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

SEC MEMORANDUM CIRCULAR NO. 8
Series of 2009

SCALE OF FINES FOR NON-COMPLIANCE WITH THE FINANCIAL REPORTING REQUIREMENTS OF THE COMMISSION

In line with the continuing efforts to strengthen compliance by corporations with the financial reporting requirements provided for in Section 141 of the Corporation Code, Section 68 of the Securities Regulation Code, Pre-Need Uniform Chart of Accounts (PNUCA), as revised, Investment Company Act, Financing Company Act, Lending Company Act and Investment Houses Law, the Commission, in its meeting on June 18, 2009, approved the scale of administrative penalties set forth below.

I. Scale of Fines

(A) Ordinary corporations with no secondary license issued by the Commission

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Stock Corporations			
	Deficit	P500	P1,000	P2,000
	Capital Deficiency	300	600	1,200
	Retained Earnings:			
	0 to P100,000	P500	P1,000	P2,000
	P100,001 to P500,000	1,000	P2,000	P4,000
	P500,001 to P5,000,000	2,000	P4,000	P8,000
	P5,000,001 to P10,000,000	3,000	P6,000	P12,000
	Above P10,000,000	4,000	P8,000	P16,000
	Non-stock Corporations			
	Negative Fund Balance	P200	P400	P800
	Fund Balance/Equity			
	Up to P100,000	P300	P600	1,200
	P100,001 to P500,000	500	1,000	2,000
	P500,001 to P10,000,000	1,000	2,000	4,000
	Above P10,000,000	2,000	4,000	8,000
Material misstatement in the financial statements		An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(B) Branches and regional offices of foreign corporations licensed to operate in the Philippines by the Commission

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Net Cash Receipts 0 to P100,000 P100,001 to P500,000 P500,001 to P5,000,000 P5,000,001 to P10,000,000 Above P10,000,000	 P500 P1,000 P2,000 P3,000 P4,000	 P1,000 P2,000 P4,000 P6,000 P8,000	 P2,000 P4,000 P8,000 P12,000 P16,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(C) Lending Companies; Transfer Agents

Annual Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit Retained Earnings: Up to P100,000 P100,001 to P500,000 P500,001 to P5,000,000 P5,000,001 to P10,000,000 Above P10,000,000	P500 P1,000 2,000 3,000 4,000 5,000	P1,000 P2,000 4,000 6,000 8,000 10,000	P2,000 P4,000 8,000 12,000 16,000 20,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

Interim Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit Retained Earnings: Up to P100,000 P100,001 to P500,000 P500,001 to P5,000,000 P5,000,001 to P10,000,000 Above P10,000,000	P100 P200 400 600 800 1,000	P200 P400 800 1,200 1,600 2,000	P400 P800 1,600 2,400 3,200 4,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(D) Financing Companies

Annual Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P1,000	P2,000	P4,000
	Retained Earnings:			
	Up to P100,000	P2,000	P4,000	P8,000
	P100,001 to P500,000	3,000	6,000	12,000
	P500,001 to P5,000,000	4,000	8,000	16,000
	P5,000,001 to P10,000,000	5,000	10,000	20,000
	Above P10,000,000	6,000	12,000	24,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

Interim Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P400	P800	P1,600
	Retained Earnings:			
	Up to P100,000	P600	P1,200	P2,400
	P100,001 to P500,000	800	1,600	3,200
	P500,001 to P5,000,000	1,000	2,000	4,000
	P5,000,001 to P10,000,000	1,200	2,400	4,800
	Above P10,000,000	1,400	2,800	5,600
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(E) Brokers and Dealers of securities; Government Securities Eligible Dealers (GSEDs)

Annual Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P2,500	P5,000	P10,000
	Retained Earnings:			
	Up to P1,000,000	P5,000	P10,000	P20,000
	P1,000,001 to P10,000,000	6,000	12,000	24,000
	P10,000,001 to P20,000,000	7,000	14,000	28,000
	P20,000,001 to P30,000,000	8,000	16,000	32,000
	Above P30,000,000	9,000	18,000	36,000

Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

Interim Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P500	P1,000	P2,000
	Retained Earnings:			
	Up to P1,000,000	P1,000	P2,000	P4,000
	P1,000,001 to P10,000,000	2,000	4,000	8,000
	P10,000,001 to P20,000,000	3,000	6,000	12,000
	P20,000,001 to P30,000,000	4,000	8,000	16,000
	Above P30,000,000	5,000	10,000	20,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher.	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(F) Investment Houses; Universal Banks Registered as Underwriters of Securities Investment Company Advisers

Annual Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P5,000	P10,000	P20,000
	Retained Earnings:			
	Up to P5,000,000	P10,000	P20,000	P40,000
	P5,000,001 to P15,000,000	11,000	22,000	44,000
	P15,000,001 to P30,000,000	12,000	24,000	48,000
	P30,000,001 to P50,000,000	13,000	26,000	52,000
	Above P50,000,000	14,000	28,000	56,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

Interim Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit Retained Earnings: Up to P5,000,000 P5,000,001 to P15,000,000 P15,000,001 to P30,000,000 P30,000,001 to P50,000,000 Above P50,000,000	P1,000 P3,000 4,000 5,000 6,000 7,000	P2,000 P6,000 8,000 10,000 12,000 14,000	P4,000 P12,000 16,000 20,000 24,000 28,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(G) Clearing Agency and Clearing Agency as Depository; Stock and Securities Exchange/s

Annual Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit Retained Earnings: Up to P10,000,000 P10,000,001 to P20,000,000 P20,000,001 to P50,000,000 P50,000,001 to P100,000,000 Above P100,000,000	P10,000 P20,000 21,000 22,000 23,000 24,000	P20,000 P40,000 42,000 44,000 46,000 48,000	P40,000 P80,000 84,000 88,000 92,000 96,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

Interim Financial Statements

Violation		1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit Retained Earnings: Up to P10,000,000 P10,000,001 to P20,000,000 P20,000,001 to P50,000,000 P50,000,001 to P100,000,000 Above P100,000,000	P4,000 P5,000 6,000 7,000 8,000 9,000	P8,000 P10,000 12,000 14,000 16,000 18,000	P16,000 P20,000 24,000 28,000 32,000 36,000
Material misstatement in the financial statements	-	An amount based on the above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(H) Pre-need Corporations

Annual Financial Statements

Violation	1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Active[1]: P25,000 Inactive[2] P12,500	Active: P50,000 Inactive P25,000	Active: P100,000 Inactive P50,000
Material misstatement in the financial statements	Active: P25,000 Inactive P12,500	Active: P50,000 Inactive P25,000	Active: P50,000 Inactive P25,000
Failure to comply with the requirements of PNUCA	Active: P25,000 Inactive P12,500	Active: P50,000 Inactive P25,000	Active: P100,000 Inactive P50,000

Interim Financial Statements

Violation	1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Active[1]: P5,000 Inactive[2] P2,500	Active: P10,000 Inactive P5,000	Active: P20,000 Inactive P10,000
Material misstatement in the financial statements	Active[1]: P5,000 Inactive[2] P2,500	Active: P10,000 Inactive P5,000	Active: P20,000 Inactive P10,000
Failure to comply with the requirements of PNUCA	Active[1] P5,000 Inactive[2] P2,500	Active: P10,000 Inactive P5,000	Active: P20,000 Inactive P10,000

[1] With dealer license
[2] Without dealer license

(I) Issuers of securities registered under the SRC and public companies

Annual Financial Statements

Violation	1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of Rules	P25,000 plus P500 per day until completed/ complied	P50,000 plus P1,000 per day until completed/ complied	P100,000 plus P2,000 per day until completed/ complied
Material misstatement in the financial statements	P50,000 or 1/10 of 1% of the amount of misstatement, whichever is higher, plus P500 per day until corrected	P100,000 or 1/10 of 2% of the amount of misstatement, whichever is higher, plus P1,000 per day until corrected	P200,000 or 1/10 of 4% of the amount of misstatement, whichever is higher, plus P1,000 per day until corrected

