

Newsletter

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The Securities and Exchange Commission (SEC) has issued Memorandum Circular No. 9 concerning the filing of Annual Financial Statements (AFS) and General Information Sheet (GIS) and SEC Memorandum Circular No.10 S. 2022 regarding the amendments to SEC Memorandum Circular No. 15, S. 2019.

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2023 FILING OF ANNUAL FINANCIAL STATEMENTS AND GENERAL INFORMATION SHEET

TO: All Concerned Corporations

The Securities and Exchange Commission (SEC) has issued Memorandum Circular No. 9 concerning the 2023 filing of Annual Financial Statement (AFS) and General Information Sheet (GIS) to maintain an organized and orderly filing of AFS and GIS, and to comply with the zero-contact policy and automation of business-related transactions mandated by Republic Act No. 11032 otherwise known as the “Ease of Doing Business and Efficient Government Service Delivery Act of 2018”.

I. AUDITED FINANCIAL STATEMENTS

1. All corporations, including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations, whose fiscal years ended on December 31, 2022, shall file their AFS through the SEC Electronic Filing and Submission Tool (eFAST), in accordance with the following schedule, depending on the last numerical digit of their SEC registration or license numbers:

Submission Dates	Last Digit of SEC Registration/ License Number
May 2,3,4,5	1 and 2
May 8,9,10,11,12	3 and 4
May 15,16,17,18,19	5 and 6
May 22,23,24,25,26	7 and 8
May 29,30,21 and June 1,2	9 and 0

All corporations under the jurisdiction of the SEC Extension Offices shall be governed by the same coding schedule in 2023.

2. The above filing schedule shall not apply to the following corporation:
 - a) Those fiscal years end on a date other than December 31, 2022. AFS shall file within 120 calendar days from the end of their respective fiscal years.

Brokers and dealers whose fiscal years end on December 31, SEC Form 52-AR shall be filed with Commission depending on the last numerical digit of the brokers and dealers’ registration numbers as prescribed by the Commission.

Brokers and dealers whose fiscal years end on a date other than December 31 shall file SEC Form 52-AR, 110 calendar days after the close of their respective fiscal years.
 - b) Those whose securities are listed on the Philippine Stock Exchange (PSE), those whose securities are registered but not listed on the PSE, those considered as public companies, and other entities covered under Sec.17.2 of the SRC. These entities shall file their AFS within 105 calendar days after the end of fiscal year, as attachment to their Annual Reports (SEC Form 17-A), in accordance with the Implementing Rules and Regulations of the SRC.

- c) Those whose AFS being audited by the Commission on Audit (COA), provided that the following documents are attached to their AFS:
- ✓ Affidavit signed by the President and Treasurer (or Chief Finance Officer, where applicable) proving that the company timely provided COA with the financial statements and supporting documents that the audit of the COA has just been concluded; and
 - ✓ A letter from the COA confirming the information provided in the affidavit.
3. All corporations may file AFS regardless of the last numerical digit of the registration or license number before the first day of the coding schedule pertaining to the said digit.
4. Late filings or submissions after the due dates provided above shall be accepted starting June 5, 2023, and shall be subject to the prescribed penalties which shall be computed from the date of the last day of filing stated above.
5. The AFS to be submitted, other than the consolidated financial statements, shall be stamped “received” by the Bureau of Internal Revenue (BIR) or its authorized banks, unless the BIR allows an alternative proof of submission for its authorized banks (e.g., bank slips) and/or other facilities. For companies which filed their AFS through the BIR e-AFS system, they shall attach the system-generated Transaction Reference Number issued by the BIR, in lieu of the manual “received” stamp.
6. The AFS shall include the basic components prescribed under the Revised SRC Rule 68. Failure to comply with any of the formal requirements under said Rule, including the prescribed qualifications for independent auditors and/or any material deficiency or misstatement that may be found upon evaluation of the specific contents thereof, shall be considered a sufficient ground for the imposition of penalties by the SEC. The acceptance and receipt by the Commission of the financial statements shall be without prejudice to such penalties.
7. The following shall submit annual audited financial statements (AAFS), as provided under the general financial reporting requirements stated in Revised SRC Rule 68, which was approved by the Commission En Banc on August 19, 2019:
- a) Stock corporations with total assets or total liabilities of Six Hundred Thousand Pesos (Php600,000.00) or more, as prescribed under the RCC and any of its subsequent revisions or such amount as may be subsequently prescribed;
 - b) Nonstock corporations with total assets or total liabilities of Six Hundred Thousand Pesos (Php600,000.00) or more as prescribed under the RCC and any of its subsequent revisions or such amount as may be subsequently prescribed;
 - c) Branch offices/representative offices of stock foreign corporations with assigned capital in the equivalent amount of One Million Pesos (Php1,000,000.00) or more;
 - d) Branch offices/representative offices of nonstock foreign corporations with total assets in the equivalent amount of One Million Pesos (Php1,000,000.00) or more;
 - e) Regional operating headquarters of foreign corporations with total revenues in the equivalent amount of One Million Pesos (Php1,000,000.00) or more;

Financial statements of branch offices of foreign corporations licensed to do business in the Philippines by the Commission shall comply with the requirements of this Rule unless they are otherwise determined by the Commission as not applicable.

