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Eduardo de los Angeles

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RULES ON DISCLOSURE AND ENFORCEMENT IN THE PHILIPPINES

Eduardo de los Angeles[†]

Abstract: The Philippines modeled its first securities laws on the U.S. Uniform Sales of Securities Act, Securities Act of 1933, and the Securities Exchange Act of 1934. In terms of disclosure requirements, the early Philippine laws were more lenient than the U.S. acts, but since 1982 the Philippines has improved its disclosure requirements by implementing its Revised Securities Act. The new Act imposes more consistent reporting rules on issuers and insiders, and levies a broad range of sanctions. Nonetheless, the Revised Securities Act could be improved further by requiring fuller disclosure during registration and by toughening the insider trading provisions. Also, the Philippine Securities and Exchange Commission could rely more heavily on the Stock Exchange to assist in enforcing the disclosure requirements.

CONTENTS*

- I. INTRODUCTION
- II. DISCLOSURE
 - A. *During Registration*
 - B. *Registration and the Listing of Foreign Corporations*
 - C. *Post Registration*
 - D. *Other Disclosures*
 - 1. *Insider's Duty to Disclose When Trading*
 - 2. *Duty to Report Purchase of More Than Ten Percent Issue*
 - 3. *Tender Offers*
 - 4. *Proxies*
 - 5. *Report of Directors, Officers, and Principal Stockholders*
- III. SANCTIONS
 - A. *Criminal Penalty*
 - B. *Civil Liability*
 - C. *Administrative Liability*
- IV. ENFORCEMENT
- V. CONCLUSION

[†] President, Philippine Stock Exchange; Partner, Romulo, Mabanta, Buenaventura, Sayoc & de los Angeles (on leave); LL.M. (Columbia University); LL.B., A.B. (Ateneo de Manila University). The views of the author do not necessarily reflect those of the Philippine Stock Exchange.

* The reader is advised that although the accuracy of citations has been generally checked by the *Journal* staff, a few non-English source materials could not be obtained for this Article. The *Journal* staff has attempted to provide substantiation where appropriate.

I. INTRODUCTION

In 1927, when the Philippines was still a colony of the United States, five American businessmen organized the Manila Stock Exchange.¹ Without an exclusive office or a trading floor, pioneer members merely met during their free time in a brokerage firm to trade securities. The pioneers then started to preach the gospel of securities to a public which virtually had no knowledge of stock trading. Then, in 1930, upon the insistence of one member, the Exchange leased an office, operated a trading floor, and promulgated its rules. As public interest grew, so did the number of listed securities. More mining and oil exploration shares were listed in the Exchange.²

By 1934, indications of a bull market were discerned as the price of gold began to move from US\$20 an ounce to US\$35 an ounce. Mining prospered and caused even more mining companies to list their shares in the Exchange.³ Investors flocked to the market and purchased shares as if they were lottery tickets. Antamok Gold Fields, which was listed at P.10 (US\$.05) per share, jumped to P4.50 (US\$2.25) per share.⁴ Shares of other gold mining companies leaped from P.10 (US\$.05) to an average of P2.00 (US\$1.00) per share.⁵ It was then that some mining companies over-issued stocks prompting the Exchange to seek government intervention.⁶

At that time the Philippines had a Blue Sky Law⁷ "to protect the public [and investors] against 'speculative schemes which [had] no more basis than so many feet of blue sky'" and "the 'sale of stock in fly-by-night concerns, visionary oil wells, distant gold mines, and other like fraudulent exploitations.'"⁸ But this law was inadequate to meet problems like the over-issuance of stocks, watered stocks, price manipulations, churning and artificial markets caused by false information. The Blue Sky Law also did

¹ The Manila Stock Exchange, *The MSE History*, INVESTMENTS GUIDE 269 (1976).

² *Id.* at 270.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at 271.

⁷ An Act to regulate the sale of certain corporation shares, stocks, bonds and other securities, Philippine Legislature, Act. No. 2581 (1916).

⁸ *People v. Rosenthal*, 68 Phil. 328, 342 (1939).

not provide for a specialized regulatory agency to monitor trading activities and to enforce securities laws. As a former Commissioner of the Philippine Securities and Exchange Commission recounted:

Some of us today will still remember the unbridled speculation that characterized securities transactions in and out of our organized stock exchanges during the middle 30's. It was a bonanza period for fly-by-night and fake corporations and get-rich-quick wallingfords.

....

The deplorable situation brought about by the mining boom, and the attendant mushrooming of irresponsible issuers of corporate securities became so alarming that government was rudely jolted into the realization that there was a pressing and urgent need to create an office technically manned and adequately clothed with power to protect investors, both actual and potential, and safeguard public interest.⁹

In 1936, the Philippine government therefore enacted the Securities Act¹⁰ to regulate the sale of securities and to create a Securities and Exchange Commission ("SEC") to enforce its provisions.

With slight modifications, the Philippine Securities Act was patterned after the U.S. Uniform Sales of Securities Act,¹¹ the Securities Act of 1933¹² ("1933 Act"), and the Securities Exchange Act of 1934¹³ ("1934 Act"). It was enacted primarily "to prevent exploitation of the public by the sale of unsound, fraudulent and worthless securities through misrepresentation; to place adequate and true information before the investor; and to protect honest enterprise seeking capital by honest presentation against competition afforded by dishonest securities offered to the public through

⁹ Arcadio E. Yabyabin, *The Securities Act and Trading*, in ASPECTS OF PHILIPPINE CORPORATION LAW: PROCEEDINGS OF 1966, 281-82 (1966).

¹⁰ Commonwealth Act No. 83, 1 COMMONWEALTH ACTS, ANNOTATED (1968) (Philippines) [hereinafter Commonwealth Act No. 83].

¹¹ In 1927, a United States National Conference of Commissioners on Uniform State Laws had adopted a Uniform Sale of Securities Act that was to serve as a model for state blue sky laws. See John E. Dalton, *The California Corporate Securities Act*, 18 CAL. L. REV. 115, 126 (1929).

¹² The Securities Act of 1933, 15 U.S.C. § 77a (1988).

¹³ The Securities Exchange Act of 1934, 15 U.S.C. § 78a (1988).

crooked promotion."¹⁴ More specifically, to protect the investing public, the Securities Act:

- (1) required the registration and/or licensing of securities;¹⁵
- (2) required the registration of brokers and salesmen;¹⁶
- (3) required the registration of stock exchanges;¹⁷
- (4) provided for rules regarding margin requirements,¹⁸ borrowings by brokers and dealers,¹⁹ manipulation of prices,²⁰ other manipulative devices,²¹ artificial measures of price control,²² transactions of unregistered securities,²³ giving of proxies,²⁴ and over-the-counter markets.²⁵

However, the Securities Act only required disclosure of *certain* information in the original registration statement which was to be filed with the Securities and Exchange Commission.²⁶ It did not require disclosure of *all* material facts related to an offering, or changes in the facts as set forth in the original registration statement.²⁷ Thus, unlike the 1933 Act, the Securities Act did not require a statement of the securities covered by options; the full particulars of the nature and extent of the interest, if any, of every director, principal executive officer and of every stockholder holding more than ten percent of any class of stocks of the issuer; the dates of and parties to every material contract made, not in the ordinary course of business; any management contract; and the names and addresses of counsels who have passed upon the legality of the issue.

