause 49 of the Listing Agreement.

03. Secretarial Audit & Company Secretary in Practice (PCS)

A Company Secretary in Practice has been assigned the role of Secretarial Auditor in section 2(2)(c)(v) of The Company Secretaries Act 1980, which is the only statute in the country, carving out ‘Secretarial Audit’ as an area of practice.

PCS is the competent, fit and proper professional to conduct Secretarial Audit. A significant area of competence of PCS is “Corporate laws” (comprising statutes, rules, regulations, notifications, circulars and clarifications, forms, guidelines and bye-laws) owing to intensive and rigorous coaching, examinations, training and continuing education programs. PCS is a highly specialized professional in matters of statutory, procedural and practical aspects.
involved in proper compliances under corporate laws. Strong knowledge base makes PCS a competent professional to conduct Secretarial Audit.

In order to guide its members in employment and in practice with the process of Secretarial Audit, The Institute of Company Secretaries of India has issued this Referencer.

04. Usefulness of Secretarial Audit

Secretarial Audit is sometimes described as Corporate Law Compliance Audit/Review. Whatever its name, Secretarial Audit is a process of verification of records and documents to check compliance with the provisions of various laws and rules/procedures, maintenance of books, records etc. by an independent professional to ensure that the company has complied with the legal and procedural requirements and also followed due processes. It is essentially a mechanism to monitor compliance with the requirements of stated laws.

Benefits of Secretarial Audit are manifold and its beneficiaries are many. Secretarial Audit enables corporate law compliance management. Ever-increasing complexities of laws and responsibilities of directors (especially non-executive or independent directors) make it imperative that a PCS opines whether or not there exist robust compliance mechanism and systems in the corporate structure. Also, PCS has to verify whether diverse requirements under applicable laws have been duly complied with or not and if there is a need for any corrective measures or improvement in the system.

05. Beneficiaries of Secretarial Audit

The major beneficiaries of Secretarial Audit include:

(a) Promoters
Secretarial Audit will assure the Promoters of a company that those in-charge of its management are conducting its affairs in accordance with requirements of laws.

(b) Management
Secretarial Audit will assure the Management of a company that those who are charged with the duty and responsibility of compliance are performing their duties competently, effectively and efficiently.

(c) Non-executive directors
Secretarial Audit will assure the Non-executive Directors that appropriate mechanisms and processes are in place to ensure compliance with laws applicable to the company, thus mitigating any risk from a regulatory or governance perspective; so that the people not in-charge of the day-to-day management of the company are not likely to be exposed to penal or other liability (and consequential risk and embarrassment) on account of non-compliance with law.

(d) Government authorities / regulators
Being a pro-active measure, Secretarial Audit has a salutary effect of substantially reducing the burden of the law-enforcement authorities and enhance governance and level of compliance.

(e) **Investors**

Secretarial Audit will assure the Investors that the company is conducting its affairs within the applicable legal framework.

(f) **Other Stakeholders**

Financial Institutions, Banks, Creditors and Consumers are enabled to measure the law abiding nature of Company management.

Corporate actions manifesting good Corporate Governance are vital for the healthy, vibrant and ever growing corporate sector in global economy. In developing economies, inclusive growth of all segments of society is more than imperative. Such actions adopting effective management tools like Secretarial Audit can go a long way in fulfilling these objectives.

06. **Scope and Contents of Secretarial Audit**

**Scope:**

The scope of Secretarial Audit, comprises the following:

- The Companies Act, 1956 and the Rules made under that Act;
- The Memorandum of Association and the Articles of Association of the company;
- Corporate Governance Voluntary Guidelines- 2009 issued by the Ministry of Corporate Affairs, Government of India;
- Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
- Secretarial Standards issued by The Institute of Company Secretaries of India;
- The Depositories Act, 1996 and the Regulations and Bye-laws framed under that Act;
- The Securities Contracts (Regulation) Act, 1956 (‘SCRA’) and the Rules made under that Act;
- The Equity Listing Agreements with ..... Stock Exchange(s) both in India and overseas, including in particular clause 49;
- The Simplified Listing Agreement for debt securities in India;
- The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 (‘SEBI Act’);
  
  (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
(b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
(c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
(d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;
(f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;
(g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and
(i) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

Besides, Secretarial Audit may cover:

• Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007; and
• Corporate Governance guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA.

Contents:
Secretarial Audit report should be addressed to the members and form part of the Annual Report (not as part of Directors’ Report).

