Republic of the Philippines
SECURITIES AND EXCHANGE COMMISSION
SEC Building, EDSA, East Greenhills
Mandaluyong City, Metro Manila

SEC MEMORANDUM CIRCULAR NO. 14
Series of 2006

SUBJECT: RULES GOVERNING THE OVER THE COUNTER (OTC) MARKET

WHEREAS, the Securities Regulation Code (SRC) empowers the Securities and Exchange Commission (Commission) to promulgate rules and regulations and orders that shall govern Exchanges and other securities trading markets;

WHEREAS, Chapter IX of the SRC contains the sections that pertain to the regulation of Exchanges and other securities trading markets. Specifically,

- Section 32.1 prohibits brokers, dealers, salesmen and associated persons of broker or dealer from using unregistered Exchange;
- Section 32.2 (a) also prohibits brokers, dealers, salesmen and associated persons of broker or dealer from making, creating or operating, or enabling another to make, create or operate, any trading market, otherwise than on a registered Exchange, for the buying and selling of any security, except in accordance with rules and regulations that the Commission prescribes;
- Section 32.2 (b) further authorizes the Commission to promulgate rules and regulations governing transactions by brokers, dealers, salesmen or associated persons of broker or dealer, over any facilities of such trading market and to require such market to be administered by a self-regulatory organization (SRO) determined by the Commission as capable of ensuring the protection of investors comparable to that provided in the case of a registered Exchange, and that such SRO must provide a centralized marketplace for trading and must satisfy requirements comparable to those prescribed for registration of Exchanges in Section 33 of the SRC;

- Section 33 requires the registration of an Exchange;
- Section 36.2 empowers the Commission to require and enforce uniformity of trading regulations between or among Exchanges or other trading markets, where two (2) or more Exchanges or other trading markets exist;
- Section 36.3 recognizes the authority of the Commission to determine the number, size and location of stock Exchanges, other trading markets and commodity Exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve or rationalize investment, and;
- Section 37 authorizes the Commission, having due regard for national economic development, to encourage competitiveness in the market to promulgate rules for the registration and licensing of innovative and other trading markets or Exchanges covering, but not limited to, the issuance and trading of innovative securities, securities of small, medium, growth and venture enterprises, and technology-based ventures;

WHEREAS, the rules governing the registration of Exchanges have already been promulgated and are embodied in the Implementing Rules and Regulations (IRR) of the SRC;

WHEREAS, the rules governing the issuance and trading of innovative and non-traditional securities and registration and licensing of innovative and non-traditional markets have been promulgated and are reflected in the Rules and Regulations on Alternative Trading Systems (ATS);

WHEREAS, the existing Rules Governing Secondary Market Trade of Government Securities must be strengthened;

WHEREAS, there is a need to promulgate rules governing existing trading market that shall recognize the activities of brokers, dealers, salesmen and associated persons of broker or dealer in trading securities that are otherwise not qualified for listing or trading in an Exchange or ATS, and support the bilateral

negotiation between the buyer and seller before concluding a transaction which is generally referred to as the OTC market;

WHEREAS, it is essential to ensure that the OTC market shall operate in a manner that is consistent with investor protection, market integrity and transparency in order to promote the development of the capital market;

NOW THEREFORE, the Commission hereby issues and promulgates the following rules governing OTC market and the transactions and persons involved therein.

Section 1. Title, Applicability and Interpretation -

A. These rules shall be known as the "Rules Governing The Over-The-Counter (OTC) Market" or "OTC rules" for brevity. These rules shall govern the operation and use of an OTC market by registered persons such as brokers, dealers, salesmen or associated persons of broker or dealer, who trade or deal in securities in the secondary market.

B. The requirements under these rules shall be in addition to those provided under the following: (1) SRC and other related laws and their IRRs insofar as their provisions are applicable; (2) internal policies, procedures, conventions of brokers or dealers, and; (3) rules, procedures and conventions of the SRO that shall regulate and supervise the brokers, dealers, salesmen or associated persons of broker or dealer who participate in the OTC market, to the extent that such policies, rules, procedures and conventions do not contravene the SRC, its IRR and these rules.

C. The OTC rules shall not alter or abrogate the obligations of a broker, dealer, salesman or associated person of broker or dealer to comply with other applicable laws, rules, or regulations that may govern the operations of such registered persons.

D. These rules shall be construed in a manner which shall establish a socially conscious free market that regulates itself, ensure transparency and full and timely disclosure of material information, protect investors, preserve market integrity, avoid systemic risk, prevent fraudulent or manipulative devices and practices, enhance the democratization of wealth and promote the development of the capital market.

Section 2. Definition of Terms - For purposes of these rules, the following definition of terms shall apply unless the context otherwise requires:

(A) **Algorithm** refers to a set of rules that govern the process of prioritizing and matching of quotations against contra orders.

(B) **Associated person** of broker or dealer (AP) refers to any person employed full time by a broker or dealer whose responsibilities include internal control supervision of other employees, agents, salesmen, officers, directors, clerks and stockholders of such broker or dealer for compliance with the SRC and its IRR. An AP shall not perform other duties without Commission approval and subject to the condition that the broker or dealer will maintain the appropriate Chinese Wall between the functions of an AP and that of his other duties.

