SEC Memorandum Circular No. 4
Series of 2022

TO : **ALL CONCERNED**

SUBJECT : **Disqualifications of Directors, Trustees and Officers of Corporations; and the Guidelines on the Procedure for their Removal**
(Pursuant to Sections 26 and 27 of the Revised Corporation Code of the Philippines)

WHEREAS, under Section 26 of Republic Act No. 11232, or the Revised Corporation Code of the Philippines ("RCC"), a person shall be disqualified from being a director, trustee, or officer of any corporation if, within five (5) years prior to the election or appointment as such, the person was:

(a) Convicted by final judgment:
  (1) Of an offense punishable by imprisonment for a period exceeding six (6) years;
  (2) For violating this Code; and
  (3) For violating Republic Act No. 8799, otherwise known as "The Securities Regulation Code";
(b) Found administratively liable for any offense involving fraudulent acts; and
(c) By a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) above;

WHEREAS, the same section provides that the Securities and Exchange Commission ("Commission") or the Philippine Competition Commission ("PCC") may impose qualifications or other disqualifications in its promotion of good corporate governance or as a sanction in its administrative proceedings;

WHEREAS, Section 27 of the RCC provides that the Commission shall, *motu proprio* or upon a verified complaint, and after due notice and hearing, order the removal of a director or trustee elected despite the disqualification, or whose disqualification arose or is discovered subsequent to an election, and the removal of a disqualified director shall be without prejudice to other sanctions that the Commission may impose on the board of directors or trustees who, with knowledge of the disqualification, failed to remove such director or trustee;

WHEREAS, Section 96 of the RCC provides that, unless the context clearly provides otherwise, the stockholders of a close corporation shall be deemed to be directors, for the

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purpose of applying the provisions of the RCC: Provided, that its articles of incorporation state that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors;

WHEREAS, under Section 124 of the RCC, a nominee and alternate nominee shall, in the event of the single stockholder's death or incapacity, take the place of the single stockholder as director and shall manage the corporation's affairs.

WHEREAS, Section 158 of the RCC provides that the Commission, after due notice and hearing, may impose the following sanctions for violations of any provision thereof, rules or regulations, or any of the Commission's orders:

(a) Imposition of a fine ranging from Five thousand pesos (P5,000.00) to Two million pesos (P2,000,000.00), and 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);
(b) Issuance of a permanent cease and desist order;
(c) Suspension or revocation of the certificate of incorporation; and
(d) Dissolution of the corporation and forfeiture of its assets under the conditions in Title XIV of the RCC.

WHEREAS, under Section 179 (a) and (c) of the RCC, the Commission shall have the power to exercise supervision and jurisdiction over all corporations and persons acting on their behalf, except as otherwise provided under the RCC, and to impose sanctions for the violation of the RCC, its implementing rules and orders of the Commission;

NOW THEREFORE, the Commission hereby promulgates the following disqualifications of directors, trustees and officers of corporations, and the guidelines on the procedure for their removal:

TITLE I – GENERAL PROVISIONS

Section 1. Scope and Coverage

Pursuant to the provisions of the RCC on the disqualifications and removal of directors, trustees and officers, these rules shall govern pleadings, practice and procedure before the Commission in all matters of hearing and proceedings for:

(a) Independent administrative actions for the removal of directors, trustees, and officers;

(b) Removal of directors, trustees, and officers as a sanction in the Commission's proceedings; and

(c) Imposition of sanctions on the board of directors or trustees who, with knowledge of the disqualification, failed to remove a disqualified director or trustee.

For purposes of these rules, the term "disqualification" shall pertain to the fact or condition that disqualifies a person from being a director, trustee or officer. The term "removal" shall pertain to the act of taking away a person from the position of a director, trustee or officer.

These rules shall not cover actions or proceedings to prohibit the nomination, election or appointment of an individual as a director, trustee, or officer.

