

A photograph of a city skyline at night, showing several tall skyscrapers with illuminated windows against a dark sky. The buildings are viewed from a low angle, looking up.

QAU Memo No. 17, s2021

In this issue:

The Securities and Exchange Commission has issued the Amendments on the SRC Rules 9 and 10, and rules for Calling of Special Stockholders' Meetings, and Notice regarding deadline to file mandatory declarations under MC No. 1 s 2021: *The Beneficial Ownership Transparency Guidelines* to July 31, 2021.

R.S. BERNALDO & ASSOCIATES

TAKING YOU FURTHER

AMENDMENTS ON THE SRC RULES 9 AND 10

To: All Concerned

On April 20, 2021, the Commission *En Banc* has resolved to approve the following amendments to SRC Rules 9 and 10. Below is a summary of the said amendments:

2015 IRR of the Securities Regulation Code (R.A. 8799)	Amendments provided in MC No. 6 s2021
Rule 9.1 – Exempt Securities	
<p>9.1.1. Any evidence of indebtedness issued by a financial institution that has been licensed by the BSP to engage in banking or quasi-banking shall be exempt from registration under Section 8.1 of the Code.</p>	<p>9.1.1. The requirements and procedures for registration under Sections 8 and 12 shall not as a general rule apply to any of the following classes of securities:</p> <p>(a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.</p> <p>(b) Any security issued or guaranteed by the government of any country with which the Philippines maintain diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: Provided, That the Commission may require compliance with the form and content for disclosures the Commission may prescribe.</p> <p>(c) Certificates issued by a receiver or by a transferee in bankruptcy duly approved by the proper adjudicatory body.</p> <p>(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Rule Regulatory Board, or the Bureau of Internal Revenue.</p> <p>(e) Any security issued by a bank except its own shares of stock.</p>

<p>9.1.2. The registration requirements shall not likewise apply to the following:</p> <p>9.1.2.1. Evidence of indebtedness issued to the BSP under its open market and/or rediscounting operations;</p> <p>9.1.2.2. Bills of exchange arising from a bona fide sale of goods and services that are distributed and/or traded by banks or investment houses duly licensed by the Commission and BSP through an organized market that is operated under the rules approved by the Commission;</p> <p>9.1.2.3. Any security issued or guaranteed by multilateral financial entities established through a treaty or any other binding agreement to which the Philippines is a party or subsequently becomes a member (hereinafter referred as Multilateral Financial Entities or MFE), e.g., international financial institutions, multilateral development banks, development finance institutions or any other similar entities; or by facilities or funds established, administered, and supported by MFEs; Provided, that the issuer shall file an offering circular/ memorandum in a format prescribed by the Commission and containing among others; (1) information about the issuer and the security to be issued, (2) information about the MFE, and (3) information about the guarantee.</p> <p>9.1.2.4. The registration requirements shall not likewise apply to evidence of indebtedness, e.g., commercial papers, that meet the following conditions:</p> <p>9.1.2.4.1. Issued to not more than nineteen (19) non-institutional lenders;</p>	<p>9.1.2. The registration requirements shall not likewise apply to the following:</p> <p>9.1.2.1. Any evidence of indebtedness issued by a financial institution that has been licensed by the BSP to engage in banking or quasi-banking shall be exempt from registration under Section 8.1 of the Code.</p> <p>9.1.2.2. Evidence of indebtedness issued to the BSP under its open market and/or rediscounting operations;</p> <p>9.1.2.3. Bills of exchange arising from a bona fide sale of goods and services that are distributed and/or traded by banks or investment houses duly licensed by the Commission and BSP through an organized market that is operated under the rules approved by the Commission;</p> <p>9.1.2.4. Any security issued or guaranteed by multilateral financial entities established through a treaty or any other binding agreement to which the Philippines is a party or subsequently becomes a member (hereinafter referred as Multilateral Financial Entities or MFE), e.g., international financial institutions, multilateral development banks, development finance institutions or any other similar entities; or by facilities or funds established, administered, and supported by MFEs; Provided, that the issuer shall file an offering circular/ memorandum in a format prescribed by the Commission and containing among others; (1) information about the issuer and the security to be issued, (2) information about the MFE, and (3) information about the guarantee.</p> <p>9.1.2.5. The registration requirements shall not likewise apply to evidence of indebtedness, e.g., commercial papers, that meet the following conditions:</p> <p>9.1.2.5.1. Issued to not more than nineteen (19) non-institutional lenders;</p>
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<p>9.1.2.4.2. Payable to a specific person;</p> <p>9.1.2.4.3. Neither negotiable nor assignable and held on to maturity; and</p> <p>9.1.2.4.4. In an amount not exceeding One Hundred Fifty Million Pesos (PhP150,000,000.00) or such higher amount as the Commission may prescribe.</p>	<p>9.1.2.5.2. Payable to a specific person;</p> <p>9.1.2.5.3. Neither negotiable nor assignable and held on to maturity; and</p> <p>9.1.2.5.4. In an amount not exceeding One Hundred Fifty Million Pesos (PhP150,000,000.00) or such higher amount as the Commission may prescribe.</p>
<p>Rule 10.1 – Exempt transactions</p>	
<p>10.1.3. Offer or Sale of Securities to Qualified Buyers under Section 10.1(1) of the Code. Sections 8 and 12 shall not likewise apply to securities issued and sold to the following qualified buyers:</p> <p>10.1.3.1. Bank;</p> <p>10.1.3.2. Registered investment house;</p> <p>10.1.3.3. Insurance company;</p> <p>10.1.3.4. Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the BSP to engage in trust functions;</p> <p>10.1.3.5. Investment company; or</p> <p>10.1.3.6. Such other person as the Commission may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.</p>	<p>10.1.3. Offer or Sale of Securities to Qualified Buyers under Section 10.1(1) of the Code. Sections 8 and 12 shall not likewise apply to securities issued and sold to the following qualified buyers:</p> <p>10.1.3.a. Bank;</p> <p>10.1.3.b. Registered investment house;</p> <p>10.1.3.c. Insurance company;</p> <p>10.1.3.d. Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the BSP to engage in trust functions;</p> <p>10.1.3.e. Registered Securities Dealer;</p> <p>10.1.3.f. An account managed by a Registered Broker under a discretionary arrangement as provided for in the other relevant provisions in these SRC 2015 Rules;</p> <p>10.1.3.g. Registered Investment Company (e.g., mutual fund companies);</p> <p>10.1.3.h. Provident fund or pension fund maintained by a government agency or by a government or private corporation and managed by an entity authorized accordingly by the BSP or the SEC to engage in trust function or in fund management;</p>

