Republic of the Philippines
Department of Finance
Securities and Exchange Commission
SEC Building, EDSA, Greenhills, Mandaluyong City

SEC MEMORANDUM CIRCULAR NO. 13
Series of 2013

TO : **ALL ACQUIRERS THAT ARE MANDATED TO CONDUCT A TENDER OFFER PURSUANT TO SRC RULE 19**

SUBJECT : **GUIDELINES ON THE CONDUCT OF VALUATION AND ISSUANCE OF A FAIRNESS OPINION**

To increase the quality and reliability of fairness opinions being issued prior to the conduct of a mandatory tender offer and to align the rules of the Commission with best practices in other jurisdictions, the Commission in its meeting on 08 August 2013 resolved to adopt the requirements contained herein as part of SRC Rule 19 on Tender Offer.

I. Paragraph 2(c) of SRC Rule 19 provides in part:

"2. Mandatory tender offers

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C. If any acquisition of even less than thirty five percent (35%) would result in ownership of over fifty one percent (51%) of the total outstanding equity securities of a public company, the acquirer shall be required to make a tender offer under this Rule for all the outstanding equity securities to all remaining stockholders of the said company at a price **supported by a fairness opinion provided by an independent financial advisor or equivalent third party**. The acquirer in such a tender offer shall be required to accept any and all securities thus tendered." (emphasis provided)

An opinion on the fairness of the price for a proposed mandatory tender offer shall not be acceptable unless the requirements of this Circular are complied with.

II. Only independent firms that are compliant with the qualifications prescribed in this Circular may conduct valuation and issue fairness opinion for purposes of the above-quoted provisions of SRC Rule 19. Independence shall mean absence of any business interest or family relationship with any party to the transaction or of any its directors, officers, or major stockholders, that could, or could reasonably be perceived to, materially interfere with the exercise of the professional judgment of

the firm, its representative or any member of the engagement team, in carrying out their responsibilities in assessing the fairness of the issuer's securities;

III. The following requirements must be observed in the conduct of the valuation and issuance of fairness opinion by an accredited firm:

a. The individual who acts on behalf of the accredited firm shall be a licensed professional who have at least ten (10) years experience in the field of accounting, finance or economics and holds relevant advance degree;

b. The firm shall use in its assessment relevant and current data or those that are not more than three months from date of valuation.

c. The firm shall adopt more than one valuation methodology and compare the values derived from using different methodologies to minimize the risk that the opinion is unreliable. In addition to referencing with the quoted price of the subject equity securities, valuation methodologies include balance sheet valuation or book value, dividend discount model, price/earnings ratio, and free cash flow approach.

d. If the firm's valuation of a company materially differs from the market price of the company's securities prior to the announcement of a proposed transaction, the firm shall comment on the difference and factors underlying it.

e. The firm shall not include prospective financial information (including forecasts and projections) unless it has made sufficient inquiries to satisfy itself that the information on which it relied was prepared on a reasonable basis. Discounted cash flow methodology which invariably uses forward looking information may only be used if the firm has reasonable grounds for doing so. If the firm considered the use of prospective information, the reasons shall be indicated in the report;

f. The firm shall notify the party commissioning the report within two (2) days from date of its knowledge of a significant change which may affect the contents of the report or from date of its conclusion that a material statement in the report is misleading or deceptive. A copy of said report shall be furnished to the Commission within the same period.

g. The following information shall be provided in the firm's Fairness Opinion Report:

i. All material assumptions and reasons for the opinion;

ii. Justification of the choice of methodologies and description of the methods used by the firm;

iii. Whether or not the opinion was approved by a committee created within the firm;

iv. Whether or not the opinion expresses an opinion about the fairness of the compensation in the transaction to any of the company's directors, officers or employees relative to the compensation to the company's shareholders;

v. Whether or not the firm acted as a financial advisor to any party to the transaction, and whether or not it will receive compensation and/or other significant payments that is contingent on the successful completion of the transaction, for rendering the fairness opinion and/or serving as advisor;

vi. Material relationships during the prior two years or those contemplated between the firm and any party to the transaction in which any compensation was received or intended to be received. A relationship shall be considered material if it would affect the independence of the firm, as defined under paragraph II above, assuming that it is currently present.

vii. Whether or not the firm independently verified any information that formed a substantial basis for the opinion, and whether or not such information was supplied to the firm by the company requesting the opinion. The information or the categories of information verified and not verified must be described;

viii. The firm's discussion on any material difference between the valuation set and the market price of the company's securities prior to the announcement of the proposed transaction;

ix. A written declaration of compliance by the firm's representative with the Code of Ethics applicable to his or her profession;

x. A brief description of the firm and the education and professional qualifications of its representative who conducted the valuation.

h. The Fairness Opinion Report shall be signed by the firm's representative. He shall indicate his complete name, Professional License Number, Tax Identification Number, firm name and address, PSE Accreditation Number of the firm (if any) and other technical information.

This Circular shall be effective fifteen (15) days after the date of last publication in newspapers of general circulation.

8th day of August 2013, Mandaluyong City, Philippines.

For the Commission:

TERESITA J. HERBOSA
Chairperson