



QAU Memo  
No.22 s2021

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The Securities and Exchange Commission has issued a Moratorium on New Online Lending Platforms in its MC No. 10 s 2021 and Notice on Extension of Deadline to File Additional Security Deposits and Notice on Request for Comments on Guidelines on the Registration and Licensing of Online Lending Platforms.

**R.S. BERNALDO & ASSOCIATES**

TAKING YOU FURTHER

## MORATORIUM ON NEW ONLINE LENDING PLATFORMS

To: Financing and Lending Companies

Given numerous complaints concerning alleged violations by online lending platforms (OLPs), the SEC imposed postponement on registering new and existing Financing Companies (FCs) and Lending Companies (LCs) that will engage in OLPs. These platforms are where services and products of FCs and LCs are catered, including mobile lending applications, websites, and other FinTech-enabled programs or systems.

Furthermore, the Commission is currently preparing a draft regarding the Guidelines on the Registration of OLPs to prescribe documentary requirements and qualifications of FCs and LCs as to their corresponding OLPs.

Correspondingly, to ensure the protection of consumers, only the recorded lending and financing companies with OLPs as of **November 02, 2021**, are allowed to operate but shall be subject to strict monitoring by the Commission.

### EFFECTIVITY

This Moratorium shall be immediately in effect until the Commission formally lifts the same.

For your information and guidance.

SEC MC No. 10, s.2021: <https://www.sec.gov.ph/mc-financing-lending-companies/mc-no-10-s-2021moratorium-on-new-online-lending-platforms/>

## EXTENSION OF DEADLINE TO FILE ADDITIONAL SECURITY DEPOSITS

To: All Concerned Foreign Corporations

Under SEC MC No. 3, Series of 2021 or Extension of Deadline for Filing of the Audited Financial Statements (AFS) stating all stock corporations with the fiscal year ending December 31, including branch offices, representative offices, regional headquarters, and regional operating headquarters of foreign corporations, shall enroll and file their AFS through SEC's Online Submission Tool (OST) following schedules depending on the last numerical of SEC registration or license number.

While Foreign Corporations with a License to Operate as Branch office use the latest due AFS as a basis in computation, monitoring, and posting additional and substitution of securities deposit.

Furthermore, with the alarming rise of COVID-19 cases posing a health threat and restrictions affecting people's mobility, the Commission has resolved to extend the deadline for posting of additional security deposits for branch offices falling due in 2021 until **December 23, 2021, Thursday**. The extension shall automatically apply without the need to request from affected branches and shall be in effect immediately and prospectively.

SEC MC No. 11, s.2021: <https://www.sec.gov.ph/mc-2021/adjusted-deadline-for-filing-additional-securities-deposit/>

## NOTICE: REQUEST FOR COMMENTS ON GUIDELINES ON THE REGISTRATION AND LICENSING OF ONLINE LENDING PLATFORMS

To: All Concerned

Regarding the Draft Memorandum Circular on the Guidelines on the Registration and Licensing of Online Platforms, the Commission issued a request for comments, proposed revisions, and estimated cost/s to comply with the Memorandum Circular. The written statements shall be submitted to the Commission's Corporate Governance and Finance Department within fifteen (15) days starting November 18, 2021, attaching *Comments Table* by email to [cgfd\\_md@sec.gov.ph](mailto:cgfd_md@sec.gov.ph).

The draft on the Guidelines on the Registration and Licensing of Online Lending Platforms issued by the Commission is as follows:

**Definition of Terms.** – For purposes of this Circular, the following definitions shall apply:

- a) *Certificate of Authority (CA)* shall refer to a certificate issued by the SEC in favor of a financing or lending company to engage in the business of financing or lending regulated by the FCA and the LCRA and their Implementing Rules and Regulations (IRR).
- b) *Certificate of Incorporation (COI)* shall refer to a certificate issued by the SEC in favor of a corporation granting juridical personality thereto in accordance with Republic Act No. 11232 or the Revised Corporation Code of the Philippines. This shall be synonymous with the term primary license.
- c) *FCs* shall refer to duly registered and licensed financing companies under the FCA.
- d) *FinTech* shall refer to a software, a service, or a business that provides technologically advanced ways to make financial processes and transactions more efficient compared to traditional methods.
- e) *Independent director (ID)* shall refer to a person who, apart from shareholdings and fees received from the corporation, is independent of management and free from any business or other relationship which could or could reasonably be perceived to materially interfere with the exercise of independent judgment in carrying out the responsibilities as a director.
- f) *LCs* shall refer to duly registered and licensed lending companies under the LCRA.
- g) *OLPs* shall refer to mobile lending applications, websites, and other FinTech-enabled programs or systems where the services and products of FCs and LCs are made available.

**Coverage.** – This Circular covers FCs and LCs whether existing or newly registered who do not yet own/operate/utilize OLPs or are not currently engaged in FinTech as of the effectivity of this Circular but wish to deliver their services and products through OLPs and FinTech.

