

QAU Memo No. 04, s2021



In this issue:

The Securities and Exchange Commission (SEC) has issued the following Memorandum Circulars (MC):

- SEC MC No. 33, s2020 Amendments to the Implementing Rules and Regulation of the Investment Company Act, as Amended;
- SEC MC No. 34, s2020 Deferral of Philippine Interpretations Committee Question & Answer (PIC Q&A) No. 2018-12 and IFRS Interpretations Committee (IFRIC) Agenda Decision on Over Time Transfer of Constructed Goods [Philippine Accounting Standards (PAS) 23- Borrowing Cost] For Real Estate Industry;
- SEC MC No. 35, s2020 Financial Reporting Relief in Light of Covid-19 Pandemic;
- SEC MC No. 36, s2020 2020 Compliance Officer's Certificate; and
- SEC MC No. 37, s2020 Regulatory Relief Measures to Manage the Effects of the Covid-19 Pandemic.

R.S. BERNALDO & ASSOCIATES

TAKING YOU FURTHER

Amendments to the Implementing Rules and Regulations of the Investment Company Act, as Amended

To: Investment Companies, Fund Managers, and Other Entities Dealing with Investment Companies

The Commission has issued the amended rules for Section 35(a) of Republic Act No. 2629 or the Investment Company Act (ICA) last December 5, 2020 to align the rules with global standards and practices in order to develop the Philippine capital market and help prepare investment companies qualify and compete in international cross-border transactions.

The amendments are as follows:

2018 IRR of Investment Company Act	SEC MC No.33 s2020
RULE 1 – Definition of Terms	
7. Collective Investment Scheme (CIS) – shall refer to an arrangement whereby funds are solicited from the investing public for the purpose of investing, reinvesting and trading in securities or other assets allowed under this Rule.	<p>Collective Investment Scheme (CIS) – shall refer to an arrangement whereby funds are solicited from the investing public for the purpose of investing, reinvesting and trading in securities or other assets as may be allowed under these Rules and other applicable laws and regulations or such other arrangement as may be registered/authorized/approved by a regulatory authority that is an ordinary or associate member of the IOSCO.</p> <p>The term ‘CIS’ in the Philippines may either have a corporate structure such as an investment company or a contractual structure such as a Unit Investment Trust Fund or similar scheme held by a trust corporation or separate account fund established pursuant to a variable unit linked life insurance policy issued by an insurance company and such other forms of collective investment schemes as may be determined by the appropriate government regulatory agencies such as the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), and Insurance Commission (IC).</p>
10. Custodian – shall refer to an independent third-party entity duly authorized or accredited by the BSP or the Commission to engage in the business of custodial and safekeeping of investment assets	Custodian – shall refer to an independent third-party entity duly authorized or accredited by the BSP or the Commission to engage in the business of custodial and safekeeping of investment assets of the investment company. It includes a universal or commercial bank with trust license, a non-bank

	entity with a trust license, a BSP-accredited custodian bank, and a registered securities depository.
	43. Independent Oversight Entity (IOE) - an impartial committee or entity tasked to monitor the transactions and functions carried out by the Fund Manager.
	44. Investment Company Assets – shall refer to assets owned by the investment company, held on behalf of stockholders/unitholders, which are either (i) assets which can be held in custody whether by physical delivery to the custodian or by way of registration in book entry form in the accounts of the Fund opened with the custodian, or (ii) other assets which by their nature cannot be held in custody such as derivative instruments which are subject to the Fund Manager’s record-keeping obligation and oversight function by the IOE.
RULE 3.3 (d) (e) and (h)	
<p>Rule 3.3 Classifications of Investment Company. An investment company may be classified by investment policy as either:</p> <p>d. Feeder Fund – shall refer to an MFC that invests at least ninety percent (90%) of its net assets in a single CIS established by another Fund Manager, asset management company or fund operator, which shall not be a feeder fund.</p> <p>e. Fund-of-Funds – shall refer to an MFC that invests at least fifty percent (50%) of its net assets in more than one (1) CIS established by another Fund Manager/s, asset management company/ies or fund operator/s.</p> <p>h. Multi-asset/Asset Allocation Fund - shall refer to an MFC that invests in a fixed or variable mix of both equity and fixed income instruments, as well as cash and cash-equivalents.</p>	<p>d. Feeder Fund – shall refer to an investment company that invests at least ninety percent (90%) of its net assets in a single CIS established by another Fund Manager, asset management company or fund operator, which shall not be a feeder fund.</p> <p>e. Fund-of-Funds – shall refer to an investment company that invests at least fifty percent (50%) of its net assets in more than one (1) CIS established by another Fund Manager/s, asset management company/ies or fund operator/s.</p> <p>h. Multi-asset/Asset Allocation Fund - shall refer to an investment company that invests in a fixed or variable mix of both equity and fixed income instruments, as well as cash and cash-equivalents.</p>