The Securities Act also had many dissimilarities with the 1934 Act. For example, the Securities Act did not specifically provide for reporting requirements in cases of tender offers.²⁸ Also, while section 26 of the

¹⁴ Pelagio T. Ricalde, *Towards a New Securities Acts Act*, 56 PHIL. L.J. 306 (1981).

¹⁵ Commonwealth Act, No. 83, *supra* note 10, §§ 4-13.

¹⁶ *Id.* §§ 14-15.

¹⁷ *Id.* §§ 16-17.

¹⁸ *Id.* § 18.

¹⁹ *Id.* § 19.

²⁰ *Id.* § 20.

²¹ *Id.* § 21.

²² *Id.* § 21(a).

²³ *Id.* § 23.

²⁴ *Id.* § 24.

²⁵ *Id.* § 25.

²⁶ *Id.* § 7.

²⁷ Ricalde, *supra* note 13, at 310.

²⁸ *Id.* at 312.

Securities Act was modeled on section 16 of the 1934 Act—requiring insiders to report to the SEC and to the Exchange their beneficial interest in securities and any purchase or sale thereof—, section 26 of the Securities Act permitted the insider to keep short-swing profits if acquired in good faith in connection with a debt previously contracted.²⁹ In contrast, the 1934 Act strictly proscribed short-swing profits. Under section 16 of the 1934 Act, an insider could not keep short-swing profits regardless of his intent when he entered into the transaction.³⁰

The liability provisions also differed. Under section 30, only the issuer [dealer], director, officer or agent of the issuer who *personally participated or aided* in a sale could be jointly and severally liable to a purchaser of securities for misrepresentation and omission of any material fact in a registration statement.³¹ In stark contrast, under section 11 of the 1933 Act, a director of the issuer at the time the registration statement was made, even if not a signatory thereto, along with every accountant, engineer or appraiser who prepared or certified any part of the registration statement and every underwriter involved in the distribution, could be held liable for material misstatements or omissions in the registration statement and prospectus.³²

The fines that can be imposed for violations of the Securities Act were also low. To remedy these flaws in the Securities Act,³³ in 1982 the Philippine Congress enacted the Revised Securities Act³⁴ which expanded the meaning of “securities,”³⁵ increased disclosure requirements,³⁶ broadened the SEC’s rule-making authority,³⁷ and contained new anti-fraud provisions to counter insider trading³⁸ and “short-swing” profits.³⁹ The Revised Securities Act contained a number of other provisions designed to strengthen overall enforcement.⁴⁰

²⁹ *Id.* at 313-14.

³⁰ *Id.*

³¹ *Id.* at 316.

³² *Id.* at 312-18.

³³ Commonwealth Act No. 83, *supra* note 10.

³⁴ The New Corporation Code of the Philippines (Batas Pambansa No. 178) (1982) [hereinafter *Batas Pambansa No. 178*].

³⁵ *Id.* § 2.

³⁶ *Id.* §§ 8, 11 (requiring continuous disclosure).

³⁷ *Id.* § 3.

³⁸ *Id.* § 30.

³⁹ *Id.* § 36.

⁴⁰ The Revised Securities Act included provisions to:

(1) simplify the registration process by eliminating the distinction between speculative and non-speculative securities, § 4;

II. DISCLOSURE

A. *During Registration*

The Revised Securities Act in section 4 stipulates that all securities must be registered unless they fit into one of the exempt categories as provided under sections 5 and 6.⁴¹ The obvious purpose of registration is to require the issuer to disclose certain information about its securities for the benefit of the investing public. Under the Revised Securities Act, this information is not broadly defined, but specifically enumerated. As stated in section 8 (see appendix I), these disclosures include information about the issuer company, its officers and principal stockholders;⁴² the nature of business of the issuer company;⁴³ its financial condition including the amount of outstanding debt;⁴⁴ the purpose and uses of the funds that shall be raised through the public offering;⁴⁵ the material contracts of the issuer company;⁴⁶ and options or other interest of the officers and principal stockholders in the issuer company.⁴⁷

It is a matter of policy that disclosure must be complete in terms of providing material information relating to the condition of the issuer. The information must also be accurate in that the factual information given at the time of disclosure should be verifiable and measurable, and not misleading so that opinions, conclusions and interpretations should not create mis-impressions and false conclusions. Such disclosures must be

-
- (2) provide for the inclusion of opinions and forward-looking or "soft" information in the registration statement, § 8(31);
 - (3) provide for reporting requirements in cases of tender offers, proxy solicitations, and other situations, §§ 32-34;
 - (4) give the SEC supervision and control over securities exchanges and other organizations whose operations are related to or connected with the securities market for the protection of investors, §§ 38, 40, 42;
 - (5) strengthen the civil liability provisions of the registration process by increasing the number of liable persons, § 13; and
 - (6) increase the penal sanctions for violations of the Act and the rules promulgated by the SEC, Sec. 56. See HECTOR S. DE LEON, *THE CORPORATION CODE OF THE PHILIPPINES, THE REVISED SECURITIES ACT 744-45* (1993).

⁴¹ Batas Pambansa, No. 178, *supra* note 39, § 4.

⁴² *Id.* § 8(1)(3).

⁴³ *Id.* § 8(5).

⁴⁴ *Id.* § 8(13).

⁴⁵ *Id.* § 8(14).

⁴⁶ *Id.* § 8(26).

⁴⁷ *Id.* § 8(24).

embodied in a sworn registration statement in accordance with SEC Form RSA-1.⁴⁸

It is significant that the Revised Securities Act does not expressly require a prospectus or the underwriting of an issue as conditions to registration. Section 8 merely implies that if there is a prospectus, a copy shall be furnished to the SEC.⁴⁹ Indeed, there is no provision in the Revised Securities Act which specifies the contents of a prospectus or that a prospectus shall be delivered to prospective investors. Neither is there a requirement in the Revised Securities Act to make a risk disclosure.

It is therefore recommended that the Revised Securities Act require even a preliminary prospectus as part of the application for registration in accordance with a prescribed form and content that will require full disclosure of relevant information to investors. Disseminating information at an earlier stage of the offering process assists the public in evaluating the merits of the investment. Analysts and commentators, including brokers and newspaper columnists, will be able to help public investors understand the material filed in the registration statement. Otherwise, limiting the available information to a small group, such as brokers and institutional investors, would give unfair advantage to these groups.

It is also recommended that the registration statement shall be signed by the issuer, its principal executive officer, its principal financial officer, its comptroller or principal accounting officer, a majority of its board of directors, or persons performing similar functions. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. This will afford greater assurance that directors will undertake a review of the accuracy of disclosures prior to filing. Further, if any change occurs in the material facts set forth in a registration statement, the issuer that filed the registration statement should file with the SEC an amendment setting forth the change in material facts.

The Listing Rules of the Exchange⁵⁰ fill the vacuum requiring a prospectus and, except in the case of venture companies where the principal stockholders undertake to buy any share which is not subscribed or purchased, the underwriting of an issue as conditions to listing. However,

⁴⁸ Philippine SEC Form RSA-1.

⁴⁹ Batas Pambansa, No. 178, *supra* note 39, § 8(10).

