SEC MEMORANDUM CIRCULAR NO. 7
Series of 2021

TO : **PUBLICLY-LISTED COMPANIES**

SUBJECT : **CALLING OF SPECIAL STOCKHOLDERS' MEETINGS**

To promote good corporate governance and the protection of minority investors, the Securities and Exchange Commission (the "Commission" or "SEC"), pursuant to its regulatory power under Section 179(d) of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines (RCC), and Administrative Order No. 38, Series of 2013 resolved to issue the following rules:

(1) Any number of shareholders of a corporation ("Qualifying Shareholders") who hold at least ten percent (10%) or more of the outstanding capital stock ("Qualifying Shares") of a Publicly Listed Company (PLC) shall have the right to call for a Special Stockholders' Meeting, subject to the guidelines set under Section 49 of the RCC and other relevant regulations. The Special Stockholders' Meeting may be done physically or remotely through allowable means of remote communication.

(2) The Qualifying Shareholders should have continuously held the Qualifying Shares for a period of at least one (1) year prior to the receipt by the Corporate Secretary of a written Call for a Special Stockholders' Meeting.

(3) The Call for a Special Stockholders' Meeting shall be in writing, signed by all Qualifying Shareholders, addressed to the Board of Directors and transmitted through the Corporate Secretary at least forty-five (45) days prior to the proposed date of the special meeting, setting forth therein:

i. The names of the Qualifying Stockholder(s) and their respective percentage of shareholdings, which must constitute at least ten percent (10%) of the outstanding capital stock of the corporation;

ii. The purpose of the Call for a Special Stockholders' Meeting, which must be stated with sufficient clarity, and must affect the legitimate interest of the stockholders and is germane to the stockholders' interest; *Provided,* that the purpose should not include the removal of any director under Section 27 of the RCC;

iii. The proposed date and time of the requested Special Stockholders' Meeting; *Provided,* that no stockholder may call a special meeting within sixty (60) days from the previous meeting of the same nature and where the same matter was discussed, *unless* the company's

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bylaws provide otherwise or the special meeting is approved by the Board of Directors.

iv. The proposed agenda items to be discussed during the Special Stockholders' Meeting; *Provided,* that the matters to be discussed are those affecting the legitimate interests of the shareholders on corporate actions where stockholders' approval is required under the RCC, except the right to remove a director; *Provided further,* that a special meeting cannot be called if the proposed agenda:

(a) covers the same matter/s discussed and resolved in a previous meeting of the stockholders, unless the sixty (60)-day holding-off period had lapsed, the company by-laws provide otherwise or the special meeting is approved by the Board;

(b) will be covered in the next regular or special meeting; *Provided,* that the next regular or special meeting is scheduled not later than thirty (30) days from the date of the request; or

(c) has already been discussed and resolved with finality in the previous meetings.

The Qualifying Shareholders must provide proof of shareholdings and at least one (1) government-issued ID.

The Board of Directors may, at its discretion, set the Special Stockholders' Meeting, earlier than forty-five (45) days, if it determines that the matters raised by the Qualifying Shareholders necessitate a quick resolution to prevent undue damage to the company.

(4) The Board of Directors shall determine if the objectives and conditions in the Call for Special Stockholders' Meeting are consistent with the requirements of this Memorandum Circular.

If found to be consistent, the Board of Directors shall issue the Notice to convene the Special Stockholders' Meeting at least seven (7) days prior to the proposed date of special meeting in accordance with Sections 49 and 50 of the RCC, SEC Memorandum Circular No. 6, Series of 2020 (Teleconferencing, Videoconferencing, and Other Remote or Electronic Means of Communication), and other relevant laws, rules and regulations of the Commission and the company's by-laws.

If found to be inconsistent, the Board of Directors shall send a written notice to the requesting stockholders indicating that a meeting cannot be called due to their failure to comply with the requirements of this Memorandum Circular, clearly setting forth the basis of such inconsistency, within twenty (20) days from receipt of the request.

(5) In the event that the Board of Directors fail to respond to the Call for Special Stockholders' Meeting within twenty (20) days from receipt of the request, the Qualifying Stockholder/s may avail of the remedy provided under paragraph 7, Section 49 of the RCC.

The Qualifying Shareholders may avail of the same remedy if the Board of Directors refuses to call a meeting under Section (4) above.

(6) Any officer or agent of the corporation who shall refuse to allow a Qualifying Shareholder to exercise his/her right to call a meeting shall be liable under Section 158 of the RCC: *Provided,* that if such refusal is made pursuant to a resolution or order of the Board of Directors, the liability under this section for such action shall be imposed upon the directors who voted for such refusal; *Provided further,* that it shall be a defense to any action under this Memorandum Circular that the shareholder exercising any of these rights was not acting in good faith or in accordance with the requirements of this Memorandum Circular; *Provided furthermore*, that delay in the processing of such requests shall be equivalent to refusal if the delay is solely caused by negligence on the part of the corporation.

If, after due notice and hearing, the Commission finds that any provision of this Memorandum Circular has been violated, or that any of the right hereunder has been abused, the Commission may impose any or all of the sanctions provided under Section 158 of the RCC.

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

Pasay City, Philippines, 23 April 2021.

For the Commission:

EMILIO B. AQUINO
Chairperson