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CS UPDATE

January 07, 2011

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Disclaimer: - CS Update contains government notifications, case laws and contributions received from the members. Due care and diligence is taken in compilation of the CS Update. The Institute does not own the responsibility for any loss or damage resulting from any action taken on the basis of the contents of the CS Update. Anyone wishing to act on the basis of the contents of the CS Update is advised to do so after seeking proper professional advice.

PCS UPDATE

COMPANY SECRETARIES IN PRACTICE

RELAXATION OF TIME TO COMPLETE REQUIRED PROGRAMME CREDIT HOURS FOR THE BLOCK OF THREE YEARS ENDING 31.12.2010

The Guidelines for Compulsory Attendance of Professional Development Programmes by Members (ICSI Guideline No. 3 of November, 2007), which were notified and came into effect from January 1, 2008 require every PCS to secure 12 Programme Credit Hours in one year or 40 Programme Credit Hours in a block of three years by attending approved learning programmes.

As per the guidelines the current block of three years which commenced from January 1, 2008 will close on December 31, 2010.

The Council of the Institute in its 197th meeting held on December 15, 2010 considered the matter and granted an opportunity to those practicing members who have not completed the mandatory programme credit hours to complete the same by attending approved learning programmes upto March 31, 2011.

The Council further decided that if a member does not complete the mandatory Programme Credit Hours till March 31, 2011 the Certificate of Practice of such member shall not be renewed.

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FROM ICS

PMQ COURSE IN CORPORATE GOVERNANCE

ENHANCEMENT OF FEES

The Council at its 197th Meeting held on December 15, 2010 felt that honorarium be paid to the Guides for dissertation and project report under PMQ Course in Corporate Governance. With a view to meet the expense on honorarium to be paid to the Guide and to meet the increased costs, the Council has decided to enhance the **fee for PMQ Course in Corporate Governance with effect from January 1, 2011. to Rs.25,000/-** for the entire course payable as under :

Rs.12500/- payable at the time of registration for the course.

Rs.12,500/- payable after completion of Part I and before commencement of Part II

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THE INSTITUTE'S PUBLICATIONS - 2010

- Business @ Governance & Sustainability
- Guidance Note on Board Processes
- Independent Directors-A research Study on Corporate Practice in India
- Corporate Social Responsibility –Research Study of Corporate Practice in India
- DNA of Integrity
- Role of Company Secretaries-A New Perspective
- A Guide to Company Secretary in Practice
- Guidance Note on Related Party Transactions
- Guidance Note on Listing of Corporate Debt
- Guidance Note on Corporate Governance Certificate
- Referencer on Secretarial Audit
- Referencer on Filling and Filing of E-Forms 23AC and 23ACA
- Establishment of Branch, Liaison & Project Offices in India
- Handbook on Mergers, Amalgamation and Takeover

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MCA UPDATE

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**ADDITIONAL FEES REVISED w.e.f 5TH DECEMBER,
2010.**

Dear Corporates,

It has been decided to revise the additional fees payable as per Section 611(2) of the Companies Act, 1956 (except for Form 5) as per below details with effect from 5th December 2010 :-

Period of Delay	Fixed rate of additional fee
Upto 30 days	Two times of normal filing fee
More than 30 days and upto 60 days	Four times of normal filing fee
More than 60 days and upto 90 days	Six times of normal filing fee
More than 90 days	Nine times of normal filing fee

In order to avoid payment of additional fees, please file within stipulated time.

Source: www.mca.gov.in

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Circular on Easy Exit Scheme, 2011

F. No. 2/7/2010-CL V
Government of India
Ministry of Corporate Affairs

5th Floor, 'A' Wing, Shastri Bhavan,
Dr. R.P. Road, New Delhi
Dated the 3rd December, 2010

To
All Regional Director,
All Registrar of Companies.

Subject: Easy Exit Scheme, 2011

Sir,

It has been observed that certain companies have been registered under the Companies Act, 1956, but due to various reasons some of them are inoperative since incorporation or commenced business but became inoperative later on and are not filing their due documents timely with the Registrar of Companies. These companies may be defunct and are desirous of getting their names strike off from the Register of Companies.

2. In order to give an opportunity to the defunct companies, for getting their names strike off from the Register of Companies, the Ministry had launched a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956 during May-Aug, 2010. A large number of companies availed this scheme. However, on huge demands from corporate sector, the Ministry has decided to re-launch the Scheme as, "Easy Exit Scheme, 2011" under Section 560 of the Companies Act, 1956. The details of the Scheme are as under: -

(i) The Scheme shall come into force on the 1st January, 2011 and shall remain in force up to 31st January, 2011.