⁵⁰ PHILIPPINE STOCK EXCHANGE, MANUAL OF RULES GOVERNING THE LISTING OF SECURITIES 80 (1995) [hereinafter MANUAL OF RULES].

the failure to disclose risks may mislead investors into thinking that the investment is risk-free. If made deliberately, this may therefore defraud investors. The prospectus must include a variety of detailed information, including a statement of risks and uncertainties;⁵¹ economic, political and regulatory issues;⁵² and a list and description of court cases which may materially affect the issuer company.⁵³ (See appendix II.)

Many times, issuers do not like to make risks disclosures because they may work against the issuer's financial interest to tell investors the real weaknesses of the company. Indeed, the experience is that issuers tend to make rosy assumptions and bullish projections, although, because of the inherent difficulty in predicting the future, projections are often off-the-mark.

Another flaw in the Revised Securities Act is that while section 8 provides that in connection with securities issued by a company engaged in the business of developing, exploiting or operating universal claims, there must be a sworn statement of a mining engineer stating the ore possibilities of the mine,⁵⁴ there is no requirement under the Act that in connection with securities issued by a company engaged in the business of oil exploration, someone should attest that the service contract or concession is valid and existing, or that there are possibilities of finding oil within the contract or concession area. Thus, in the case of Seven Seas Oil Exploration and Resources Company, the Securities and Exchange Commission approved its application for registration and sale of securities to the public even if its service contract or concession had expired.⁵⁵ Notably, there is an old SEC rule that no corporation formed for the purpose of engaging in oil exploration shall be permitted to register securities with a view to selling them to the public without presenting a duly certified subsisting service contract with the Petroleum Board.⁵⁶ But, in allowing the registration of Seven Seas Oil Exploration, the SEC may have either forgotten its old rule or thought that it was implicitly superseded by the Revised Securities Act.

All these reveal some of the inadequacies in the disclosure provisions of the Revised Securities Act and their implementation by the SEC.

⁵¹ *Id.* at Annex 2.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ Batas Pambansa, No. 178, *supra* note 39, § 8(35).

⁵⁵ *Id.*

⁵⁶ In Re: Application for Registration of Seven Seas Oil Exploration and Resources Company, SEC Order (March 25, 1994) (Phil.).

B. *Registration and the Listing of Foreign Corporations*

The Revised Securities Act contains no prohibition against the registration and listing of shares of a foreign company. It assumes, however, that the requirements for listing under the law must be complied with. Under the Revised Securities Act, no shares, except of a class exempt from registration thereunder, may be listed in any stock exchange in the Philippines unless they have first been registered pursuant to this Act.⁵⁷ Accordingly, if the shares of a foreign company are to be listed in any stock exchange in the country, such requirement must be complied with. The SEC, for the protection of Philippine investors, will exercise its best judgment and discretion in determining the foreign securities that should be listed for trading in Philippine stock exchanges.

Shares of a foreign company, after compliance with the requirements for registration as well as for listing in a stock exchange, are subject to the same rules and regulations applicable to securities of domestic corporations listed and traded in stock exchanges. However, the foreign corporation whose securities are listed and traded in a local stock exchange must have a transfer agent and registrar in the Philippines to handle the registration and transfer of its securities in this country.⁵⁸

C. *Post Registration*

After registration, every issuer of securities must meet the ongoing disclosure requirements by filing the following items with the SEC and the Exchange:

- (1) all information and documents needed in order to keep reasonably current the information in the registration statement;
- (2) annual reports, periodicals and other reports necessary to update information on the operation of the business of the issuer, and
- (3) copies of circulars, prospectus, advertising matter and other materials "necessary for the protection of investors."⁵⁹

⁵⁷ Batas Pambansa, No. 178, *supra* note 39, § 4(a).

⁵⁸ SEC Opinion Letter, SEC Folio (Nov. 2, 1966) (Phil.).

⁵⁹ Batas Pambansa, No. 178, *supra* note 39, § 11.

Under the rules of the SEC, all issues must also file quarterly reports (appendix III) and annual reports (appendix IV). In connection with these reporting requirements, it is recommended that the annual reports include a balance sheet and profit and loss statement for the last fiscal year certified by an independent certified public accountant, and a management discussion and analysis of results of operations.

The Exchange also requires the listed issuer to promptly inform the Exchange and the SEC of any *meeting or corporate activity* wherein any material information relating to the issuer has been presented or discerned. The test on whether disclosure is required here is very broad. The meeting must be disclosed if the information discussed therein was:

- (1) necessary to enable the issuer and the public to appraise its position;
- (2) necessary to avoid the establishment of a false market in its securities; and
- (3) might reasonably be expected to materially affect market activity in and the price of its securities.⁶⁰

As can be expected, the law defines "materiality" broadly to ensure full disclosure. Material information includes information relating to the issuer's financial condition, prospects, development projects, contracts entered into in the ordinary course of the business or otherwise, and other information with significant impact on the issuer's operations.⁶¹ In addition, most corporate activities that involve shareholders must be disclosed. (Appendix V.)

Until recently, the timing of the release of announcements does not always result in the information being widely available at the same time. Often a privileged group of investors seem to be able to trade ahead of the market. One such example happened on Monday, September 28, 1992. The Union Bank of the Philippines' Board met on Friday, September 25, 1992 after trading hours, and resolved to pay a stock dividend equivalent to 42% of par value or P376.5 million (approximately US\$15 million).⁶² However, the details of the Board resolution were not published until midday on Monday, September 28, and were not available simultaneously on both

⁶⁰ MANUAL OF RULES, *supra* note 55, at 12.

⁶¹ *Id.* at Chapter V.

⁶² INTERNATIONAL SECURITIES CONSULTANCY, 1 PHILIPPINES: STOCK MARKET DEVELOPMENT 78 (1993).

Exchanges (at that time, there were still two Exchanges: The Manila and Makati Stock Exchanges).⁶³ The company claimed that traffic prevented the announcement reaching the Manila Stock Exchange at the same time as the Makati Stock Exchange. The details of the dividend were not phoned to or faxed to the Exchanges. During the morning trading session on Monday, September 28, the price of Union Bank shares rose sharply before the dividend information was made public. From a closing price of P32 (US\$1.30) on Friday, it closed at P36.50 (US\$1.45) on Monday at the Makati Stock Exchange.⁶⁴

Where there is publication of information about a security in writing or by word of mouth, regardless of whether it is correct or false, and which is likely to have, or has had, an effect on the price of the security, the issuer of such security must promptly clarify or confirm such information:

- (1) If rumors indicate that material information has been leaked, a frank and explicit announcement is required. If rumors are in fact false or inaccurate, they should be promptly denied or clarified; and
- (2) In the case of a rumor or report predicting future sales, earnings or other data, no response from the listed issuer is ordinarily required. However, if such report is manifestly based on erroneous information, or the listed issuer or any of its executive officers is wrongly attributed as the source, the issuer should respond promptly to the supposedly factual elements of the rumor or report in the same manner as to the false rumor or report contains a prediction that is clearly erroneous, the listed issuer should issue an announcement to the effect that the issuer itself has made no such prediction and currently knows of no facts that would justify making such a prediction.⁶⁵

Upon inquiry, the listed issuer must also promptly respond and disclose to the Exchange the result of its investigation on any unusual trading activity in its security which occurs without any apparent publicly available information. If the unusual trading activity results from a false rumor or report, the issuer should correct such rumor or report. If the listed

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ See generally, MANUAL OF RULES, *supra* note 55, Chapter V.

issuer is unable to determine the cause of the unusual trading activity, the Exchange may suggest that the issuer make a public announcement to the effect that there are no undisclosed recent development affecting the issuer that would account for the unusual trading activity.

