MEMORANDUM CIRCULAR NO. 25
Series of 2020

TO : ALL CONCERNED

SUBJECT: Guidelines in the Filing, Investigation and Resolution of Complaints for Violation of the Right to Inspect and/or Reproduce Corporate Records

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WHEREAS, Section 73 of Republic Act No. 11232, otherwise known as the Revised Corporation Code of the Philippines ("RCC"), provides that corporate records, regardless of the form in which they are stored, shall be open to inspection by any director, trustee, stockholder or member of the corporation in person or by a representative at reasonable hours on business days, and a demand in writing may be made by such director, trustee or stockholder at their expense, for copies of such records or excerpts from said records.

WHEREAS, the same Section also states that any officer or agent of the corporation who shall refuse to allow the inspection and/or reproduction of records in accordance with the RCC shall be liable to such director, trustee, stockholder or member for damages, and in addition, shall be guilty of an offense which shall be punishable under Section 161 of the RCC: provided, that if such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability shall be imposed upon the directors or trustees who voted for such refusal: provided further, that it shall be a defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such corporation or of any other corporation, or was not acting in good faith or for a legitimate purpose in making the demand to examine or reproduce corporate records, or is a competitor, director, officer, controlling stockholder or otherwise represents the interests of a competitor.

WHEREAS, the same Section further provides that, if the corporation denies or does not act on a demand for inspection and/or reproduction, the aggrieved party may report such to the Commission, and, within five (5) days from receipt of such report, the Commission shall conduct a summary investigation and issue an order directing the inspection or reproduction of the requested records.

WHEREAS, the same Section further provides that the inspecting or reproducing party shall remain bound by confidentiality rules under prevailing laws, such as the rules on trades secrets or processes under Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended, Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012", Republic Act No. 8799, otherwise known as "The Securities Regulation Code", and the Rules of Court.

WHEREAS, the same Section also provides that any stockholder who shall abuse the rights granted under the aforesaid section shall be penalized under Section 158 of the RCC, without prejudice to the provisions of Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended, and Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012".

NOW THEREFORE, the Commission hereby promulgates the guidelines in enforcing the right to inspect and/or reproduce corporate records and the procedure for the conduct of investigation for violation of the same.

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SECTION 1. *Who may file a Verified Complaint; Filing fee.* - An aggrieved party may file a report, in the form of a Verified Complaint, with the Company Registration and Monitoring Department ("CRMD"), or any of the Extension Offices of the Securities and Exchange Commission ("Commission"), if a corporation, or any of its officers or agents, denies or does not act on a demand for inspection and/or reproduction of corporate records. For the purpose of docketing, a filing fee of Ten Thousand One Hundred Thirty Pesos (P10,130.00), inclusive of Legal Research Fee (LRF) and Documentary Stamp Tax (DST), shall be paid.

SECTION 2. *Grounds.* - The following shall constitute a violation of the right to inspect and/or reproduce corporate records:

a. Outright refusal to allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative;

b. Failure to take, within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to inspect any of the corporate records in person, or by a representative;

c. Failure to give the director, trustee, stockholder, or member a reasonable amount of time to inspect any of the corporate records in person, or by a representative;

d. Outright refusal to allow the director, trustee, stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative, at his/her own expense;

e. Failure to take, within a reasonable amount of time, the necessary steps that would allow the director, trustee, stockholder, or member of the corporation to reproduce any of the corporate records in person, or by a representative, at his/her own expense; or

f. Failure to give the director, trustee, stockholder, or member a reasonable amount of time to reproduce any of the corporate records in person, or by a representative, at his/her own expense.

