SEC Memorandum Circular No. 33
Series of 2020

TO : **INVESTMENT COMPANIES**
FUND MANAGERS
OTHER ENTITIES DEALING WITH INVESTMENT COMPANIES

SUBJECT : **AMENDMENTS TO THE IMPLEMENTING RULES AND REGULATIONS OF THE INVESTMENT COMPANY ACT, AS AMENDED**

WHEREAS, Section 35(a) of Republic Act No. 2629, or the Investment Company Act (ICA), and Section 72 of Republic Act No. 8799, or the Securities Regulation Code (SRC), vest upon the Commission the authority to make, issue, amend, and rescind rules and regulations and orders which are necessary or appropriate to the exercise of the powers conferred upon it in the ICA and the SRC;

WHEREAS, it is the policy of the State to promote the development of the capital market, protect investors, and ensure full and fair disclosure about securities;

WHEREAS, the Commission seeks to align the Rules with global standards and practices in order to develop the Philippine capital market and help prepare investment companies qualify and compete in international cross-border transactions;

WHEREAS, the amended Rules issued on 19 December 2017 need updating for relevance, clarity and ease of use by regulated entities, and on account of some procedural matters to ensure adequate protection to shareholders and unitholders;

IN VIEW OF THE FOREGOING, the following rules are hereby promulgated:

SECTION 1. Rule 1 is hereby amended to read, as follows:

a. RULE 1 – Definition of Terms

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7. Collective Investment Scheme (CIS) – shall refer to an arrangement whereby funds are solicited from the investing public for the purpose of investing, reinvesting and trading in securities or other assets **as may be allowed under these Rules and other applicable laws and regulations or such other arrangement as may be registered/authorized/approved by a regulatory authority that is an ordinary or associate member of the IOSCO.**

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The term CIS in the Philippines may either have a corporate structure such as an investment company or a contractual structure such as a Unit Investment Trust Fund or similar scheme held by a trust corporation or separate account fund established pursuant to a variable unit linked life insurance policy issued by an insurance company and such other forms of collective investment schemes as may be determined by the appropriate government regulatory agencies such as the Bangko Sentral ng Pilipinas (BSP), Securities and Exchange Commission (SEC), and Insurance Commission (IC).

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b. 10. Custodian – shall refer to an independent third-party entity duly authorized or accredited by the BSP or the Commission to engage in the business of custodial and/**or** safekeeping of investment assets **of the investment company. It includes a universal or commercial bank with trust license, a non-bank entity with a trust license, a BSP-accredited custodian bank, and a registered securities depository.**

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c. 43. Independent Oversight Entity (IOE) - an impartial committee or entity tasked to monitor the transactions and functions carried out by the Fund Manager

d. **44. Investment Company Assets – shall refer to assets owned by the investment company, held on behalf of stockholders/unitholders, which are either (i) assets which can be held in custody whether by physical delivery to the custodian or by way of registration in book entry form in the accounts of the Fund opened with the custodian, or (ii) other assets which by their nature cannot be held in custody such as derivative instruments which are subject to the Fund Manager's record-keeping obligation and oversight function by the IOE.**

SECTION 2. Rule 3.3 (d) (e) (h) are hereby amended to read, as follows:

3.3. Classifications of Investment Company. An investment company may be classified by investment policy as either:

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d. Feeder Fund – shall refer to an **investment company** that invests at least ninety percent (90%) of its net assets in a single CIS established by another Fund Manager, asset management company or fund operator, which shall not be a feeder fund.

e. Fund-of-Funds – shall refer to an **investment company** that invests at least fifty percent (50%) of its net assets in more than one (1) CIS established by another Fund Manager/s, asset management company/ies or fund operator/s.

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h. Multi-asset/Asset Allocation Fund - shall refer to an **investment company** that invests in a fixed or variable mix of both equity and fixed income instruments, as well as cash and cash-equivalents.

