SEC MEMORANDUM CIRCULAR NO. 20
Series of 2020

TO : ***ALL EXCHANGES AND OTHER ORGANIZED MARKETS***

SUBJECT : ***SEC RULES ON THE NUMBER OF INDEPENDENT DIRECTORS AND SECTORAL REPRESENTATIVES OF EXCHANGES and OTHER ORGANIZED MARKETS***

WHEREAS, Republic Act No. 11232, or the Revised Corporation Code of the Philippines ("RCC"), was approved on February 20, 2019 and took effect on February 23,2019;

WHEREAS, Section 22 of the RCC prescribes that the number of independent directors of the board of directors of corporations vested with public interest constitute at least 20% of such board, institutionalizing the presence of persons who shall exercise independent judgment in carrying out the responsibilities as directors.

WHEREAS, the Supreme Court has declared that it is undeniable that an Exchange is not an ordinary corporation, in that although it is clothed with the marking of a corporate entity, it functions as the primary channel through which the vessels of capital trade ply. An Exchange's relevance to the continued operation and filtration of the securities transaction in the country give it a distinct color of importance such that government intervention in its affairs becomes justified, if not necessary. Due to this special nature of stock exchanges, the country's lawmakers have seen it wise to give special treatment to the administration and regulation of stock exchanges. (Philippine Stock Exchange, Inc. v. The Honorable Court of Appeals, G.R. No. 125469, October 27, 1997, 281 SCRA 232, 246 [1997])

WHEREAS, Section 179 (m) of the RCC authorizes the Commission to, among others, *"prescribe the number of independent directors."*

WHEREAS, Section 179 (d) of the RCC empowers the Commission to *"promote corporate governance and the protection of minority investors,* through among others, *the issuance of rules and regulations consistent with international best practices*."

WHEREAS, based on the best practices of major and comparable markets in many economies, the number of independent directors of their exchanges comprise a majority of the members of the board of directors.

Published:
Manila Bulletin, August 14, 2020
Manila Standard, August 14, 2020

WHEREAS, Section 33.2(g) of the Securities Regulation Code (SRC) and Rules 33.2.4 and 33.2(c).1.2 of the 2015 SRC Rules authorizes the Commission to permit an exchange or an exchange controller to use a different governance structure in the interest of the public

NOW THEREFORE, the Commission hereby promulgates the following Rules on the number of independent directors and sectoral representatives of exchanges and other organized markets.

Section 1. Coverage – These Rules shall cover the number of independent directors and sectoral representatives in the board of directors of exchanges and other organized markets in the Philippines.

Section 2. Definition of Terms – As used in these Rules, unless the context provides otherwise:

2.1 *"Commission"* means Securities and Exchange Commission

2.2 *"Independent Director"* is a person who, apart from his or her 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 or her exercise of independent judgment in carrying out his or her responsibilities as a director and includes, among others, any person who:

a). Is not a director or officer of the covered company or of its related companies or any of its substantial shareholders except when the same shall be an independent director of any of the foregoing;

b) Does not own more than two percent (2%) of the shares of the covered company and/or its related companies or any of its substantial shareholders;

c). Is not related to any director, officer or substantial shareholder of the covered company, any of its related companies or any of its substantial shareholders. For this purpose, relatives include spouse, parent, child, brother, sister, and the spouse of such child, brother or sister;

d). Is not acting as a nominee or representative of any director or substantial shareholder of the covered company, and/or any of its related companies and/or any of its substantial shareholders, pursuant to a Deed of Trust or under any contract or arrangement;

e). Has not been employed in any executive capacity by the covered company, any of its related companies and/or by any of its substantial shareholders within the last two (2) years;

f). Is not retained, either personally or through his or her firm or any similar entity, as professional adviser, by that covered company, any of its related companies and/or any of its substantial shareholders, within the last two (2) years; or

g). Has not engaged and does not engage in any transaction with the covered company and/or with any of its related companies and/or with any of its substantial shareholders, whether by himself/herself and/or with other persons and/or through a firm of which he or she is a partner and/or a company of which he or she is a director or substantial shareholder, other than transactions which are conducted at arm's length and are immaterial, within the last two (2) years.

2.3 "*Exchange*" is an organized marketplace or facility that brings together buyers and sellers, and executes trades of securities and/or commodities.

2.4 "*Organized Market*" is an exchange, an over-the-counter market, alternative trading system, or otherwise recognized as such by the Commission, and governed by, among others, transparent and binding rules and market conventions on membership, trading, price transparency, trade reporting, market monitoring and orderly conduct or operation of the market which are enforceable on the members and participants.

2.5 "*Sectoral Representatives*" refers to persons who represent the interests of issuers, investors, and other market participants.

A person shall qualify to represent the interest of issuers if said person is affiliated with an entity that has issued securities which are traded in an exchange or in an organized market.

A person shall qualify to represent the interest of investors if said person is affiliated with an entity that is engaged in the business of investing or investment management, or is engaged individually in trading or investing in securities which are traded in an exchange or in an organized market.

A person shall qualify to represent the interest of other market participants if said person, in his or her individual capacity or in affiliation with an entity, is engaged in the promotion, development and operation of capital or financial market-related activities other than being an issuer or investor. A person affiliated with an exchange or other trading market may qualify to represent the interest of other market participants provided that the person's election as a director is in an exchange or other organized market other than that in which the person is affiliated.

Section 3. Number of Independent Directors – Independent Directors shall constitute at least one-third (1/3) of the members of the board of directors of exchanges and other organized markets.

In addition to the qualifications of an independent director provided for in applicable laws, regulations and SEC issuances, an independent director of an exchange and other organized market shall have the relevant experience in or working knowledge of the capital or financial markets for at least three (3) years prior to his election.

Section 4. Number of Sectoral Representatives – There shall be at least four (4) persons representing the interests of issuers, investors, and other market participants, with each

sector having at least one representative, in the board of directors of an exchange or other organized market.

A person who is elected as director to represent any of these sectors in the board of an exchange or other organized market shall have had the relevant experience in or working knowledge of the related sector and the capital or financial markets for at least three (3) years prior to the person's election.

A person may be elected as a director representing any of these sectors for a maximum period of ten (10) years with a mandatory cooling off period of at least one (1) year after the first five (5) years.

Section 5. Repealing Clause — All existing rules, circulars, orders and other related issuances inconsistent with these Rules are hereby revoked or modified accordingly.

Section 6. Effectivity — These Rules shall take effect immediately upon publication in two (2) newspapers of general circulation.

11 August 2020, Pasay City Philippines.

EMILIO B. AQUINO
Chairperson