Under the rules of the Exchange, disclosure of material information should normally be made to the Exchange through an announcement after trading hours.⁶⁶ If the disclosure is made during trading hours, the Exchange may suspend the trading of the listed issuer's securities to provide an opportunity for the material information to be properly disseminated. Trading would resume after one hour following the disclosure or the next market day if the disclosure is made after trading hours.⁶⁷ Each announcement should be factual, clear and succinct, and contain sufficient quantitative information to allow investors to evaluate its relative importance to the activities of the listed issuer. However, if the issuer makes an announcement in the form of a press release, SEC rules require that prior approval by the SEC of the press release must be secured before its publication.⁶⁸

In one instance, a press release was received by the Exchange from a listed company, San Miguel Corporation after office hours.⁶⁹ In that press release, it was announced that San Miguel Corporation sold its plant site in Hong Kong for HK\$650,000,000.00.⁷⁰ However, the press release had not been approved by the SEC. Hence, the Exchange could not circulate the press release to the brokers and the public. The Exchange therefore informed San Miguel Corporation that considering the materiality of the announcement, it would suspend trading of its shares the next day unless in the meantime, San Miguel Corporation could get SEC's approval on the press release. Fortunately, San Miguel Corporation was able to track down some SEC officials who were doing overtime work to get the necessary approval of its press release. The Exchange has therefore advised listed companies to simply make a disclosure statement to the Exchange instead of a press release to avoid the coverage of the SEC rule on press releases.

Other than the annual report, the Exchange finally requires the listed issuer to file a semi-annual report on its financial condition, an updated list

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ SEC Rules Governing Dissemination of News, Tips or Rumors about the Issuer Corporation or Its Securities (Sept. 8, 1969).

⁶⁹ Letter from San Miguel Corporation to the Philippine Stock Exchange, (Sept., 1994).

⁷⁰ *Id.*

of the top twenty stockholders and their corresponding number of shares, and a distribution schedule indicating the number and percentage of shareholders per range of shares.⁷¹

Currently, the Exchange relentlessly implements the disclosure rules to update all material information and ensure a level playing field for all investors. In so doing, it has recaptured the trust and confidence of foreign and domestic investors in the stock market. Since the unification of the Manila and Makati Stock Exchanges into the Philippine Stock Exchange in 1992, the market has grown by 355%, value of transactions by 385% and foreign portfolio investment by almost 300%.⁷²

D. Other Disclosures

The Revised Securities Act likewise mentions other instances when disclosure must be made. These additional disclosure requirements are outlined below.

1. Insider's Duty to Disclosure When Trading.

Section 30 makes it unlawful for an insider to sell or buy securities of the issuer if he knows a fact of special significance with respect to the issuer or the security that is not generally available. An exception exists if the insider proves that the fact is generally available, or the insider proves that the other party to the transaction knows it.⁷³

The term "insider" comprises four categories of individuals: (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of *special significance* about the issuer or the security that is not generally available, or (4) a person who learns such fact from any of the foregoing insiders with knowledge that the person from whom he learns the fact is such an insider.⁷⁴

Under Philippine law, the scope of information that has "special significance" is not as broad as "material information." Thus, information

⁷¹ MANUAL OF RULES, *supra* note 55, Chapter V.

⁷² Central Bank Data (1994).

⁷³ Batas Pambansa, No. 178, *supra* note 39, § 30(a).

⁷⁴ *Id.* § 30(b).

is deemed to be of "special significance" if:

- (1) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent; or
- (2) a reasonable person would consider it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.⁷⁵

This current version of the insider trading provision in section 30 is too restrictive and wholly inadequate to deter trading abuses by insiders. It threatens the integrity of the securities markets as it undermines the confidence of investors that they are not being unfairly disadvantaged. The basic defect is that a violation cannot be established unless the insider trades on non-public information of "special significance." In turn, this is defined as a fact that likely impacts the market price "to a significant extent" or is "especially" important to an investment decision. Because of the difficulty in meeting this test, insiders are now free to use clearly important information they gain as a result of their relationship with the issuer to reap profits at the expense of public investors.

It is therefore recommended that insiders should be held to violate the provision if they trade simply on any "material" information that has not been publicly disclosed. In turn, materiality should only encompass the type of information that would be important to a reasonable investor since, if it is, an insider should not be allowed to have this informational advantage.

It is also proposed that an insider should be able to avoid accountability only if he can show that he did not secure the information from his insider status, or that it is shown that the contra party to the transaction is reasonably believed by the insider to also possess the information. The first exception is designed to exclude trading on the basis of so-called material "market" information—that is, information which analysts and others gather about the issuer through investigation, but which may not be entirely available to the public at large.

⁷⁵ *Id.* § 30(c).

The definition of "insider" must also be modified in such a way so as to make it easier to hold a tippee liable for his trading. This is done by providing that a tippee (i.e., a person who receives inside information from persons such as an officer or director) shall be deemed an insider so long as the tippee has "reason to believe" the source of the information is another insider and that the information is non-public.⁷⁶

Presently, the Revised Securities Act does not fine the insider three times the profit gained. To deter insider trading, it is suggested that such penalty be adopted as part of the law.

2. *Duty to Report Purchase of More Than Ten Percent Issue*

Section 32 requires a person who acquires beneficial ownership of ten percent of an issue to report to the issuer, the Exchange and the SEC within ten days from the acquisition a sworn statement identifying himself and the purpose of his purchase. Also, the statement must note the total number of shares held, and any information regarding contractual obligations with respect to securities, such as joint ventures, options, and puts and calls.⁷⁷

3. *Tender Offers*

Section 33 makes it unlawful for any person, directly or indirectly, to make a tender offer for any class of any registered equity security if, after consummation thereof, such person becomes the beneficial owner of more than ten percent of such security. An exception exists if at the time of the offer, such person has filed with the SEC a statement containing the information enumerated in section 32 above.⁷⁸

4. *Proxies*

Section 34 prohibits any person to solicit or to permit the use of his name to solicit any proxy with respect to a registered security, unless the proxies are solicited by or on behalf of the management of the issuer. The issuer must file the proxy with the SEC, and send proxy statements to all security holders of record.⁷⁹

⁷⁶ Proposed Amendments to the Revised Securities Act, P.B. 178: Additions and Deletions from Original Statute with Commentary, [Capital Market Development Project] at 59-60 (Mar. 15, 1995).

⁷⁷ Batas Pambansa No. 178, *supra* note 39, § 32.

⁷⁸ *Id.* § 33.

⁷⁹ *Id.* § 34.