	<p>10.1.3.i. A trust corporation that is authorized by the BSP to perform the acts of a trustee;</p> <p>10.1.3.j. Unit investment trust funds that are established in accordance with rules and regulations of the BSP;</p> <p>10.1.3.k. A fund established and covered by a trust or IMA agreement under a discretionary arrangement in accordance with rules and regulations of the BSP, A discretionary arrangement means that the entity managing the fund is granted authority to decide on the investment of the trust funds or IMA funds;</p> <p>10.1.3.l. A fund established and covered by a trust or IMA agreement under a non-discretionary arrangement in accordance with rules and regulations of the BSP, provided that the beneficial owner/s or principal/s of such fund possess the qualifications on financial capacity and sophistication as specified in 2015 SRC Rules 10.1.11.1 for natural persons, and 10.1.11.2 for juridical persons; and provided also, that the treatment of such fund as qualified buyer does not contravene the trust or IMA agreement.</p> <p>10.1.3.m. A fund established and covered by a trust or IMA agreement wherein the beneficial owner or principal of the fund has been deemed or conferred as a qualified buyer under SRC Sec. 10.1 (l) or SRC Rule 10.1.11; and</p> <p>10.1.3.n. An entity with quasi bank license issued by BSP;</p> <p>10.1.3.o. Pre-need company authorized by the Insurance Commission;</p> <p>10.1.3.p. Collective Investment Scheme authorized by the relevant regulatory authority pursuant to existing laws and regulations;</p>
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	<p>10.1.3.q. A listed entity on the Philippine Stock Exchange, or a related body corporate of a Philippine Stock Exchange listed entity provided that it engages the service of a professional fund manager, through direct hire or via outsourcing to an authorized fund management entity.</p> <p>10.1.3.r. A foreign entity not being established or incorporated in the Philippines that, if established or incorporated in the Philippines, would be covered by one of the preceding paragraphs; and</p> <p>10.1.3.s. Such other person as the Commission may by rule or order determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.</p>
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MC No. 06 s. 2021: <https://www.sec.gov.ph/mc-2021/mc-no-06-s-2021/>

CALLING OF SPECIAL STOCKHOLDERS’ MEETINGS

To: Publicly Listed Companies

For the promotion of good corporate governance and the protection of minority investors, the Commission resolved to issue the following rules:

- I. Any number of shareholders of a corporation (Qualifying Shareholders) who hold **at least ten percent** (10%) or more of the outstanding capital stock (Qualifying Shares) of a Publicly Listed Company (PLC) shall have the right to call for a Special Stockholders’ Meeting, subject to the guidelines set under Section 49 of the RCC and other relevant regulations. The Special Stockholders’ Meeting may be done physically or remotely through allowable means of remote communication.
- II. The Qualifying Shareholders should have continuously held the Qualifying Shares for a period of **at least one (1) year** prior to the receipt by the Corporate Secretary of a written Call for a Special Stockholders’ Meeting.
- III. The Call for a Special Stockholders’ Meeting shall be in writing, signed by all Qualifying Shareholders, addressed to the Board of Directors and transmitted through the Corporate Secretary at least forty-five (45) days prior to the proposed date of the special meeting, setting forth therein:
 - a) The names of the Qualifying Stockholder(s) and their respective percentage of shareholdings, which must constitute at least ten percent (10%) of the outstanding capital stock of the corporation;