RULE 3.4 (f) and (j)	
<p>3.4 Minimum Requirements. An investment company applying for incorporation with this Commission shall comply with the following requirements:</p> <p>f. It shall have a minimum subscribed and paid-up capital of Fifty Million Pesos (₱50,000,000.00). The Commission may grant a request for lower paid-in capital requirement if the Investment Company is one of or part of a group of investment companies to be created or already in existence to be managed or under management by the same Fund Manager with a track record of at least five years as such and provided that the subscribed and paid-up capital shall not be lower than One Million Pesos (P1,000,000.00).</p> <p>j. An investment company shall not be required to comply with the minimum subscribed and paid-up capital relative to the increase in its authorized capital stock.</p>	<p>f. It shall have a minimum subscribed and paid-up capital of Fifty Million Pesos (₱50,000,000.00). However, if the investment company is one of or part of a group of investment companies to be created or already in existence to be managed or under management by the same fund manager with a track record of at least five years, the minimum subscribed and paid-up capital shall not be lower than One Million Pesos (₱1,000,000.00) provided an affidavit must be submitted stating such track record of the fund manager.</p> <p>j. An investment company shall not be required to comply with the minimum subscribed and paid-up capital relative to the increase in its authorized capital stock provided the minimum subscribed and paid-up capital under Rule 3.4 (f) or any of its amendments is complied with.</p>
RULE 5.1.1 (a,i)	
<p>Rule 5.1.1 Qualifications of a Fund Manager</p> <p>i. Paid-up capital of at least Fifty Million Pesos (₱50,000,000.00) exclusive of revaluation surplus, unrealized gain in value of non-current investments, deferred income tax and other capital adjustments as may be required by SEC. Provided further that the Fund Manager shall be required to have an additional unimpaired capital requirement of 0.02% of the excess of One Hundred Billion Pesos (₱100,000,000,000.00) of the total AUM, which additional capital infusion shall be made within 30 days after the end of the fiscal year the AUM increased.</p>	<p>i. Paid-up capital of at least Fifty Million Pesos (₱50,000,000.00) which shall remain unimpaired at all times, provided the fund manager shall be required to have an additional unimpaired capital requirement of 0.02% of the excess of One Hundred Billion Pesos (₱100,000,000,000.00) of the total AUM, which additional capital infusion shall be made within 30 days after the end of the fiscal year the AUM increased. However, the amount of additional capital requirement is capped at Php1 Billion.</p>

RULE 5.1.2 (c)	
<p>c. Maintain records and arrange for participants to receive accounts, reports and statements.</p>	<p>c. Maintain records and arrange for participants to receive accounts, reports and statements either in hard/physical copies or by electronic means such as but not limited to, transmitting via electronic communication with soft-copy attachments.</p> <p>The participants should be given the option to request for hardcopy accounts and reports within one month from the notification of the availability of the accounts and reports. The fund manager should cause to be made available, hardcopies of the accounts and reports to any participant who provides a written request thereof within ten (10) business days from the date of request or whenever practicable in case of any fortuitous event and other circumstances upon notification by the fund manager of such fortuitous event to the Commission through a Current Report. Participants should also be allowed at any time to opt for hardcopies for all future reports and accounts.</p>
<p>g. Ensure that all assets of the investment company are deposited with an independent custodian.</p>	<p>g. Ensure that all assets of the investment company are deposited with an independent custodian except those which cannot be placed in the custody of the custodian such as:</p> <ol style="list-style-type: none"> 1. Investments in deposits; 2. Investments in other foreign/domestic collective investment schemes provided that the custodian and transfer agent (if applicable) of the CIS is approved by local regulations or registered/authorized/approved, as the case may be, by a regulatory authority that is an ordinary or associate member of the IOSCO; 3. OTC Derivatives; and 4. Such other assets as may be allowed by the Commission. <p>Guidance: All other assets which by their nature cannot be held in custody by the Custodian are subject to the fund manager's record-keeping obligation and oversight function by the IOE. In</p>

	such cases, the IOE must be informed of the records of those assets for which it is satisfied that the investment company holds ownership of such assets.
RULE 5.1.9 (c) (f) and (g)	
c. Submit an undertaking/affidavit of assumption of liabilities of subject company's officer, director or majority stockholder stating in effect that should third parties having claims against the corporation appear in the future (in the next five [5] years), said officer, director or majority stockholder may be held responsible for said claims.	<p>c. Submit an undertaking/affidavit of assumption of liabilities of subject company's officer, director or majority stockholder stating in effect that should third parties having claims against the corporation appear in the future (in the next five [5] years), said officer, director or majority stockholder may be held responsible for said claims including the submission of the reportorial requirements under Rule 13.1.8 for the redemption of securities of the investment company in case of concurrent dissolution of the fund manager and the investment company.</p> <p>f. Submit an undertaking/affidavit of the appointed liquidator pursuant to Rule 13.1.2 (e) (i) and (ii) stating that the liquidator will assume the fund manager's obligation to liquidate assets on behalf of the investment company, within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate, if the fund manager cannot liquidate the assets of the investment company prior to the fund manager's dissolution and to assume the fund manager's obligation in relation to the reportorial requirements under Rule 13.1.8 for the redemption of securities of the investment company.</p> <p>g. Submit a copy of the Escrow Agreement within ten (10) days from execution in case an escrow account has been opened for the unclaimed assets of the investment company in case of liquidation of the assets of the investment company due to its failure to hire a new fund manager under Rule 5.1.10 or dissolution and withdrawal of ICA license of the fund manager.</p>
RULE 5.3.2 (a) and (b)	

