Securities and Exchange Commission
PHILIPPINES

SEC MEMORANDUM CIRCULAR NO. 5
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SUBJECT: GUIDELINES ON THE IMPLEMENTATION OF ACMF PASS UNDER THE ASEAN CAPITAL MARKET PROFESSIONAL MOBILITY FRAMEWORK

WHEREAS, Section 2 of the Securities Regulation Code (SRC) declares that it is the policy of the State to promote the development of the capital market and protect the investors;

WHEREAS, Section 5 of the SRC provides the Commission the power to formulate policies and recommendations on issues concerning securities market;

WHEREAS, Section 72 of the SRC authorizes the Commission to issue and amend rules and regulations and relative thereto, the Commission may classify persons, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of the SRC.

WHEREAS, Section 35 of the Investment Company Act or RA 2629, pursuant to the Commission's authority to make, issue, amend, and rescind rules and regulations and such orders as are necessary or appropriate to the exercise of its powers under this law, the Commission may classify persons, securities and other matters within its jurisdiction and prescribe different requirements for different classes of persons, securities, or matters.

WHEREAS, the Philippine Securities and Exchange Commission is a signatory to the Memorandum of Understanding on the ACMF PASS (MOU) under the ASEAN Capital Market Professional Mobility Framework together with the securities regulators of Thailand, Malaysia and Singapore.

WHEREAS, the ASEAN Capital Market Professional Mobility Framework aims to enhance the connectivity of capital market professionals in the ASEAN region.

WHEREAS, ACMF Pass allows the freer movement of professionals licensed from a home country to perform investment advice activities and issue research report on ASEAN financial products in a host country under the Framework.

WHEREAS, there is a need to issue Guidelines with regard to the implementation of the ACMF Pass under the ASEAN Capital Market Professional Mobility Framework.

NOW, THEREFORE, the Commission hereby issues the following guidelines on the implementation of the ACMF Pass under the ASEAN Capital Market Professional Mobility Framework.

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ARTICLE ONE. GENERAL PROVISIONS

Section 1. Applicability - This shall be known as the "Guidelines on the Implementation of ACMF Pass under the ASEAN Capital Market Professional Mobility Framework". These guidelines shall apply to:

a. Professionals in the Philippines who intend to obtain an ACMF Pass in another country which is Signatory to the MOU;

b. Professionals in other Signatory countries who intend to obtain an ACMF Pass in the Philippines; and

c. Attached Licensed Firms as defined under Section 2 hereof.

Section 2. Definition of Terms – For purposes of these Guidelines, the following definitions of terms shall apply, unless the context otherwise requires:

a. **ACMF member** means the securities regulator of the respective ASEAN jurisdiction, collectively referred to as the "ACMF members";

b. **ACMF Pass** means the authorisation by a Host Regulator to allow a Professional from the Home Jurisdiction to perform activities under the Framework in Host Jurisdiction;

c. **Attached Licensed Firm** refers to the Licensed Firm in either the Home or Host Jurisdiction to which the Professional is connected or employed;

d. **Commission** refers to the Philippine Securities and Exchange Commission;

e. **Framework** refers to the ASEAN Capital Market Professional Mobility Framework;

f. **Home Jurisdiction** means the jurisdiction of the MOU Signatory in which a Professional is licensed or registered or approved or authorised;

g. **Host Jurisdiction** means the jurisdiction (other than the Home Jurisdiction) of an MOU Signatory in which a Recognised Representative performs the activities specified in the Framework in Host jurisdiction;

h. **Home Regulator** means the Signatory whose jurisdiction is the Home Jurisdiction of the Professional;

i. **Host Regulator** means the Signatory whose jurisdiction is the Host Jurisdiction of the Recognised Representative;

j. **Laws and Regulations** means any law, regulation or regulatory requirement applicable in the jurisdiction of a Signatory, and where the context permits include any rule, direction, requirement, or policy made or given by or to be taken into account by the Signatory in its jurisdiction;

