



MEMORANDUM – 2020-025

**TO : THE TRADING PARTICIPANTS, THE INVESTING PUBLIC,
AND OTHER MARKET PARTICIPANTS**

**SUBJECT : REQUEST FOR SECOND ROUND OF COMMENTS ON THE PROPOSED SEC
RULES ON THE NUMBER OF INDEPENDENT DIRECTORS AND SECTORAL
REPRESENTATIVES OF EXCHANGES AND OTHER ORGANIZED MARKETS**

DATE : 06 August 2020

On 23 June 2020, the Securities and Exchange Commission (“SEC” or “Commission”) proposed to adopt and issue its *SEC Rules on the Number of Independent Directors of Exchanges and Other Organized Markets* (“Rules”). The proposed rules were thereafter disseminated for public comments lasting up to 13 July 2020. The Commission also held a separate dialogue with senior officials of the Philippine Stock Exchange and the Philippine Dealing Systems Holdings Corporation.

After considering all the comments and inputs, the Commission re-proposes to adopt and issue the subject Rules with the following salient amendments:

1. Instead of the proposal that the Independent Directors in the board of exchanges and other trading markets comprise the majority, they are now proposed to constitute one-third (1/3) of the board (Section 3).
2. It is proposed that the minimum number of Sectoral Representatives in the board of exchanges and other trading markets be pegged at four (4), with at least one person representing the issuers, investors, and other market participants (Section 4).
3. A section defining the important terms is also included (Section 2).
4. In the WHEREAS clauses, the proposed amended Rules lay down the authority of the Commission under the Securities Regulation Code to prescribe a different governance structure for markets in the interest of the public.
5. The Rules will be re-titled to *SEC Rules on the Number of Independent Directors and Sectoral Representatives of Exchanges and Other Organized Markets*.

Thus, the Commission is inviting the interested parties to submit their views, comments, and inputs on the re-proposed Rules with amendments.

Please address your comments to the Markets and Securities Regulation Department (MSRD), Ground Floor Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City, c/o Atty. Marlon Facun and Ms. Gretchen Lagonoy **not later than 10 August 2020**.

You may also email them to msrd_covid19@sec.gov.ph, mrd@sec.gov.ph, mgfacun@sec.gov.ph and gclagonoy@sec.gov.ph. For ease of tracking of all the comments, you may fill up the field "Subject" in your email message box with the phrase –*Comments on Rules on IDs of Exchanges-2R*.

For your reference, the relevant *SEC Notice*, together with the *draft Memorandum Circular*, is attached.

(original signed)
DAISY P. ARCE
President

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NOTICE

TO : ALL CONCERNED AND INTERESTED PARTIES

SUBJECT : **REQUEST FOR SECOND ROUND OF COMMENTS ON THE PROPOSED SEC RULES ON THE NUMBER OF INDEPENDENT DIRECTORS AND SECTORAL REPRESENTATIVES OF EXCHANGES AND OTHER ORGANIZED MARKETS**

On 23 June 2020, the Securities and Exchange Commission proposed to adopt and issue **SEC Rules on the Number of Independent Directors of Exchanges and Other Organized Markets**. It was thereafter disseminated for public comments lasting up to 13 July 2020. Further, the Commission held a separate dialogue with senior officials of the Philippine Stock Exchange and the Philippine Dealing Systems Holdings Corp.

After considering all the comments and inputs from the various entities including these said officials, the Commission re-proposes to adopt and issue the subject Rules with the following salient amendments:

1. Instead of the proposal that the Independent Directors in the board of exchanges and other trading markets comprise the majority, they are now proposed to constitute one-third (1/3) of the board (Section 3).
2. It is proposed that the minimum number of Sectoral Representatives in the board of exchanges and other trading markets be pegged at four (4), with at least one person representing the issuers, investors, and other market participants (Section 4).
3. A section defining the important terms is also included (Section 2).
4. In the WHEREAS clauses, the proposed amended Rules lay down the authority of the Commission under the Securities Regulation Code to prescribe a different governance structure for markets in the interest of the public.
5. It will be re-titled to **SEC Rules on the Number of Independent Directors and Sectoral Representatives of Exchanges and Other Organized Markets**.

In this regard the Commission is inviting the Exchanges, Broker Dealers, the PLCs, other market institutions and participants, the investing public, and other interested parties to submit their views, comments, and inputs on the re-proposed rules with amendments.

The draft Memorandum Circular on the foregoing may be downloaded from the SEC website.

Again, kindly address your comments to the **Markets and Securities Regulation Department (MSRD)**, Ground Floor Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City, c/o **Atty. Marlon Facun and Ms. Gretchen Lagonoy** not later than **August 10, 2020**. You may also email them to msrd_covid19@sec.gov.ph, mrd@sec.gov.ph, mgfacun@sec.gov.ph and gclagonoy@sec.gov.ph.

For ease of tracking of all the comments, we encourage you to fill up the field **“Subject”** in your email message box with the phrase – *Comments on Rules on IDs of Exchanges-2R*.

Thank you for your cooperation.