(ii) **Definitions** - In this Scheme, unless the context otherwise requires, -

- (a) "company" means a company registered under the Companies Act, 1956;
- (b) "Collective Investment Management Company" means the company as defined in clause (h) of sub-regulation of 2 of Securities and Exchange Board of India (Collective Investment Companies) Regulations, 1999;

- (c) "defunct company" means a company registered under the Companies Act, 1956 which is not carrying over any business activity or operation on or after the 1st April, 2008 and includes a company which has not raised its paid up capital as provided in sub sections (3) and (4) of section 3 of the Companies Act, 1956;
- (d) "Non-Banking Financial Company" means a company as defined under clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
- (e) **"Scheme" means the "Easy Exit Scheme, 2011" (EES, 2011), being specified through this Circular;**
- (f) "vanishing company" means a company, registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

(iii) Applicability: -

- (a) Any "defunct company" which has active status on Ministry of Corporate Affairs portal may apply under EES, 2011 in accordance with the provisions of this Scheme for getting its name strike off from the Register of Companies;
- (b) Any defunct company which is a Government Company shall submit 'No Objection Certificate' issued by the concerned Administrative Ministry or Department or State Government along with the application under this Scheme;
- (c) The purpose of the Scheme is to allow eligible companies to avail of this opportunity to exit from the Register of Companies after fulfilling the requirements laid down herewith and the decision of the Registrar of Companies in respect of striking off the name of company shall be final.

(iv) Scheme not applicable to certain companies: - The Scheme does not cover the following companies namely: -

- (a) listed companies;
- (b) companies that have been de-listed,
- (c) companies registered under section 25 of the Companies Act, 1956;
- (d) vanishing companies;

- (e) companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court;
- (f) companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court;
- (g) companies against which prosecution for a non-compoundable offence is pending in court;
- (h) companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- (i) company having secured loan ;
- (j) company having management dispute;
- (k) company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority;
- (l) company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

(v) Procedure for making an application:-

(a) Any defunct company desirous of getting its name strike off the Register under Section 560 of the Companies Act, 1956 shall make an application in the Form EES, 2011, annexed;

(b) The Form EES, 2011, should be filed electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in accompanied by filing fee of Rs. 3,000/-;

(c) In case, the application in Form EES, 2011, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;

(d) In all cases, the Form EES, 2011, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;

(e) The company shall disclose pending litigations if any, involving the company while applying under this Scheme;

(f) The Form shall be accompanied by an affidavit annexed at Annexure- A of Form EES, 2011, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations and has not carried on any business after the 1st April, 2008, as the case may be;

(g) The Form EES, 2011 shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B of Form EES, 2011, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;

(h) The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of filing of application in Form EES, 2011, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.

(i) In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form EES, 2011 and in Annexure A, B and C in place of name and other details of the directors and also to sign the said documents before filing.

(vi) Simplified procedure for Registrar of Companies for removal of name of defunct companies:-

(a) The Registrar of Companies, on receipt of the application, shall examine the same and if found in order, shall give a notice to the company under section 560(3) of the Companies Act, 1956 by e-mail on its e-mail address intimated in the Form, giving thirty days time, stating that unless cause is shown to the contrary, its name be struck off from the Register and the company will be dissolved;

(b) The Registrar of companies shall put the name of applicant(s) and date of making the application(s) under EES, 2011, on daily basis, on the MCA portal www.mca.gov.in,

giving thirty days time for raising objection, if any, by the stakeholders to the concerned Registrar;

(c) In case of company(s) like Non-Banking Financial Company(s), Collective Investment Management Company(s) which are regulated by other Regulator(s) namely RBI, SEBI, the Registrar of Companies, at the end of every week, after the Scheme commences, shall send intimation of such companies availing EES, 2011, during that period to the concerned Regulator(s) and also an intimation in respect of all companies availing EES, 2011, during that period to the office of the Income Tax Department giving thirty days time for their objection, if any;

(d) The Registrar of Companies immediately after passing of time given in sub-paras (a) to (c) of this Para and on being satisfied that the case is otherwise in order, shall strike its name off the Register and shall send notice under sub-section (5) of section 560 of the Companies Act, 1956 for publication in the Official Gazette and the applicant company under this Scheme shall stand dissolved from the date of publication of the notice in the Official Gazette.

Yours faithfully,

(Monika Gupta)
Assistant Director

NOTE: To view Form EES, 2011 and the proforma of various attachments required to be send along with it, kindly visit the website of Ministry of Corporate Affairs i.e. www.mca.gov.in

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MINISTRY OF FINANCE
UPDATE

CREATION OF FINANCIAL STABILITY AND DEVELOPMENT COUNCIL (FSDC)

(To be published in Part I (1) of the Gazette of India Extra Ordinary)

MINISTRY OF FINANCE

Department of Economic Affairs (DEA)
Capital Markets Division

North Block, New Delhi,
30 December, 2010

Notification

Subject: Creation of Financial Stability and Development Council (FSDC)

With a view to establishing a body to institutionalise and strengthen the mechanism for maintaining financial stability, financial sector development and inter-regulatory coordination, the Government in consultation with the financial sector regulators has decided to set up the Financial Stability and Development Council.