<p>a. Hold directly or indirectly five percent (5%) or more of the total number of issued shares in either the investment company and fund manager or vice versa.</p> <p>b. Have a common shareholder in the investment company, or the fund manager who holds directly or indirectly five percent (5%) or more of the total number of issued shares of the investment company or fund manager.</p>	<p>a Hold directly or indirectly ten percent (10%) or more of the total number of issued shares in either the investment company and fund manager or vice versa.</p> <p>b Have a common shareholder in the investment company, or the fund manager who holds directly or indirectly ten percent (10%) or more of the total number of issued shares of the investment company or fund manager.</p>
<p align="center">RULE 5.3.3 (b)</p>	
<p>b. Safe-keep the assets of the investment company which shall be clearly identified and properly labeled as assets or properties of the Investment Company.</p>	<p>b. Safe-keep the assets of the investment company which shall be clearly identified and properly labeled as assets or properties of the investment company.</p> <p>Safekeeping by the Custodian applies to all assets which can be held in custody, whether by physical delivery to the custodian or by way of registration in book-entry form in the accounts of the investment company opened with the custodian.</p>
<p align="center">RULE 5</p>	
	<p>Rule 5.9 Independent Oversight Entity. An investment company shall perform oversight over its fund manager. Hence, the former is required to have an Independent Oversight Entity which shall function as an impartial committee or entity tasked to monitor the transactions and functions carried out by the fund manager.</p> <p>Rule 5.9.1. Constitution or Engagement of an IOE. An investment company may constitute its Audit Committee as its IOE or may engage the services of a custodian bank, trust entity or an external auditor to serve as such.</p> <p>Rule 5.9.2. Roles and Responsibilities of an IOE. The IOE shall:</p>

	<p>1 Exercise care and diligence when monitoring the transactions and functions of the fund manager;</p> <p>2 Oversee the transactions and functions of the fund manager to ensure compliance with the disclosures made in the Registration Statement (RS), prospectus, ICA, SRC and their implementing rules and regulations (IRR). For cross-border offerings or transactions, in addition to the abovementioned, oversee the transactions of the fund manager in order to ensure that it also complies with the standards/requirements of bilateral or multilateral agreements allowing cross-border offerings/transactions that the Philippines is party to;</p> <p>3 Oversee the subscription and redemption of shares or units facilitated by the fund manager and to approve the request of the fund manager in the case of suspension of redemption of shares or units whenever necessary for the protection of the investors subject to the rules on Suspension of Redemption provided under Rule 10.4 of ICA-IRR;</p> <p>4 Oversee the activities of the fund manager in order to ensure that it complies with the rules on investment restrictions/limitations, liquidity requirements and other regulations involving the operationalization of the investment objectives, investment policy or strategy of the investment company;</p> <p>5 Oversee the transactions of the fund manager to ensure that delegation will not result in unnecessary fees to be paid by the investment company and ensure that it will not delegate its function to the extent that it becomes a letter box such as when it no longer has the power to make decisions in the implementation of the investment policy and strategies nor retain the suitable processes to monitor, control the activities and evaluate the performance of the delegate;</p> <p>6 If, in the reasonable opinion of the IOE, the fund manager has not complied with any of the laws, rules or regulations applicable to the investment company and/or it failed to report to the</p>
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	<p>Commission the said non-compliance, notify the Commission of its opinion, including particulars of the non-compliance, not later than five (5) business days after forming the opinion or upon knowledge of the non-compliance. The notification shall be done by filing an SEC Form 17-C. It shall also notify, without delay, the members of the Board of Directors of the investment company of its opinion so that the Board can apprise the fund manager of the said non-compliance and address any resulting breach;</p> <p>7 Report to the Commission, any act of the fund manager which in its opinion may be detrimental to the interests of the shareholders or unitholders even if the said act is not in violation of any law, rule or regulation, not later than five (5) business days from knowledge thereof; and</p> <p>8 If necessary, recommend to the Board of Directors of the investment company that the fund manager be removed due to its inability to fulfill its functions.</p> <p>Rule 5.10 Independent Net Asset Value Calculator. An investment company must appoint an independent entity that will calculate or cross-check its net asset value (NAV) every dealing day which may be the custodian bank, trust entity, external auditor, audit committee or other service providers capable of calculating the NAV.</p> <p>To be considered independent, the following criteria must be met:</p> <p>1 The custodian bank or trust entity must be duly licensed by the Bangko Sentral ng Pilipinas, provided that it does not hold directly/indirectly 10% or more of the total number of issued shares in the investment company, fund manager, or vice versa, nor have a common shareholder that holds directly/indirectly 10% or more of the total number of the issued share capital of the investment company or fund manager; and</p> <p>2 The external auditor shall not be the same as the one auditing the investment company and fund manager.</p> <p>An investment company may engage for this purpose its Audit Committee acting as IOE,</p>
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	provided that it is capable of calculating the NAV, and other service providers capable of calculating the NAV, provided that they are not affiliated with the investment company and fund manager.
Rule 6.8 (j)	
j. No investment company shall purchase from or sell to any of its officers or directors or the officers or directors of its investment advisor/s, manager or distributor/s or firm/s of which any of them are members, any securities other than the capital stock of the investment company.	j. No investment company shall purchase from or sell to any of its officers or directors or the officers or directors of its investment advisor/s, manager or distributor/s or firm/s of which any of them are members, any securities other than the capital stock or registered units of the investment company.
RULE 6.9	
<p>Rule 6.9 Additional Rules on Money Market Funds. Constant net asset value money market funds (C-NAV MMFs) are not permitted. The fund manager that manages an investment company that markets itself as a money market fund or an equivalent fund that primarily invests in high quality debt securities, deposits and money market instruments shall comply with the following:</p> <p>a. Shall have a cash reserve, or assets with high liquidity, low market risk and can be cashed within T+1 day, of at least ten percent (10%) of its net assets;</p> <p>b. Invest in any of the following:</p> <p>i. high quality debts securities;</p> <p>ii. deposits; and</p> <p>iii. money market instruments</p> <p>c. Shall not engage in direct lending of monies.</p>	<p>Rule 6.9 Additional Rules on Money Market Funds. Constant net asset value money market funds (C-NAV MMFs) are not permitted. The fund manager that manages an investment company that markets itself as a money market fund or an equivalent fund that primarily invests in high quality debt securities, deposits and money market instruments shall comply with the following:</p> <p>a. Shall have a cash reserve, or assets with high liquidity, low market risk and can be cashed within T+1 day, of at least ten percent (10%) of its net assets;</p> <p>b. Invest in any of the following:</p> <p>i. high quality debts securities;</p> <p>ii. deposits; and</p> <p>iii. high quality money market instruments</p> <p>Guidance: a high quality money market instrument has:</p> <p>a. a remaining term to maturity of not more than 397 days; and</p>