Section 2. Administrative Sanctions

In addition to the removal as a director, trustee and/or officer, the Commission may issue a permanent cease and desist order, and/or impose a fine ranging from Ten thousand pesos (P10,000.00) to Four hundred thousand pesos (P400,000.00) for each violation of the Commission's orders, or any of the provisions of the RCC on the disqualifications and removal of directors, trustees and/or officers, taking into consideration the extent of participation, nature, effects, frequency and seriousness of the violation.

Section 3. Close Corporations

If the articles of incorporation of a close corporation provides that the business of the corporation shall be managed by the stockholders of the corporation rather than by a board of directors, the stockholders removed under these rules shall be excluded from being part of the governing body which exercises the corporate powers, conducts all business, and controls all properties of the corporation.

Section 4. One Person Corporations

In case of removal of the sole director under these rules, the nominee shall take the place of the single stockholder as director and shall manage the corporation's affairs, subject to the rights, obligations and responsibilities under Chapter III, Title XIII of the RCC, provided, that the nominee shall possess the qualifications and none of the disqualifications of a director.

Section 5. Applicability of Other Rules

The pertinent provisions of the 2016 Rules of Procedure of the Commission, including the amendments thereto, and the Rules of Court of the Philippines

may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.

Section 6. When Exemption May Be Given

In the broader interest of justice and in order to best serve public interest, the Commission may, as called for or justified by the circumstances in a particular case, exempt an action from these rules and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases.

TITLE II – DISQUALIFICATIONS OF DIRECTORS, TRUSTEES, OR OFFICERS

Section 7. Disqualifications of Directors, Trustees and Officers

The following are the disqualifications of a director, trustee or officer of a corporation:

(a) Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years;

(b) Within the tenure, the director, trustee, or officer was convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years;

(c) Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted by final judgment for violating the Revised Corporation Code;

(d) Within the tenure, the director, trustee, or officer was convicted by final judgment for violating the Revised Corporation Code;

(e) Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted by final judgment for violating the Securities Regulation Code;

(f) Within the tenure, the director, trustee, or officer was convicted by final judgment for violating the Securities Regulation Code;

(g) Within five (5) years prior to the election or appointment, the director, trustee, or officer was found administratively liable, by

final judgment, for any offense involving fraudulent acts punishable under Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, Republic Act No. 8799, otherwise known as the Securities Regulation Code, and other laws, rules or regulations enforced or implemented by the Commission;

(h) Within the tenure, the director, trustee, or officer was found administratively liable, by final judgment, for any offense involving fraudulent acts punishable under Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines, Republic Act No. 8799, otherwise known as the Securities Regulation Code, and other laws, rules or regulations enforced or implemented by the Commission;

(i) Within five (5) years prior to the election or appointment, the director, trustee, or officer was convicted or found administratively liable by a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) of Section 26 of the RCC;

(j) Within the tenure, the director, trustee, or officer was convicted or found administratively liable by a foreign court or equivalent foreign regulatory authority for acts, violations or misconduct similar to those enumerated in paragraphs (a) and (b) of Section 26 of the RCC; or

(k) Within five (5) years prior to the election or appointment, or within the tenure, the director, trustee, or officer was found administratively liable, by final judgment, for refusal to allow the inspection and/or reproduction of corporate records.

TITLE III –REMOVAL OF DIRECTORS, TRUSTEES, AND/OR OFFICERS

Chapter I – Independent Administrative Action for Removal of Director, Trustee, or Officer

Section 8. Venue and Authority

All independent administrative actions for removal brought under this title shall be commenced and heard at the main office of the Commission in Metro Manila, or any of the Extension Offices of the Commission, subject to their respective geographical jurisdictions. This is without prejudice to the power of

the Commission *En Banc* to order the transfer of the proceedings to the main office in Metro Manila or another Extension Office whenever warranted by the prevailing circumstances.

The Operating Departments shall have original jurisdiction to hear and decide independent administrative actions for the removal of directors, trustees, and/or officers of corporations. The Operating Departments shall only have original jurisdiction over actions that are based on the disqualifications enumerated in Section 7 of these rules.