SECTION. 3. Rule 3.4 (f) and (j) are hereby amended to read, as follows:

3.4. Minimum Requirements. An investment company applying for incorporation with this Commission shall comply with the following requirements:
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(f) It shall have a minimum subscribed and paid-up capital of Fifty Million Pesos (₱50,000,000.00). **However, if the investment company is one of or part of a group of investment companies to be created or already in existence to be managed or under management by the same fund manager with a track record of at least five years, the minimum subscribed and paid up capital shall not be lower than One Million Pesos (₱1,000,000.00) provided an affidavit must be submitted stating such track record of the fund manager.**
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(j) An investment company shall not be required to comply with the minimum subscribed and paid–up capital relative to the increase in its authorized capital stock **provided the minimum subscribed and paid-up capital under Rule 3.4 (f) or any of its amendments is complied with.**

SECTION 4. Rule **5.1.1 (a) (i)** is hereby amended to read, as follows:

5.1.1. Qualifications of a Fund Manager
An investment company shall appoint a fund manager with an investment company Adviser. The following are the requirements for the licensing of an ICA:

Paid-up capital of at least Fifty Million Pesos (₱50,000,000.00) **which shall remain unimpaired at all times, provided the** fund manager shall be required to have an additional unimpaired capital requirement of 0.02% of the excess of One Hundred Billion Pesos (₱100,000,000,000.00) of the total AUM, which additional capital infusion shall be made within 30 days after the end of the fiscal year the AUM increased. **However, the amount of additional capital requirement is capped at Php1 Billion.**

SECTION 5. Rule 5.1.2 (c) and (g) are hereby amended to read, as follows:

5.1.2. Responsibilities of a Fund Manager. The fund manager shall have the following responsibilities:

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c. Maintain records and arrange for participants to receive accounts, reports and statements **either in hard/physical copies or by electronic means such as but not limited to, transmitting via electronic communication with soft-copy attachments.**

The participants should be given the option to request for hardcopy accounts and reports within one month from the notification of the availability of the accounts and reports. The fund manager should cause to be made available, hardcopies of the accounts and reports to any participant who provides a written request thereof within ten (10) business days from the date of request or whenever practicable in case of any fortuitous event and other circumstances upon notification by the fund manager of such fortuitous event to the Commission through a Current Report. Participants should also be allowed at any time to opt for hardcopies for all future reports and accounts.

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g. Ensure that all assets of the investment company are deposited with an independent custodian **except those which cannot be placed in the custody of the custodian such as:**

1) Investments in deposits;

2) Investments in other foreign/domestic collective investment schemes provided that the custodian and transfer agent (if applicable) of the CIS is approved by local regulations or registered/authorized/approved, as the case may be, by a regulatory authority that is an ordinary or associate member of the IOSCO;

3) OTC Derivatives; and

4) Such other assets as may be allowed by the Commission.

Guidance: All other assets which by their nature cannot be held in custody by the Custodian are subject to the fund manager's record-keeping obligation and oversight function by the IOE. In such cases, the IOE must be informed of the records of those assets for which it is satisfied that the investment company holds ownership of such assets.

SECTION 6. Rule 5.1.9 is hereby amended to read, as follows:

5.1.9. Withdrawal of license as Fund Manager. The fund manager shall undertake the following procedures:

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c. Submit an undertaking/affidavit of assumption of liabilities of subject company's officer, director or majority stockholder stating in effect that should third parties having claims against the corporation appear in the future (in the next five [5] years), said officer, director or majority stockholder may be held responsible for said claims **including the submission of the reportorial requirements under Rule 13.1.8 for the redemption of securities of the investment company in case of concurrent dissolution of the fund manager and the investment company;**

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f. Submit an undertaking/affidavit of the appointed liquidator pursuant to Rule 13.1.2 (e) (i) and (ii) stating that the liquidator will assume the fund manager's obligation to liquidate assets on behalf of the investment company, within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate, if the fund manager cannot liquidate the assets of the investment company prior to the fund manager's dissolution and to assume the fund manager's obligation in relation to the reportorial requirements under Rule 13.1.8 for the redemption of securities of the investment company.