	<p>b. an issuer credit rating that is:</p> <ol style="list-style-type: none"> 1. in the case of short-term credit rating, one of the two highest credit ratings; and 2. in the case of long-term credit rating, one of the three highest credit ratings. <p>iv. financial derivatives for hedging arrangements The hedging arrangement should:</p> <ol style="list-style-type: none"> (a) not be aimed at generating a return; (b) result in an overall verifiable reduction of the risk of the qualifying CIS; (c) offset the general and specific risks linked to the underlying being hedged; (d) relate to the same asset class being hedged; and (e) be able to meet its hedging objective in all market conditions. <p>c. Shall not engage in direct lending of monies.</p> <p>Guidance: Direct lending of monies refers to an instance in which an investment company lends money or makes loan directly to other entities (borrower) without intermediaries.</p>
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RULE 6.10 (b)	
	b. The investment company may implement a decreased investment of less than ten percent (10%) of its assets in liquid/semi-liquid assets, provided, however, that it shall submit a notarized liquidity contingency plan, signed by the president of the fund and its fund manager.
RULE 6.11.1	
	The computation and expense ratio of the investment company must be disclosed in the quarterly and annual report.
RULE 7.2	
The prospectus or materials to be disseminated by the feeder fund, fund-of-funds, or co-managed funds in connection with its offer of securities shall provide an explanation or illustration of a feeder fund or a fund- of-funds.	The prospectus or offering materials to be disseminated by the feeder fund, fund-of-funds, or co-managed funds in connection with its offer of securities shall provide an explanation or illustration of a feeder fund or a fund- of-funds and shall likewise make available all relevant information on the target fund/s.
RULE 8.2	
<p>Rule 8.2 Daily Computation and Publication of the NAVps/NAVpu. The fund manager shall compute and post the net asset value per share/unit of the Investment Company on a daily basis and shall:</p> <p>a. Publish such daily prices in at least two (2) national newspapers of general circulation which may be done through the industry organization/s;</p> <p>b. Upload in its website or industry association, through digital portals such as its website or social media accounts; and</p>	<p>Rule 8.2 Daily Computation and Publication of the NAVps/NAVpu. The fund manager shall compute and post the net asset value per share/unit of the Investment Company on a daily basis and shall:</p> <p>a. Publish such daily prices in at least two (2) national newspapers of general circulation which may be done through the industry organization/s; or</p> <p>b. Upload daily in its website or industry association, through digital portals such as its website or social media accounts; or post them daily in a conspicuous place at the principal office of the investment</p>