8. Corporations, which do not meet the thresholds stated in Item 7 above, may submit their AFS accompanied by a duly notarized Treasurer's Certification only.

II. GENERAL INFORMATION SHEET (GIS)

All corporations shall file with the Commission, through eFAST, their GIS within 30 calendar days from:

1. For Stock Corporations, date of actual annual stockholders' meeting;
2. For Non-stock Corporations, date of actual annual members' meeting;
3. For Foreign Corporations, anniversary date of issuance of respective SEC licenses.

III. ALL REPORTS

1. All corporations, both stock and nonstock, are required to file their annual reportorial requirements through eFAST, formerly known as the Online Submission Tool (OST) and which may be accessed at <https://cifss-ost.sec.gov.ph/>, following the schedule provided in Part I, in the case of AFS submissions. All filers of GIS and AFS, regardless of the number of reports to be filed with the Commission, shall be accommodated through eFAST.

Other reports not yet accepted through eFAST may be submitted through email at ictdsubmission@sec.gov.ph Submission of reports over the counter and/or through mail or courier under the SEC Express Nationwide Submission (SENS) facility shall no longer be accepted.

Any problem encountered in the enrollment and submission of AFS and GIS in the eFAST shall be accommodated through the email addresses and telephone numbers provided in the SEC Contact Center posted at <https://www.sec.gov.ph/contact-us/>.

2. The SEC shall accept all reports filed through eFAST regardless of their form and contents. Reports will be reverted only for the following reasons:
 - a) Poor image quality (e.g., blurred and unreadable);
 - b) Horizontal image orientation;
 - c) Wrong company profile; and
 - d) Wrong period covered.
3. The reckoning date for the receipt of reports is the date they are initially submitted through eFAST, if the filed report is compliant with the requirements stated above.

A report which is reverted, is considered not filed or not received. A notification will be sent to the filer, stating the reason(s) for the rejection of the report in the remarks box based on the reasons stated above.

4. Reportorial requirements submitted by corporations shall be filed through eFAST, subject to review by the Commission, and further subject to fines and/or penalties for violation of existing laws, rules and regulations, if any.

For the full text of MC No. 9, series of 2022, refer to the link below.

SEC MC No. 09, s. 2022: <https://www.sec.gov.ph/mc-2022/mc-no-09-s-of-20222023-filing-of-annual-financial-statements-and-general-information-sheet/>

SEC MEMORANDUM CIRCULAR NO.10 S. 2022 AMENDMENTS TO SEC MEMORANDUM CIRCULAR NO. 15, S. 2019 (THE 2019 REVISION OF THE GIS) INCREASING THE PENALTIES AND IMPOSING ADDITIONAL NON-FINANCIAL PENALTIES AND PROVIDING FURTHER GUIDELINES FOR SUBMISSION

To: All Concerned Corporations and Reporting Persons

The Commission has issued Memorandum Circular (MC) No. 10, Series of 2022 whereas there is a need to increase the penalties imposed and include additional non-financial sanctions in MC No. 15, S. 2019 to make them proportional, effective, and dissuasive for non-compliance, in line with the recommendations of the Financial Action Task Force and other international standards setting bodies.

NOTE: The revised portions and additional sanctions are underlined for ease of reference.

Disclosure of Beneficial Ownership Information

To ensure timely access to adequate, accurate, and current information on the beneficial ownership and control of SEC registered corporations by competent authorities, all SEC registered corporations are required to take reasonable measures to obtain and hold up-to-date information on their beneficial owners as defined herein and to disclose the same in a timely manner in the GIS. Accordingly, the GIS is hereby revised to include such information.

The following information on the beneficial owner shall be provided, to wit:

- ✓ Complete name which shall include the surname, given name, middle name and name extension (i.e., Jr., Sr., III, etc.);
- ✓ Specific residential address
- ✓ Date of Birth
- ✓ Nationality
- ✓ Tax identification number (TIN) or passport number for foreign individuals who do not have a TIN; and
- ✓ Percentage of ownership, if applicable.

Such information, however, shall not be uploaded to the Commission's publicly accessible electronic database. Said information shall, nonetheless, be made accessible or available in a timely manner to competent authorities for law enforcement and other lawful purposes.

Updating of Beneficial Ownership Information

The SEC shall be timely apprised of relevant changes in the submitted beneficial ownership information as they arise. An updated GIS shall be submitted to the SEC within thirty (30) calendar days (*formerly seven (7) working days*) after such change occurred or became effective.