This Circular likewise covers existing FCs and LCs with OLPs or are otherwise already engaged in FinTech, subject to Section 11 hereof.

**Registration/License Requirement.** – No FC or LC shall be allowed to own/operate/utilize OLPs or engage in FinTech without registration and prior approval by the SEC.

Further, no FC or LC shall be allowed to own/operate/utilize OLPs or engage in FinTech unless the same is included in the company's purpose in its Articles of Incorporation. FCs and LCs may either adopt the template purposes provided by the Commission or formulate their own.

The names of the OLPs shall be registered as business names or trade names of the FC or LC pursuant to the provisions of SEC Memorandum Circular No. 13, Series of 2019.

**Qualifications and Requirements.** – Applicant FCs and LCs shall meet the following criteria and submit the following requirements to be considered for the issuance of an OLP license:

**I. Qualifications**

- a) Must be duly registered and licensed as an FC/LC
- b) With at least five (5) directors and at least two (2) IDs or such number of IDs that constitutes twenty percent (20%) of the members of the Board, whichever is higher

**II. Requirements**

Applicant FCs and LCs shall submit to the Commission, through the Corporate Governance and Finance Department (CGFD) the following documents:

- a) Duly accomplished Application Form
- b) Detailed business and operational plan showing the following:
  - Compliance with Republic Act No. 3765, or the Truth in Lending Act (TILA)
  - Compliance with SEC Memorandum Circular No. 19, Series of 2019 on the Disclosure Requirements on Advertisements of Financing Companies and Lending Companies and Reporting of Online Lending Platforms (SEC MC 19)
  - Compliance with SEC Memorandum Circular No. 18, Series of 2019 on the Prohibition on Unfair Debt Collection Practices of Financing Companies and Lending Companies (SEC MC 18)
  - Compliance with Republic Act No. 9510, or the Credit Information System Act
  - Compliance with SEC Memorandum Circular No. 28, Series of 2020 on the Requirement for Corporations, Partnerships, Associations, and Individuals to Create and/or Designate E-mail Account Address and Cellphone Number for Transactions with the Commission
  - Process flow on customer onboarding and know-your-client procedure (KYC), including the company's procedure in determining the borrower's prior and existing loans from other financial institutions and its policy to curb over-indebtedness
  - Consumer protection and collection policies and processes, including a list of all its third-party service providers (TPSPs)
  - Service Level Agreement
  - Cybersecurity programs and policies
  - Data recovery, backup, and disaster risk reduction plan
  - Location and information on the company's data center and data recovery center
- c) The company's marketing strategy, target market, interest rates, loan products and services. Should a business process be outsourced by the company to a third party, the Company shall provide information about the third party and the services that are outsourced to the latter.

- d) Curriculum vitae of the following:
  - All the directors and officers, showing relevant experience on financing and lending
  - The company's Data Privacy Officer
  - The company's Chief Technology/Cybersecurity Officer, showing relevant experience on development of applications, cybersecurity, etc.
- e) Manual for Corporate Governance (MCG)
- f) Money Laundering and Terrorist Financing Prevention Program (MTPP)
- g) Certification from the National Privacy Commission (NPC) of compliance with NPC Circular No. 20-015 and other relevant rules and regulations of the NPC
- h) Payment of the required application fees which shall be equivalent to 1/10 of 1% of the FC/LC's paid in capital but shall not, in any case, be lower than Ten Thousand Pesos (P10,000.00). The fee shall be forfeited in cases of denial and rejection.
- i) Payment of annual fees which shall be equivalent to 1/8 of 1% of the required paid-up capital

**Presentation to the Commission** – The CGFD shall evaluate the documents submitted by the applicant FC/LC. Should the CGFD find that the applicant FC/LC does not meet the qualifications, or that the documents submitted are incomplete, or otherwise inadequate, it shall reject the application outright, without prejudice to the company's reapplication and authority to provide their credit products and services through other means except OLPs or other technology-enabled means.

In cases where the applicant FC/LC meets the qualifications and the documents submitted are complete, it shall be notified, through email, of its schedule for presentation to the Commission.

During the presentation, the applicant FC/LC must be represented by its President/Chief Executive Officer/Chairperson, or any officer of equivalent rank, Compliance Officer, Chief Technology Officer/Cybersecurity Officer, or a representative from its third-party digital/technology provider, if applicable, and such other officers or personnel as it may deem necessary. It shall present the following before a panel of representatives from the Commission:

- a) The company's business and operational plan, including the items listed in Section 4
- b) The company's marketing strategy, target market, interest rates, loan products and services
- c) Walk-through of the OLP simulating actual user experience
- d) Complaint handling process
- e) Discussion on the extent of data to be collected by the OLP and how they will handle it

**Evaluation of the OLP and issuance of the license.** – The panel shall submit its recommendation on whether to grant or deny the application to the Commission En Banc. The Commission En Banc's decision shall be final.

The applicant FC/LC shall be informed of the decision through email.