Interim Financial Statements

Violation	1st Offense	2nd Offense	3rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of Rules	P10,000 plus P100 per day until completed/ complied	P20,000 plus P500 per day until completed/ complied	P30,000 plus P1,000 per day until completed/ complied
Material misstatement in the financial statements	P25,000 or 1/10 of 1% of the amount of misstatement, whichever is higher, plus P500 per day until corrected	P50,000 or 1/10 of 2% of the amount of misstatement, whichever is higher, plus P1,000 per day until corrected	P100,000 or 1/10 of 4% of the amount of misstatement, whichever is higher, plus P1,000 per day until corrected

The penalty for material deficiencies in the financial statements of a public company engaged in the business of providing health and education services are covered by SEC Memorandum Circular No. 4, Series of 2009, or any amendments thereto.

II. Definition

For purposes of this Circular, *Retained Earnings* shall mean the accumulated profits realized out of normal and continuous operations of the business after deducting therefrom distributions to stockholders and transfers to capital stock or other accounts. The Retained Earnings for the purpose of computing the penalty under this Circular shall be the total amount of appropriated and unappropriated retained earnings as shown in the latest financial statements audited by the company's independent auditor.

III. Test of Materiality

A. The following shall be considered a material deficiency in the financial statements (FS) or significant non-compliance with SRC Rule 68:

(i) Any of the following is not submitted with the FS:

(1) Balance Sheet;
(2) Income Statement or Statement of Receipts and Disbursements;
(3) Cash Flow Statement;
(4) Statement of Changes in Equity or Fund Balance;
(5) Notes to Financial Statements;
(6) Statement of Management's Responsibility;
(7) Auditor's Report.

(ii) The following shall likewise render the financial statements significantly not compliant:

(1) If a listed company, public company, mutual fund or issuer of securities to the public, the auditor's opinion is qualified due to a deviation from the applicable financial reporting framework. However, for listed banks, a qualified opinion of the external auditor shall not be considered a non-compliance with SRC Rule 68 if the qualification pertains to a deviation adopted by the Bangko Sentral ng Pilipinas as part of its prudential reporting requirements;

(2) The auditor's report is substantially not compliant with the wording prescribed by Philippine Standards on Auditing (PSA) No. 700, as revised, and other applicable auditing standards and practices.

(iii) The Statement of Management's Responsibility is not signed by the prescribed signatories and/or not notarized in the case of a listed or public company;

(iv) There is no accounting policy for a significant account;

For purposes of these Guidelines, a **significant account** means a Balance Sheet or Income Statement item, the amount of which is equivalent to:

For listed companies, public companies, mutual funds, other issuers of securities to the public, and pre-need companies

(1) 5% or more of Total Current Asset, if it is one of the current asset items;
(2) 5% or more of Total Non-Current Asset, if it is one of the non-current asset items;
(3) 5% or more of Total Current Liabilities, if it is one of the current liabilities items;
(4) 5% or more of Total Long-Term Liabilities, if it is one of the long-term liabilities items;
(5) 5% or more of the Total Stockholders' Equity, if it is one of the equity items or the amount of Total Assets if there is capital deficiency;
(6) 5% or more of the Gross Income, Cost of Sales/Services or the Total Operating Expenses, as may be applicable.

For all other corporations, the threshold shall be 10% or more of the items mentioned above.

(iv) The required disclosures or presentations under the applicable financial reporting framework and SRC Rule 68/68.1 for a significant account are not provided in the financial statements. In case however of disclosures on related party transactions as required under PAS 24, any deficiency thereof shall be considered significant regardless of the amount involved if the reporting company is a public company, listed company, issuer of securities to the public or secondary licensee of the Commission.