(C) **Broker** refers to a person engaged in the business of buying and selling securities for the account of others.

(D) **Dealer** refers to a person who buys and sells securities for his own account in the ordinary course of business.

(E) **Government Securities Eligible Dealer** or **GSED** refers to a dealer registered by the Commission as such.

(F) **OTC Market** refers to the market created by the buying and selling of a security on a bilateral basis between parties that takes place outside of an Exchange or Alternative Trading System (ATS).

(G) **OTC Quotation System** or **Quotation System** refers to the system defined in Section 9 of these rules.

(H) **OTC Transaction or OTC Trade** refers to a purchase or sale of security that takes place in an OTC market.

(I) **Participant in an OTC Market** refers to a broker, dealer, salesman or associated person of broker or dealer who is authorized to participate in the OTC market. The term "**counterparty**" as used in these rules refers to a person who is the other party to an OTC transaction.

(J) **Qualified Investor** refers to any of the qualified buyers defined under Section 10.1 (L) of the SRC and any of the institutional accounts defined under SRC Rule 52.1-6 of the IRR of the SRC or such other person declared by the Commission by way of rule or order as a qualified investor taking into consideration such person's net worth or financial background would allow him to bear the risk that may arise from participating in an OTC market.

(K) **Salesman** refers to a natural person hired to buy and sell securities on a salary or commission basis properly endorsed to the Commission by the employing broker or dealer. It includes any employee of an issuer company whose compensation is determined directly or indirectly on sales of the issuer's securities.

(L) **Self-Regulatory Organization** or **SRO** refers to an organized Exchange, registered clearing agency or any organization or association registered as an SRO under Section 39 of the SRC to enforce compliance with relevant provisions of the SRC and IRR issued thereunder, and mandated to make and enforce its own rules, which have been approved by the Commission, by their members and/or participants. It is an organization that enforces fair, ethical and efficient practices in the securities and commodity futures industries, including securities and commodities Exchanges.

(M) **Secondary market** refers to the market where outstanding securities are bought and sold. In contrast, **primary market** refers to a market where new securities are sold.

Section 3. Making, Creating or Operating An OTC Market-

A. A broker, dealer, salesman, or associated person of broker or dealer, singly or in concert with any other person, is prohibited from making, creating or operating or enabling another to make, create or operate an OTC market, except in accordance with these rules.

B. A person shall be viewed to be making, creating or operating an OTC market:

1. If in the ordinary course of his business, he buys, sells or publishes or submits for publication a quotation to a quotation system, or holds himself before the public that he is ready or his act is perceived that he is ready to buy or sell or to publish or submit for publication a quotation to a quotation system, for any security, other than in an Exchange or ATS. In this case, he shall be construed to be acting as **dealer** in an OTC market and shall be registered accordingly.

2. If he searches for a counterparty to a buy or sell order that is left with him by another person for his disposal or holds himself before the public that he is ready or he is perceived that he is ready to search for a counterparty to a buy or sell order that is left with him for his disposal, either by direct search or participation in a quotation system, for any security, other than in an Exchange or ATS. In this case, he shall be construed to be acting as **broker** in an OTC market and shall be registered accordingly.

3. If he represents himself as an agent or salesman of or affiliated with a dealer or broker as construed in this section and buys, sells or publishes or submits for publication a quotation, for and on behalf of the principal or customer account of such dealer or broker, for any security, other than in an Exchange or ATS. In this case, he shall be construed to be acting as a **salesman** of broker or dealer in an OTC market and shall be registered accordingly.

C. A person shall be viewed to be **enabling another** person to make, create or operate an OTC market if he sells or buys a security or publishes or submits for publication a quotation in other person's quotation system.

D. A group of two or more brokers, dealers and/or salesmen of broker or dealer shall be viewed to be **acting in concert** in making, creating or operating an OTC market if in buying and selling a security between and/or among each other, in a market other than an Exchange or ATS, the group utilizes a common quotation system and the access to such common quotation system by other persons is restricted by some standards, conventions or requirements prescribed by the group or the operator of the quotation system.

E. Nothing herein shall preclude the Commission from declaring any person to be making, creating or operating an OTC market, or enabling another person to make, create or operate an OTC market or acting in concert with other person in making, creating or operating an OTC market, and impose sanction where the circumstances warrant.

Section 4. Registration of Broker, Dealer, Salesman and Associated Person of Broker or Dealer In An OTC Market -

A. General Provisions:

1. No person shall act as a broker, dealer, salesman or an associated person of broker or dealer unless he is registered as such pursuant to the requirements of Section 28 of the SRC.

2. No person shall make, create or operate an OTC market unless he is a registered broker, dealer or salesman of broker or dealer in an OTC market.

3. No broker, dealer or salesman shall enable another person to make, create or operate an OTC market unless the latter is authorized to act as broker, dealer or salesman in an OTC market.

B. Registration of Broker or Dealer In An OTC Market:

1. In applying for registration as a broker or dealer, the applicant shall specifically signify in the application his intention to conduct the activities of a broker or dealer in an OTC market, either singly or in concert with others, prior to engaging in said activities.