It should, among other things, contain:

1. Secretarial Auditor’s comments and observations on compliance or non-compliance during the defined audit period, in relation to the statutes, rules, regulations, etc. applicable to the company;
2. Significant litigation(s) within the Scope of Audit;
3. Board Processes followed by the Company;
4. A statement on the existence of adequate internal control systems, procedures and safeguards for ensuring compliance with laws applicable to the company, commensurate with the size of the company and the nature of its business.
5. Such other matters that may be required to be audited/ reviewed from a compliance and governance perspective.
6. Any material event(s) happening after the financial year but before the date of the report having substantial impact on any of the above reported items.
Secretarial Audit Report shall be signed by the Practicing Company Secretary, who acts as the Secretarial Auditor in his individual capacity (and not as a partner or sole proprietor of a firm) by mentioning his CP Number.

07. Secretarial Audit-Periodicity

Proactive Secretarial Audit on a continuous basis would help the company in initiating corrective measures and strengthening its compliance mechanism and processes. It is advisable that the Secretarial Audit be carried out periodically (quarterly / half yearly) and adverse findings if any, be reported to the Board immediately.

08. Reporting with Qualification

The qualification, reservation or adverse remarks, if any, shall be stated by the PCS at the relevant places in his/her report. It is recommended that the qualifications, reservations or adverse remarks of PCS, if any, should be stated in **thick** type or in *italics* in the Secretarial Audit Report.

If the PCS is unable to form any opinion on any matter, he/she shall state that he/she is unable to form an opinion on that matter and the reasons thereof. If the scope of work required to be performed, is restricted on account of limitations imposed by the company or on account of circumstantial limitations (like certain books or papers being in custody of another person or Government Authority) the Report shall indicate such limitations. If such limitations are so material as to render the PCS incapable of expressing any opinion, the PCS should state that:

“In the absence of necessary information and records, he / she is unable to report compliance(s) by the Company”.

09. Professional Responsibility and Penalty for Incorrect Audit Report

While the Voluntary Guidelines on Corporate Governance have opened up a significant area of practice for Company Secretaries, it equally casts immense responsibility on them and poses a greater challenge whereby they have to justify fully, the faith and confidence reposed by the industry as well as Regulators and measure up to their expectations. Company Secretaries must take adequate care while conducting Secretarial Audit.

Any failure or lapse on the part of PCS in issuing a Secretarial Audit Report may not only attract penalty for incorrect report and disciplinary action for professional or other misconduct under the provisions of the Company Secretaries Act, 1980 but also make him liable for any injury caused to any person due to his / her negligence in issuing the Secretarial Audit Report. Therefore, it becomes imperative for the PCS that he / she exercises great care and caution while issuing the Secretarial Audit report and also adheres to the highest standards of professional ethics and excellence in providing his / her services.

10. Pre-requisites to Secretarial Audit

*Appointment*
a. Appointment of Secretarial Auditor and remuneration payable to him should be preferably made by the members and at the least by the Board of Directors of the Company. As a prudent corporate practice, it is advisable that changes in the office of Secretarial Auditor, are reported to the members in the Director’s Report.

**Communication to earlier incumbent**

b. Whenever a new Secretarial Auditor is appointed in place of the existing Secretarial Auditor, he/she should communicate the appointment to the earlier incumbent in writing by registered post, in view of the gist of relevant pronounced judgements apart from the provisions of clause (8) of Part I of the First Schedule to the Company Secretaries Act, 1980.

**Assignment**

c. After the appointment is carried out in the manner suggested, a letter of engagement shall be issued by the Company. Practising Company Secretary should formally accept the letter of engagement.

d. It would be in the interest of the new Secretarial Auditor to attempt to procure at appropriate stage, authentic information about the remuneration paid to the earlier incumbent in view of the provisions under clause (11) of Part I of the First Schedule to the Company Secretaries Act, 1980.

**Right to Information and Access to Records**

e. To enable a PCS to conduct Secretarial Audit, the Company should provide the PCS access at all times to the books, papers, minute, books, forms and returns filed under various statutes, documents and records of the company, whether kept in pursuance of the applicable laws or otherwise and whether kept at the registered office of the company or elsewhere which the PCS considers essential for the purposes of Secretarial Audit.

f. A PCS shall be entitled to require from the officers or agents of the company, such information and explanations as the PCS may think necessary for the purpose of such Reporting. However, depending on the facts and circumstances he/she may obtain a letter of representation from the company in respect of matters where personal verification may not be practicable.
SECRETARIAL AUDIT REPORT

To
The Members,
_______________ Limited

I/We have examined the registers, records and documents of ............... Limited (“the Company”) for the financial year ended on __, ______. according to the provisions of:

• The Companies Act, 1956 and the Rules made under that Act;
• The Memorandum of Association and the Articles of Association of the company;
• Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
• Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;
• Secretarial Standards issued by The Institute of Company Secretaries of India;
• The Depositories Act, 1996 and the Regulations and Bye-laws framed under that Act;
• The Securities Contracts (Regulation) Act, 1956 (‘SCRA’) and the Rules made under that Act;
• The Equity Listing Agreements with .... Stock Exchange(s) both in India and overseas, including in particular clause 49;
• The Simplified Listing Agreement for debt securities in India;
• The following Regulations and Guidelines prescribed under the Securities and Exchange Board of India Act, 1992 (‘SEBI Act’);
  (a) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997;
  (b) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992;
  (c) The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009;
  (d) The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
(e) The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008;

(f) The Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;

(g) The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009; and

(i) The Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998;

- Compliance with Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007; and

- Corporate Governance guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA.

Based on my examination and verification of the registers, records and documents produced to me and according to information and explanations given to me by the Company, I report that the Company has in my/our opinion, complied with the provisions of the Companies Act, 1956 (Act) and the Rules made under the Act and the Memorandum and Articles of Association of the Company. I report that:

1. The status of the Company during the Financial year has been that of a Private Company/Unlisted Public Company/Listed Public Company.

2. Also the Company has / has not been a holding or subsidiary of another company. The company has not been a Government/non Government Company or a financial/non financial company.

3. The Board of Directors of the Company is duly constituted. The change in the Board of Directors that took place during the period under review were carried out in due compliance with the provisions of the Companies Act, 1956.

4. The Company has complied with the provisions of the Act and Rules made under that Act in carrying out the following changes:

   (a) Name of the Company
   (b) Registered Office
   (c) Principal business in conformity with the Objects
   (d) Particulars of holding and subsidiary companies
   (e) Promoters
   (f) Auditors
   (g) Directors
   (h) Managerial Remuneration
   (i) Officers in default
(j) Share Capital (authorized, issued, subscribed, paid-up, conversion/ redemption, reclassification, sweat).

5. The shareholding pattern of the company as on ——— was as detailed in Annexure …………..

6. During the period under review the changes that took place in the shareholding pattern of the Company are detailed in Annexure……….

7. The company has altered the following provisions of:
   (i) The Memorandum of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose.
   (ii) The Articles of Association during the period under review and has complied with the provisions of the Companies Act, 1956 for this purpose………………………………………………………….

8. The company has entered into transactions with business entities in which directors of the company were interested as detailed in Annexure………..

9. The Directors have complied with the requirements as to disclosure of interests and concerns in contracts and arrangements, shareholdings / debenture holdings and directorships in other companies and interests in other entities.

10. The Directors have complied with the disclosure requirements in respect of their eligibility of appointment, their being independent and complied with the code of Business Conduct & Ethics for Directors and Management Personnel.

11. The company has advanced loans, given guarantees and provided securities amounting to Rs. __________ to directors and/or persons or firms or companies in which directors were interested, and has complied with the provisions of the Companies Act, 1956.

12. The Company has made loans and investments; or given guarantees or provided securities to other business entities as detailed in Annexure …and has complied with the provisions of the Companies Act, 1956.

13. The amount borrowed by the Company from its directors, members, bank(s)/ financial institution(s) and others were within the borrowing limits of the Company. Such borrowings were made by the Company in compliance with applicable laws. The break up of the Company’s domestic borrowings were as detailed in Annexure …… .

14. The Company has not defaulted in the repayment of public deposits, unsecured loans, debentures, facilities granted by bank(s) / financial institution(s) and non-banking financial companies.

15. The Company has created, modified or satisfied charges on the assets of the company as detailed in Annexure…..

16. Investments in wholly owned Subsidiaries and/or Joint Ventures abroad made by the company are as detailed in Annexure ……. .
17. The Company has issued and allotted the securities to the persons-entitled thereto and has also issued letters, coupons, warrants and certificates thereof as applicable to the concerned persons and also redeemed its preference shares/debentures and bought back its shares within the stipulated time in compliance with the provisions of the Companies Act, 1956 and other relevant statutes.

18. The Company has declared and paid dividends to its shareholders as per the provisions of the Companies Act, 1956.

19. The Company has credited and paid to the Investor Education and Protection Fund within the stipulated time, all the unpaid dividends and other amounts required to be so credited.

20. The Company has complied with the provisions stipulated in Section 372 A of the Companies Act in respect of its Inter Corporate loans and investments.

21. Prosecutions initiated against or show cause notices received by the Company for alleged defaults/offences under various statutory provisions and also fines and penalties imposed on the Company and/or any other action initiated against the Company and/or its directors in such cases are detailed in Annexure......