SEC MEMORANDUM CIRCULAR NO. _____

Series of 2020

TO : ALL EXCHANGES AND OTHER ORGANIZED MARKETS

**SUBJECT : SEC RULES ON THE NUMBER OF INDEPENDENT DIRECTORS AND
SECTORAL REPRESENTATIVES OF EXCHANGES and OTHER ORGANIZED
MARKETS**

WHEREAS, Republic Act No. 11232, or the Revised Corporation Code of the Philippines ("RCC"), was approved on February 20, 2019 and took effect on February 23, 2019;

WHEREAS, Section 22 of the RCC prescribes that the number of independent directors of the board of directors of corporations vested with public interest constitute at least 20% of such board, institutionalizing the presence of persons who shall exercise independent judgment in carrying out the responsibilities as directors.

WHEREAS, the Supreme Court has declared that "it is undeniable that an Exchange is not an ordinary corporation, in that although it is clothed with the marking of a corporate entity, it functions as the primary channel through which the vessels of capital trade ply. The Exchange relevance to the continued operation and filtration of the securities transaction in the country give it a distinct color of importance such that government intervention in its affairs becomes justified, if not necessary. Due to this special nature of stock exchanges, the country's lawmakers have seen it wise to give special treatment to the administration and regulation of stock exchanges. (Philippine Stock Exchange, Inc. v. The Honorable Court of Appeals, G.R. No. 125469, October 27, 1997, 281 SCRA 232, 246 [1997])

WHEREAS, Section 179 (m) of the RCC authorizes the Commission to, among others, *"prescribe the number of independent directors."*

WHEREAS, Section 179 (d) of the RCC empowers the Commission to *"promote corporate governance and the protection of minority investors, through among others, the issuance of rules and regulations consistent with international best practices."*

WHEREAS, based on the best practices of major and comparable markets in many economies, the number of independent directors of their exchanges comprise majority of the members of the board of directors.

WHEREAS, Section 33.2(g) of the Securities Regulation Code (SRC) and Rules 33.2.4 and 33.2(c).1.2 of the 2015 SRC Rules authorizes the Commission to permit an exchange or an exchange controller to use a different governance structure in the interest of the public

NOW THEREFORE, the Commission hereby promulgates the following Rules on the number of independent directors and sectoral representatives of exchanges and other organized markets.

Section 1. Coverage – These Rules shall cover the number of independent directors and sectoral representatives in the board of directors of exchanges and other organized markets in the Philippines.

Section 2. Definition of Terms – As used in these Rules, unless the context provides otherwise:

2.1 “*Commission*” means Securities and Exchange Commission

2.2 “*Independent Director*” is a person who, apart from his fees and shareholdings, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his exercise of independent judgment in carrying out his responsibilities as a director and includes, among others, any person who:

a). Is not a director or officer of the covered company or of its related companies or any of its substantial shareholders except when the same shall be an independent director of any of the foregoing;

b) Does not own more than two percent (2%) of the shares of the covered company and/or its related companies or any of its substantial shareholders;

c). Is not related to any director, officer or substantial shareholder of the covered company, any of its related companies or any of its substantial shareholders. For this purpose, relatives include spouse, parent, child, brother, sister, and the spouse of such child, brother or sister;

d). Is not acting as a nominee or representative of any director or substantial shareholder of the covered company, and/or any of its related companies and/or any of its substantial shareholders, pursuant to a Deed of Trust or under any contract or arrangement;

e). Has not been employed in any executive capacity by the covered company, any of its related companies and/or by any of its substantial shareholders within the last two (2) years;

f). Is not retained, either personally or through his firm or any similar entity, as professional adviser, by that covered company, any of its related companies and/or any of its substantial shareholders, within the last two (2) years;
or

g). Has not engaged and does not engage in any transaction with the covered company and/or with any of its related companies and/or with any of its substantial shareholders, whether by himself and/or with other persons and/or through a firm of which he is a partner and/or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arm's length and are immaterial.

2.3 "*Exchange*" is an organized marketplace or facility that brings together buyers and sellers, and executes trades of securities and/or commodities.

2.4 "*Organized Market*" is an exchange, an over-the-counter market, alternative trading system, or otherwise recognized as such by the Commission, and governed by, among others, transparent and binding rules and market conventions on membership, trading, price transparency, trade reporting, market monitoring and orderly conduct or operation of the market which are enforceable on the members and participants.

2.5 "*Sectoral Representatives*" refers to persons who represent the interests of issuers, investors, and other market participants.

Section 3. Number of Independent Directors – Independent Directors shall constitute at least one-third (1/3) of the members of the board of directors of exchanges and other organized markets.

Section 4. Number of Sectoral Representatives – There shall be at least four (4) persons representing the interests of issuers, investors, and other market participants, with each sector having at least one representative, in the board of directors of exchanges and other organized markets.

Section 5. Repealing Clause – All existing rules, circulars, orders and other related issuances inconsistent with these Rules are hereby revoked or modified accordingly.

Section 6. Effectivity – These Rules shall take effect immediately upon publication in two (2) newspapers of general circulation.

_____ August 2020, Pasay City Philippines.

EMILIO B. AQUINO
Chairperson