

# QAU Memo No. 08, s2021



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The Securities and Exchange Commission issued the following Memorandum Circulars:

- MC No. 01 s. 2021 - Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership (BO Transparency Guidelines)
- MC No. 02 s. 2021 - Compliance with Section 4 of SEC Memorandum Circular No. 18, Series of 2019 for Newly Registered Financing Companies (FCs) and Lending Companies (LCs)

# R.S. BERNALDO & ASSOCIATES

TAKING YOU FURTHER

## Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership ("BO Transparency Guidelines")

To: All Concerned

The Commission has issued the Guidelines in Preventing the Misuse of Corporations for Illicit Activities through Measures Designed to Promote Transparency of Beneficial Ownership (BO Transparency Guidelines).

Corporations must give access to the competent authority to their adequate, accurate, and timely information on their beneficial ownership and control of the corporation to effectively guard against the misuse of such corporate vehicles such as money laundering and terrorist financing activities.

The following guidelines are promulgated by the Commission, as Supervising Authority by the Anti-Money Laundering Act (AMLA), as amended, and its Implementing Rules and Regulations (IRR), the Securities Regulation Code (SRC) and the Revised Corporation Code of the Philippines (RCCP), and as approved by the Commission *En Banc*:

### **Scope**

This Circular shall apply to nominee directors/trustees and nominee shareholders as herein defined, incorporators/applicants for incorporation, and all concerned corporations subject to the supervision and jurisdiction of the Commission.

### **Definition of Terms**

#### Bearer shares

Shall refer to equity securities owned by the person or entity that holds the physical certificate which enables the transfer of ownership of shares of stock by mere delivery of such certificate. It shall likewise refer to instruments that accord ownership in a juridical person to the person or entity who possesses or is the holder of the bearer share certificate.

#### Bearer share warrant

Shall refer to a document certifying that the bearer is entitled to a certain amount of the fully paid shares of stock of a corporation.

#### Beneficial Owner

Shall refer to the natural person or persons who ultimately owns or controls or exercises ultimate effective control over the corporation as defined and required to be disclosed in the General Information Sheet (GIS) pursuant to SEC Memorandum Circular No. 15, Series of 2019 or any amendment thereto.

#### Commission

Shall refer to the Securities and Exchange Commission.

#### Nominee Incorporator/Director/Trustee/Shareholder

Shall refer to any natural person who acts for and on behalf of another person as incorporator/director/trustee or shareholder.

#### Nominator/Principal

Shall refer to any person or entity for and on whose behalf another person acts as incorporator/applicant/director/trustee/shareholder.

### **Prohibition Against the Issuance/Sale/Public Offering of Bearer Shares/Bearer Share Warrants**

Issuance, selling, or offering for sale or distribution of bearer shares and bearer share warrants shall not be issued by any person or entity.

### **Disclosure and Recording of the Alienation, Sale, or Transfer of Shares**

The alienation, sale, or transfer of shares of stock, the date thereof, by whom and to whom made, shall be disclosed and recorded in the Stock and Transfer Book of the issuing corporation within thirty (30) days from date of such alienation, sale, or transfer, subject to compliance with the requirements for the recording or registration of transfers under applicable regulations, except as provided for under any of the rules of the Commission. The same shall not be binding on the issuer unless disclosed and recorded.

Transfer or assignment of ownership or rights over shares of stock shall not be effective unless the name of the transferee/purchaser/assignee is properly indicated and said transferee/purchaser/assignee is properly identified and the transaction is recorded in the Stock and Transfer Book or the appropriate registry book of the issuing corporation in accordance with these Guidelines.

Sales or transfers of shares of publicly listed companies through the facilities of the Philippine Stock Exchange are not covered by this Section 4, without prejudice to the requirement to disclose beneficial ownership information in the GIS which shall remain applicable to all registered corporations as well as the disclosure of beneficial ownership of shares in accordance with pertinent provisions of the 2015 IRR of the SRC.

### **Payment of Dividends**

Payments of dividends to any person or entity shall not be made unless his/her/its name appears in the records of the corporation as the owner of the shares of stock for which dividends are being paid. Except, on the dividend payments made by publicly listed companies to the PCD Nominee or any similar entity authorized to act as depository and custodian of shares for purposes of trading in the stock exchange and operating under the same rules.

### **The Mandatory Disclosure of the Person on Whose Behalf the Corporation is Registered and the Nominators/Principals of Nominee Incorporators/First Directors/Trustees and Shareholders of Corporations Applying for Registration**

Incorporators of a corporation shall disclose to the Commission, within thirty (30) days from the issuance of the company's Certificate of Registration, the person or persons on whose behalf the registration of the corporation was applied for, except as otherwise provided under existing laws, rules, and regulations.

Nominee incorporators or applicants for registration, nominee directors/trustees and nominee shareholders of the applicant corporation shall in the same manner disclose to the Commission their respective principals or nominators.