2. Composition: The Council shall have the following composition:

- a. The Union Finance Minister shall be the Chairperson.
- b. Its members shall be:
 - i. Governor Reserve Bank of India (RBI),
 - ii. Finance Secretary and/ or Secretary, Department of Economic Affairs (DEA),
 - iii. Secretary, Department of Financial Services (DFS),
 - iv. Chief Economic Advisor, Ministry of Finance,
 - v. Chairman, Securities and Exchange Board of India (SEBI),
 - vi. Chairman, Insurance Regulatory and Development Authority (IRDA),
 - vii. Chairman Pension Fund Regulatory and Development Authority (PFRDA),
- c. Joint Secretary (Capital Markets), DEA, will be the Secretary of the Council,
- d. The Chairperson may invite any person whose presence is deemed necessary for any of its meeting (s).

3. Responsibility of the Council: The Council shall deal with issues relating to:

- a. Financial stability
- b. Financial sector development
- c. Inter-regulatory coordination
- d. Financial literacy
- e. Financial inclusion
- f. Macro prudential supervision of the economy including the functioning of large financial conglomerates

g Coordinating India's international interface with financial sector bodies like the Financial Action Task Force (FATF), Financial Stability Board (FSB) and any such body as may be decided by the Finance Minister from time to time.

h. Any other matter relating to the financial sector stability and development referred to by a member/Chairperson and considered prudent by the Council/Chairperson.

4. The Council would meet as and when deemed necessary by the Chairperson.

5. The Council shall have a Sub-committee headed by the Governor, RBI. The Subcommittee will replace the existing High Level Coordination Committee on Financial Markets (HLCCI'M)

[F.No.14/33/2010-EM]

Dr. Thomas Mathew
Joint Secretary to the Government of India

Source:www.finmin.nic.in

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SEBI UPDATE

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MODIFICATIONS TO CLIENT CODE POST TRADE EXECUTION

CIRCULAR

CIR/DNPD/01/2011

January 3, 2011

To

Recognised Stock Exchanges of India

Dear Sir,

Sub: Modifications to client code post trade execution

1. Stock Exchanges can permit modifications to client code post trade execution only in case of genuine error or wrong data entry made by trading members. This facility has been provided for the smooth functioning of the system and is expected to be used more as an exception rather than routine. Accordingly, Stock Exchanges are advised to:

- Set objective parameters for identification of client code modifications arising as a result of genuine error or wrong data entry. These objective parameters should be approved by the Governing Board of the Exchange and disclosed to the trading members.
- Impose monetary penalty in addition to disciplinary action against members who do not meet the laid down objective parameters.
- Include verification of client code modification as a reporting item in internal audit report of the trading members.

2. This circular is issued in exercise of the powers conferred under Section 11 (1) of the Securities and Exchange Board of India Act 1992, read with Section 10 of the Securities Contracts (Regulation) Act, 1956 to protect the interests of investors in securities and to promote the development of, and to regulate the securities market.

3. The circular shall come into force from the date of the circular.

4. This circular is available on SEBI website at www.sebi.gov.in, under the category "Derivatives- Circulars".

Yours faithfully,
Sujit Prasad
General Manager
022-26449460
sujitp@sebi.gov.in

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January 07, 2011

MASTER CIRCULAR ON MATTERS RELATING TO EXCHANGE TRADED DERIVATIVES

MASTER CIRCULAR

CIR/DNPD/7/2010
31, 2010

December

To,

The Managing Directors/Executive Directors of Derivative Segment of Stock Exchanges and their Clearing House/ Corporation.

Dear Sir / Madam,

Sub: Master Circular on Matters relating to Exchange Traded Derivatives

1. The Securities and Exchange Board of India has, from time to time, issued various circulars regarding Exchange Traded Derivatives.
2. This master circular seeks to consolidate all the applicable circulars issued on the subject as on date. The list of previous circulars on the subject is referred to in Annexure VII.
3. This Master Circular is being issued with a sunset clause of one year. This circular will stand withdrawn on December 30, 2011 and be replaced by an updated Master Circular on the subject on that date.
4. This Master Circular is available on SEBI website at www.sebi.gov.in, under the category "Derivatives-Circulars".

Yours faithfully,

Sujit Prasad

General Manager
Derivatives and New Products Department
022-26449460
sujitp@sebi.gov.in

For details: <http://www.sebi.gov.in/circulars/2010/cirdnpd72010.pdf>

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MASTER CIRCULAR FOR DEPOSITORIES

MASTER CIRCULAR

CIR/MRD/DP/ 41 /2010

December 31, 2010

To,

All Depositories

Dear Sir / Madam,

Sub: Master Circular for Depositories

Securities and Exchange Board of India (SEBI) has been issuing various circulars/directions from time to time. In order to enable the users to have an access to all the applicable circulars/directions at one place, Master Circular for Depositories has been prepared.