k. **Licensed Firm** means any legal person with authority to undertake the business related to dealing in and giving advice on the capital market products under the Laws and Regulations of the Signatories;

l. **Professional** means a person who is licensed or registered or approved or authorised by a Signatory to perform, including but not limited to, the activities specified in the Framework in its jurisdiction;

m. **Recognised Representative** means a Professional who has obtained an ACMF Pass;

n. **Signatory** means the ACMF member who signed the MOU on the ACMF Pass under the ASEAN Capital Market Professional Mobility Framework, and collectively, shall be referred to as "the Signatories".

ARTICLE TWO. THE ACMF PASS

Section 3. Qualified Professionals in the Philippines – The following registered capital market professionals in the Philippines are qualified to apply for an ACMF Pass from a Host Regulator and become a Recognised Representative in other Signatory Countries:

a. *Salesman of a Broker Dealer and/or Investment House* - a natural person hired to buy and sell securities on a salary or commission basis properly endorsed to the Commission by the employing Broker Dealer or the Investment House, as the case may be, as defined in Rule 28.1.1 of the 2015 SRC Rules;

b. *Certified Investment Solicitor* - a natural person of legal age duly licensed by the Commission and appointed by a Fund Manager or Mutual Fund Distributor to solicit, sell or offer to sell the shares or units of an Investment Company to the public as defined in Rule 1 of the Implementing Rules and Regulations of the Investment Company Act (ICA IRR);

c. *Key officers/s of Fund Managers (Investment Company Advisers) involved in the management of the Fund and licensed by the Commission as Certified Investment Solicitor;*

d. Other professionals which the Commission may, in the future, determine as eligible to apply for ACMF Pass in other Signatory Countries.

Section 4. Eligibility Requirements for Professionals from other Signatory Countries – A Professional from other Signatory countries is eligible to obtain the ACMF Pass and become a Recognised Representative in the Philippines provided that he/she:

a. is licensed or registered or approved or authorised by the Home Regulator;

b. has no pending disciplinary action or has not been censured, reprimanded or fined by a professional or regulatory body for negligence, incompetence, mismanagement, dereliction of duty or violation of law or regulation; and

c. has not been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, misappropriation, forgery, bribery, false oath, perjury, or of a violation of securities, commodities, banking, real estate or insurance laws.

Section 5. Products – The ASEAN capital market products which Recognised Representative may give advice on are limited only to:

a. shares;

b. bonds; and

c. units of collective investments scheme including:

   i. units of real estate investment trust; and

   ii. units of infrastructure fund.

The scope of advising activity is described in Section 6 of these Guidelines.

Section 6. Scope of Activities - The Recognised Representative shall be permitted to perform the following activities in the Host Jurisdiction:

a. Issuing or promulgating research analysis or research reports concerning the capital market products set out in Section 5 that are solely incidental to the giving of general investment advice set out under sub-paragraph (b) hereof; and

b. Giving general investment advice to both retail and non-retail investors concerning the capital market products set out in Section 5.

Section 7. Prohibited Activities - The Recognised Representative shall not be permitted to perform the following activities in the Host Jurisdiction:

a. Giving advice to investors by considering investor's investment objective, financial situation and particular needs; and

b. Soliciting for sales of the capital market products set out in Section 5.

Section 8. Mode of Performance of Service - The Recognised Representative's performance of the activities as provided in Section 6 can be through physical presence or electronic means.

Section 9. Conditions for Servicing Retail and Non-Retail Investors - A Recognised Representative must be attached to a Licensed Firm in the Host Jurisdiction with the following conditions:

a. A Recognised Representative is not required to be a full-time employee of the Licensed Firm;

b. The Licensed Firm, to whom the Recognised Representative is attached to, is not required to be related to any Licensed Firms in the Home Jurisdiction; and

c. A Recognised Representative is allowed to change his attachment from one Licensed Firm(s) to another Licensed Firm in the Host Jurisdiction during the validity period of his ACMF Pass. In the event that the Recognised Representative in the Philippines shall transfer to another Licensed Firm or attach to another Licensed Firm, he shall inform the Commission of such occurrence.