- b) The purpose of the Call for a Special Stockholders' Meeting, which must be stated with sufficient clarity, and must affect the legitimate interest of the stockholders and is germane to the stockholders' interest provided that the purpose should not include the removal of any director under Section 27 of the RCC;
- c) The proposed date and time of the requested Special Stockholders' Meeting provided that no stockholder may call a special meeting within sixty (60) days from the previous meeting of the same nature and where the same matter was discussed, unless provided otherwise by the company's bylaws or approved by the Board of Directors.
- d) The proposed agenda items to be discussed during the Special Stockholders' Meeting provided that the matters to be discussed are those affecting the legitimate interests of the shareholders on corporate actions where stockholders' approval is required under the RCC except the right to remove a director provided further that a special meeting cannot be called if the proposed agenda:
 - 1) Covers the same matter/s discussed and resolved in a previous meeting of the stockholders, unless the sixty (60)-day holding-off period had lapsed, provided otherwise by the company's bylaws, or approved by the Board of Directors.
 - 2) Will be covered in the next regular or special meeting provided it is scheduled not later than thirty (30) days from the date of the request; or
 - 3) Has already been discussed and resolved with finality in the previous meetings.

The Qualifying Shareholders must provide proof of shareholdings and at least one (1) government-issued ID.

The Board of Directors may, at its discretion, set the Special Stockholders' Meeting, earlier than forty-five (45) days, if it determines that the matters raised by the Qualifying Shareholders necessitate a quick resolution to prevent undue damage to the company.

- IV. The Board of Directors shall determine if the objectives and conditions in the Call for Special Stockholders' Meeting are consistent with the requirements of this Memorandum Circular.
 - *If found to be consistent, the Board of Directors shall issue the Notice to convene the Special Stockholders' Meeting at least seven (7) days prior to the proposed date of special meeting in accordance with Sections 49 and 50 of the RCC, SEC Memorandum Circular No. 6, s. of 2020, and other relevant laws, rules and regulations of the Commission and the company's by-laws.*
 - *If found to be inconsistent, the Board of Directors shall send a written notice to the requesting stockholders indicating that a meeting cannot be called due to their failure to comply with the requirements of this Memorandum Circular, clearly setting forth the basis of such inconsistency, within twenty (20) days from receipt of the request*
- V. In the event that the Board of Directors fail to respond to the Call for Special Stockholders' Meeting within twenty (20) days from receipt of the request, the Qualifying Stockholder/s may avail of the remedy provided under paragraph 7, Section 49 of the RCC.

The Qualifying Shareholders may avail of the same remedy if the Board of Directors refuses to call a meeting under Section (IV) above.

- VI. Any officer or agent of the corporation who shall refuse to allow a Qualifying Shareholder to exercise his/her right to call a meeting shall be liable under Section 158 of the RCC provided that if such refusal is made pursuant to a resolution or order of the Board of Directors, the liability under this section for such action shall be imposed upon the directors who voted for such refusal provided further that it shall be a defense to any action under this Memorandum Circular that the shareholder exercising any of these rights was not acting in good faith or in accordance with the requirements of this Memorandum Circular provided furthermore that delay in the processing of such requests shall be equivalent to refusal if the delay is solely caused by negligence on the part of the corporation.

If, after due notice and hearing, the Commission finds that any provision of this Memorandum Circular has been violated, or that any of the right hereunder has been abused, the Commission may impose any or all of the sanctions provided under Section 158 of the RCC.

EFFECTIVITY

This Memorandum Circular shall take effect starting April 24, 2021.

SEC MC No. 7, s2021: <https://www.sec.gov.ph/mc-2021/mc-no-07-s-2021/>

NOTICE: EXTENSION OF DEADLINE TO FILE MANDATORY DECLARATIONS UNDER SECTIONS 6 AND 7 OF MC NO. 01, SERIES OF 2021 OR “THE BENEFICIAL OWNERSHIP TRANSPARENCY GUIDELINES” TO 31 JULY 2021

To: All Concerned

In consideration of the strict measures imposed under the Enhanced Community Quarantine (ECQ) and Modified Enhanced Community Quarantine (MECQ) from 29 March to 14 May 2021 arising from the surge in COVID-19 infections, the Commission has further extended the deadline for submission of all mandatory disclosures under **Sections 6 and 7 of MC No. 01, Series of 2021** to **31 July 2021**.

For your information and guidance.

SEC Notice: <https://www.sec.gov.ph/notices/extension-of-deadline-to-file-mandatory-declarations-under-sections-6-and-7-of-mc-no-01-series-of-2021-or-the-beneficial-ownership-transparency-guidelines-to-31-july-2021/>

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