	company as well as in all its branches or correspondent offices which are designated redemption centers.
RULE 8.6	
<p>Rule 8.6. Valuation Error or Incorrect Price. In case of valuation error or when incorrect pricing occurs, the fund manager shall:</p> <p>Report to the Commission within five (5) business days from the valuation error or incorrect pricing is found on the:</p>	<p>Report to the IOE and Commission within five (5) business days from the valuation error or incorrect pricing is found on the:</p>
RULE 10.4	
<p>Rule 10.4. Suspension of Redemption of Shares or Units. The Commission <i>motu proprio</i> or, upon the request of a fund manager, may suspend the redemption of securities of investment company if:</p> <p>...</p>	<p>Rule 10.4. Suspension of Redemption of Shares or Units. The Commission <i>motu proprio</i> or, upon the request of a fund manager, may suspend the redemption of securities of investment company if:</p> <p>...</p> <p>If the request for suspension of redemption of shares or units is made by the Fund Manager, for any of the grounds mentioned above, the approval of the IOE must be secured.</p>
RULE 10.5	
<p>Rule 10.5. Period for the Suspension of Redemption of Shares or Units. The Commission shall provide the period of suspension of redemption which shall not be more than twenty-one (21) business days, unless an extension is approved by the Commission En Banc.</p>	<p>Rule 10.5. Period for the Suspension of Redemption of Shares or Units. The Commission shall provide the period of suspension of redemption which shall not be more than twenty-one (21) business days, unless an extension is approved by the Commission En Banc. The fund manager must report to the Commission when dealing in units/shares of the investment company is resumed.</p>

RULE 11.3	
<p>Rule 11.3. Separate booking and recording for shares and units. A fund manager that manages an MFC which issues both shares and units of participation shall ensure proper booking or recording of transactions to separate the assets, liabilities, income and expenses corresponding to each type of securities issuance.</p>	<p>Rule 11.3. Separate booking and recording for shares and units. A fund manager that manages an investment company which issues both shares and units of participation shall ensure proper booking or recording of transactions to separate the assets, liabilities, income and expenses corresponding to each type of securities issuance.</p> <p>An investment company offering units of participation may make periodic distribution of income to investors of the fund on a pro-rata basis; provided, that the distribution of income shall be made only from cash received from interest income and/or cash dividends earned after deduction of applicable taxes and expenses. Investment companies issuing units of participation shall be exempt from SEC Memorandum Circular No.11, series of 2008 or any amendment thereto.</p>
RULE 13 (e)	
	<p>e. In case of concurrent dissolution of the fund manager and the investment company, the following must be complied with:</p> <p>i. The fund manager must appoint a liquidator that will assume its obligation to liquidate of assets on behalf of the investment company, within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate, if the fund manager cannot liquidate the assets of the investment company prior to the fund manager's dissolution. In such case, an Affidavit and Undertaking of the liquidator must be submitted to the Commission;</p> <p>ii. The unclaimed assets of the investment company from the date of dissolution of the fund manager shall be placed by the fund manager in an escrow account for ten (10) years or such period until all investors have claimed their</p>

	<p>investments, whichever is sooner, after which the funds shall be escheated in favor of the government in accordance with the procedure prescribed by existing laws and rules; and</p> <p>iii. The fund manager must appoint a director, officer, majority stockholder or liquidator to assume its obligation in relation to the reportorial requirements under Rule 13.1.8 for the redemption of securities of the investment company. In such case, an Affidavit and Undertaking of the director, officer, majority stockholder or liquidator must be submitted to the Commission.</p>
RULE 13.1.8	
<p>Rule 13.1.8 Residual Obligation of the Investment Company with a Revoked Registration Statement. The investment company, or the fund manager, shall inform the Commission of the status of the redemption of securities every 30th of January until all the shares/units have been fully redeemed.</p>	<p>Rule 13.1.8 Residual Obligation of the Investment Company with a Revoked Registration Statement. The investment company, or the fund manager, shall inform the Commission of the status of the redemption of securities every 30th of January until all the shares/units have been fully redeemed.</p> <p>In case of concurrent dissolution of the fund manager and the investment company, the person or entity that has assumed the liabilities of the fund manager shall file a monthly report with the Commission, within ten (10) days after the end of every month, on the redemption of securities in the immediately preceding month. The report shall include the following:</p> <ol style="list-style-type: none"> 1. Number of shares redeemed; 2. Number of shareholders or unitholders whose securities were redeemed; 3. Number of shareholders or unitholders whose securities are yet to be redeemed; and 4. The reasons why their securities are not yet redeemed.
RULE 13	
RULE 13 – Suspension or Revocation	RULE 13– Suspension, Revocation or Liquidation