The disclosure shall include the:

- a) full names;
- b) country of residence;
- c) nationality; and
- d) tax identification numbers (TIN), or in the absence of such TIN, the passport numbers of their nominators or principals and the person on whose behalf the corporation was registered.

Otherwise, they shall submit to the Commission a declaration within the same period that they are not nominee incorporators/nominee applicants/nominee directors/nominee subscribers, if such be the fact, and that they are not acting as such for and on behalf of another person.

**Mandatory Disclosure of Nominators/Principals/Persons on Whose Behalf One Acts as Director/Trustee/Shareholder of Existing Corporations**

Disclosure of nominators and principals or persons acting on behalf as shareholders/directors/trustees of the nominee shareholders and nominee directors/trustees of registered corporations shall be known to the Commission, except as otherwise provided by law, rules, and regulations.

Such information shall likewise be disclosed to the corporation in which they are or act as nominee shareholders or directors/trustees.

The disclosure shall include the:

- a) full names, country of residence;
- b) nationality; and
- c) TIN, or in the absence of such TIN, the passport numbers of their nominators or principals.

If the nominator or principal is a corporation:

- a) the registered name of the corporation;
- b) its country of registration;
- c) names of its incorporators and directors;
- d) its beneficial owner, its TIN, if any, shall in the same manner be disclosed.

If the nominator or principal is a trust:

- a) the names;
- b) nationality and country of residence; and
- c) TIN or passport number of the trustor/s, trustee/s and beneficiary/ies of the trust shall in like manner be disclosed.

The requirement prescribed in this section shall not apply to the PCD Nominee.

**Period to Submit Disclosure Statement Under Section 7 Hereof**

All persons who are nominee shareholders/directors/trustees of existing corporations before the effective date of this Circular shall submit to the Commission the said disclosure within thirty (30) days from the date this Circular became effective. Those who become nominee shareholders, directors/trustees on or after the effectivity of this Circular, shall submit the same within thirty (30) days from the time they became or assumed the role of or started acting as nominee directors/trustees or shareholders.

**Exemption from Disclosure Requirements**

As a general rule, all Covered Institutions as enumerated under 3(a) of the AMLA, as amended, and SEC Memorandum Circular No. 16, Series of 2018 or any amendments thereof, are exempted in the disclosure requirement prescribed in Section 7 of these Guidelines. Provided, that the exemption from the said disclosure requirement only applies to nominee/trustee arrangements related to products and services offered by Covered Institutions/Persons that are already subject to Customer Identification Requirements and Record Keeping by Supervising Authorities under the AMLA and its applicable Rules and Regulations.

SEC Covered Persons having an overall rating of 1 in the Commission's Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT) Risk Rating System (ARRS) may nonetheless be directed to comply with the disclosure requirements in Section 7 of these Guidelines as part of its close monitoring measures pursuant to SEC Memorandum Circular No. 26, Series of 2020.

### **Compliance**

The submission to the Commission of the required information under Sections 6 and 7 of this Circular shall be done online in such form and manner as the Commission deems practicable.

### **Data Handling and Management of Information and Communication Technology (ICT)**

The Information and Communications Technology Department (ICTD) of the Commission shall electronically acknowledge receipt of the disclosures required to be submitted online under these Guidelines noting the date they were actually submitted and shall provide access to such disclosures to designated personnel of the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (AML-D-EIPD). The ICTD shall likewise maintain an updated database of corporations with the information required to be submitted under Sections 6 and 7 of these Guidelines.

The confidentiality of the said information shall remain and information will not be uploaded to the Commission's publicly accessible database. However, the information shall be made readily available upon request to competent authorities for law enforcement and other lawful purposes as may be necessary in carrying out the functions of public authority.

### **Beneficial Ownership as Part of Corporate Records**

All Corporations registered with the Commission shall keep and preserve in its principal office adequate, timely, and accurate information relating to its beneficial owner or owners to be identified in the manner provided for in SEC Memorandum Circular No. 15, Series of 2019 or any amendments thereof.

For the purposes of this Circular, the information on Beneficial Ownership is adequate when the Corporation has the:

- a) Complete names,
- b) Specific residential addresses,
- c) Dates of birth, nationalities,
- d) Tax identification numbers, if any, and
- e) Percentage of ownership,
- f) If applicable, of all its Beneficial Owners.

It is timely if the beneficial ownership information or any change thereto is promptly reflected on record within three (3) days from the time the information becomes available or is reasonably expected to be available to the Corporation with the exercise of due diligence.

Further, an information is accurate if all details are correct. This is without prejudice to the requirement to disclose beneficial ownership information in the GIS which shall remain in full force and effect.

### **Administrative Sanctions**

The penalties and sanctions under current laws and other issuances of the Commission are hereby adopted and incorporated into these Guidelines insofar as they are applicable.