PENALTIES

I. Failure to Disclose

If after due notice and hearing, the Commission finds that the reporting corporation has committed a violation of this Circular by failing to disclose, without any lawful cause, its beneficial ownership in accordance with the provisions thereof, the reporting corporation shall be penalized based on retained earnings whether appropriated or unappropriated or fund balance, as follows:

For Stock Corporations with retained earnings of less than Php500,000.00:

	BEFORE	AFTER
First violation	Php 10,000.00	Php 50,000.00
Second violation	Php 20,000.00	Php 100,000.00
Third violation	Php 50,000.00	Php 250,000.00
Fourth and subsequent violations	Php 100,000.00	Php 500,000.00

For Non-Stock Corporations with fund balance of less than Php500,000.00:

	BEFORE	AFTER
First violation	Php 5,000.00	Php 25,000.00
Second violation	Php 10,000.00	Php 50,000.00
Third violation	Php 20,000.00	Php 100,000.00
Fourth and subsequent violations	Php 50,000.00	Php 250,000.00

For Stock Corporations with retained earnings or Non-Stock Corporations with fund balance of Php500,000.00 or more but less than Php5,000,000.00, the penalties shall be twice the amount of the penalties imposed for those with retained earnings or fund balance of less than Php500,000.00.

For Stock Corporations with retained earnings or Non-Stock Corporations with fund balance of Php5,000,000.00 or more but less than Php10,000,000.00, the penalties shall be thrice the amount imposed for those with retained earnings or fund balance of less than Php500,000.00.

For Stock Corporations with retained earnings or Non-Stock Corporations with fund balance of Php10,000,000.00 or more, the penalties shall be four times the penalties imposed for those with retained earnings or fund balance of less than Php500,000.00.

The reporting corporation shall also be imposed an additional fine of Php1,000.00 for each day of delay in the submission of beneficial ownership information as a continuing violation, but the additional fine for the continuing violation shall in no case exceed Php2,000,000.00.

False Declaration

A corporation that submitted false beneficial ownership information shall send a Notice and Order to the reporting corporation stating that:

- ✓ The fact of false disclosure of beneficial ownership information; and
- ✓ Giving the corporation fifteen (15) calendar days to comply and submit complete accurate beneficial ownership information and a written explanation for the false disclosure.

If after fifteen (15) days from receipt by the Corporation of the Notice and Order from the Commission has lapsed without compliance with the abovementioned, or after a finding by the Commission through its Resolution that the corporation indeed submitted false Beneficial Ownership Information, the reporting corporation shall be penalized with a fine of up to Two Million Pesos (Php2,000,000.00), and shall subsequently be dissolved.

II. Liability of Directors/ Trustees and Officers of the Corporation

If the Commission, after due notice and hearing, finds that the directors/trustees and/or officers of the reporting corporation, without any lawful cause, failed to exercise the due diligence required in ensuring compliance with the requirement to disclose beneficial ownership information in accordance with Section 8 hereof resulting in no beneficial owner(s) as defined herein being timely disclosed in the GIS or in the non-submission of the GIS containing such information within the prescribed period, the following penalties shall be imposed upon such directors, trustees and/or officers:

	BEFORE	AFTER
First violation	Php 5,000.00	Php 10,000.00
Second violation	Php 10,000.00	Php 20,000.00
Third violation	Php 20,000.00	Php 50,000.00
Fourth and subsequent violations	Php 50,000.00	Php 100,000.00

If the violation pertains to False Declaration of this Circular, the directors, trustees, and officers, found responsible in the commission thereof or in the non-compliance of the related Notice and Order issued therefor shall, after due notice and hearing, each be penalized with a fine of up to Two Hundred Thousand Pesos (Php200,000.00) and shall be disqualified to be directors, trustees, and officers of any corporation for a period of five (5) years.

Every submission of the GIS without the required beneficial ownership information or every instance of non-submission or late submission of the GIS, arising from the failure to exercise the due diligence required, shall be considered as a prima facie violation of the duty to exercise the due diligence required by said directors/trustees and/or officers.

III. Other Imposable Penalties

If, after due notice and hearing, the Commission finds that there is a willful violation of this Circular or related orders of the Commission, or that any person has refused to permit any lawful examination into its affairs, the Commission may, in its discretion, and subject to existing laws and regulations, impose the penalty of suspension or revocation of the certificate of incorporation of the reporting corporation along with other penalties that is within the power of the Commission to impose.

In imposing the foregoing penalties, the Commission shall be guided by the principles of effectiveness, dissuasiveness, and proportionality.

The foregoing penalties are without prejudice to the imposition of other applicable penalties as provided under the Revised Corporation Code of the Philippines, the Securities Regulation Code, and other rules and regulations of the Commission.

This Memorandum Circular shall take effect on January 1, 2023, subject to its publication in two (2) national newspapers of general circulation and posting on the Commission's website.

For the full text of MC No. 10, series of 2022, refer to the link below.

SEC MC No. 10, s. 2022: <https://www.sec.gov.ph/mc-2022/sec-mc-no-10-series-of-2022/>

Our View: *This guideline will be beneficial to corporations, stockholders, and members as this will provide the specifics of the content of increasing the penalties imposed and include additional non-financial sanctions in MC No. 15, S. 2019. This provision of SEC guidelines should be incorporated and adopted to prevent penalties that may be given to corporations.*

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Comments and suggestions are welcome.

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