2. A broker or dealer with current registration shall amend his registration to specifically reflect his intention to conduct the activities of a broker or dealer in an OTC market, either singly or in concert with others, prior to engaging in said activities.

C. Registration of Salesman or Associated Person of Broker or Dealer In An OTC Market:

1. A broker or dealer shall cause the registration of a person or the amendment of the registration of a salesman or associated person with current registration before allowing such person to act as a salesman or associated person of broker or dealer in an OTC market.

2. A salesman or associated person of broker or dealer shall not act as such unless he has determined that the broker or dealer to which he is affiliated is registered to act as broker or dealer in an OTC market and that he is authorized to act as salesman or associated person in an OTC market.

3. A broker or dealer shall ensure that his salesman or associated person has acquired the competence and skills to perform the activities of a salesman or associated person in an OTC market before causing his registration or the amendment of his existing registration as salesman or associated person in an OTC market.

Section 5. Registration of A Group of Persons To Operate An OTC Market - No group of two or more brokers, dealers and/or salesmen of broker or dealer shall act in concert in making, creating or operating an OTC market unless such group forms and causes the registration of an association of brokers and/or dealers pursuant to Section 39 of the SRC and which association shall act as a self-regulatory organization (SRO) to regulate and supervise the activities of the members of the group or unless the brokers, dealers and/or salesmen who are part of such group are currently members of an SRO in accordance with Section 6 of these rules.

Section 6. Membership In An SRO -

A. No broker or dealer shall participate in an OTC market unless he is a member of an SRO that has been registered with the Commission for the purpose of regulating and supervising the activities of the broker or dealer in an OTC market.

B. In case a broker or dealer is already a member of an existing SRO whose current status is for the purpose of regulating and supervising a market other than the OTC market, such broker or dealer may be allowed to participate in the OTC market; *Provided*, that the broker or dealer shows proof and the existing SRO is able to demonstrate that said SRO is capable of performing its regulatory and supervisory obligations relative to the activities of the broker or dealer in the OTC market; *Provided further*, that the SRO has committed to regulate and supervise the broker or dealer with respect to such activities; *Provided finally,*

that the SRO files an amendment to its current SRO registration to reflect its intention to act as SRO in such OTC market.

C. The Commission may prescribe the governance and ownership structure of an SRO or require amendment thereto to ensure the effective regulation and supervision of the OTC market.

Section 7. Eligible Investors In An OTC Market -

A. An investor in the OTC market shall be treated either as a qualified investor or as a non-qualified investor.

B. An investor falling under the definition of Section 2 (J) of these rules may be recognized as a qualified investor and allowed to deal directly in an OTC market subject to any of the following conditions:

1. An investor who opts to participate as a qualified investor can directly buy or sell security in an OTC market; *Provided,* that this type of participation is explicitly recognized and accepted by a broker or dealer that singly makes, creates or operates an OTC market by embodying the same in the client agreement required under SRC Rule 30.2 (3); *Provided further*, that if an investor participates in an OTC market operated by a group, this type of participation is explicitly recognized and accepted by the group based on the participation agreement entered into by all participants and/or on the internal rules prescribed by the OTC market and approved by the Commission.

2. An investor who opts not to participate as a qualified investor shall be treated as non-qualified investor and shall participate in the manner allowed for non-qualified investor.

C. A non-qualified investor shall not participate in an OTC market unless such participation is in any of the following manners:

1. Through the service of another person such as broker, investment house or bank, each in its capacity as an authorized broker in an OTC market; or

2. Through participation in a registered or chartered collective investment scheme such as an investment company, non-directional trust fund or pension fund.

D. Nothing in these rules shall be construed to mean that a qualified investor has waived his right to protection of the SRC and its IRR.

Section 8. Eligible Securities In An OTC Market –

A. A broker, dealer or salesman of broker or dealer shall buy or sell or quote a buy or sell price in the OTC market only in the following categories of securities:

1. A security that is registered pursuant to Section 8 of the SRC;
2. A security that is exempt from registration pursuant to Section 9 of the SRC;
3. A security that is exempt from registration pursuant to Section 10 of the SRC;
4. A security of an entity that is deemed as a "public company" pursuant to Section 38 of the SRC and its IRR;

B. Notwithstanding paragraph A of this section, a security that is already being traded in an Exchange or an ATS shall not be quoted or traded in an OTC market unless the Commission specifically allows the quoting or trading of such security in an OTC market.

C. Recognizing the role of government securities in the government's effort in laying down monetary and fiscal policies, the Commission hereby allows the trading of government securities in an OTC market.

Section 9. Quotation and Quotation System -

A. Except as otherwise specified in these rules, "**quotation**" shall mean any bid or offer at a specified price with respect to a security, or any indication of interest by a broker or dealer in receiving bid or offer from others for a security, or any indication by a broker or dealer that he wishes to advertise his general interest in buying or selling a particular security.

A debt issue shall be quoted in a quotation system in peso amount or in any other applicable currency and/or in yield to maturity.

B. "Quotation system" shall mean any inter-dealer quotation system or any publication, set of procedures or electronic communications network or other device, or a combination thereof, which is used by brokers or dealers, singly or in concert with others, to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell, either for the account of customers or for the principal account.

