The President,
The Institute of Company Secretaries of India
Lodi Road, New Delhi.

Sub: Suggestions on monitoring of quality and conduct of Secretarial Audit and Annual Return Certification.

May 14, 2014

Dear Sir,

As you are aware about the fact that the Secretarial Audit under Section 204 of the Companies Act, 2014 (“the Act”) has been made applicable on the prescribed class of Companies from financial year 2014 – 15. To comply with these provisions, the Companies have already started appointing the Secretarial Auditors.

Further, Annual Return of companies other than OPC & small companies will also be required to be certified by the Practising Company Secretaries (“the PCS”).

Therefore, it has became utmost important for the Institute to frame the Guidelines for setting up effective monitoring process and mechanism for smooth conduct of Secretarial Audits and Annual Return Certification by the PCS.

Secretarial Audit:

With a view to effective conduct of Secretarial Audit, we hereby submit that:

i) We shall fix maximum ceiling limit for conducting Secretarial Audit by each Practising Company Secretary or by each partner in case of firm, after considering number of practicing members vis-à-vis tentative number of Companies available for Secretarial Audit, so as to provide equal opportunity among all the practising members. Further, it is advisable to provide / fix separate limits for Secretarial Audit & Annual Return, so as to benefit relatively new and young practitioners.

ii) We shall prescribe minimum fees to be charged for conducting Secretarial Audit. This ceiling shall be based on paid-up capital or Turnover of Auditee Company.

iii) We shall clarify or seek clarification from the Ministry of Corporate Affairs regarding understanding and meaning of “other laws as may be applicable specifically to the Company” as provided in point (vi) of the Form MR – 3. Whether, it relates to any law specifically applicable to the Company such as
NBFC Regulations in case of NBFC Companies, Banking Law in case of Banking Companies, etc. or all other laws including sales tax, services tax, income tax, labour laws, etc.

iv) We may come out with Secretarial Standard of Secretarial Audit and include provisions relating to obtaining NOC from previous incumbent in the Secretarial Standards.

v) In order to ensure Independence of Secretarial Auditors, the MCA shall be requested to include provisions relating to appointment and removal of Secretarial Auditors in the Companies Rules. The removal of Secretarial Auditor should require approval of the shareholders in the General Meeting;

**Annual Return Certification:**

With a view to monitor the quality of Annual Return Certification, we hereby submit that:

vi) We shall fix maximum ceiling limit for certification of Annual Return by each Practising Company Secretary or by each partner in case of firm, after considering number of practicing member vis-à-vis tentative number of Companies subject to Annual Return Certification. Further, it is advisable to provide separate limits for Secretarial Audit & Annual Return, so as to benefit relatively new and young practitioners.

i) We shall prescribe minimum fees to be charged for Annual Return Certification. This ceiling shall be based on paid-up capital or Turnover of Company requiring Annual Return Certification;

ii) We shall bring out Secretarial Standard of Annual Return Certification and include provisions relating to obtaining NOC from previous incumbent in the guidelines.

We have received numerous suggestions from the members on the above said matter and are of the view that an immediate action on the above is required.

I hereby request you to kindly take-up the above matters on urgent basis in the best interest of the members of the ICSI.

Regards,

CS Shyam Agrawal
Chairman, NIRC