5. *Report of Directors, Officers and Principal Stockholders*

Section 36 provides that every person who is directly or indirectly the beneficial owner of more than ten percent of any registered equity security, or who is a director, must file monthly statements indicating ownership amounts and any changes in these amounts.⁸⁰ This filing requirement is meant to discourage insiders from taking advantage of their access to information by engaging in short term trading. To prevent the unfair use of information, section 36 allows the corporation, or by stockholder, to recover any profit realized by the officer, director or ten percent stockholder from any purchase and sale, or sale and purchase, of any equity security of the corporation within a period of less than six months. The only exception is if the individual can show that the security was acquired in good faith in connection with a debt previously contracted.⁸¹

III. SANCTIONS

The Revised Securities Act provides for criminal, civil and administrative sanctions in case of violation of any of its provisions, or the making of an untrue statement of a material fact, or the omission to state any material fact required to be stated or necessary to make the statement not misleading.

A. *Criminal Penalty*

If fraud or other willful violation is indicated, the SEC may refer the matter to the National Prosecution Service of the Department of Justice for investigation and prosecution of the offending persons before the proper court. Upon conviction, the person liable may suffer a fine of not less than P5,000 (\$200) nor more than P500,000 (\$20,000) or imprisonment of not less than seven years nor more than twenty-one years, or both in the discretion of the court.⁸² If the person liable is an alien, he shall, in addition to the penalties prescribed, be deported after service of sentence.⁸³

⁸⁰ *Id.* § 36(a).

⁸¹ *Id.* § 36(b).

⁸² *Id.* § 12.

⁸³ *Id.* § 56.

B. *Civil Liability*

In case of a false registration statement, the person liable is required to pay damages to the person prejudiced equal to double the difference between the amount paid and committed to be paid for the security, not exceeding the price at which the security was offered to the public.⁸⁴ Exemplary damages may also be awarded in cases of bad faith, fraud, malevolence or wantonness.⁸⁵

In connection with prospectuses, the person liable is required to return the consideration paid plus interest to the person prejudiced by an untrue statement of a material fact or an omission to state a material fact necessary to make the statement not misleading. Exemplary damages may likewise be awarded in cases of bad faith, fraud, malevolence or wantonness.⁸⁶

In connection with false reports, the person liable is required to pay damages, attorney's fees and costs to the person prejudiced.⁸⁷ Any action under sections 12 and 13 must be brought within two years from the discovery of the untrue statement or omission,⁸⁸ and any action under section 13(a)(1) must be brought within two years from the violation.⁸⁹

C. *Administrative Liability*

The registrant who makes an untrue statement of a material fact or omits to state a material fact necessary to make the statements not misleading, may suffer the penalty of suspension, or revocation of its certificate of registration and permit to offer securities. The registrant also faces a fine of no less than P200 (\$8) more than P50,000 (\$2,000) for each day of continued violation, disqualification from being an officer or member of the Board of Directors, and other penalties within the power of the SEC.⁹⁰ (Appendix VI).

⁸⁴ *Id.* § 12.

⁸⁵ *Id.*

⁸⁶ *Id.* § 13(a)(1).

⁸⁷ *Id.* § 13(b).

⁸⁸ *Id.* § 14(a).

⁸⁹ *Id.*

⁹⁰ *Id.* § 46.

IV. ENFORCEMENT

Securities law is enforced by the SEC. Originally placed under the directive of a Commissioner appointed by the President, the Commission was made a collegial body composed of a Chairman and two associate commissioners. Later, the Commission was further expanded with the addition of two more associate commissioners.⁹¹

Unlike in many foreign countries, the SEC is a government agency with quasi-judicial powers designed to provide speedy remedy to aggrieved parties. As such, it can hear and resolve intra-corporate disputes, complaints against brokers and underwriters, and corporate bankruptcy cases. In the exercise of its administrative functions, it has authority to regulate stock exchanges; license securities brokers and dealers; and promulgate rules and regulations on securities trading. It also enforces the following statutes: The Revised Securities Act,⁹² Corporation Code,⁹³ Investment Company Act,⁹⁴ Financing Company Act,⁹⁵ Investment Houses Law,⁹⁶ Omnibus Investment Code,⁹⁷ and the Foreign Investment Act of 1991.⁹⁸

Additionally, the SEC has the power of supervision and control over all corporations, partnerships and associations, which are grantees of primary franchise and/or a license to operate in the Philippines. In the exercise of its authority, it can enlist the aid and support of, and deputize, any and all enforcement agencies of the government, civil or military.

It also has the power to promulgate such rules and regulations as it may consider appropriate in the public interest for the enforcement of the provisions of the Revised Securities Act.⁹⁹

While initially organized as an independent agency under the Office of the President, the Securities and Exchange Commission, with respect to its administrative functions, is now under the Department of Finance.¹⁰⁰

⁹¹ Reorganization of the Securities and Exchange Commission with Additional Powers and Placing the Said Agency under the Administrative Supervision of the Office of the President, Presidential Decree No. 902-A (as amended, Mar. 11, 1976) (The Philippines).

⁹² See generally Batas Pambansa No. 178, *supra* note 39.

⁹³ See generally Batas Pambansa No. 68.

⁹⁴ Republic Act No. 2629.

⁹⁵ Republic Act No. 5980.

⁹⁶ Presidential Decree No. 129.

⁹⁷ Executive Order No. 226.

⁹⁸ Republic Act No. 7042.

⁹⁹ Batas Pambansa, No. 178, *supra* note 39, § 3.

¹⁰⁰ Transferring the Securities and Exchange Commission to the Department of Finance, Executive Order No. 202 (Sept. 22, 1994) (Malacañang, Manila).

This transfer was precipitated by the growing perception that the SEC was too pre-occupied with the enactment of regulatory rules instead of enforcing existing law and assisting in the expansion of the Philippine stock market.¹⁰¹

To be sure, the regulatory system in the Philippines includes many meritorious regulation practices. For instance, the SEC requires the pricing of a new issue to be justified if it is set above the par value.¹⁰² The concern of the SEC is to avoid an offering price based on a high p/e ratio. Thus, the SEC will at times direct a lower offering price to "protect" the public, or to prevent a failure in the public offering because the issue is priced too high. Examples of this are the Benpres and Petron offerings where the SEC wanted the issuers and underwriters to reduce the offering price. However, this interference in the price of an issue may sometimes be embarrassing to the SEC. When the security immediately sells at substantial premiums in the secondary market, the SEC has in effect deprived the issuer from receiving funds commensurate to the value of the security. It is preferable to leave pricing to the judgment of the issuer and its underwriters, who after all must know the true value of the security and the sentiments of the market. What the SEC can do is to require full disclosure of the basis of the price in a prospectus.

Section 9 of the Revised Securities Act also empowers the SEC to reject registration if "the business of the issuer is not shown to be sound or to be based on sound business principles."¹⁰³ In effect, the SEC is given great responsibility to determine the soundness of the business of an issuer. Yet, when the SEC approves the registration, section 8(38) states that this approval does not constitute a recommendation or endorsement to the public.

The SEC therefore should focus its attention on promoting an efficient, fair and orderly market in which investors can make investment decisions based on adequate and timely disclosures. Investors should face normal market risks, while the SEC's attention should be directed to curtailing risks that result from the unethical and unscrupulous activities of certain market participants.