	<p>Rule 13.3- Liquidation of Assets of an Investment Company with a Revoked Registration Statement</p> <p>The fund manager shall carry out the liquidation of assets on behalf of the investment company. In all cases of revocation of the Registration Statement and Certificate of Permit to Offer Securities for Sale, the fund manager must liquidate the assets within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate.</p> <p>Rule 13.3.1. Appointment of a Liquidator in case of Concurrent Dissolution of the Investment Company and Fund Manager</p> <p>In case of concurrent dissolution of the fund manager and the investment company, where applicable under Rule 13.1.2 e (i) or in such other cases under the Rules, the appointed liquidator is tasked to convert the assets of the investment company to money and dispose of the same to investors, stockholders and other parties.</p> <p>Any qualified natural or juridical person may serve as a liquidator; provided, that if the liquidator is a juridical entity, it must designate a natural person/s who possess/es all the following qualifications:</p> <ul style="list-style-type: none"> i. A citizen of the Philippines or a resident of the Philippines in the six (6) months immediately preceding his appointment; ii. Of good moral character and with acknowledged integrity, impartiality and independence; iii. Has the requisite knowledge of commercial laws, rules and procedures, as well as the relevant training and/or experience that may be necessary to enable him to properly discharge the duties and obligations of a liquidator; and iv. Such other qualifications as may be determined by the Commission taking into consideration the protection of interests of all stockholders/unitholders.
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	<p>Rule 13.3.2. Appointment of an Escrow Agent for the Unclaimed Assets of an Investment Company.</p> <p>Where applicable in case of liquidation of the assets of the investment company due to its failure to hire a new fund manager under rule 5.1.10 or concurrent dissolution of the fund and its fund manager under Rule 13.1.2 e (ii), the fund manager must appoint an escrow asset/s or unclaimed assets of the investment company from the date of dissolution of the fund manager for a period of ten (10) years of such period until all investors have claimed their investments, whichever is sooner, after which the funds shall be escheated on favor of the government in accordance with the procedure prescribed by existing laws and rules.</p>
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These amendments shall take effect after December 20, 2020.

SEC MC No.33, s2020:

<https://www.sec.gov.ph/mc-2020/mc-no-33-s-2020/>

IRR of the Investment Company Act:

<https://www.sec.gov.ph/wp-content/uploads/2019/11/2018IRRoInvestmentCompanyAct.pdf>

Deferral of Philippine Interpretations Committee Question & Answer (PIC Q&A) No. 2018-12 and IFRS Interpretations Committee (IFRIC) Agenda Decision on Over Time Transfer of Constructed Goods (Philippine Accounting Standards (PAS) 23- Borrowing Cost) for Real Estate Industry

To: The Real Estate Industry

In various issuances, the SEC provided relief to the estate industry by deferring the application of the following accounting pronouncements:

- SEC MC No.14 s2018 Deferral of the application of the provisions of the Philippine Interpretations Committee Question and Answer (PIC Q&A) No. 2018-12 with respect to the accounting for significant financing component and the exclusion of land in the calculation of Percentage of Completion (POC) for a period of three (3) years
- SEC MC No. 3 s2019 Deferral of PIC Q&A 2018-12(H) on Accounting for Common Usage Service Area (CUSA) Charges and 2018-14 on Accounting for Cancellation of Real Estate sales until December 31, 2020
- SEC MC No. 4 s2020 Deferral of Implementation if IFRS Interpretations Committee (IFRIC) Agenda Decision on Over Time Transfer of Constructed Goods (PAS 23-Borrowing Cost) For Real Estate Industry until December 31, 2020

In response to the issues raised by the real estate industry in implementation of the above reliefs, the Commission *en banc* decided to extend the deferral of the above reliefs **for another three (3) years.** The prior supposed effectivity of PIC Q&A No. 2018-12 and IFRIC Agenda Decision on Over Time Transfer of Constructed Goods (PAS 23-Borrowing Cost) For Real Estate Industry of January 1, 2021 shall now be postponed until January 1, 2024.

The Commission believes that this will allow the estate industry to further evaluate and explore options on how to mitigate the impact of COVID-19 crisis.

Real estate companies may opt not to avail of any of the relief provided above. However, they will therefore comply in full with the requirements of PIC Q&A 2018-12 and IFRIC Agenda Decision in respect of the relief not availed of.

Those who opted for the deferral shall disclose in their Notes to Financial Statements the accounting policies applied, a discussion of the deferral of the subject implementation issues and a qualitative discussion of the impact in the financial statements had the concerned application guidelines been adopted.

Should any of the deferral options result into an accounting policy change, such accounting change will have to be accounted for under PAS 8, *Accounting Policies, Changes in Accounting Estimates and Errors*, i.e., retrospectively, together with the corresponding required quantitative disclosures.

The above relief, once adopted and recorded, will not be considered in accordance with PFRS. Real Estate Companies who will avail the deferral shall specify in their “*Basis of Preparation of the Financial Statements*” section that the financial statements are in accordance with **PFRS, as modified by the application of the above financial reporting reliefs.** For consistency purposes, real estate companies should comply with the following prescribed wordings:

“The accompanying financial statements have been prepared in accordance with Philippine Financial Reporting Standards, as modified by the application of the following financial reporting reliefs issued and approved by the Securities and Exchange Commission in response to the COVID-19 pandemic: (enumerate reliefs availed of).”

External auditors that are engaged to perform an audit engagement on these financial statements which have been prepared using the PFRS as modified by the said reliefs shall reflect in the **opinion paragraph** that the **financial statements are prepared in accordance with the compliance framework prescribed in the notes to financial statements.** The external auditor shall also include an **Emphasis of Matter** paragraph in the auditor’s report to draw attention to the basis of accounting used in preparation of the financial statements.