SECTION 3. *Contents of the Verified Complaint.* - The Verified Complaint shall contain the following:

a. Corporate Name, SEC Registration Number, and complete mailing address of the subject corporation;

b. The relevant facts and circumstances pertaining to the violation of the right to inspect and/or reproduce corporate records, which shall include:

    i. The date and time of demand;

    ii. A statement that, at the time the demand to inspect and/or reproduce the corporate records was made, the complainant is a director, trustee, stockholder, member, or an authorized representative of a director, trustee, stockholder, or member, of the subject corporation: Provided, that pieces of evidence that will support such fact shall be attached to the Verified Complaint;

    iii. The complete name and mailing address of the custodian of the corporate records and/or corporate secretary to whom the demand was made and/or addressed, and the custodian's position in the corporate structure of the subject corporation;

    iv. The complete name and mailing address of the directors, trustees and/or officers deemed by the complainant to be liable;

v. The form of the demand, whether written or verbal: Provided, that, if the demand was in writing, a clear photocopy of the written demand letter shall be attached to the Verified Complaint;

vi. The specific corporate records to be inspected, as stated in the demand;

vii. The manner and circumstances by which the demand was made by the complainant; and

viii. The relevant circumstances after the demand was made;

c. The statement that the complainant acted in good faith or for a legitimate purpose in making the demand to examine or reproduce corporate records;

d. Name and signature of the complainant, and his/her position in the corporate structure of the subject corporation: Provided, that, if the complainant is a duly authorized representative, his/her proof of authority shall be attached to the Verified Complaint: Provided, further, that the signature of the complainant shall serve as a certification of the truthfulness of the allegations in the Verified Complaint;

e. An affidavit duly signed by the complainant, which shall allege the following attestations:

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

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

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

f. A Certification Against Forum Shopping duly 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 Company Registration and Monitoring Department, or the appropriate Extension Office, of the Commission;

g. Photocopy of the Official Receipt or other proof of payment of the filing fee;

h. The supporting documents and/or evidence, if any, to support the allegations or arguments; and

i. Such other matters the complainant deems necessary to include.

A sample of the Verified Complaint is attached below as **ANNEX "A"**.

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.

SECTION 4. *Outright Dismissal of Verified Complaint.* – After an initial examination of the allegations in the Verified Complaint and such evidence that may be attached to it, the Director of the CRMD or the appropriate Extension Office, or his/her duly authorized representative, may dismiss outright the Verified Complaint based on any of the following grounds:

a. The Verified Complaint is not compliant with the requirements set forth in Section 3 of these rules;

b. The CRMD or the appropriate Extension Office has no jurisdiction over the subject matter of the Verified Complaint;

c. Pending action or complaint involving the same subject matter or issues in any court, tribunal or agency; or

d. The CRMD or the appropriate Extension Office 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 Verified Complaint.

SECTION 5. *Summons.* – Upon the filing of the Verified Complaint, the payment of the filing fees, and the determination by the Director of the CRMD or the appropriate Extension Office, or his/her duly authorized representative, of its authority to act over the Verified Complaint and of the sufficiency in substance of the Verified Complaint, the CRMD or the appropriate Extension Office shall issue a Summons within Five (5) calendar days from the filing of the Verified Complaint. The Summons shall be directed to the respondent, or the person alleged to have violated the complainant's right to inspect and/or reproduce, and shall contain:

a. The name of the appropriate Extension Office, or the CRMD, and the names of the parties to the action;

b. A direction that the respondent file with the Commission, and serve to the complainant, his Verified Answer within Ten (10) calendar days from receipt of the Summons;

c. A notice that, unless the respondent files and serves a Verified Answer, the complainant will take judgment by default and may be granted the relief applied for;

d. The signature of the Director of the CRMD or the appropriate Extension Office, or his/her duly authorized representative; and

e. A photocopy of the Verified Complaint and the supporting documents and/or evidence, if any.