A Recognised Representative may be attached to more than one Licensed Firm at the same time; the Attached Licensed Firm is obliged to monitor the conduct of the Recognised Representative and ensure that he complies with the Host Jurisdiction's laws and regulations when performing activities under the Framework in the Host Jurisdiction.

Section 10. Validity of ACMF Pass – The validity of ACMF Pass shall be for a period of two (2) years from the date of grant of ACMF Pass, unless earlier revoked or cancelled by the Commission, and each Recognised Representative will be permitted to perform the activities under the Framework in a Host Jurisdiction for the duration of its validity.

Section 11. How to Apply for ACMF Pass –

a. The Attached Licensed Firm (in the Host Jurisdiction) of the professional from Home Jurisdiction shall manually submit the application together with the supporting documents, to the Markets and Securities Regulation Department (MSRD) of the Commission.

b. Applications shall be filed with the Commission anytime during business hours of any business day.

c. The following documents are required as supporting documents for the application for the issuance of the ACMF Pass:

   i. Copy of the certificate of registration, license or authority of the Recognized Representative issued by the Home Regulator;

   ii. Certificate of good standing issued by the Home Regulator;

   iii. Proof issued by the Attached Licensed Firm in the Home Jurisdiction authorizing its Professional to apply for ACMF Pass in the Philippines;

   iv. Endorsement by the Attached Licensed Firm in the Host Jurisdiction for the issuance of the ACMF Pass in favor of the Recognized Representative. The endorsement shall be signed by the Associated Person or Compliance Officer or other officer with equivalent or higher rank of the Attached Licensed Firm.

   Good standing shall mean having complied with all regulatory obligations, no pending disciplinary action; has not been censured, reprimanded or fined by a professional or regulatory body for negligence, incompetence, mismanagement, dereliction of duty or violation of law or regulation; and has not been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, misappropriation, forgery, bribery, false oath, perjury, or of a violation of securities, commodities, banking, real estate or insurance laws.

d. The Commission shall, within thirty (30) days after the filing of application for the issuance of ACMF PASS:

   i. Grant ACMF PASS if it determines that the eligibility requirements and supporting documents have been satisfied and complied with; or

   ii. Deny the application stating the reason/s for the denial.

ARTICLE THREE. RENEWAL OF THE ACMF PASS

Section 12. Renewal Coverage - The provisions under Article Three of these guidelines shall only apply to Recognized Representatives from other Signatory countries with ACMF Pass issued by the Commission.

Renewal guidelines for Professionals in the Philippines with ACMF Pass issued by other Signatory countries shall be provided by relevant Host Jurisdictions.

Section 13. Renewal Criteria - The ACMF Pass of the Recognised Representative in the Philippines may be renewed provided that:

a. He still possesses a valid license or registration or approval or authorisation from the Home Jurisdiction;

b. He has no pending disciplinary action or has not been censured, reprimanded or fined by a professional or regulatory body for negligence, incompetence, mismanagement, dereliction of duty or violation of law or regulation;

c. Has no pending complaint filed against him/her in the Host Jurisdiction; and

d. He has not been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, misappropriation,

forgery, bribery, false oath, perjury, or of a violation of securities, commodities, banking, real estate or insurance laws.

Section 14. Validity of Renewal – The ACMF Pass shall be valid for one (1) year from the date of renewal and may be renewed yearly.

Section 15. Renewal Documents – The following documents are required for the renewal of the ACMF Pass:

a. Copy of the certificate of registration, license or authority of the Recognized Representative issued by the Home Regulator;

b. Certificate of good standing issued by the Home Regulator;

c. Endorsement by the Attached Licensed Firm in the Host Jurisdiction for the renewal of the ACMF Pass of the Recognised Representative. The endorsement shall be signed by the Associated Person or Compliance Officer or other officer with equivalent or higher rank of the Attached Licensed Firm.

