SEC MEMORANDUM CIRCULAR NO. 16

Series of 2002

GUIDELINES ON THE NOMINATION AND ELECTION OF INDEPENDENT DIRECTORS

To properly guide the companies in the nomination and election of independent directors and to have uniform procedures on the same, the Commission hereby prescribes the following guidelines:

I. COVERAGE

This Circular shall be applicable to public companies and those subject to secondary licenses from the Commission, as follows:

A. Issuers of registered securities to the public whether or not listed in the Philippine Stock Exchange (PSE);

B. Public companies or those with assets of at least Fifty Million Pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having Two hundred (200) or more holders each holding at least One hundred (100) shares of a class of its equity securities;

C. Finance companies;

D. Investment houses;

E. Brokers and dealers of securities;

F. Investment companies;

G. Pre-need companies;

H. Subsidiaries or branches of foreign corporations which operate in the Philippines and are listed in the PSE;

I. Stock and other securities exchange/s.

II. DEFINITION

A. Independent director means a person who, apart from his fees and shareholdings, is independent of management and free from any business or other relationship which could, or could reasonably be perceived to, materially interfere with his exercise of independent judgment in carrying out his responsibilities as a director in any corporation

that meets the requirements of Section 17.2 of the Securities Regulation Code and includes, among others, any person who:

i. Is not a director or officer or substantial stockholder of the corporation or of its related companies or any of its substantial shareholders (other than as an independent director of any of the foregoing);
ii. Is not a relative of any director, officer or substantial shareholder of the corporation, any of its related companies or any of its substantial shareholders. For this purpose, relatives includes spouse, parent, child, brother, sister, and the spouse of such child, brother or sister;
iii. Is not acting as a nominee or representative of a substantial shareholder of the corporation, any of its related companies or any of its substantial shareholders;
iv. Has not been employed in any executive capacity by that public company, any of its related companies or by any of its substantial shareholders within the last five (5) years;
v. Is not retained as professional adviser by that public company, any of its related companies or any of its substantial shareholders within the last five (5) years, either personally of through his firm;
vi. Has not engaged and does not engage in any transaction with the corporation or with any of its related companies or with any of its substantial shareholders, whether by himself or with other persons or through a firm of which he is a partner or a company of which he is a director or substantial shareholder, other than transactions which are conducted at arms length and are immaterial or insignificant.

B. When used in relation to a company subject to the requirements above:

i. Related company means another company which is: (a) its holding company, (b) its subsidiary, or (c) a subsidiary of its holding company; and
ii. Substantial shareholder means any person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of its equity security.

C. An independent director shall have the following qualifications:

i. He shall have at least one (1) share of stock of the corporation;
ii. He shall be at least a college graduate or he shall have been engaged or exposed to the business of the corporation for at least five (5) years;
iii. He shall possess integrity/probity; and
iv. He shall be assiduous.

D. No person enumerated under Section II (5) of the Code of Corporate Governance shall qualify as an independent director. He shall likewise be disqualified during his tenure under the following instances or causes:

i. (i) He becomes an officer or employee of the corporation where he is such member of the board of directors/trustees, or becomes any of the persons enumerated under letter (A) hereof;

ii. (ii) His beneficial security ownership exceeds 10% of the outstanding capital stock of the company where he is such director;
iii. (iii) Fails, without any justifiable cause, to attend at least 50% of the total number of Board meetings during his incumbency unless such absences are due to grave illness or death of an immediate family.
iv. (iv) Such other disqualifications which the company's Manual on Corporate Governance provides.

III. NUMBER OF INDEPENDENT DIRECTORS

A. All companies are encouraged to have independent directors. However, issuers of registered securities and public companies are required to have at least two (2) independent directors or at least 20% of its board size, whichever is the lesser. Provided further that said companies may choose to have more independent directors in their boards than as above required.

B. The Exchange/s are required to have at least three (3) independent directors and an independent director-President. To effectively carry out the provisions of Section 33.2(g) of the Securities Regulation Code, the independent directors must not be allowed to solicit votes for himself or for others or be subject to election by the stockholders until the shares are listed, or Exchange's outstanding capital stock are no longer majority owned by the brokers.

IV. NOMINATION AND ELECTION OF INDEPENDENT DIRECTOR/S

The following rules shall be applicable to all covered companies:

A. The Nomination Committee shall have at least three (3) members, one of whom is an independent director. It shall promulgate the guidelines or criteria to govern the conduct of the nomination. The same shall be properly disclosed in the company's information or proxy statement or such other reports required to be submitted to the Commission. The members of the Nomination Committee of the Exchange shall be cleared by the Commission.

B. Nomination of independent director/s shall be conducted by the Committee prior to a stockholders' meeting. All recommendations shall be signed by the nominating stockholders together with the acceptance and conformity by the would-be nominees.

C. It shall pre-screen the qualifications and prepare a final list of all candidates and put in place screening policies and parameters to enable it to effectively review the qualifications of the nominees for independent director/s.

D. After the nomination, the Committee shall prepare a Final List of Candidates which shall contain all the information about all the nominees for independent directors, as required under Part IV(A) and (C) of Annex "C" of SRC Rule 12, which list, shall be made available to the Commission and to all stockholders through the filing and distribution of

the Information Statement or Proxy Statement, in accordance with SRC Rule 17.1(b) or SRC Rule 20, respectively, or in such other reports the company is required to submit to the Commission. The name of the person or group of persons who recommended the nomination of the independent director shall be identified in such report including any relationship with the nominee.

E. Only nominees whose names appear on the Final List of Candidates shall be eligible for election as Independent Director/s. No other nomination shall be entertained after the Final List of Candidates shall have been prepared. No further nomination shall be entertained or allowed on the floor during the actual annual stockholders'/memberships' meeting.

F. Election of Independent Director/s

i. Except as those required under this Circular and subject to pertinent existing laws, rules and regulations of the Commission, the conduct of the election of independent director/s shall be made in accordance with the standard election procedures of the company or its by-laws.
ii. It shall be the responsibility of the Chairman of the Meeting to inform all stockholders in attendance of the mandatory requirement of electing independent director/s. He shall ensure that an independent director/s are elected during the stockholders' meeting.
iii. Specific slot/s for independent directors shall not be filled-up by unqualified nominees.
iv. In case of failure of election for independent director/s, the Chairman of the Meeting shall call a separate election during the same meeting to fill up the vacancy.
v. The covered companies shall amend its by-laws in accordance with the foregoing requirements as soon as practicable.

V. TERMINATION/CESSATION OF INDEPENDENT DIRECTORSHIP

In case of resignation, disqualification or cessation of independent directorship and only after notice has been made with the Commission within five (5) days from such resignation, disqualification or cessation, the vacancy shall be filled by the vote of at least a majority of the remaining directors, if still constituting a quorum, upon the nomination of the Nomination Committee otherwise, said vacancies shall be filled by the stockholders in a regular or special meeting called for that purpose. An independent director so elected to fill a vacancy shall serve only for the unexpired term of his predecessor in office.

VI. EFFECTIVITY

This Memorandum Circular shall take effect after fifteen (15) days from publication in a newspaper of general circulation.

November 28, 2002. Mandaluyong City, Philippines.

(Original Signed)

LILIA R. BAUTISTA
Chairperson