101 Fidel V. Ramos, Address at the Inauguration of Philippine Stock Exchange Trading Floor at Tektite Tower.

102 Securities and Exchange Commission, Financial Requirement for Registration of Securities.

103 Batas Pambansa, No. 178, *supra* note 39, § 9(3).

There are many unlawful activities and practices proscribed by the Revised Securities Act, including manipulation,¹⁰⁴ deceptive devices,¹⁰⁵ artificial measures of price control,¹⁰⁶ fraudulent transactions,¹⁰⁷ insider trading,¹⁰⁸ and short-selling transactions.¹⁰⁹ (Appendix VII.) To enforce these prohibitions, the SEC can issue cease and desist orders, civil injunctions, and administrative sanctions. In egregious cases, the SEC has the power to issue orders for damages and criminal prosecution.¹¹⁰

However, while equipped with awesome powers, the SEC in its almost sixty years of existence has yet to fine and penalize a market participant for violating any of the above provisions. While "[t]he rampant use of inside information in the trading of securities in and out of the [E]xchange is too well-known an occurrence . . . in the Philippines to be the subject of serious dispute,"¹¹¹ the SEC has caught no one. This has compelled a former SEC officer to state: "In recent years, our [Securities and Exchange Commission] has amassed tremendous powers without even noticing the fundamental defects of our Securities Act. In the meantime, scandal after scandal eroded our public's confidence in the securities market. Capital formation has thus been slowed down."¹¹² What the SEC has done thus far is to fine or suspend brokers for delayed delivery of stock certificates or for failure to timely file reports. It has also ordered de-listing of stocks in the Exchange for the issuer's closure of business.

It was only in August 1994, that the Exchange investigated and filed the first insider trading case with the SEC. This involved officers and directors of a realty development company, Interport Resources Inc., who purchased Interport shares shortly before and/or after consummating a joint venture with a Malaysian company, but before disclosing such joint venture to the SEC and the Exchange.¹¹³ After disclosing the joint venture and after the prices of Interport shares moved significantly, some of these officers and directors even sold their newly acquired shares, making them further liable under section 36 of the Revised Securities Act (re: short swing

104 *Id.* § 26.

105 *Id.* § 27.

106 *Id.* § 28.

107 *Id.* § 29.

108 *Id.* § 30.

109 *Id.* § 36.

110 *Id.* §§ 46-47.

111 Ricalde, *supra* note 13, at 306, 313.

112 *Id.* at 326.

113 Philippine Stock Exchange Report to the SEC (Aug. 31, 1994).

profits). Perhaps due to its numerous functions, the SEC has not resolved the case to date.

It may therefore be timely for the SEC to soon grant the Exchange a status of a self-regulatory organization. Through its Compliance and Surveillance Department, the Exchange can more closely monitor, probe and supervise the market. In fact, during the past year, it has strictly required full, accurate and timely disclosures from listed companies. It has disciplined brokers and traders. By policing the market, the Exchange has projected an image of a fair market which has attracted more investors to put more funds in the bourse. In this situation, the SEC can properly take a supportive but active oversight role to ensure enforcement of the Revised Securities Act by the Exchange and to spend more time in the development of the market.

V. CONCLUSION

The Philippine stock market has rapidly developed during the past four years. It is therefore expected that more investors will pour funds into the stock market. Consequently, it is imperative that the Revised Securities Act and allied Securities and Exchange Commission rules must be upgraded in order to require more stringent and comprehensive disclosures for the protection of the investing public. Among others, it is recommended that a prospectus be mandated as a condition to registration of securities, replete with information on the risks of the issuer's business, the economic and political factors that may affect the issue and the court cases that may affect the issuer and its principal officers.

The law must also require that copies of the prospectus shall be furnished to prospective investors to enable them to determine the pros and cons of investing in the issue. The information in the prospectus must be current, with the issuer having the obligation to timely and accurately make further disclosure to the Exchange as may be necessary to enable investors to make wise investment decisions.

Finally, the role of the Securities and Exchange Commission in enforcing the rules on disclosure cannot be overemphasized. As the government corporate watchdog, it is incumbent upon the Securities and Exchange Commission to ensure a level playing field in the market to protect investor interest. For only then will the rules of disclosure have meaning to the public.

APPENDICES

I. DISCLOSURE REQUIREMENTS FOR REGISTRATION: SECTION 8 OF THE REVISED SECURITIES ACT¹¹⁴

Sec. 8. Procedure for registration: (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing of the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities, containing or having attached thereto, the following:

- (1) Name of issuer and, if incorporated, place of incorporation.
- (2) The location of the issuer's principal business office, and if such issuer is a non-resident or its place of office is outside of the Philippines, the name and address of its agent in the Philippines authorized to receive notice.
- (3) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen, if the issuer be a corporation, association, trust, or other entity; of all the partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed.
- (4) The names and addresses of the underwriters.
- (5) The general character of the business actually transacted or to be transacted by, and the organization and financial structure of, the issuer including identities of all companies controlling, controlled by or commonly controlled with the issuer.
- (6) The names and addresses of all persons, if any, owning of record or beneficially, if known, more than ten (10%) *per centum* in the aggregate of the outstanding stock of the issuer

¹¹⁴ Batas Pambansa, No. 178, *supra* note 39, § 178.

as of a date within twenty days prior to the filing of the registration statement.

(7) The amount of securities of the issuer held by any person specified in subparagraphs (3), (4), and (6) of this subsection, as of a date within twenty days prior to the filing of the registration statement, and , if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe.

(8) A statement of the capitalization of the issuer and of all companies controlling, controlled by or commonly controlled with the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up; the number and classes of shares in which such capital stock is divided; par value thereof; or if it has no par value, the stated or assigned value thereof; a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital or each class, with respect to each other class, including the retirement and liquidation rights or values thereof.

(9) A copy of the security for the registration of which application is made.

(10) A copy of any circular, prospectus, advertisement, letter, or communication to be used for the public offering of the security.

(11) A statement of the securities, if any, covered by options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than ten (10%) *per centum* in the aggregate of such options.

(12) The amount of capital stock of each class issued or included in the shares of stock to be offered.

(13) The amount of the funded indebtedness outstanding and to be created by the security to be offered, with a brief statement of the date, maturity, and character of such debt, rate of interest, character or amortization provisions, other terms and conditions thereof and the security, if any, therefor. If substitution of any security is permissible, a summarized statement

of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect.

(14) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts and the sources thereof.

(15) The remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly during the past year and the ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them whenever such remuneration exceeded sixty thousand (P60,000.00) pesos during each such year.

(16) The amount of issue of the security to be offered.

(17) The estimated net proceeds to be derived from the security to be offered.

(18) The price at which the security is proposed to be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to persons or classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security by filing an amended registration statement.

(19) All commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything of value, paid, to be set aside, or disposed of, or understandings with or for the benefit of any other person in which any underwriter is interested, made in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid, the amount of such commission paid to each underwriter shall be stated.

(20) The amount or estimated amounts, itemized in reasonable detail, of expenses, other than commission specified in the next preceding paragraph, incurred or to be incurred by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges.

(21) The net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security.

(22) Any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment.

(23) The names and addresses of the vendors and the purchase price of any property or goodwill, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition.

(24) Full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than ten (10%) *per centum* in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date.

(25) The names and addresses of independent counsel who have passed on the legality of the issue.

(26) Dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or

which has been executed not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements, and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service shall be deemed a material contract.

Any contract, whether or not made in the ordinary course of business with any stockholder, whether a natural or juridical person, owning more than ten (10%) *per centum* of the shares of the issuer shall be deemed a material contract for the purpose of this Act.