SECTION 6. *Verified Answer.* - Within Ten (10) calendar days from the receipt of the Summons, the respondent shall file three (3) original copies of his Verified Answer, 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 containing the following:

a. The facts or circumstance relevant and necessary to explain why the respondent should not be held liable for the alleged violation of the complainant's right to inspect and/or reproduce the corporate records;

b. The legal grounds on which the Verified Answer is based;

c. Name and signature of the respondent, and his/her position in the corporate structure of the subject corporation, if any: Provided, that, if the affiant is a duly authorized representative of the respondent, his/her proof of authority shall be attached to the Verified Answer: Provided, further, that the signature of the respondent or the duly authorized representative shall serve as a certification of the truthfulness of the allegations in the Verified Answer;

d. An affidavit duly signed by the respondent or the duly authorized representative, which shall allege the following attestations:

   i. The allegations in the Verified Answer are true and correct based on his or her personal knowledge, or based on authentic documents;

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

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

e. Proof of service to the Complainant and Co-Respondents, if applicable.

f. The supporting documents and/or evidence, if any, to support the claims or arguments; and

g. Such other matters the respondent deems necessary to include.

If the Respondent fails to answer the Verified Complaint within the period fixed in these rules, the CRMD or the appropriate Extension Office may, *motu proprio*, proceed to render a judgment granting such relief, or imposing the sanction/s, as the Complaint and/or the evidence presented may warrant. The Director of the Operating Department may require the Complainant to submit additional evidence *ex parte*.

SECTION 7. *Clarificatory Conference.* - Before the rendition of a Final Order, the CRMD or the appropriate Extension Office, in its discretion, may conduct a clarificatory conference or hearing for the purpose of ascertaining facts, issues and other matters necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents thereto, not later than Thirty (30) days after the last Verified Answer is filed.

SECTION 8. *Amicable Settlement; Effect of Withdrawal of Complaint.* – Before the issuance of a Final Order, the complainant and respondent may arrive at an amicable settlement or resolution, which shall be in writing, in English or Filipino language, signed by them and accompanied by a jurat or acknowledgement before a notary public. The execution of the amicable settlement has the effect of withdrawing the verified complaint.

The withdrawal of a verified complaint does not automatically result in the outright dismissal of the investigation on the violation of the right to inspect and/or reproduce corporate records, 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.

SECTION 9. *Final Order.* - Within Thirty (30) days after the conclusion of the clarificatory conference or hearing, or the receipt of the last affidavits, documents, or papers requested or ordered to be submitted during the conference or hearing, or the expiration of the period for filing the same, the CRMD or the appropriate Extension Office shall issue a Final Order, containing the appropriate order, sanction, grant of relief or denial thereof or such other conditions or terms to be imposed, and a demand for payment of the penalties, if applicable; Provided, that administrative sanctions shall be imposed after due notice and hearing.

SECTION 10. *Verified Status Account (VSA).* - If the Final Order includes a directive to the respondent to allow the complainant to inspect and/or reproduce any of the corporate records within a specified period, both parties shall file a joint Verified Status Account ("VSA"), or their respective VSAs, within Fifteen (15) days from the date of compliance, or from the last day of the period within which to comply.

If an Appeal or Motion for Reconsideration has been made and is denied, both parties shall file a joint VSA, or their respective VSAs, within fifteen (15) days from the finality of the Final Order and/or the Decision or Resolution on the Appeal or Motion for Reconsideration.

Unless contradicted and overcome by evidence, it shall be presumed that the respondent complied with the Final Order if the respondent filed a VSA while the complainant failed to file a VSA within the period stated in this section.

Unless contradicted and overcome by evidence, it shall be presumed that the respondent did not comply with the Final Order if:

a. The complainant filed a VSA while the respondent failed to file a VSA within the period stated in the immediately preceding paragraphs; or

b. Both the complainant and the respondent failed to file a Joint VSA, or their respective VSAs, within the period stated in the immediately preceding paragraphs.

The CRMD or the appropriate Extension Office may issue a Show Cause Order, which shall include a directive to the respondent to show good cause as to why the Commission should not impose sanctions or penalties for failing to comply with the Final Order.