g. Submit a copy of the Escrow Agreement within ten (10) days from execution in case an escrow account has been opened for the unclaimed assets of the investment company in case of liquidation of the assets of the investment company due to its failure to hire a new fund manager under Rule 5.1.10 or dissolution and withdrawal of ICA license of the fund manager;

SECTION 7. Rule 5.1.10 is hereby amended to read, as follows:

5.1.10. Failure to hire a new Fund Manager.

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In case of liquidation of the assets of the investment company due to its failure to hire a new fund manager mentioned above or concurrent dissolution of the fund manager with the investment company, the unclaimed assets of the investment company shall be placed by the liquidator **and/or fund manager** in an escrow account for ten (10) years **or such period until all investors have claimed their investments, whichever is sooner,** after which the funds shall be escheated in favor of the government in accordance with the procedure prescribed by existing laws and rules.

SECTION 8. Rule **5.3.2. (a) and (b)** are hereby amended to read, as follows:

Rule 5.3.2. Independent Custodian. To be considered independent, the Custodian shall not:

a. Hold directly or indirectly **ten percent (10%)** or more of the total number of issued shares in either the investment company and fund manager or vice versa;

b. Have a common shareholder in the investment company, or the fund manager who holds directly or indirectly **ten percent (10%)** or more of the total number of issued shares of the investment company or fund manager.

SECTION 9. Rule 5.3.3 is hereby amended to read, as follows:

5.3.3. Responsibilities of a Custodian. The custodian shall have the following responsibilities:

b. Safe-keep the assets of the investment company which shall be clearly identified and properly labeled as assets or properties of the investment company.

Safekeeping by the Custodian applies to all assets which can be held in custody, whether by physical delivery to the custodian or by way of registration in book-entry form in the accounts of the investment company opened with the custodian.

SECTION 10. Rule 5 is hereby amended to read, as follows:

Rule 5. 9. Independent Oversight Entity. An investment company shall perform oversight over its fund manager. Hence, the former is required to have an Independent Oversight Entity which shall function as an impartial committee or entity tasked to monitor the transactions and functions carried out by the fund manager.

Rule 5.9.1. Constitution or Engagement of an IOE. An investment company may constitute its Audit Committee as its IOE or may engage the services of a custodian bank, trust entity or an external auditor to serve as such.

Rule 5.9.2. Roles and Responsibilities of an IOE. The IOE shall:

1. **Exercise care and diligence when monitoring the transactions and functions of the fund manager;**

2. **Oversee the transactions and functions of the fund manager to ensure compliance with the disclosures made in the Registration Statement (RS), prospectus, ICA, SRC and their implementing rules and regulations (IRR). For cross-border offerings or transactions, in addition to the abovementioned, oversee the transactions of the fund manager in order to ensure that it also complies with the standards/requirements of bilateral or multilateral agreements allowing cross-border offerings/transactions that the Philippines is party to;**

3. **Oversee the subscription and redemption of shares or units facilitated by the fund manager and to approve the request of the fund manager in the case of suspension of redemption of shares or units whenever necessary for the protection of the investors subject to the rules on Suspension of Redemption provided under Rule 10.4 of ICA-IRR;**

4. **Oversee the activities of the fund manager in order to ensure that it complies with the rules on investment restrictions/limitations, liquidity requirements and other regulations involving the operationalization of the investment objectives, investment policy or strategy of the investment company;**

5. **Oversee the transactions of the fund manager to ensure that delegation will not result in unnecessary fees to be paid by the**

investment company and ensure that it will not delegate its function to the extent that it becomes a letter box such as when it no longer has the power to make decisions in the implementation of the investment policy and strategies nor retain the suitable processes to monitor, control the activities and evaluate the performance of the delegatee;

6. If, in the reasonable opinion of the IOE, the fund manager has not complied with any of the laws, rules or regulations applicable to the investment company and/or it failed to report to the Commission the said non-compliance, notify the Commission of its opinion, including particulars of the non-compliance, not later than five (5) business days after forming the opinion or upon knowledge of the non-compliance. The notification shall be done by filing an SEC Form 17-C. It shall also notify, without delay, the members of the Board of Directors of the investment company of its opinion so that the Board can apprise the fund manager of the said non-compliance and address any resulting breach;

7. Report to the Commission, any act of the fund manager which in its opinion may be detrimental to the interests of the shareholders or unitholders even if the said act is not in violation of any law, rule or regulation, not later than five (5) business days from knowledge thereof; and

8. If necessary, recommend to the Board of Directors of the investment company that the fund manager be removed due to its inability to fulfill its functions.