(27) A balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable with intangible items segregated, including any loan to or from any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. In the event any such assets consist of shares of stock in other companies, the balance sheet and profit and loss statements of such companies for the past three years shall likewise be enclosed. All the liabilities of the issuer, including surplus of the issuer, showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement is not certified by an independent certified public accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent certified public accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted.

(28) A profit and loss statement of the issuer showing earnings and income, the nature and source thereof, and the expense and fixed charges in such detail and such form as the Commission shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal

years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business, year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with statement of the basis upon which credit is computed. Such statement shall also differentiate between recurring and non-recurring income and between any investment and operating income. Such statement shall be certified by an independent certified public accountant.

(29) Any liabilities of the issuer to companies controlling or controlled by the issuer shall be disclosed in full detail as to use of the proceeds thereof, the maturity and repayment schedule, nature of security thereof, the rate of interest and other terms and conditions thereof. If the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business, certified by an independent certified public accountant, meeting the requirements of subparagraph (28) of this subsection, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business, meeting the requirements of subparagraph (27) hereof of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer more than ninety days to the filing of the registration statement.

(30) A copy of any agreement or agreements or, if identical agreements are used, the forms thereof made with any underwriter, including all contracts and agreements referred to in subparagraph (19) hereof.

(31) A copy of the opinion or opinions of independent counsel in respect to the legality of the issue.

(32) A copy of all material contracts referred to in subparagraph (26) hereof, but no disclosure shall be required by the Commission of any portion of any such contract if the disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors.

(33) A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which securities have been or are to be issued in payment.

(34) The amount of cash to be paid as promotion fees, or of capital stock which is to be set aside and disposed of as promotion stock, and a statement of all stock issued from time to time as promotion of stock.

(35) In connection with securities issued by a person engaged in the business of developing, exploiting or operating mineral claims, a sworn statement of a mining engineer stating the ore possibilities of the mine and such other information in connection therewith as will show the quality of the ore in such claims, and the unit cost of extracting it.

(36) Unless previously filed and registered with the Commission and brought up to date:

(a) A copy of its articles of incorporation with all amendments thereof and its existing by-laws or instruments corresponding thereto, whatever the name, if the issuer be a corporation;

(b) A copy of all instruments by which the trust is created or declared and in which it is accepted and acknowledged, if the issuer is a trust;

(c) A copy of its articles of partnership or association and all the papers pertaining to its organization, if the issuer is a partnership, unincorporated association, joint-stock company, syndicate, or any other form of organization.

(37) A copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be

offered by the issuer and outstanding on the part of companies controlling or controlled by the issuer.

(38) Where the issuer or registrant is not formed, organized and existing under the laws of the Philippines or is not domiciled in the Philippines, a written power of attorney, certified and authenticated in accordance with law, designating some individual person, who must be a resident of the Philippines, on whom any summons and other legal processes may be served in all actions or other legal proceedings against him, and consenting that service upon such resident agent shall be admitted as valid and proper service upon the issuer or registrant, and if at any time that service cannot be made upon such resident agent, service shall be made upon the Commission.

Additional information or documents, including written information from an expert, may be required, or anyone of the above requirements may be dispensed with, depending on the necessity thereof for the protection of the public investors, or their applicability to the class of securities sought to be registered, as the case may be.

The registration statement shall be signed by the issuer, its principal executive officer, its principal operating officer, its principal financial officer, its comptroller or principal accounting officer or persons performing similar functions. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed.

Upon filing of the registration statement, the registrant shall pay to the Commission a fee of not more than one-tenth of one *per centum* of the maximum aggregate price at which such securities are proposed to be offered and the fact of such filing shall be immediately published by the Commission, at the expense of the registrant, in two newspapers of general circulation in the Philippines, once a week for two consecutive weeks, reciting that a registration statement for the sale of such security has been filed with it, and that the aforesaid registration statement, as well as the papers attached thereto, are open to inspection during business hours, by interested parties, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Commission may prescribe.

Any interested party may file an opposition to the registration within ten days from the publication.

If after the completion of the aforesaid publication, the Commission finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements and conditions for the protection of the investors have been complied with, and unless there are grounds to reject a registration statement as herein provided, it shall as soon as feasible enter an order making the registration effective, and issue to the registrant a permit reciting that such person, its brokers or agents, are entitled to offer the securities named in said certificate, with such terms and conditions as it may impose in the public interest and for the protection of investors.

The Commission shall, however, advise the public that the issuance of such permit shall not be deemed a finding by the Commission that the registration statement is true and accurate on its face or that it does not contain an untrue statement of fact or omit to state a material fact, or be held to mean that the Commission has in any way given approval to the security included in the registration statement. Every permit and any other statement, printed or otherwise, for public consumption, that make reference to such permit shall clearly and distinctively state that the issuance thereof is only permissive and does not constitute a recommendation or endorsement of the securities permitted to be offered for sale. It shall be unlawful to make, or cause to be made, to any prospective purchaser any representation contrary to the foregoing.

Notwithstanding the foregoing, the Commission, for the guidance of investors, may require issuers to submit their securities to rating by securities rating agencies accredited by the Commission, to provide all information necessary therefor, and to report such rating in the registration statement and prospectus, if any, offering the securities.

If any change occurs in the facts set forth in the registration statement, it shall be the obligation of the issuer, dealer or underwriter who filed the original registration statement to submit to the Commission for approval an amended registration statement.

The Commission, in its order, may fix the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities in the Philippines and the maximum amount of compensation which the issuer shall pay for mining claims and mineral rights for

which provision is made by the issuer for payment in cash or securities. The amount of compensation which shall be paid the owner or holder of such mining claims or mineral rights shall be a fair valuation thereof, as may be fixed by the Commission, after consultation with the Bureau of Mines, and after receiving such technical information as issuer or dealer or the owner or owners of such claims may care to submit in the premises.

A copy of the order of the Commission making the registration effective, together with the registration statement, shall be transmitted to the exchange wherein the security may be listed and shall be available for inspection by any interested party during reasonable hours on any business day.

The order shall likewise be published, at the expense of the registrant, once in a newspaper of general circulation within ten days from its promulgation.

The same rules shall apply to any amendment to the registration statement.

II. DISCLOSURE REQUIREMENTS FOR LISTING ON THE PHILIPPINE STOCK EXCHANGE¹¹⁵

A. Information Summary

1. Name, address and place of incorporation of the issuer
2. Total amount of the offering, number of shares to be offered and the offering price
3. Name of issue manager, lead underwriter, members of the underwriting syndicate, lead selling agent and selling agents

B. Summary of the Offering

1. Number of shares offered
2. Offer price
3. Payment terms
4. Offering period
5. Subscription amount
6. Eligibility of applicants
7. Procedures for application
8. Screening procedures and criteria for final acceptance of subscription applications.

¹¹⁵ The International Securities Consultancy Ltd., *Philippines: Stock Market Development*, Mar. 1993, at 78-82.