Once an Operating Department takes cognizance of an action filed under this title, it shall have the power to adjudicate the said case to the exclusion of all other Operating Departments, unless otherwise ordered by the Commission *En Banc.*

The term "Operating Department" shall refer to the Company Registration and Monitoring Department ("CRMD"), or the Extension Offices.

The Extension Offices may exercise authority over independent administrative actions for the removal of directors, trustees, and/or officers of corporations within their respective geographical jurisdiction.

These provisions shall be without prejudice to the discretion of the Commission *En Banc* to create a Special Hearing Panel for the conduct of hearing and proceedings for the removal of a director, trustee, or officer of a corporation.

Section 9. Commencement of an Independent Administrative Action for Removal

An independent administrative action for the removal of a director, trustee, and/or officer of a corporation shall be commenced upon:

(a) the *motu proprio* issuance of a Formal Charge by the Operating Department that has jurisdiction over the subject matter; or

(b) the filing of a Verified Complaint with the Operating Department that has jurisdiction over the subject matter.

Section 10. Formal Charge

If the appropriate Operating Department finds sufficient ground/s to warrant the commencement of an independent administrative action for removal of a director, trustee, or officer of a corporation, it shall issue a formal charge. The person subject of the Formal Charge shall be referred to as Respondent.

The Formal Charge shall specify the ground/s for removal, provide a statement of material or relevant facts, and direct the Respondent/s to file, within fifteen (15) calendar days from the receipt thereof, a Verified Answer in accordance with Section 14 of these rules. The Formal Charge shall be accompanied by the copies of the documentary evidence, sworn statements covering the testimony of witnesses, and such other pieces of evidence necessary, if any.

Section 11. Verified Complaint

A real party in interest may commence an independent administrative action for the removal of a director, trustee, or officer of a corporation by filing a Verified Complaint with the Operating Department that has jurisdiction over the subject matter, in accordance with the following rules:

(a) The Verified Complaint may include, as Respondents, the other directors or trustees.

(b) The Complainant shall file three (3) original (properly marked) copies of the Verified Complaint with its supporting documents, and an additional copy per Respondent. Hence, if there are five (5) Respondents, the Complainant shall file three (3) original copies of the Verified Complaint with its supporting documents, and Five (5) additional copies.

(c) Prior to filing the Complaint, the Complainant shall pay the Filing Fee in the amount of Three Thousand and Sixty pesos (₱3,060.00), inclusive of Legal Research Fee and Documentary Stamp Tax, or such amount deemed proper by the Commission *En Banc*.

(d) The Complaint shall contain the following:

i. The complete names and addresses of the parties;

ii. The ground and legal basis for disqualification/removal;

iii. A statement of material or relevant facts;

iv. The issues to be resolved;

v. The reliefs sought which must specifically include the prayer for removal;

vi. The proof of authority of the representative of the juridical person, if applicable;

vii. The documentary evidence, affidavits of witnesses and such other pieces of evidence necessary to establish the *prima facie* truth of the factual allegations therein;

viii. The proof of payment of the filing fee;

ix. Verification; and

x. Certification against forum shopping.

(e) The Verification, in the form of an affidavit, shall allege the following attestations:

i. The allegations in the Verified Complaint are true and correct based on the Complainant's personal knowledge, or based on authentic documents;

ii. The Verified Complaint is not filed to harass, cause unnecessary delay, or needlessly increase the cost regulation and/or litigation; and

iii. The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

(f) The Certification Against Forum Shopping shall be signed by the Complainant, wherein he/she shall certify under oath:

i. That he/she has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his/her knowledge, no such other action or claim is pending therein;

ii. If there is such other pending action or claim, a complete statement of the present status thereof; and

iii. If he/she should thereafter learn that the same or similar action or claim has been filed or is pending, he/she shall report that fact within five (5) calendar days therefrom to the appropriate Operating Department of the Commission.