SECTION 11. *Contents of the VSA.* - The Verified Status Account shall be filed in three (3) original copies, and shall include the following:

a. The name of the appropriate Extension Office, or the CRMD, the names of the parties to the action, and the SEC Case Number;

b. Corporate name and SEC registration number of the subject corporation;

c. The facts, circumstances and justification why the directive was not complied with;

d. Name and signature of the complainant and/or the respondent: Provided, that the signatures of the complainant and/or respondent shall serve as a certification of the truthfulness of the statements and/or allegations in the VSA;

e. An affidavit duly signed by the complainant and/or the respondent, which shall allege the following attestations:

    i. The statements and/or allegations in the VSA are true and correct based on his or her personal knowledge, or based on authentic documents;

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

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

f. The supporting documents and/or evidence, if any, to support the allegations or arguments; and

g. Such other matters the complainant and/or the respondent deem necessary to include.

A sample of the Verified Status Account is attached below as **ANNEX "B"**.

SECTION 12. *Second Clarificatory Conference.* - Before the rendition of a Resolution, the CRMD or the appropriate Extension Office, in its discretion, may conduct a clarificatory conference or hearing for the purpose of ascertaining facts, issues and other matters necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents thereto.

SECTION 13. *Resolution.* - Within Thirty (30) days from the receipt of the joint VSA or the last VSA, or from the expiration of the period within which to file the VSA, the CRMD or the appropriate Extension Office shall issue a Resolution which shall contain the following:

a. A concise statement of the facts, findings and conclusions;

b. The reasons and the law on which it is based;

c. The names of the persons responsible or liable, if applicable;

d. The appropriate order, sanction, grant of relief or denial thereof or such other conditions or terms to be imposed, and a demand for payment of the penalties, if applicable; Provided, that administrative sanctions shall be imposed after due notice and hearing.

e. Name and Signature of the Director of the CRMD, or the appropriate Extension Office, or the duly authorized representative.

SECTION 14. *Administrative Sanctions.* - After due notice and hearing, the Commission may impose any or all of the sanctions under Section 158 of the Revised Corporation Code of the Philippines, taking into consideration the extent of participation, nature, effects, frequency and seriousness of the violation of the right to inspect and reproduce corporate records.

SECTION 15. *Appeals.* - The 2016 SEC Rules, or the amendments thereto, on motions for reconsideration, appeals and execution proceedings shall apply.

SECTION 16. *Confidentiality.* - The inspecting or reproducing party shall remain bound by confidentiality rules under prevailing laws, such as the rules on trades secrets or processes under Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended, Republic Act No. 10173, otherwise known as the "Data Privacy Act of 2012", Republic Act No. 8799, otherwise known as "The Securities Regulation Code", and the Rules of Court.

SECTION 17. *Procedure for the Imposition of Sanctions for the Abuse of Right to Inspect and Reproduce Corporate Records.* – The procedure for investigations, and administrative actions or proceedings, including the rules on decisions, final orders, resolutions, motions for reconsideration, execution and appeals, of the 2016 Rules of Procedure of the Securities and Exchange Commission ("2016 SEC Rules"), or the amendments thereto, shall apply in the imposition of administrative sanctions on the abuse of the right to inspect and/or reproduce corporate records.

SECTION 18. *Role of the Commission in the Prosecution.* – Unless otherwise provided by law or the Rules of Court, the Commission may assist in the prosecution of the violation of the right to inspect and/reproduce corporate records upon the order of the Commission *En Banc.* The task of assisting in the prosecution of the said violation, including the preparation of the necessary criminal complaint and filing with the Department of Justice. may be designated to the Enforcement and Investor Protection Department (EIPD), the Company Registration and Monitoring Department (CRMD), and/or the appropriate Extension Office.

SECTION 19. *Exclusion from the Alternative Dispute Resolution System.* – The provisions of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004", its implementing rules and regulations, and the arbitration agreements provided in the articles of incorporation or by-

laws of corporations shall not apply to the resolution or settlement of disputes or controversies arising from violations of the right to inspect and/or reproduce corporate records.