This Master Circular is a compilation of the circulars/communications issued by SEBI up to December 31, 2010 and shall come into force from the date of its issue.

Harini Balaji
Deputy General Manager
022-26449372
harinib@sebi.gov.in

For details: <http://www.sebi.gov.in/circulars/2010/cirmrddp412010.pdf>

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MASTER CIRCULAR FOR STOCK EXCHANGE - CASH MARKET

MASTER CIRCULAR

CIR/MRD/DP/42/2010

December 31, 2010

To,

All Stock Exchanges

Dear Sir / Madam,

Sub: Master Circular for Stock Exchange - Cash Market

Securities and Exchange Board of India (SEBI) has been issuing various circulars from time to time. In order to enable the users to have an access to all the applicable circulars at one place, Master Circular for Stock Exchange/ Cash Market has been prepared.

This Master Circular is a compilation of the circulars issued by SEBI up to December 31, 2010 and shall come into force from the date of its issue.

Yours faithfully,
Harini Balaji
Deputy General Manager
022-26449372
harinib@sebi.gov.in

Encl:

- Annexure 1** – Master Circular for Stock Exchange/ Cash Market – Trading Part- I
- Annexure 2** – Master Circular for Stock Exchange/ Cash Market – Trading Part- II
- Annexure 3** – Master Circular for Stock Exchange/ Cash Market – Settlement
- Annexure 4** – Master Circular for Stock Exchange/ Cash Market – Comprehensive Risk Management
- Annexure 5** – Master Circular for Stock Exchange - Companies shifted from Trade for trade to Rolling Settlement

For details: <http://www.sebi.gov.in/circulars/2010/cirmrddp42.pdf>

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**MASTER CIRCULAR FOR STOCK EXCHANGES AND
DEPOSITORIES**

MASTER CIRCULAR

CIR/MRD/DMS/40/2010

December 31, 2010

To,

All Stock Exchanges and Depositories

Dear Sir / Madam,

Sub: Master Circular for Stock Exchanges and Depositories

Securities and Exchange Board of India (SEBI) has been issuing various circulars from time to time. In order to enable the users to have an access to all the applicable circulars at one place, Master Circular for Stock Exchanges and Depositories has been prepared.

This Master Circular is a compilation of the circulars issued by Market Regulation Department –Division of Market Supervision of SEBI up to December 31, 2010 and shall come into force from the issuance date.

Yours faithfully,

MANOJ KUMAR
General Manager
+91-22-26449260
manojk@sebi.gov.in

For details: <http://www.sebi.gov.in/circulars/2010/cirmrddms402010.pdf>

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MASTER CIRCULAR ON ADMINISTRATION OF STOCK EXCHANGES, ARBITRATION IN RECOGNISED STOCK EXCHANGES AND STOCK EXCHANGES / TRADING PLATFORM FOR SMALL & MEDIUM ENTERPRISES INCLUDING GUIDELINES FOR MARKET MAKERS.

CIR/MRD/DSA/SE/43/2010

December 31, 2010

The Managing Director/Executive Director, of all Stock Exchanges.

Dear Sir / Madam,

Sub: Master Circular on Administration of Stock Exchanges, Arbitration in recognised Stock Exchanges and Stock Exchanges / trading platform for Small & Medium Enterprises including guidelines for Market Makers.

1. The Securities and Exchange Board of India has, from time to time, issued various circulars/directions on the captioned subject. In order to enable the users to have an access to all the applicable circulars at one place, this Master Circular has been prepared.
2. This Master Circular consolidates the circulars/directions issued by SEBI in this regard up to December 31, 2010 as listed in the Schedule and shall come into force from the date of its issue.

Yours faithfully,

D. Rajesh Kumar
Deputy General Manager
022-26449242
rajeshkd@sebi.gov.in

For details: <http://www.sebi.gov.in/circulars/2010/cirmrddsa432010.pdf>

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MASTER CIRCULAR ON AML/CFT

**OFFICER ON SPECIAL DUTY
INTEGRATED SURVEILLANCE DEPARTMENT
EMAIL – ramanns@sebi.gov.in**

Tel : 022 26449450

Fax : 022 2644902

CIR/ISD/AML/3/2010

December 31, 2010

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

Sub: Master Circular on AML/CFT

Anti Money Laundering (AML) Standards/ Combating the Financing of Terrorism (CFT) /Obligations of Securities Market Intermediaries under the Prevention of Money Laundering Act, 2002 and Rules framed there under.

For detail: <http://www.sebi.gov.in/circulars/2010/cirisdaml2010.pdf>

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