(g) Failure to comply with any of the foregoing requirements shall result in the dismissal without prejudice to the refiling of the Complaint. If the acts of the party or his/her counsel constitute willful forum shopping, the same shall be considered as a justifiable ground for the summary dismissal with prejudice, and constitute direct contempt of the Commission with the attendant administrative and criminal consequences.

Section 12. Outright Dismissal of Complaint

After an initial examination of the allegations in the Complaint and such evidence that may be attached to it, the Director of the Operating Department that has jurisdiction over the subject matter, or his/her duly authorized representative, may dismiss outright the Complaint based on any of the following grounds:

(a) The Complaint is not compliant with the requirements set forth in Section 11 of these rules;

(b) The Commission or the Operating Department that has jurisdiction over the subject matter has no jurisdiction over the subject matter of the Complaint;

(c) There is a pending action or complaint involving the same subject matter or issues in any court, tribunal or agency; or

(d) The Operating Department finds insufficient evidence as would reasonably tend to establish prima facie the truth of the factual allegations contained therein, on the basis of the documents, affidavits and other evidence attached to the Complaint.

Section 13. Summons

Upon the filing of the Verified Complaint, the payment of filing fees, and the determination by the Director of Operating Department, or his/her duly authorized representative, of its authority to act over the Complaint and of the sufficiency in form and substance of the Complaint, the Operating Department

shall forthwith issue the corresponding summons together with a copy of the Complaint and all attachments to the Respondent/s.

Section 14. Verified Answer

Within fifteen (15) calendar days from the receipt of the Formal Charge or Summons, the Respondent shall file three (3) original copies of his/her Verified Answer to the Formal Charge or Verified Complaint, and serve a copy thereof to the Complainant. If there are several Respondents, and they decide to file their separate Verified Answers, each Co-Respondent must also be furnished a copy of their respective Verified Answers.

The Verified Answer shall be accompanied by an affidavit, which shall allege the following attestations:

(a) The allegations in the Verified Answer are true and correct based on the Respondent's personal knowledge, or based on authentic documents;

(b) The Verified Answer is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation; and

(c) The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery;

The Commission-bound Verified Answer shall be accompanied by the proof of service to the Complainant and Co-Respondent/s, if applicable. The Verified Answer shall contain the affidavits of witnesses, and such other pieces of evidence necessary to establish the facts relied upon, if any.

If the Respondent fails to answer the Formal Charge or Verified Complaint within the period fixed in these rules, the Operating Department may, *motu proprio*, render a judgment granting such relief, or imposing the sanction/s, as the Complaint and/or the evidence presented or established in the course of the proceedings may warrant; Provided, that the decision, resolution, or final order shall be issued in accordance with the 2016 SEC Rules of Procedure and the amendments thereto. The Director of the Operating Department may require the Complainant to submit additional evidence *ex parte*.

Section 15. Clarificatory Hearing

Should the Hearing Officer of the Operating Department find it necessary to clarify certain material facts, it may, before rendition of judgment, conduct a clarificatory hearing for the purpose of ascertaining facts, issues and other matters that are necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents pertinent thereto.

Section 16. Effect of Withdrawal of Complaint

The withdrawal of a complaint does not automatically result in the outright dismissal of the proceedings of the independent administrative action for removal of a director, trustee, or officer of a corporation, nor discharge the Respondent/s from the possible imposition of any administrative sanction or penalty when there is merit to the charges, or where there is documentary evidence which would tend to establish a *prima facie* case warranting the continuation of the proceedings.

In all instances, the Commission may take the place of the Complainant as if it has *motu proprio* instituted a Formal Charge.

Section 17. Submission of Position Papers

Within fifteen (15) calendar days from the Order terminating the Clarificatory Hearing, the parties may be required to submit their respective position papers setting forth the law and facts relied upon, with supporting affidavits and other evidence on such facts.

Upon submission of the position paper, or upon expiration of the period mentioned above and no position paper has been filed, the case shall be deemed submitted for resolution.

Only the complaint, answer and position paper can be filed and all other pleadings shall be disallowed unless they are filed with leave of the Operating Department.