22. The Company has insured all its secured assets.

23. The Company has paid all its Statutory dues and satisfactory arrangements had been made for arrears of any such dues.

24. The Company (being a listed entity) has complied with the provisions of the Listing Agreement.

25. The Company has deposited within the stipulated time both Employees’ and Employer’s contribution to Provident Fund with the prescribed authorities.

26. The Company has provided a list of statutes in addition to the laws as mentioned above and it has been observed that there are proper systems in place to ensure compliance of all laws applicable to the company.

27. There are proper Board processes in the company.

I further report that:

(a) the Company has complied with the provisions of Corporate Governance Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;

(b) the Company has complied with the provisions of Corporate Social Responsibility Voluntary Guidelines, 2009 issued by the Ministry of Corporate Affairs, Government of India;

(c) the Company has followed the following Secretarial Standards issued by the Institute of Company Secretaries of India;

(d) the Company has complied with the provisions of Equity listing Agreements entered into with ______ Stock Exchange(s) and Simplified Debt listing Agreement entered into with ______ Stock Exchange(s);
(e) the Company has complied with the provisions of The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 including the provisions with regard to disclosures and maintenance of records required under the Regulations;

(f) the Company has complied with the provisions of The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 including the provisions with regard to disclosures and maintenance of records required under the Regulations;

(g) the Company has complied with the provisions of The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 with regard to__________ ;

(h) the Company has complied with the provisions of The Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999 with regard to grant of Stock Options and implementation of the Schemes;

(i) the Company has complied with the provisions of The Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 with regard to______ ;

(j) the Company has complied with the provisions of the Securities and Exchange Board of India (Registrars to an Issue and Share Transfer Agents) Regulations, 1993 regarding the Companies Act and dealing with client;

(k) the Company has complied with the provisions of The Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009 with regard to delisting of Equity shares from the_____ Exchange(s);

(l) the Company has complied with the provisions of the Securities and Exchange Board of India (Buyback of Securities) Regulations, 1998 with regard to buy back of Equity shares.

(m) the Company has complied with the Guidelines on Corporate Governance for Central Public Sector Enterprises, 2007.

(n) the Company has complied with Corporate Governance guidelines for Insurance Companies, 2009 issued by IRDA in case of companies regulated by IRDA.

Place : Signature
Date : Name of Company Secretary / Firm:
ACS/FCS No.
C P No.:

Note : The qualification, reservation or adverse remarks, if any, are explicitly stated at the relevant paragraphs above.
SECRETARIAL AUDIT REPORT
FOR THE PERIOD …

EXECUTIVE SUMMARY

In terms of my appointment for conducting Secretarial Audit and the instructions I received, I conducted the audit of the records and documents maintained by the Company under the-

- The Companies Act, 1956;
- The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997;
- The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 1992; and
- The Listing Agreement with the Stock Exchanges.

The Company has complied with the provisions of the Act and the Regulations mentioned above, subject to the following observations.
SEBI Updates
CIRCULAR

CIR/IMD/FII/ 3 /2010

June 11, 2010

To
All Foreign Institutional Investors
through their designated Custodians of Securities

Dear Sir/Madam

Sub: Allocation of Corporate debt investment limits to FIIs

Based on the assessment of the allocation and the utilization of the limits to FIIs for investments in Corporate Debt, it has been decided to allocate the unutilized limits in the following manner:-

I. Allocation through bidding process:
Please refer to SEBI circular IMD/FII&C/37/2009 dated February 06, 2009, providing the modalities for the allocation methodology through the bidding process. The bidding process shall be on June 18, 2010 on the Bombay Stock Exchange subject to the following conditions: -

a) In partial amendment to clause 3 (h) of the aforesaid circular IMD/FII & C/ 37/2009, no single entity shall be allocated more than Rs.2000 cr. of the corporate debt investment limit.

b) In partial amendment to clause 3 (c) and 3(d) of the aforesaid circular IMD/FII & C/ 37/2009, the minimum amount which can be bid for shall be Rs.200 cr. And the minimum tick size shall be Rs.200 cr.