(v) Five (5) or more of the following minor deficiencies are noted:

(1) The financial statements are not presented in the prescribed comparative format;
(2) There is no distinction between the current and non-current portion of assets or liabilities except in cases where PAS 1 allows non-classification;
(3) There are no cross-references to the notes to financial statements;
(4) The number of disclosure items that are not provided for a significant account does not exceed two;
(5) The Statement of Management's Responsibility is not in full conformity with the prescribed wording of SRC Rule 68 or 68.1;
(6) Such other deficiencies as the Commission may consider minor.

B. Any of the following shall be considered a **material misstatement** in the financial statements:

(1) An accounting policy for a significant account is not consistent with PFRS or GAAP, e.g., for non-publicly accountable entities or pre-need companies;
(2) An accounting policy for a significant account is not consistently applied between periods or to similar transactions and events (inconsistent application); or
(3) The estimate or assumption used on a significant account is unreasonable and resulted to material[1] misstatement of the financial statements;
(4) There is more than one (1) minor misstatement and the aggregate amount involved for said misstatements meets the test of materiality;
(5) The financial statements of a corporation with a subsidiary or subsidiaries are not presented on a consolidated basis in violation of PAS 27;
(6) Such other misstatements in the financial statement, i.e., overstatement or understatement of income, asset, liability or equity, that the Commission may consider material.

IV. Reckoning Date of Computation of Penalty

The amount of daily penalty shall be computed *from the date the violation is discovered*, as indicated in the comment letter of the Commission, *up to the time that a sufficient and meritorious explanation, together with an audit committee or board resolution taking up the matter, and the corrective measures to be taken thereon, are submitted to the Commission*. The

[1] Use the 5% and 10% threshold in item (b) above.

submission shall include the revised financial statements or an addendum to the financial statements, as may be directed by the Commission.

V. Delinquency

A. An entity that commits a violation for the fourth time shall be subject to the following penalties:

i. In the case of a corporation holding a secondary license from the Commission, suspension of the license for a period of sixty (60) business days and a monetary penalty equivalent to 200% of the fine for the third offense. Failure to pay the fine within the suspension period shall be a ground for the revocation of the company's license;

ii. In the case of a corporation with no secondary license from the Commission, a monetary penalty equivalent to 200% of the fine for the third offense with a warning that a subsequent violation shall be a ground for the revocation of the corporation's registration with the Commission. Failure to pay the fine shall be a ground for the revocation of the company's registration.

B. An entity that commits a violation for the fifth time shall be subject to the following penalties:

i. In the case of a corporation holding a secondary license from the Commission, revocation of the license and a monetary penalty equivalent to 200% of the fine for the fourth offense;

ii. In the case of a corporation with no secondary license from the Commission, revocation of its registration and a monetary penalty equivalent to 200% of the fine for the fourth offense.

The non-payment of the above monetary penalty shall constitute a derogatory record on the directors and officers of the corporation.

C. The suspension or revocation of the company's secondary license shall not affect its civil or criminal liability for any act committed prior to such suspension or revocation. The provisions of Section 71.2 of the Securities Regulation Code shall likewise be observed for contracts entered into by the subject company.

VI. Coverage of the Penalty

A. The penalties for the violations cited shall be in addition to the fine imposable for the late filing of the financial statements, as provided for in earlier circulars or may in the future be issued by the Commission.

B. The imposition of monetary penalty shall be without prejudice to any action that the Commission may institute against the corporation, its directors and officers, in accordance with existing laws and regulations.

VII. Repealing Clause

The salient provisions of SEC Memorandum Circular No. 6, Series of 2005 (Consolidated Scale of Fines) and other circulars, rules, orders earlier issued by the Commission that are inconsistent with any of the foregoing enumeration of violations and penalties shall be deemed superseded, repealed or amended by this Circular.

VIII. Transitory Clause

This Circular shall be applied to violations committed in prior years in so far as the stated penalty is favorable to the corporation. In all other cases, the Circular shall cover financial statements for the period ended December 31, 2008 and onwards.

This Circular shall take effect on July 15, 2009.

Issued this 24th day of June, 2009. Mandaluyong City, Philippines.

For the Commission:

FE B. BARIN
Chairperson