Rule 5. 10 Independent Net Asset Value Calculator. An investment company must appoint an independent entity that will calculate or cross-check its net asset value (NAV) every dealing day which may be the custodian bank, trust entity, external auditor, audit committee or other service providers capable of calculating the NAV.

To be considered independent, the following criteria must be met:

1. The custodian bank or trust entity must be duly licensed by the Bangko Sentral ng Pilipinas, provided that it does not hold directly/indirectly 10% or more of the total number of issued shares in the investment company, fund manager, or vice versa, nor have a common shareholder that holds directly/indirectly 10% or more of the total number of the issued share capital of the investment company or fund manager; and

2. The external auditor shall not be the same as the one auditing the investment company and fund manager.

An investment company may engage for this purpose its Audit Committee acting as IOE, provided that it is capable of calculating the NAV, and other service providers capable of calculating the NAV, provided that they are not affiliated with the investment company and fund manager.

SECTION 11. Rule 6.8 (j) is hereby amended to read, as follows:

j. No investment company shall purchase from or sell to any of its officers or directors or the officers or directors of its investment advisor/s, manager or distributor/s or firm/s of which any of them are members, any securities other than the capital stock **or registered units** of the investment company.

SECTION 12. Rule 6.9 is hereby amended to read, as follows:

6.9. Additional Rules on Money Market Funds. Constant net asset value money market funds (C-NAV MMFs) are not permitted. The fund manager that manages an investment company that markets itself as a money market fund or an equivalent fund that primarily invests in high quality debt securities, deposits and money market instruments shall comply with the following:

a. Shall have a cash reserve, or assets with high liquidity, low market risk and can be cashed within T+1 day, of at least ten percent (10%) of its net assets;

b. Invest in any of the following:
i. high quality debts securities;
ii. deposits; and
iii. **high quality** money market instruments

Guidance: a high quality money market instrument has:

(a) a remaining term to maturity of not more than 397 days; and
(b) an issuer credit rating that is:
1. in the case of short-term credit rating, one of the two highest credit ratings; and
2. in the case of long-term credit rating, one of the three highest credit ratings.

iv. financial derivatives for hedging arrangements

The hedging arrangement should:
(a) not be aimed at generating a return;
(b) result in an overall verifiable reduction of the risk of the qualifying CIS;
(c) offset the general and specific risks linked to the underlying being hedged;
(d) relate to the same asset class being hedged; and
(e) be able to meet its hedging objective in all market conditions.

c. Shall not engage in direct lending of monies.

Guidance: Direct lending of monies refers to an instance in which an investment company lends money or makes loan directly to other entities (borrower) without intermediaries.

SECTION 13. Rule 6.10 (b) is hereby amended to read, as follows:

6.10. Liquidity Requirements. For liquidity purposes, unless otherwise prescribed by the Commission, at least ten percent (10%) of the assets of an investment company shall be invested in liquid/semi-liquid assets.

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b. The investment company may implement a decreased investment of less than ten percent (10%) of its assets in liquid/semi-liquid assets, provided, however, that it shall submit a notarized liquidity contingency plan, signed by the president of the fund and its fund manager.

SECTION 14. Rule 6.11.1. is hereby amended to read, as follows:

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The computation and expense ratio of the investment company must be disclosed in the quarterly and annual report.