Section 10. Submission of Information Relative to the Quotation System -

A. No broker or dealer shall activate a quotation system unless the following shall have been submitted to the Commission for notation:

1. A description of such quotation system or amendment thereof;

2. A description showing how an actual transaction would transpire;

3. The internal rules and procedures specifying among others:

   a. How a person may participate in the quotation system;
   b. How a person accepted to participate in the system may submit a quotation for publication;
   c. How a person accepted to participate in the system may view the quotation of other participants and act as a counterparty to a published quotation;
   d. Other rights and responsibilities of a participant that shall allow the viewing, submission, execution and settlement of a published quotation.

4. The procedures for making available to participants information about the security and the issuer of the security being quoted.

5. An affidavit of undertaking that the quotation system shall connect with other quotation systems, the central trade reporting system, the system of an existing exchange or an SRO, upon order of the Commission, within the manner and period prescribed by the Commission.

B. A quotation system that provides an algorithm that automatically executes published buy or sell quotation with a contra order shall not be used in an OTC market unless the owner, operator or common users of such quotation system are able to demonstrate that the quotation system preserves the characteristic of conducting bilateral negotiation before execution that is inherent in an OTC trade.

A quotation system is deemed to have achieved this required characteristic if the system also provides an algorithm that determines the acceptability of the parties to each other in terms of establishing the ability of each party to either pay the cash or to deliver the security in a particular trade, before automatically executing the orders or establishing the creditworthiness of parties based on each party's internal credit setting policies, or other procedures that the Commission determines to have achieved the same characteristic.

C. The broker or dealer that will operate the quotation system shall maintain in his office the following documents which shall be made available to the representatives of the Commission for inspection and examination:

1. A list of and a written description of each software system or program and a diagram or matrix showing its applications and functions, if any.

2. A written description of the hardware component and the communication facility of the system which shall include configuration, capacity, and the ability to interconnect with other OTC markets, Exchanges, ATS, other trading markets and a central trade reporting system, if and when required by the Commission.

3. A business continuity and recovery plan.

4. Copy of pro-forma agreement between and/or among participants in the quotation system.

5. Copy of agreement between the operator of a quotation system and any third-party service provider.

6. The ground(s) and procedures that may disqualify an accepted participant from participating in the quotation system.

7. The ground(s) and procedures for terminating the quotation on a security.

8. Risk Management Manual relative to the operation of a quotation system;

9. Other requirements that the Commission may prescribe.

D. The Commission may add, remove or modify the list of information that shall be viewed by the participants in a quotation system.

E. For audit and/or surveillance purposes, the dealers, brokers or group of dealers and/or brokers shall grant the Commission access to their quotation systems. If a third party is engaged to provide the quotation system service, the service agreement between the parties, mentioned in subsection C(5) of this section, shall expressly provide that the Commission shall have access to the quotation system.

Section 11. Operation of A Quotation System By A Dealer -

A. A dealer who operates a quotation system shall be deemed to act as market maker for security that shall be quoted in said system.

A dealer acting as a market maker shall publish two(2)-way quotes for a security in a continuous manner.

B. A dealer shall immediately publish in his quotation system the price, volume, date and time of the transaction done or executed in his quotation system. A dealer shall also immediately publish the trade details of transactions executed in another quotation system on a security for which he makes market upon being made available by a central trade reporting system.

C. In case where a third party is engaged by a dealer to provide the quotation system, the dealer shall be accountable for the acts, errors or omissions of the third party service provider.

Section 12. Operation of A Quotation System By A Broker -

A. A broker who operates a quotation system shall only facilitate the publication and/or execution of published quotation but such broker shall not act as a counterparty to a quotation published in the quotation system he is operating.

B. A broker shall immediately publish in his quotation system the price, volume, date and time of the transaction done or executed in another quotation system on a security that is also being quoted in his quotation system. A broker shall also immediately publish the trade details of transactions executed in another quotation system on a security for which he creates a market upon being made available by a central trade reporting system.

C. In case where a third party is engaged by a broker to provide the quotation system, the broker shall be accountable for the acts, errors or omissions of the third party service provider.

Section 13. Operation of A Quotation System By A Group of Brokers and/or Dealers -

A. A group of brokers and/or dealers that operates a quotation system or uses a common quotation system which is provided by a third party shall likewise submit to the Commission the requirements under Section 10 of these rules.

B. The group shall immediately post in its quotation system the price, volume, date and time of the transaction done or executed in its quotation system. The group shall also immediately publish the trade details of transactions executed in another quotation system on a security for which any member of the group makes, creates or operates a market upon being made available by a central trade reporting system.

C. In case where a third party is engaged by a group of brokers and/or dealers to provide the quotation system, the brokers and/or dealers concerned shall be accountable for the acts, errors or omissions of the third party service provider.

Section 14. Integration of the Quotation Systems -

A. Pursuant to its mandate under Section 39 of the SRC, the Commission, when it finds necessary and appropriate in the public interest or for the protection of the investors, may order the electronic integration of the various quotation systems, the central trade reporting system, the systems of an Exchange, SRO and/or other market participants, in a manner and within reasonable period that it shall prescribe. Such integration should be able, among others, to ensure transparency, facilitate exchange of information and route orders in a security among competing quotation systems to achieve, among others, best execution.