SEC MC No. 34 s2020:

<https://www.sec.gov.ph/mc-2020/mc-no-34/>

PIC Q&A No. 2018-12:

<http://www.picpa.com.ph/attachment/3242018173953534.pdf>

SEC MC No. 4 s2020:

<https://www.sec.gov.ph/mc-2020/mc-no-04-s-2020deferment-of-the-implementation-of-ifrs-interpretations-committee-ifric-agenda-decision-on-over-time-transfer-of-constructed-goods-philippine-accounting-standards-pas-23-borrow/>

Financial Reporting Relief on Light of Covid-19 Pandemic

To: Financing Companies, Lending Companies and Accredited Microfinance-NGOs

Pursuant to RA 11494, Bayanihan to Recover as One Act that allows the SEC to adopt measures to enable companies to mitigate the impact brought by COVID-19 pandemic, the Commission decided to provide relief to the subject institutions by **allowing staggered booking of provision for credit losses calculated in accordance with the requirements of Philippine Financial Reporting Standards (PFRS), PFRS for Small and Medium-Sized Entities (SMEs), or PFRS for Small Entities (SEs)**, as applicable, for annual period ending on or after December 31, 2020 (to consider those with fiscal year-end) for a **maximum period of five (5) years using straight-line amortization method to be recognized in the profit or loss.**

FCs, LCs and MFC-NGOs shall continue to report actual past due and non-performing loans and provision for credit losses in their reports submitted to the Corporate Governance and Finance Department to facilitate the generation of industry statistics and provide the Commission with information on the true status of these institutions.

The accounting relief mentioned, when adopted and reported will not be considered in accordance with PFRS, PFRS for SMEs and PFRS for SEs.

FCs, LCs and MFC-NGOs that opts to avail the mentioned relief should specify that the financial statements are prepared using an industry-specific framework, to be referred to as the **PFRS/PFRS for SMEs/PFRS for SEs, as modified by the application of the financial reporting reliefs issued and approved by the SEC** and specify in the “Basis of Preparation of Financial Statements” that the availment of the relief therefor only covers current year-transactions. For consistency of presentation, the subject companies should comply with the following prescribed wordings:

“The accompanying financial statements have been prepared in accordance with (state the applicable financial reporting framework), as modified by the application of the following financial reporting relief issued and approved by the Securities and Exchange Commission in response to the COVID-19 pandemic: (state the relief availed of). The relief covers only current-year transactions/ events and do not impact the comparative period/s.”

To ensure transparency in financial reporting, a qualitative disclosure of the impact of the relief availed of should be disclosed. The following information should likewise be provided in tabular format in the Note to Financial Statements that contains the “Basis for Preparation of the Financial Statements”:

- a) Impact on the affected financial statement line items if the provision for credit losses was measured and recorded in accordance with PFRS, PFRS for SMEs, or PFRS for SEs, as applicable (loans and receivables, allowance for credit losses, provision for credit losses, retained earnings, deferred tax asset and expense, earnings per share [for listed companies], etc.)
- b) Amount of allowance recognized/amortized for the period.
- c) Balance of unrecognized (unamortized) allowance.

FCs, LCs and MFC-NGOs must comply with the requirements of the financial reporting standards in doing the above adjustments when it reverts to full PFRSs, PFRS for SMEs, or PFRS for SEs, as applicable, after the period of relief.

The mentioned industry-specific accounting framework shall form part of the applicable financial reporting framework for the purpose of preparing and filing general-purpose financial statements with the Commission pursuant to the Revised SRC Rule 68.

FCs, LCs and MFC-NGOs, who availed the relief but only had immaterial effect on their Financial statement may still represent in the notes that the financial statements are presented in full compliance with their respective reporting frameworks. No disclosure requirement for such relief, under such circumstances, is mandatory.

External auditors that are engaged to perform an audit engagement on these financial statements which have been prepared using the PFRS as modified by the said reliefs shall reflect in the **opinion paragraph** that the **financial statements are prepared in accordance with the compliance framework prescribed in the notes to financial statements**. The external auditor shall also include an **Emphasis of Matter** paragraph in the auditor's report to draw attention to the basis of accounting used in preparation of the financial statements.

SEC MC No. 35 s2020:

<https://www.sec.gov.ph/mc-2020/mc-no-35-s-2020/>

2020 Compliance Officer's Certification

To: Public Companies and Registered Issuers

The Commission, with the intention to make reporting less complex during these difficult times and in recognition of the continuous challenges posed by the Covid-19 pandemic to compliance of Recommendation 8.4 of SEC MC No. 24 s2019 otherwise known as the Code of Corporate Governance for Public Companies and Registered Issuers (CG Code for PCs and RIs) on 19 December 2019 which provides that *"the company should disclose all relevant information on its corporate governance policies and practices in the Annual Corporate Governance Report (ACGR), which should be submitted to the Commission, and continuously updated and posted on the company's website"*, has issued the following rules:

I. Compliance Officer's Certification (CG Form-2020)

PCs and RIs shall be required to submit a Compliance Officer's Certification, in lieu of the ACGR, certifying that the company has substantially adopted in its Manual on Corporate Governance all of the recommendations under the CG Code for PCs and RIs. When applicable, the Certification shall also identify and explain any deviation to the recommendations provided under the CG Code for PCs and RIs.

II. Signatories

The Compliance Officer's Certification shall be signed under oath by the company's Compliance Officer and countersigned by its President or Chief Executive Officer.