SECTION 20. *Effectivity.* - These rules shall take effect immediately after its publication in the Official Gazette or in at least Two (2) newspapers of general circulation in the Philippines.

Done this 20 day of August 2020, Pasay City, Philippines.

EMILIO B. AQUINO
Chairperson

ANNEX "A" – Page 1 of 2

VERIFIED COMPLAINT

I. SUBJECT CORPORATION

Corporate Name : _____
SEC Registration Number : _____
Mailing Address : _____
_____
_____

II. RELEVANT FACTS AND CIRCUMSTANCES

i. Date and Time of Demand: _____.

ii. At the time the demand to inspect and or reproduce the corporate records was made, the undersigned complainant is a (Please check the appropriate box and fill-in the details, if applicable):

[ ] Director; [ ] Trustee;

[ ] Stockholder; [ ] Member; or

[ ] Duly authorized representative of *(Complete name of the principal)*, who is a director, trustee, stockholder and/or member of the subject corporation at the time the demand to inspect and or reproduce the corporate records was made.

iii. The complete name of the custodian of the corporate records to whom the demand was made is _____, with the position of _____, and mailing address at _____
_____.

iv. The demand was made in *(written/verbal)* form.

v. The corporate record/s to be inspected and/reproduced, as stated in the demand, is/are:
_____
_____
_____

vi. In making the demand, the undersigned _____
_____
_____

vii. After the demand was made, _____
_____
_____

III. OTHER FACTUAL STATEMENTS

i. The complainant acted in good faith or for a legitimate purpose in making the demand to examine or reproduce corporate records;

ii. _____; and

iii. _____.

(Signature over printed name)
Complainant
(Complete mailing address)

ANNEX "A" – Page 2 of 2

VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

I, (Complete name of complainant), of legal age, (Citizenship), and a resident of _____, _____, on oath, state:

1. That I, as the complainant, have caused this Verified Complaint to be prepared; that I read and understood its contents which are true and correct based on my own personal knowledge and/or based on authentic documents;
2. That the Verified Complaint is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation;
3. That the factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after reasonable opportunity for discovery;
4. That I have not 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; and
5. That if I should thereafter learn that the same or similar action or claim has been filed or is pending, I shall report that fact within five (5) calendar days therefrom to the Company Registration and Monitoring Department, or the appropriate Extension Office, of the Commission.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

_____
Affiant

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

NOTARY PUBLIC

ANNEX "B"

Republic of the Philippines
Department of Finance
Securities and Exchange Commission

Company Registration and Monitoring Department

In the matter of:

SEC CRMD Case No. xx-xxxx
For: Violation of Right to Inspection and/or Reproduction of Corporate Records

Mr. _____,
Complainant,

vs.

_____, INC. (SEC Registration No. xxxxxxxxx), and Mr. _____, Corporate Secretary,
Respondents.

x----------x

VERIFIED STATUS ACCOUNT

Complainant, MR. _____, unto this Honorable Department, most respectfully alleges the following, to wit:

1. That after the receipt of the Honorable Department's Final Order, _____ _____.
2. Respondents have not complied with the order of the Honorable Department to allow the inspection and/or reproduction of the subject corporate records.

_____
Complainant

VERIFICATION

I, (Complete name of Complainant), of legal age, (Citizenship), and a resident of _____ _____, on oath, state:

1. That I, as the Complainant, have caused this Verified Status Account to be prepared; that I read and understood its contents which are true and correct based on my own personal knowledge and/or based on authentic documents;
2. The Verified Answer is not filed to harass, cause unnecessary delay, or needlessly increase the cost of regulation and/or litigation; and
3. That the factual allegations therein have evidentiary support or, if specifically identified, will likewise have evidentiary support after reasonable opportunity for discovery;

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 20____.

_____
Affiant

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20____.

NOTARY PUBLIC