In cases where the application is granted, the FC/LC shall receive an email notification with the details of the license.

In cases of rejection, the FC/LC may reapply after a period of one (1) year. The applicant FC/LC shall demonstrate that the reason for rejection no longer exists.

**Validity and conditions of the license.** – The license shall have an initial validity period of One (1) year from the issuance date, subject to periodical examination and renewal of the Commission.

The validity of the OLP license shall be conditioned upon, but not limited to, the following:

- a) Compliance with the reportorial requirements for FCs and LCs
- b) No penalties were incurred for violations of TILA, SEC MC 18, SEC MC 19, and other reportorial requirements for the immediately preceding year
- c) Compliance with the LCRA and FCA and its implementing rules and regulations
- d) No derogatory records for the last six (6) months
- e) Compliance with future compliance requirements as may be prescribed by the Commission, including, but not limited to, requirements with respect to Cybersecurity and Data Privacy
- f) Compliance with all other orders or directives from the Commission
- g) Such other reasonable conditions as may be imposed by the panel and the Commission En Banc specific to the FC/LC

**Changes to the existing OLP and addition of OLPs.** – FCs and LCs that have been granted OLP licenses shall report any change or termination of the OLP to the Commission, not less than Ten (10) days before implementing such change or termination.

FCs and LCs with existing OLP licenses who wish to develop, own, operate or utilize additional OLPs shall apply anew for the said prospective OLP.

**Responsibility of FCs and LCs.** – FCs and LCs may engage the services of third-party digital/technology providers for the development and operation of their OLPs. The ultimate responsibility for complying with the provisions of this Circular lies with FCs and LCs.

**Penalties.** – The penalties below shall be imposed for the following violations:

**I. Violations of the conditions of the OLP license**

Any violation of the conditions of the OLP license shall merit the following penalties:

Frequency	FCs	LCs
First Offense	₱100,000.00	₱50,000.00
Second Offense	₱200,000.00	₱100,000.00
Third Offense	<p>Subject to the facts, circumstances and gravity of the offense, the Commission, at its discretion, may impose a Fine of not less than twice the basic penalty but not more than One Million Pesos (₱1,000,000); or Suspension of the OLP license for a period of sixty (60) days; or Revocation of the OLP license, as appropriate for each circumstance.</p> <p>Depending on the gravity of the offense, the Commission may also proceed with the suspension or revocation of the company’s CA and Primary License.</p>	

In addition to the basic penalties above, FCs and LCs who violate the conditions of their OLP license or the provisions of this Circular shall be imposed the following daily penalties:

Company	Daily Penalty
FCs	P400.00
LCs	P200.00

## II. Commencement of operations of the OLP without a validly issued OLP license

FCs and LCs that commence operations of OLPs without complying with the provisions of this Circular shall, after due notice and hearing, have their CAs or Primary Licenses suspended or revoked, depending on the facts, circumstances, and gravity of the offense. The order of suspension or revocation shall become immediately final and executory upon its issuance.

The foregoing penalties shall be imposed without prejudice to any other penalties that may be imposed by the Commission pursuant to Presidential Decree No. 902-A, Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, and all other relevant laws, rules, and regulations being implemented by the Commission, which may include the disqualification of its directors and officers; as well as to the penalties that may be imposed by the courts or other government agencies in the exercise of their respective mandates.

In cases of revocation of CA, FCs/LCs shall be given a period of sixty (60) days from receipt of the order to amend its Articles of Incorporation to give an opportunity to change the nature of its business or industry. Failure to do so within the given period shall merit the subsequent revocation of its Primary License.

In cases of violation of this Circular, the Commission may further prohibit online public access to the company's OLPs to protect financial consumers within its jurisdiction.

**Transitory provision.** – Within One Hundred Eighty (180) days from the effectivity of this Circular, FCs and LCs with existing OLPs shall begin their compliance by applying for an OLP license and submitting a complete set of requirements as provided under Section 4 hereof.

FCs/LCs which fail to submit the application form with all the required documents within the One Hundred Eighty (180)-day period shall be barred from operating their respective OLPs. They may, however, continue operating as traditional FCs and LCs only.

Within the same period, existing FCs/LCs shall accordingly amend their Articles of Incorporation in compliance with Section 3 of this Circular.

FCs/LCs which continue to operate their OLPs despite failure to submit the application form with all the required documents and obtain an OLP license shall be charged and proceeded against under Section 10 (B) hereof.

The Commission may, at its discretion, set a limit on the total number of OLPs that may be established. The Commission shall take into consideration the total number of applications received, OLPs already existing, and its effects on the industry and the general public.

**Effectivity.** - This Circular shall take effect **fifteen (15) days** after publication in two (2) newspapers of general circulation in the Philippines.

For your information and guidance.

*SEC Notice:* <https://www.sec.gov.ph/notices/request-for-comments-on-guidelines-on-the-registration-and-licensing-of-online-lending-platforms/>

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