B. The Commission may also require a broker or dealer or group of brokers and/or dealers to provide the Commission access and linkage to his or its quotation system.

Section 15. Required Information Before Initiation or Resumption of Quotations -

A. No broker or dealer shall publish or submit a quotation on a security for publication in a quotation system unless such broker or dealer has in his records the following documents:

1. Copy of the prospectus relative to the subject security.

2. Copy of the most recent quarterly and current reports that have been filed under the provisions of the SRC by the issuer; *Provided*, that prior to the initial publication or submission of a quotation, a broker or dealer shall have in his records copy of the quarterly and current reports for the last twelve (12) months.

3. Copy of the issuer's most recent annual report that has been filed under the provisions of the SRC by the issuer.

B. Moreover, no broker or dealer shall publish or submit a quotation on a security for publication in a quotation system unless such broker or dealer has in his records the following specific information which shall be reasonably current in relation to the day the quotation is submitted and which the broker or dealer shall make reasonably available to any person expressing an interest in a proposed transaction in the security with such broker or dealer:

1. Exact name of the issuer and its predecessor (if any).

2. Address of the issuer's principal office.

3. Latest articles of incorporation and by-laws of issuer.

4. Exact title and class of the security.

5. Par or stated value of the security.

6. Number of shares or total amount of the securities issued and outstanding based on the latest report filed with the Commission.

7. Coupon rate, date of issue and maturity date.

8. Material features of the security such as convertibility, callability, redemption, lock-up period and the likes.

9. Name and address of the transfer agent and/or registrar.

10. Nature of the issuer's business.

11. Nature of products of or services offered by the issuer.

12. Nature and extent of the issuer's facilities.

13. Names of the chief executive officer and members of the board of directors and other key officers of the issuer.

14. Issuer's most recent balance sheet and profit and loss and retained earnings statements.

15. Similar financial information for such part of the two (2) preceding fiscal years as the issuer or its predecessor has been in existence.

16. Whether the broker or dealer or any associated person is affiliated, directly or indirectly with the issuer.

17. Whether the quotation is being published or submitted on behalf of any other broker or dealer, and, if so, the name of such broker or dealer.

18. Whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the SRC for any sale of such securities on behalf of such person.

If the listed information in subsection B is made available to others, such delivery, unless otherwise represented, shall not constitute a representation by such broker or dealer that such information is accurate, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that the broker or dealer has a reasonable basis under the circumstances for believing the information is accurate in all material respects, and that the information was obtained from sources which the broker or dealer has a reasonable basis for believing are reliable.

C. The requirements of subsections A and B shall be complied to the extent that these are applicable.

D. In addition, a broker or dealer submitting or publishing quotation shall have in his records the following documents:

1. A record of the circumstances involved in the submission or publication of such quotation which shall include (a) the identity of the person or persons for whom the quotation is being submitted or published, and (b) any information regarding the transactions provided to the broker or dealer by such person or persons;

2. A copy of any trading suspension order issued by the Commission pursuant Section 36 of the SRC with respect to any security of the issuer during the twelve (12) months preceding the date of the publication or submission of the quotation, or a copy of any other document issued by the Commission evidencing such trading suspension; and

3. A copy or a written record of any other material information (whether favorable or adverse information) regarding the issuer which comes to the broker's or dealer's knowledge or possession before the publication or submission of the quotation.

E. A broker or dealer shall preserve the documents and information required under subsections A, B and D of this section for a period of not less than five (5) years, the first two (2) years in an easily accessible place.

F. A broker or dealer shall establish procedures to ensure that he will be able to secure the annual, quarterly, and current reports in a timely manner.

Section 16. Trade Reporting Obligations -

A. A broker or dealer or group of brokers and/or dealers that owns or operates a quotation system, shall post or publish in its quotation system all transactions executed in said system within one (1) minute from execution.

The broker or dealer or group of brokers and/or dealers shall also report said transactions to a central trade reporting system in a manner and within the period prescribed by the Commission or by the operator of said central trade reporting system, whichever is stricter or earlier, but in no case shall it be more than fifteen (15) minutes from execution of transaction.

The trade details of the transaction that shall be posted or published in the quotation system and reported to the central trade reporting system shall include the price, volume, date and time of execution of the transaction.

B. The central trade reporting system shall make available such trade details to other quotation systems quoting or authorized to quote the same security for immediate publication in such other quotation systems.

Section 17. Approval of A Central Trade Reporting System -

A. No person shall operate or provide a central trade reporting system unless such system has been approved by the Commission.

B. In applying for the approval of the system, the operator or provider shall submit the following requirements:

1. A flowchart showing how actual activities would transpire;

2. A list of and a written description of each software system or program and a diagram or matrix showing its applications and functions, if any;

3. A written description of the hardware component and the communication facility of the system which shall include configuration, capacity, and the ability to interconnect with various OTC participants such as broker or dealer in OTC markets, Exchanges, ATS or other trading markets, and with another central trade reporting system, if and when required by the Commission;

4. Business plan;

5. A business continuity and recovery plan;

6. Implementation Plan;

7. Rules and Operating Procedures;

8. Proof of payment of filing fee in the amount of Fifty Thousand Pesos (P50,000.00); and

9. Other requirements that the Commission may prescribe in the interest of the public or protection of investors.

C. The Commission may prescribe the governance and ownership structure of the central trade reporting system.

Section 18. Capital Adequacy Requirements and Reports-

A. A broker or dealer in an OTC market shall maintain adequate financial resources in accordance with the minimum capital adequacy requirements and other capital-related obligations that are required of such broker or dealer by the Commission under the SRC and its IRR.