If, after due notice and hearing, the Commission finds that:

- a) There is a willful violation of these Guidelines or related orders of the Commission; or
- b) Any person has, in applications, records, declarations, disclosures, or documents required under these Guidelines to be filed with the Commission, made any untrue statement of any material fact required to be stated or necessary to make the statements therein not misleading; or
- c) 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 any or all of the following sanctions as may be appropriate in light of the facts and circumstance:

- I. Fine of no less than Five thousand pesos (P5,000.00) nor more than Two million pesos (P2,000,000.00) plus not more than One thousand pesos (P1,000.00) for each day of continuing violation but in no case to exceed Two million pesos (P2,000,000.00);
- II. Suspension or revocation of the certificate of incorporation; and
- III. Other penalties 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.*

#### **Criminal Actions and Criminal Liability**

The imposition of administrative sanctions shall be without prejudice to the filing of criminal charges against persons responsible for the violation of Title XVI of the Revised Corporation Code of the Philippines as well as other applicable laws, rules, and regulations.

#### **Monitoring of Compliance and Enforcement**

Enforcement and monitoring of compliance with this Circular shall be done by the Enforcement and Investor Protection Department in coordination with the other Operating Departments of the Commission. Imposition of applicable sanctions, if there is any violation, shall also be done as may be warranted.

#### **Repealing Clause**

Any inconsistencies with rules, regulations, orders, circulars, and issuances with this Memorandum Circular unless otherwise herein indicated, are hereby amended and/or repealed accordingly.

#### **Effectivity**

This Circular shall take effect after January 29, 2021.

SEC MC No. 01 s2021: <https://www.sec.gov.ph/mc-2021/mc-no-01-s-2021/>

#### **Compliance with Section 4 of SEC Memorandum Circular No. 18, series of 2019 for Newly Registered Financing Companies (FCs) and Lending Companies (LCs)**

To: All Financing and Lending Companies

The Commission issued this Memorandum Circular to guide newly registered Financing Companies (FCs) and Lending Companies (LCs) in their compliance with SEC Memorandum Circular No. 18 series of 2019, *on the Prohibition on Unfair Debt Collection Practices of FCs and LCs*.

Specifically, on the application of the provisions set forth by Section 4 of SEC MC No. 18 s2019 where there is a need to clarify the period for the submission of the Sworn Certification for FCs and LCs incorporated after September 8, 2019, the effectivity of SEC MC No. 18 s2019.

To clarify the issue stated above, FCs and LCs that are registered from September 8, 2019 until the effectivity of this Circular shall submit the Sworn Certification within thirty (30) calendar days from the effectivity thereof.

FCs and LCs that were incorporated after the effectivity of this Circular shall submit the Sworn Certificate within thirty (30) calendar days from the issuance of their Certificate of Authority to Operate as Financing/Lending Company.

Violations of this Circular shall be subject to the penalties prescribed under Section 5 of SEC MC 18 No. s2019.

This Circular shall be effective immediately after February 17, 2021.

SEC MC No. 18 s. 2019: <https://www.sec.gov.ph/mc-2019/mc-no-18-s-2019-prohibition-on-unfair-debt-collection-practices-of-financing-companiesfc-and-lending-companieslc/>

SEC MC No. 02 s. 2021: [www.sec.gov.ph/mc-2021/mc-no-02-s-2021/](http://www.sec.gov.ph/mc-2021/mc-no-02-s-2021/)

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Editorial Board

- **Rose Angeli S. Bernaldo**  
Partner | Quality and Compliance/  
Training Partner  
[rose.bernaldo@rsbernaldo.com](mailto:rose.bernaldo@rsbernaldo.com)
- **Anthony D. Paño**  
Senior Quality Assurance Manager  
[anthony.pano@rsbernaldo.com](mailto:anthony.pano@rsbernaldo.com)
- **Mary Rose A. Lorilla**  
Assistant Quality Assurance Manager/  
Quality Assurance Leader  
[rose.lorilla@rsbernaldo.com](mailto:rose.lorilla@rsbernaldo.com)
- **Charmaine S. de Guzman**  
Senior Quality Assurance Associate  
[charmaine.deguzman@rsbernaldo.com](mailto:charmaine.deguzman@rsbernaldo.com)
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Quality Assurance Associate/  
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[babyjoy.bautista@rsbernaldo.com](mailto:babyjoy.bautista@rsbernaldo.com)
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Leader  
[sandae.delatorre@rsbernaldo.com](mailto:sandae.delatorre@rsbernaldo.com)
- **Janna J. Pacis**  
Quality Assurance Associate/  
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[janna.pacis@rsbernaldo.com](mailto:janna.pacis@rsbernaldo.com)
- **Yves Michael O. Anadon**  
Quality Assurance Associate/  
Consultation Leader  
[yvesmichael.anadon@rsbernaldo.com](mailto:yvesmichael.anadon@rsbernaldo.com)