Section 18. Decisions, Resolutions, Final Orders, Motions for Reconsideration, Appeals and Execution

The decisions, resolutions, or final orders shall be rendered by the Operating Department pursuant to the 2016 SEC Rules of Procedure and the amendments thereto.

Appeals and Motions for Reconsideration or Execution shall also be filed pursuant to the 2016 SEC Rules of Procedure and the amendments thereto.

Chapter II – Removal as a Sanction in the Commission's Proceedings

Section 19. Removal as Sanction

The Commission may remove a director, trustee, and/or officer of a corporation as a sanction in its proceedings, if, during its administrative or adjudicative proceedings, it has been established, by substantial evidence, that any of the grounds enumerated in Section 7 of these rules is present.

Section 20. Show Cause Order

Prior to the removal, and/or imposition of other administrative sanctions, the Commission shall issue an order, directing the director, trustee, and/or officer of a corporation to show cause under oath, within fifteen (15) calendar days from receipt, why he/she should not be disqualified or removed as a director, trustee, and/or officer, and/or why he/she should not be administratively penalized.

Section 21. Verified Response

The Verified Response to the Show Cause Order shall be filed in three (3) original copies. The Verified Response shall contain the affidavits of witnesses, and such other pieces of evidence necessary to establish the facts relied upon, if any. If there are several Respondents, and they decide to file their separate Verified Responses, each Co-Respondent must also be furnished a copy of their respective Verified Responses.

The Verified Response shall be accompanied by an affidavit, which shall allege the following attestations:

(a) The allegations in the Verified Response are true and correct based on the affiant's personal knowledge, or based on authentic documents;

(b) The Verified Response is not filed to harass, cause unnecessary delay, or needlessly increase the cost regulation and/or litigation; and

(c) The factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after a reasonable opportunity for discovery.

The Commission-bound Verified Response shall be accompanied by the proof of service to the Co-Respondent/s, if applicable. The Verified Response shall contain the affidavits of witnesses, and such other pieces of evidence necessary to establish the facts relied upon, if any.

If the Respondent fails to answer the Show Cause Order within the period fixed in these rules, the Commission may, *motu proprio*, render a judgment imposing the sanction/s, as the evidence presented or established in the course of the proceedings may warrant; Provided, that the decision, resolution, or final order shall be issued in accordance with the 2016 SEC Rules of Procedure and the amendments thereto.

TITLE IV –-REMOVED DIRECTORS, TRUSTEES, AND OFFICERS INDEX

Section 22. Removed Directors, Trustees, and Officers Index

The Operating Departments shall furnish the Corporate Filing and Records Division ("CFRD") of the CRMD a copy the order, decision, or resolution, which includes the removal of a director, trustee, and/or officer of a corporation.

The CFRD shall maintain an index of individuals removed by the Commission from the position of a director, trustee, or officer of a corporation. The index shall include the following:

(a) The corporate name and SEC registration number of the corporation;

(b) Complete name and position of the removed director, trustee, or officer;

(c) Date of election or appointment as a director, trustee, or officer;

(d) The Operating Department which issued or promulgated the order, decision, or resolution;

(e) Case title and number;

(f) Date of issuance/promulgation of the order, decision, or resolution; and

(g) Ground/s for removal, which shall include the following:

i. Date of finality of judgment or conviction, if applicable;

ii. Penalty imposed, if applicable; and/or

iii. The specific qualification imposed by the Commission or the PCC.

Section 23. Confidentiality of the Index

The index shall only be for the use of the Commission, and may not be accessed or queried upon by outside parties except with the authority of the individual concerned, and the approval of the Director of the appropriate Operating Department, or his/her duly authorized representative; Provided, that this is without prejudice to the authority of the Commission to authorize the release of the information; Provided, further, that the proof of authority of the individual concerned must be duly notarized.

This Memorandum Circular shall take effect immediately upon its publication in two (2) newspapers of general circulation.

15 February 2022, Pasay City.

EMILIO B. AQUINO
Chairperson