B. If the entity acting as broker or dealer is a bank regulated by the BSP, then such entity shall maintain the minimum capital adequacy requirement and other capital-related obligations that are required of said entity by the BSP; *Provided*, that the bank shall file with the Commission and the SRO the pertinent documents on capital that have been filed with BSP not later than three (3) business days after being filed with BSP.

C. Nothing in these rules shall be construed to mean that the Commission or the designated SRO is precluded from examining the books and records of the bank relative to its securities business and from imposing sanction in case of breach.

D. In case of breach by a bank, the Commission shall impose the corresponding sanctions being enforced on broker or dealer as if the violation is a breach of SRC Rules on Risk Based Capital Adequacy (RBCA).

E. If the entity is a qualified investor, it shall maintain the minimum capital adequacy requirement and other capital-related obligations that are required of said entity by the relevant regulatory agency.

F. In case of breach by a qualified investor, the Commission may declare the entity as being unfit to continue participating as a qualified investor in the OTC market.

Section 19. Commissions, Charges and Fees -

A. A broker or dealer shall not effect transaction in an OTC market unless he has disclosed and explained to his customer the various fees, if any, involved in effecting such transaction and the customer has agreed to said fees. New clients should signify their assent to the various fees being charged by the broker or dealer in writing.

B. The fees to a transaction should be presented in the confirmation advice in an unbundled manner.

C. The rules on commissions and charges to the extent these are imposed for services performed by broker or dealer under SRC Rule 30.2 (5) shall also apply.

Section 20. Clearing and Settlement -

A. No broker or dealer shall effect transaction in an OTC market unless he has disclosed and has secured agreement from the counterparty as to how a transaction shall clear and settle. The broker or dealer shall ensure that the clearing and settlement arrangement shall be prompt and accurate and shall define among others: (1) Due date as to settlement; (2) Due date as to delivery of the security, and; (3) Due date as to payment of cash.

B. The clearing and settlement arrangement in the exchange of assets subject of the trade shall be on a delivery versus payment (DVP) scheme.

C. No broker or dealer shall allow the clearing and settlement of an OTC transaction via an intermediary unless such intermediary is a registered clearing agency or has been authorized by the Commission to act as intermediary.

D. The Commission may require market participants to use uniform settlement systems in the public interest and for the protection of the investors.

Section 21. Other Applicable Rules In The SRC-IRR - The provisions of the SRC and its IRR applicable to a broker, dealer, salesman and associated person of broker or dealer shall still apply unless explicitly ruled otherwise by the Commission. Accordingly, a broker, dealer, salesman or associated person of broker or dealer shall comply with the following rules among others:

SRC Rule Number	Title
SRC Rule 24.1(b)-1	Prohibition of Manipulative Practices
SRC Rule 24.1(d)	Prohibition of Manipulation of Security Prices; Devices and Practices
SRC Rule 24.2-2	Short Sales
SRC Rule 24.2-3	Prohibition on Guarantees Against Loss
SRC Rule 25.1	Regulation of Options Trading
SRC Rule 26.3	Prohibition of Fraudulent Transactions
SRC Rule 28.1	Registration of Brokers and Dealers

SRC Rule 28.2	Compliance with Qualification Requirements of Self Regulatory Organization
SRC Rule 29	Protection of Customer Accounts Where Registration of a Broker Dealer is Suspended or Revoked
SRC Rule 30.1	Monitoring of Affiliated Transactions by Broker Dealers
SRC Rule 30.2	Transactions Responsibilities of Brokers and Dealers
SRC Rule 31	Commission Role in the Development of Securities Market Professionals
SRC Rule 31.2	Trading Limited to Listed Securities and Exchanges Registered under the Code
SRC Rule 32.2(a)	Best Execution Rule
SRC Rule 34.1	Segregation of Broker Dealer Functions, Practices
SRC Rule 39.1	Registration, Responsibilities and Oversight of Self- Regulatory Organization
SRC Rule 40.3	Commission Review Procedures
SRC Rule 40.4	Commission Directions Regarding Rulemaking
SRC Rule 40.5	Commission Powers Over Exchanges, Clearing Agencies and Sell Regulatory Organizations
SRC Rule 48.1	Margin
SRC Rule 49.1* (*Amended by SEC MC 16 [2004] RBCA for Brokers Dealers)	Restrictions on Borrowing by Member, Brokers, and Dealers
SRC Rule 49.2	Customer Protection Reserves and Custody of Securities
SRC Rule 52.1	Accounts and Records, Reports, Examinations of Exchanges, Members and Others

Section 22. Unlawful Acts - In the purchase or sale of a security, a broker, dealer, salesman or associated person of broker or dealer shall not:

1. Make representation that his registration or the failure of the Commission to deny or revoke such registration indicates that the Commission has passed upon or approved his financial standing, business and conduct or the merits of any security or transaction or transactions therein.