II Allocation through first come first serve process (FCFS)
In terms of SEBI circular dated January 31, 2008, the corporate debt limits shall be allocated in the first come first served basis subject to the following conditions:-

a) The remaining amount in corporate debt after bidding process shall be allocated among the FIIs/sub-accounts on a first come first served basis, subject to a ceiling of Rs.199 cr. per registered entity.

b) The debt requests in this regard shall be forwarded to the dedicated email id fii_debtrequests@sebi.gov.in. The window for first come first served process shall open at 08:30 AM IST, June 21, 2010.

c) Time period for utilization of the allocated debt limit through first come first served basis shall be 11 working days from the date of the allocation.

d) The format for applying for debt limit for FCFS process is as follows:
   Name of FII:
   FII Registration No. :
   Name of Sub Account (if applicable):
   Sub Account Code (if applicable):
   Limit applied for (amount in INR):
   Approval requested for:
(Corporate Debt)
Name of Local custodian (of applicant):

A copy of this circular is available at the web page “F.I.I.” on our website www.sebi.gov.in. The custodians are requested to bring the contents of this circular to the notice of their FII clients.

Yours faithfully,

Jeevan Sonparote
General Manager
+91-22-26449110
jeevans@sebi.gov.in
Securities and Exchange Board of India

CIRCULAR

CIR/ISD/AML/2/2010 June 11, 2010

To all Intermediaries registered with SEBI under Section 12 of the SEBI Act.
(Through the stock exchanges for stock brokers, sub brokers, depositories for depository participants, AMFI for Asset Management Companies.)


Dear Sir/Madam,

1. SEBI, vide Master Circular No. ISD/AML/CIR-1/2010 dated February 12, 2010, issued consolidated requirements/obligations to be fulfilled by all registered intermediaries with regard to AML/CFT. In addition to the obligations contained in the Master Circular, following are the additional requirements to be fulfilled or the clarifications with regard to existing requirements:

   a. Clause 3.2.3 (f) of the Master Circular lays down obligations to establish policies and procedures with regard to role of internal audit. It is clarified that the internal audit function should be independent, adequately resourced and commensurate with the size of business and operations, organization structure, number of clients and other such factors.

   b. The following clause numbered 5.1(f) is added after the existing clause 5.1(e) of the Master Circular: “Registered intermediaries shall periodically update all documents, data or information of all clients and beneficial owners collected under the CDD process”.

   c. The following new clause numbered 5.2.1(g) is added after the existing clause 5.2.1 (f) of the Master Circular: “The CDD process should necessarily be revisited when there are suspicions of money laundering or financing of terrorism (ML/FT)”.

   d. The following line is added in the existing clause 5.3.1 of the Master Circular: “Further low risk provisions should not apply when there are suspicions of ML/FT or when other factors give rise to a belief that the customer does not in fact pose a low risk.”

   e. While dealing with clients in high risk countries where existence/effectiveness of money laundering control is suspect, it is clarified
that apart from being guided by the Financial Action Task Force (FATF) statements that identify countries that do not or insufficiently apply the FATF Recommendations, published by the FATF on its website (www.fatf.gafi.org), registered intermediaries should independently access and consider other publicly available information.

f. Clause 5.5(a) of the Master Circulars shall read as follows: “All registered intermediaries shall proactively put in place appropriate risk management systems to determine whether their client or potential client or the beneficial owner of such client is a politically exposed person. Such procedures should include seeking relevant information from the client, referring to publicly available information or accessing the commercial electronic databases of PEPS. Further, the enhanced CDD measures as outlined in clause 5.5 should also be applicable where the beneficial owner of a client is a PEP”.

g. The existing clause 5.5(c) of the Master Circular shall read as follows: “Registered intermediaries shall also take reasonable measures to verify the sources of funds as well as the wealth of clients and beneficial owners identified as PEP”.

h. Clause 8.2 of the Master Circular prescribes that intermediaries shall maintain the records of the identity of clients prescribed in Rule 9 of the PML Rules for a period of 10 years from the date of cessation of transactions between the client and intermediary. It is clarified that the “date of cessation of transactions” shall be read to mean the “date of termination of an account or business relationship”.

i. It is clarified that the "tipping off" provision in clause 13.3 of the Master Circular extends not only to the filing of the STR and/or related information but even before, during and after the submission of an STR.

2. All the registered intermediaries are directed to ensure compliance with the requirements contained in this circular on an immediate basis. Stock exchanges, Depositories and AMFI are also directed to bring the contents of this circular to the attention of their members/ depository participants and verify compliance during inspections.

3. This circular is being issued in exercise of powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act, 1992 (SEBI Act), and Rule 7 and Rule 9 of Prevention of Money-laundering (Maintenance of Records of the Nature and Value of Transactions, the Procedure and Manner of Maintaining and Time for Furnishing Information and Verification and Maintenance of Records of the Identity of the Clients of the Banking Companies, Financial Institutions and Intermediaries) Rules, 2005 (PML Rules) to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

Yours faithfully,
S. Ramann