III. Due Date and Manner of Submission

Three (3) copies of a duly accomplished, signed and notarized **CG Form-2020** shall be submitted to the Commission **on or before 29 January 2021**. The said form shall cover all relevant information for the covered year 2020.

IV. Penalties

Non-compliance with the above requirement shall subject erring companies to the following penalties:

VIOLATION	BASIC PENALTY	MONTHLY PENALTY
Non/Late Submission	Php10,000.00	Php1,000.00
<i>Disclosure(s)</i>		
a. Incomplete (i.e. no explanation)	Php5,000.00	Php500.00
b. Misinterpretation/Misinformation	Php15,000.00	Php1,500.00
<i>Signatory(ies)</i>		
a. Incomplete	Php5,000.00	Php500.00
b. Incorrect		

The monthly penalty shall continue to accrue until the company has fully complied with the requirement.

V. Coverage

PCs and RIs that are listed in the Philippine Stock Exchange are excluded from the coverage of this Memorandum Circular. Publicly-listed PCs and RIs shall continue to submit an Integrated Annual Corporate Governance Report in accordance with SEC Memorandum Circular No. 15, Series of 2017.

VI. Repealing Clause

PCs and RIs shall no longer be required to comply with Sections 15 and 16 of SEC Memorandum Circular No. 3, Series of 2007. Orders, issuances and circulars which are inconsistent with the provisions of the proposed circular are hereby repealed accordingly.

SEC MC No. 36 s2020:

<https://www.sec.gov.ph/mc-2020/mc-no-36-s-2020/>

SEC MC No. 24 s2019:

<https://www.sec.gov.ph/mc-2019/mc-no-24-s-2019-code-of-corporate-governance-for-public-companies-and-registered-issuers/>

SEC MC No. 3 s2007:

<https://www.sec.gov.ph/mc-2007/sec-memorandum-circular-no-03-7/>

Regulatory Relief Measures to Manage the Effects of the Covid-19 Pandemic

To: All Financing and Lending Companies

The Commission, with its mandate to help accelerate the recovery and bolster the resilience of the Philippine economy through measures grounded on economic inclusivity and collective growth through fiscal sustainability, among others, in lieu of the Republic Act No. 11494 or the Bayanihan to Recover As One Act, has issued the following relief:

Regulatory Reliefs for FCs and LCs – The following regulatory reliefs are available to duly registered and licensed FCs and LCs:

- A. Relaxation of the required maintaining net worth of FCs under Section 11 of the FCA Implementing Rules and Regulations (IRR);

- B. Relaxation of the required investment in financing and lending activities under Section 9(b) of the FCA IRR, and LCRA IRR, respectively, subject to the evaluation of the Commission; and
- C. Relaxation of the period of commencement of the financing and lending operations under Section 5(b) and 6(b) of FCA IRR, and Rule 3(e) of the LCRA IRR, respectively.

Application for Regulatory Reliefs - FCs and LCs that intend to avail of the regulatory reliefs enumerated herein are required to submit the following:

- A. Letter-notification stating that the company's intention to avail of the regulatory reliefs, the specific regulatory relief to be availed, and the reason therefore. The letter-notification shall include the following:
 - i. A detailed explanation of the debt relief measures provided by the company to its borrowers; and
 - ii. A statement that the company is in good standing with the Commission.
- B. Resolution of the Board of Directors authorizing the company to avail of the regulatory reliefs.

Evaluation of the Application – The company's evaluation to avail of the regulatory reliefs shall be subject to the Commission's evaluation, which shall be on a case-to-case basis. The Commission shall then communicate its decision on the application to the company.

FCs and LCs shall ensure that the regulatory reliefs to be availed of are suitable to their operation, situation, and condition.

Period of Effectivity of the Regulatory Reliefs – the regulatory reliefs enumerated herein shall be effective for one (1) year from December 22, 2020.

SEC MC No. 37 s2020:

<https://www.sec.gov/ph/mc-2020/mc-no-37-s-2020/>

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Editorial Board

- **Rose Angeli S. Bernaldo**
Partner | Quality and Compliance/
Training Partner
rose.bernaldo@rsbernaldo.com
- **Anthony D. Paño**
Quality Assurance Senior Manager/
Quality Assurance Leader
anthony.pano@rsbernaldo.com
- **Mary Rose A. Lorilla**
Assistant Quality Assurance Manager/
Quality Assurance Leader
rose.lorilla@rsbernaldo.com
- **Charmaine S. De Guzman**
Senior Quality Assurance Associate
charmaine.deguzman@rsbernaldo.com
- **Baby Joy A. Baustista**
Quality Assurance Associate/
Ethics Leader
babyjoy.bautista@rsbernaldo.com
- **Sandae E. Dela Torre**
Quality Assurance Associate/
Engagement Quality Control Review
Leader
sandae.delatorre@rsbernaldo.com
- **Janna J. Pacis**
Quality Assurance Associate/
Learning and Training Leader
janna.pacis@rsbernaldo.com
- **Yves Michael O. Anadon**
Quality Assurance Associate/
Consultation Leader
yvesmichael.anadon@rsbernaldo.com