SECTION 15. Rule 7.2 is hereby amended, as follows:

7.2. The prospectus or **offering** materials to be disseminated by the feeder fund, fund-of-funds, or co-managed funds in connection with its offer of securities shall provide an explanation or illustration of a feeder fund or a fund-of-funds **and shall likewise make available all relevant information on the target fund/s**.

SECTION 16. Rule 7.9 is hereby amended, as follows:

Rule 7.9 The fund manager can invest the funds of the feeder fund, fund-of-funds or co-managed funds to a target fund that is administered by the fund manager or its related party/company provided that:

a. There shall be no cross-holding between the feeder fund or fund-of-funds and the target funds where cross-holding refers to the holding of securities in another by two (2) or more funds;

b. All initial charges on the target fund are waived; and

c. The management fee shall be charged only once, either at the level of the feeder fund, fund-of-funds, co-managed funds or at the level of the target fund.

SECTION 17. Rule 8.2. is hereby amended to read, as follows:

8.2. Daily Computation and Publication of the NAVps/NAVpu. The fund manager shall compute and post the net asset value per share/unit of the Investment Company on a daily basis and shall:

a. Publish such daily prices in at least two (2) national newspapers of general circulation which may be done through the industry organization/s; **or**

b. Upload daily in its website or industry association, through digital portals such as its website or social media accounts; or post them daily in a conspicuous place at the principal office of the investment company as well as in all its branches or correspondent offices which are designated redemption centers.

SECTION 18. Rule 8.6. is hereby amended to read, as follows:

a. Rule 8.6. Valuation Error or Incorrect Price. In case of valuation error or when incorrect pricing occurs, the fund manager shall:

Report to the **IOE** and Commission within five (5) business days from the valuation error or incorrect pricing is found on the:
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SECTION 19. Rule 10.4 is hereby amended to read, as follows:

Rule 10.4. Suspension of Redemption of Shares or Units. The Commission *motu proprio* or, upon the request of a fund manager, may suspend the redemption of securities of investment company if:
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If the request for suspension of redemption of shares or units is made by the Fund Manager, for any of the grounds mentioned above, the approval of the IOE must be secured.

SECTION 20. Rule 10.5 is hereby amended to read, as follows:

10.5. Period for the Suspension of Redemption of Shares or Units. The Commission shall provide the period of suspension of redemption which shall not be more than twenty-one (21) business days, unless an extension is approved by the Commission En Banc. **The fund manager must report to the Commission when dealing in units/shares of the investment company is resumed.**

SECTION 21. Rule 11.3 is hereby amended, to read as follows:

Rule 11.3. Separate booking and recording for shares and units. A fund manager that manages an **investment company** which issues both shares and units of participation shall ensure proper booking or recording of transactions to separate the assets, liabilities, income and expenses corresponding to each type of securities issuance.

An investment company offering units of participation may make periodic distribution of income to investors of the fund on a pro-rata basis; provided, that the distribution of income shall be made only from cash received from interest income and/or cash dividends earned after deduction of applicable taxes and expenses. Investment companies issuing units of participation shall be exempt from SEC Memorandum Circular No.11, series of 2008 or any amendment thereto.

SECTION 22. Rule 13.1.2 (e) (i) and (ii) are hereby amended to read, as follows:

Rule 13.1.2 Procedures for the Suspension or Revocation of Registration of Securities and License of the fund manager.

The fund manager shall carry out the liquidation of assets on behalf of the investment company. In all cases of revocation of the Registration Statement and Certificate of Permit to Offer Securities for Sale, the fund manager must liquidate the assets within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate.

e. In case of concurrent dissolution of the fund manager and the investment company, the following must be complied with:

i. The fund manager must appoint a liquidator that will assume its obligation to liquidate of assets on behalf of the investment company, within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate, if the fund manager cannot liquidate the assets of the investment company prior to the fund manager's dissolution. In such case, an Affidavit and Undertaking of the liquidator must be submitted to the Commission;

ii. The unclaimed assets of the investment company from the date of dissolution of the fund manager shall be placed by the fund manager in an escrow account for ten (10) years or such period until all investors have claimed their investments, whichever is sooner, after which the funds shall be escheated in favor of the government in accordance with the procedure prescribed by existing laws and rules; and

iii. The fund manager must appoint a director, officer, majority stockholder or liquidator to assume its obligation in relation to the reportorial requirements under Rule 13.1.8 for the redemption of securities of the investment company. In such case, an Affidavit and Undertaking of the director, officer, majority stockholder or liquidator must be submitted to the Commission.