2. Effect transaction in a security for which he is controlled by, controlling, or under common control with, the issuer of said security unless such information is disclosed to the customer before the completion of the transaction.

3. Provide advice in or recommend the purchase or sale of security that is the subject of a primary or secondary distribution of which he is participating or is otherwise financially interested, or facilitates transaction during the distribution, unless such participation or interest is disclosed to the customer before the completion of the transaction.

4. Effect transaction for a discretionary account, which is excessive in size or frequency in view of the financial resources and character of such account.

5. Effect transaction for a discretionary account unless immediately after effecting such transaction he records such transaction which shall include, among others, the name of such customer, name, amount and price of the security, and the date and time when such transaction took place.

6. Make representation to a customer that the price of the security being quoted is "at the market" or at a price related to the market price, unless he knows or has reasonable grounds to believe that a market for such security exists other than that made, created, or controlled by him, or by any person for whom he is acting or with whom he is associated in the distribution, or by any person controlled by, controlling or under common control with him.

Section 23. Other Prohibited Acts -

A. A dealer shall not:

1. Deal with non-qualified investor except through the broker of said non-qualified investor.

2. Deal with another dealer, broker or qualified investor unless he has exerted reasonable effort to determine that such other dealer or broker is authorized to participate in an OTC market or the investor is indeed qualified to trade in the OTC market in accordance with these rules.

A dealer shall include in his Written Supervisory Procedures (WSP) the steps and/or activities that will be undertaken by the dealer relative to the determination process required in this paragraph.

B. A broker shall not:

1. Accept a non-qualified investor as his customer unless he has determined and confirmed to the investor that the OTC market and the securities traded therein in general are suitable to the investor.

2. Publish or accept for publication a quotation from a non-qualified investor who is his customer unless he has determined and confirmed to the customer that the security for which the investor expresses an interest to buy or sell is suitable to the customer.

A broker shall include in his WSP the steps and/or activities that will be undertaken by the broker relative to the determination and confirmation process required in this paragraph.

Section 24. Penalties -

A. Any person who violates any provision of these rules shall be penalized as follows:

FIRST VIOLATION:	
For broker or dealer	A minimum of Php100,000.00
For a salesman or associated person	A minimum of Php 50,000.00
Other person	A minimum of Php 10,000.00
SECOND VIOLATION:	
For broker or dealer	A minimum of Php150,000.00
For a salesman or associated person	A minimum of Php 75,000.00
Other person	A minimum of Php 25,000.00
THIRD AND SUBSEQUENT VIOLATIONS:	
For broker or dealer	A minimum of Php200,000.00
For a salesman or associated person	A minimum of Php100,000.00
Other person	A minimum of Php 50,000.00

B. In addition to the fines above, the Commission may limit the activities of any person, suspend or revoke his registration.

Section 25. Transitory Provisions -

A. For Dealer With Existing Registration As GSED:

1. A dealer in government securities with existing registration as GSED may continue trading in government securities in an OTC market; *Provided,* that said dealer shall file an amendment to his registration in accordance with the requirements of these rules and the procedures prescribed by the Commission, within forty five (45) days from the effectivity of these rules.

2. A dealer who fails to file an amendment to his registration as GSED within the prescribed period and continues to trade government securities shall be considered in violation of Section 32 of the SRC and shall be penalized accordingly.

3. An application for amendment that does not conform to the procedures and requirements of the Commission shall be considered as not having been filed at all.

B. For Dealer Transacting With Non-Qualified Investors:

1. Notwithstanding Section 7 (C) of these rules, a person with existing registration as dealer or GSED may continue to deal with non-qualified investor in an OTC market for a period of one (1) year from the effectivity of these rules; *Provided,* that said dealer shall file an amendment to his registration in accordance with the requirements of these rules and the procedures prescribed by the Commission, within forty five (45) days from the effectivity of these rules.

2. A dealer who fails to file an amendment to his registration within the prescribed period and continues to trade in government and proprietary securities like club shares with non-qualified investor shall be considered in violation of Section 32 of the SRC and shall be penalized accordingly.

3. After one (1) year from the effectivity of these rules, a dealer shall not deal with non-qualified investor in an OTC market except through the broker of said non-qualified investor unless the Commission rules otherwise, which ruling shall be contingent, among others, on the operation of the central trade reporting system and the establishment of adequate safeguards to protect investors and the public interest.

C. For Broker With Existing Registration To Act As Broker In Government Securities:

1. A broker with existing registration that allows him to act as broker in government securities may continue acting as a broker in said securities in an OTC market; *Provided,* that said broker shall file an amendment to his registration in accordance with the requirements of these rules and the procedures prescribed by the Commission, within forty five (45) days from the effectivity of these rules.

2. A broker who fails to file an amendment within the prescribed period and continues to trade government securities shall be considered in violation of Section 32 of the SRC and shall be penalized accordingly.

3. An application for amendment that does not conform to the procedures and requirements of the Commission shall be considered as not having been filed at all.

