

09<sup>th</sup> December, 2015

## **CACS UPDATES**

### **NON-COMPLIANCE WITH CERTAIN PROVISIONS OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015 AND STANDARD OPERATING PROCEDURE FOR SUSPENSION AND REVOCATION OF TRADING OF SPECIFIED SECURITIES**

#### **Effectiveness of Circular:**

In order to maintain consistency and uniformity of approach, the Securities and Exchange Board of India in its Circular No. CIR/CFD/CMD/12/2015 dated November 30, 2015 introduced a "Uniform fine structure for non-compliance with Listing Regulations regarding non-submission of certain periodic reports" and "Standard Operating Procedure (SOP) for suspension and revocation of suspension of trading of specified securities". The circular has come into force w.e.f. December 01, 2015.

Recognized stock exchanges shall use imposition of fines as action of first resort in case of non-compliances and invoke suspension of trading in case of subsequent and consecutive defaults.

#### **Listing Regulations:**

The circular has been issued under the following regulations of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 read with Regulation 101(2) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

- Regulation 97: Monitoring of Compliance/ Non Compliance & Adequacy/ Accuracy of the disclosures
- Regulation 98: Liability for contravention of the Act, rules or the regulations
- Regulation 99: Failure to pay fine
- Regulation 102: Power to relax strict enforcement of the regulations

#### **Disclosures on the website of Recognized Stock Exchanges:**

The recognized stock exchanges shall disclose on their website the following:

- action/s taken against the listed entities for non-compliance(s)
- the details of respective requirement
- amount of fine
- period of suspension
- freezing of shares, etc.

#### **Shareholding of promoter and promoter group:**

The depositories, on receipt of intimation from concerned recognized stock exchange, shall freeze or unfreeze, as the case may be, the entire shareholding of the promoter and promoter group in such entity.

**IMPOSITION OF FINE**

The recognized stock exchange shall impose fine on listed entities for non-compliance with certain provisions of the Listing Regulations for non-submission/ delay in submission of reports/ documents to recognized stock exchange as under:

<b>REGULATION</b>	<b>FINE PAYABLE FOR 1ST NON-COMPLIANCE</b>	<b>FINE PAYABLE FOR EACH SUBSEQUENT AND CONSECUTIVE NON-COMPLIANCE</b>
<b>Regulation 27 (2)</b> Non submission of the Corporate governance compliance report within the period provided under this regulation	Rs. 1,000 per day of non-compliance till the date of compliance.	Rs. 2,000 per day of non-compliance till the date of compliance.
<b>Regulation 31</b> Non submission of the Shareholding pattern within the period prescribed under this regulation	Rs. 1,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1% of paid up capital* of the entity or Rs. 1 crore, whichever is less.	Rs. 2,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1 % of paid up capital* of the entity or Rs. 1 crore, whichever is less.
<b>Regulation 33</b> Non submission of the financial results within the period prescribed under this regulation	Rs. 5,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1% of Paid Up capital* of the entity or Rs. 1crore, whichever is less.	Rs. 10,000 per day of non-compliance till the date of compliance and If non-compliance continues for more than 15 days, additional fine of 0.1% of Paid Up capital* of the entity or Rs. 1 crore, whichever is less.
<b>Regulation 34</b> Non-submission of the Annual Report within the period prescribed under this regulation	If non - compliance continues for more than 5 days, Rs. 1,000 per day till the date of compliance.	Rs. 2,000 per day of non-compliance till the date of compliance.

*\*Paid up capital as on first day of the financial year in which the non-compliance occurs.*

**Role of Recognized Stock Exchanges:**

- **Dissemination of non-compliant listed entities:** The recognized Stock Exchanges shall disseminate on their website, the names of non-compliant listed entities that are liable to pay fine for non-compliance of the above tabled regulations.
- **Review the compliance status:** Every recognized stock exchange shall review the compliance status of the listed entities within 15 days from the due date for compliance for the respective regulation.
- **Issue of Notice:** Every recognized stock exchange shall issue notices to the non-compliant listed entities to ensure compliances and pay fine within 15 days from the date of the notice.
- **Enforcement of action:** If any non-compliant listed entity fails to pay the fine despite the receipt of the notice, the recognized stock exchange may initiate appropriate enforcement action, including prosecution.

**Trade for Trade basis:**

- Commitment of two or more consecutive defaults in compliance of the above tabled provisions of the Listing Regulations within 15 days from date of the issuance of notice, the concerned recognized stock exchange shall, in addition to imposing fine, move the scrip of the listed entities to "Z" category wherein trades shall take place on 'Trade for Trade' basis.
- 7 days prior public notice shall be given to investors by the recognized stock exchange before moving the share of non-compliant entity to "Z" category or vice versa.
- The recognized stock exchange shall move back the scrip of the listed entity to the normal trading category, if it complies with respective provisions of the Listing Regulations and completely pays the fine.