SECTION 23. Rule 13.1.8. is hereby amended, to read as follows:

13.1.8. Residual Obligation of the Investment Company with a Revoked Registration Statement. The investment company, or the fund manager, shall inform the Commission of the status of the redemption of securities every 30th of January until all the shares/units have been fully redeemed.

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In case of concurrent dissolution of the fund manager and the investment company, the person or entity that has assumed the liabilities of the fund manager shall file a monthly report with the Commission, within ten (10) days after the end of every month, on the redemption of securities in the immediately preceding month. The report shall include the following:

1. Number of shares redeemed;
2. Number of shareholders or unitholders whose securities were redeemed;
3. Number of shareholders or unitholders whose securities are yet to be redeemed; and
4. The reasons why their securities are not yet redeemed.

SECTION 24. Rule 13 is hereby amended to read, as follows:

RULE 13– Suspension, Revocation **or Liquidation**

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Rule 13.3- Liquidation of Assets of an Investment Company with a Revoked Registration Statement

The fund manager shall carry out the liquidation of assets on behalf of the investment company. In all cases of revocation of the Registration Statement and Certificate of Permit to Offer Securities for Sale, the fund manager must liquidate the assets within a maximum period of six (6) months from the receipt of the investment company of the Order revoking the Registration Statement and its Certificate.

Rule 13.3.1. Appointment of a Liquidator in case of Concurrent Dissolution of the Investment Company and Fund Manager

In case of concurrent dissolution of the fund manager and the investment company, where applicable under Rule 13.1.2 e (i) or in such other cases under the Rules, the appointed liquidator is tasked to convert the assets of the investment company to money and dispose of the same to investors, stockholders and other parties.

Any qualified natural or juridical person may serve as a liquidator; provided, that if the liquidator is a juridical entity, it must designate a natural person/s who possess/es all the following qualifications:

i. A citizen of the Philippines or a resident of the Philippines in the six (6) months immediately preceding his appointment;

ii. Of good moral character and with acknowledged integrity, impartiality and independence;

iii. Has the requisite knowledge of commercial laws, rules and procedures, as well as the relevant training and/or experience that may be necessary to enable him to properly discharge the duties and obligations of a liquidator; and

iv. Such other qualifications as may be determined by the Commission taking into consideration the protection of interests of all stockholders/unitholders.

Rule 13.3.2. Appointment of an Escrow Agent for the Unclaimed Assets of an Investment Company

Where applicable in case of liquidation of the assets of the investment company due to its failure to hire a new fund manager under Rule 5.1.10 or concurrent dissolution of the fund and its fund manager under Rule 13.1.2 e (ii), the fund manager must appoint an escrow agent responsible for the management and release of the escrowed asset/s or unclaimed assets of the investment company from the date of dissolution of the fund manager for a period of ten (10) years or such period until all investors have claimed their investments, whichever is sooner, after which the funds shall be escheated in favor of the government in accordance with the procedure prescribed by existing laws and rules.

SECTION 25. Separability Clause. Any portion or provision of this Memorandum Circular that may be declared invalid shall not have the effect of nullifying other portions or provisions hereof as long as such remaining portion or provision can still subsist and be given effect in their entirety.

SECTION 26. Repealing Clause. All rules and regulations or parts thereof inconsistent herewith are hereby repealed or modified accordingly.

SECTION 27. Effectivity. This Circular shall take effect within fifteen (15) days after its publication in two (2) newspapers of general circulation.

Pasay City, Philippines, 27 November 2020.

For the Commission:

EMILIO B. AQUINO
Chairperson