D. For Broker or Dealer With Existing Registration To Act As Broker or Dealer in Proprietary Securities:

1. A broker or dealer with existing registration that specifies that he shall act as broker or dealer in proprietary securities like club shares may continue acting as a broker or dealer in proprietary securities in an OTC market; *Provided,* that said broker or dealer shall file an amendment to his registration in accordance with the requirements of these rules and the procedures prescribed by the Commission, within forty five (45) days from the effectivity of these rules.

2. A broker or dealer who fails to file an amendment within the prescribed period and continues to trade in proprietary securities shall be considered in violation of Section 32 of the SRC and shall be penalized accordingly.

3. An application for amendment that does not conform to the procedures and requirements of the Commission shall be considered as not having been filed at all.

E. Registration of Salesmen and Associated Persons of Broker or Dealer:

1. A salesman or associated person of broker or dealer with existing registration may continue acting as such in an OTC market; *Provided,* that the broker or dealer to which he is affiliated shall file an amendment to his registration that he shall act as such in an OTC market in accordance with the requirements of these rules and the procedures prescribed by the Commission, within forty five (45) days from the effectivity of these rules.

2. For this purpose, the broker or dealer concerned shall ensure that the terms and conditions for registration of salesman and associated person such as education, training and examination and other requirements under SRC Rule 28.1 (4) are complied with.

3. After one (1) year from the effectivity of these rules, a broker or dealer who fails to cause the registration of a person but allows such person to act as his salesman or associated person in an OTC market shall be considered in violation of Section 32 of the SRC and shall be penalized accordingly. Similarly, after the lapse of aforesaid one (1) year period, an unregistered person who acts as salesman or associated person of broker or dealer in an OTC market shall be considered in violation of Section 32 of the SRC and shall be penalized accordingly.

F. Registration of SRO To Govern The OTC Market:

1. Within one (1) year from the effectivity of these rules, brokers and dealers in the OTC market shall be members of an SRO. The brokers, dealers, salesmen or associated persons of broker and/or dealer may form and cause the registration of an SRO which shall regulate and supervise the activities of such members of the SRO.

2. The brokers, dealers, salesmen or associated persons of brokers or dealers seeking registration to participate in an OTC market shall also attach to their application for registration an Undertaking that they commit to join or form an SRO which shall regulate and supervise the activities of the members of SRO participating in an OTC market.

G. Submission of Quotation Systems:

The brokers or dealers concerned shall submit to the Commission for notation a description of their quotation systems and other requirements mentioned in Section 10 of these rules, within forty five (45) days from the effectivity of these rules.

H. Central Trade Reporting System:

1. Trading participants of an Exchange who are currently reporting done trades on a security on such Exchange shall continue reporting such done trades to the Exchange in accordance with rules of the Exchange.

2. If after six (6) months from the effectivitiy of these OTC Rules, a central trade reporting system is not yet in place, the Commission may designate an existing Exchange to act as the central trade reporting system for a security that is traded in an OTC market. The broker or dealer or group of brokers and/or dealers operating the quotation system shall be responsible for the cost attendant to said reporting activity. The Exchange shall be allowed to charge a reasonable amount for services provided hereunder based on a cost recovery approach. In case the Exchange generates revenue from the reported data, it shall return part of the profit to reporting broker or dealer or group of brokers and/or dealers based on fair and equitable allocation plan which shall be approved by the Commission.

3. On the first six (6) months of the operation of the central trade reporting system, a broker or dealer shall report the trade details of done transactions to such system not later than fifteen (15) minutes from execution of transaction. Thereafter, the reporting period shall be as that prescribed by the Commission or the operator of the system but in no case be more than fifteen (15) minutes from execution of transaction.

I. Submission of Implementation Plan

Brokers and dealers who intend to participate in the OTC market shall submit to the Commission their respective implementation plans specifying the definite steps to be done and schedule to comply with the requirements herein such as but not limited to: the training and accreditation program for the salesmen and associated persons of brokers or dealers in the OTC market, compliance with the manner by which the Best Execution Rule is to be achieved, the manner of reporting trade details of done transactions, and the concrete steps to be taken towards joining or forming an SRO which shall regulate and supervise the activities of the SRO members participating in the OTC market.

The implementation plan shall be submitted within thirty (30) days from the date a broker or dealer concerned filed his application for registration or amendment of his current registration wherein he indicated his intention to participate in the OTC market.

J. Compliance With Other Provisions of IRR

All the applicable provisions in the IRR of the SRC shall be complied with during the transition period.

Section 26. Dispute Resolution - The participants in the OTC market and other persons involved therein shall incorporate in their client agreement, participation agreement or any other suitable agreement provisions for prompt resolution of any dispute that may arise from the implementation of said agreement.

Section 27. Separability Clause - Should any provision herein be subsequently declared unconstitutional or invalid, such declaration shall not affect the validity or legality of other provisions.

Section 28. Repealing Clause - All rules and regulations or any part or provisions thereof, inconsistent with these rules or any part or provision thereof are hereby repealed or modified accordingly.

Section 29. Effectivity - These rules shall take effect fifteen (15) days after the date of last publication in two (2) newspapers of general circulation in the Philippines.

Mandaluyong City, Metro Manila, October 27, 2006.

For the Commission:

FE B. BARIN
Chairperson

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