**STANDARD OPERATION PROCEDURE FOR SUSPENSION OF TRADING**

Standard Operating Procedure (SOP) lays down the following criteria for suspension and revocation of suspension of trading of specified securities of the listed entities:

S. NO.	CRITERIA
1	Failure to comply with regulation 27(2) with respect to submission of corporate governance compliance report for two consecutive quarters
2	Failure to comply with regulation 31 with respect to submission of shareholding pattern for two consecutive quarters
3	Failure to comply with regulation 33 with respect to submission of financial results for two consecutive quarters
4	Failure to comply with regulation 34 with respect to submission of Annual Report for two consecutive financial years

5	Failure to submit information on the reconciliation of shares and capital audit report, for two consecutive quarters;
6	Receipt of the notice of suspension of trading of that entity by any other recognized stock exchange on any or all of the above grounds.

**Procedure for suspension of trading:**

**Written Intimation**

The concerned recognized stock exchange shall send a written intimation to the non-compliant listed entity calling upon it to comply with respective requirement(s) and pay the applicable fine within 21 days of the date of the intimation.



<b><u>Non-Compliant Listed Entity complies with the requirements and pays fine</u></b>	<b><u>Non-Compliant Listed Entity fails to comply with the requirements and pay fine within the prescribed time</u></b>
<p>Complies with the requirement(s) and pays fine five days before the proposed date of suspension:</p> <ul style="list-style-type: none"> <li>The trading in its shares shall not be suspended on the proposed date.</li> <li>The concerned recognized stock exchange shall intimate to the depositories to unfreeze, after one month from the date of compliance, the shares of the promoter and promoter group of the entity.</li> <li>The recognized stock exchange shall give a public notice on its website informing compliance by the entity.</li> </ul>	<ul style="list-style-type: none"> <li><b>Freeze the shareholding of promoter and promoter group:</b> The concerned recognized stock exchange shall intimate the depositories to freeze entire shareholding of the promoter and promoter group of the listed entity.</li> <li><b>Public notice:</b> The recognized stock exchange shall give a 21 days public notice (prior to the proposed date of suspension) on its website proposing suspension of trading in the shares of the non-compliant listed entity.</li> <li><b>Suspension in trading:</b> The recognized stock exchange shall suspend the trading in the shares of a non-compliant listed entity.</li> <li><b>Shareholding to remain frozen for three months from the date of revocation of suspension:</b></li> </ul>

The entire shareholding of promoter/ promoter group in such listed entity shall remain frozen till expiry of three months from the date of revocation of suspension.

- **Intimation of suspension to other recognized stock exchanges:**

While suspending trading in the shares of the non-compliant entity the recognized stock exchange shall send intimation of suspension to other recognized stock exchanges where the shares of the non-compliant entity are listed. On receipt of such intimation the other recognized stock exchanges shall also suspend trading in the shares of the entity.

- **Trade for Trade basis:**

After 15 days of suspension, trading in the shares of non-compliant entity may be allowed on the "Trade for Trade" basis, on the first trading day of every week for 6 months.

- **Confirmation from clients:**

The recognized stock exchange shall give instruction to its trading members/ stock brokers to obtain confirmation from clients before accepting an order for purchase of shares of non-compliant entity on the 'Trade for Trade' basis.

- **Caution Message:**

The recognized stock exchange shall put in place a system to publish a caution message on its trading terminals, as follows: "*Trading in shares of the Listed Entity is under 'suspension and trade to trade basis' and trading shall stop completely if the Listed Entity remains not compliant for six months*".

**STANDARD OPERATION PROCEDURE FOR REVOCATION OF SUSPENSION OF TRADING**

<b><u>Compliance of the requirement(s) and payment of fine within three months from the date of suspension</u></b>	<b><u>Complies with the requirement(s) and payment of fine after three months from the date of suspension</u></b>
<ul style="list-style-type: none"><li>The recognized stock exchange may revoke the suspension of trading of shares.</li></ul>	<ul style="list-style-type: none"><li>The recognized stock exchange may revoke the suspension of trading of its shares after a period of three more months from the date of such compliance.</li></ul>

- The recognized stock exchange shall, 7 days prior to revocation of suspension of trading in shares of the entity, issue a public notice on its website.
- After 3 months from the date of revocation of the suspension, the recognized stock exchange shall send intimation to the depositories to unfreeze the shares of the promoter and promoter group.
- After revocation of suspension, the trading of shares shall be permitted only in the 'Trade for Trade' basis for a period of three months from the date of revocation and after this period of three months, trading in the shares of the entity shall be shifted back to the normal trading category, after giving prior notice of 7 days.

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**Suggestions may be sent to [rupesh@cacsindia.com](mailto:rupesh@cacsindia.com)**

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