Section 16. Renewal Process - The Attached Licensed Firm (in the Host Jurisdiction) of the Recognized Representative shall submit to the Commission the application for renewal of the ACMF Pass not later than thirty (30) days before it expires.

The application for renewal of ACMF Pass shall be submitted to the Markets and Securities Regulation Department of the Commission manually and to be officially received by the Commission during office hours.

Section 17. Grant or Denial for Renewal of ACMF Pass – The Commission shall, within thirty (30) days after the filing of any application under these Guidelines: (i) grant renewal if it determines that the requirements and qualifications for renewal set forth in these Guidelines have been satisfied; or (ii) deny said renewal stating the reason/s for the denial.

ARTICLE FOUR. ROLE OF ATTACHED LICENSED FIRM IN THE HOST JURISDICTION

Section 18. The role of Attached Licensed Firm in the Host Jurisdiction shall be as follows:

a. The Attached Licensed Firm must conduct proper due diligence of the Professional to ensure that:

   i. The Professional has satisfied the entry requirements as prescribed by the Host Regulator; and

   ii. The Recognized Representative remain licensed or approved or authorised in Home Jurisdiction, attached with Licensed Firm in Home Jurisdiction and certify that the Recognised Representative has satisfied the requirements for maintaining the status and other ongoing requirements as prescribed by the Host Regulator.

b. The Attached Licensed Firm in the Host Jurisdiction shall maintain the record of the appointment and the discontinuation of the Recognised Representative and make available such record to the Commission.

ARTICLE FIVE. MONITORING, SUPERVISORY AND ENFORCEMENT MECHANISM

Section 19. Notification of Significant Changes to Recognized Representative – The Attached Licensed Firm in the Host Jurisdiction shall notify the Host Regulator and the Licensed Firm in the Home Jurisdiction immediately of any information or significant change considered to have an impact on the status of licensing or registration or approval or authorisation of the Recognised Representative including, but not limited to these events that occur in the Host Jurisdiction:

a. Where any of its Recognised Representative has committed any act that is detrimental to the interest of investors; or

b. Where any of its Recognised Representative, where applicable, cease to be fit and proper; or

c. Where any of its Recognised Representative, where applicable, fails or ceases to perform his function; or

d. Where any of its Recognised Representative do not comply with any of the requirements under the ACMF Pass Framework; and

e. Where any of its Recognised Representative fails to comply with the Laws and Regulations in Home Jurisdiction and Host Jurisdiction.

Upon receipt of such information, the Licensed Firm in the Home Jurisdiction shall notify the Home Regulator.

Section 20. Enforcement Action – If a Recognized Representative contravenes a Host Jurisdiction's laws and regulations, the Host Regulator shall take regulatory actions against the Recognized Representative with the assistance of the Home Regulator to the extent permissible under its laws and regulations.

ARTICLE SIX. TERMINATION AND REVOCATION OF ACMF PASS

Section 21. Any ACMF Pass granted under Article 2 hereof may be revoked or terminated by the Commission, after due notice and hearing, based on the following:

a. When the license and/or registration of the Recognised Representative in the Home Jurisdiction is cancelled, terminated or becomes invalid;

b. When the Recognised Representative is no longer compliant with the requirements stated in Section 4 hereof;

c. When the Recognised Representative commits any of the activities mentioned in Section 7 hereof;

d. Failure of the Recognised Representative to comply with regulatory requirements and/or directive of the Commission despite due notice; or

e. Violation by the Recognised Representative of the Securities Regulation Code and its Implementing Rules and Regulations, ACMF Pass Framework and other rules and regulations being implemented by the Commission.

ARTICLE SEVEN. EFFECTIVITY

Section 22. Effectivity – These Guidelines shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

26 February 2019, Pasay City, Philippines.

EMILIO B. AQUINO
Chairperson