9. Posting of share certificates for accepted subscriptions
 10. Intended use of proceeds of offering
 11. Amount of fees/expense associated with the offering
 12. Name and addresses of independent counsels who have passed on the legality of the issue.
- C. Industry Profile
1. Scope and structure
 2. Industry performance
 3. Developments in the industry
 4. Perceived risks/problems faced by the industry
 5. Projected industry performance
- D. Company Profile
1. Company background, including description, operations, product lines and manufacturing/operating facilities
 2. Names and addresses of all directors and executive officers
 3. Authorized capital stock, number of shares subscribed, amount paid and the description and par value of the shares
 4. Breakdown of the issuer's share capital before and after the offering
 5. Statement on the option to purchase shares including the general description of the class(es) of persons to whom the option was or will be granted, the price and duration of the option and consideration for which the option was or will be granted
 6. Statement of the issuer's capital in controlled or affiliated companies
 7. Description of all material contracts entered into by the issuer i.e. management contracts, credit facilities, marketing or distribution contracts, long term loan agreements, lease contracts, retirement plans and insurance contracts
 8. Financial review of the company's performance
 9. Business plans of the issuer
 10. Dividend policy
 11. Name and address of external auditors
- E. Statement of Risks: Description of all the risks which can materially affect the performance and financial condition of the issuer i.e. regulatory risk, legal risks, raw material availability risk, financial risk, labor work, etc.
- F. Annexes
1. Issuer's financial statements for the last three years

2. Financial projections duly certified by a reputable auditing firm that such financial projections and assumption used therein are in accordance with the standards practiced in the industry
3. General corporate information which shall include the qualifications and elections of directors, schedule of stockholder's meeting and voting rights of stockholders
4. Schedule of investments in affiliated companies
5. Schedule of investments in subsidiary companies
6. Schedule of loans/advances to subsidiaries and affiliated companies
7. Applicable Philippine laws which affect the issuer, the shares of stock and its stockholders i.e. laws governing rights of the stockholders, dividend distribution, derivative action and appraisal right, management, election of directors, accounting and auditing requirements, taxation and government regulations affecting the issuer and the industry.

III. SEC DISCLOSURE REQUIREMENTS FOR QUARTERLY REPORTS¹¹⁶

1. New projects or investments in another project, line of business or corporation
2. Composition of Board of Directors
3. Performance of the corporation or result/progress of operations
4. Suspension of operations
5. Declaration of dividends
6. Contracts of merger, consolidation or joint venture; contract of management, licensing, marketing distributorship, technical assistance or similar agreements
7. Financing through loans
8. Offering of rights, granting of stock options and corresponding plans therefor
9. Acquisition of additional mining claims or other capital assets or patents, formula, real estate
10. Discovery of mineral ore, oil, etc.
11. Any other information, event or happening that may affect the market price of a security, and

¹¹⁶ Periodic and Other Reports Pursuant to Sec. 11 of the Revised Securities Act, BED Circular No. 1, Series of 1987 (Jan. 30, 1987) (Manila, Philippines).

12. Transferring of assets, except in normal course of business

IV. SEC DISCLOSURE REQUIREMENTS FOR ANNUAL REPORTS¹¹⁷

I. Corporate Profile

1. Brief description of business undertaken by the corporation
2. Members of the Board of Directors
3. Officers
4. Transfer agent
5. Auditor
6. Legal Counsel
7. Broker/Underwriter
8. Corporate offices

II. Financial Highlights

1. Financial statements shall include among others
 - a) Pre-operating accountability statement
 - b) Statement of investment of stockholders
 - c) Balance sheet/deficits
 - d) Statement of income/deficit and retained earnings
 - e) Statement of changes in financial position
2. Notes to financial statements
3. Current assets
4. Total assets
5. Total liabilities
6. Stockholders' equity
7. Subscription receivables
8. Total revenues
9. Net income/earnings
10. Per common share
 - a) Primary earnings
 - b) Total taxes
 - c) Dividends paid
 - d) Book value
11. Number of shares outstanding
12. Number of stockholders
13. Tax information

¹¹⁷ Annual Reports, SEC-BED Memorandum Circular No. 7, Series of 1988 (Aug. 16, 1988) (Manila, Philippines).

- a) Income tax expense
 - b) All others e.g. principally payrolled and property taxes
 - c) Total taxes
- III. Report on Operations
- 1. Domestic
 - 2. International
- IV. Auditor's Report
- V. DISCLOSURE REQUIREMENTS RELATING TO CORPORATE DECISIONS AFFECTING SHAREHOLDERS¹¹⁸

- (1) the holding and the agenda of any stockholders meeting which must be given to the Exchange at least three (3) days prior to the said meeting;
- (2) the Exchange shall be given at least ten (10) trading days advance written notice prior to the record date fixed by the issuer to determine the list of stockholders who are entitled to notice and to vote at a regular or special stockholders meeting; and to give the same ten (10) trading days advance notice prior to the closing of transfer books, or extension of such closing;
- (3) any declaration of a cash dividend, the percentage thereof or amount per share, the record date and date of payment;
- (4) any declaration of stock dividend, or pre-emptive rights, the percentage thereof, the record date and date of payment subscription;
- (5) capitalization issues, employee stock plans, warrants, stock splits and reverse splits;
- (6) all material resolutions taken up in a stockholder's meeting of the issuer;
- (7) all call to be made on unpaid subscriptions to the capital stock of the issuer;
- (8) any change of address of the registered office of the issuer or of its transfer agents;
- (9) any change in the directors, top officers, auditors or transfer agent of the issuer;
- (10) any proposed amendment to the Articles of Incorporation and By-laws;

¹¹⁸ Philippine Stock Exchange, Manual of Rules Governing the Listing of Securities (Rev., Feb. 1995).

- (11) any change in shareholdings of directors, officers and stockholders owning more than 10% of any class of any security, as provided for under Sec. 36, Chapter IV of the Revised Securities Act;
- (12) any action filed in court, or any application filed with the SEC, to dissolve or wind-up the issuer or any of its subsidiaries, or any amendment to the Articles of Incorporation shortening its corporate term; or any significant litigation that would affect the corporation;
- (13) the appointment of receiver or liquidation of the issuer of any of its subsidiaries;
- (14) any acquisition of share of another corporation or any transaction resulting in such corporation becoming a subsidiary of the issuer;
- (15) any acquisition by the issuer of shares resulting in its holding 10 percent or more of the paid-up capital of another listed corporation or where the total value of its holdings exceeds 5 percent of net assets of an unlisted corporation.
- (16) joint ventures, mergers and acquisitions;
- (17) any sale made by the issuer, of its shareholdings in another listed or unlisted corporation;
- (18) firm evidence of significant improvement or deterioration of near-term earning aspects;
- (19) the purchase or sale of significant asset;
- (20) a significant new product or discover;
- (21) the public or private sale of a significant amount of additional securities;
- (22) a call of securities for redemption;
- (24) events of default under financing or sale agreements;
- (25) a significant change in capital investment plans;
- (26) a significant dispute or disputes with subcontractors, customers or suppliers, or with any other parties; and
- (27) a tender offer of its securities or for another corporation's securities.

VI: LIABILITIES FOR FALSE REGISTRATION STATEMENTS

The following are liable on account of false registration statement:

Sec. 12. Civil liabilities on account of false registration statement.—(a) Any person acquiring a security, the registration statement of which or any part thereof contains on its state

of material fact required to be stated therein or necessary to make such statements not misleading, and who suffer damage, unless it is proved that at the time of such acquisition he knew of such untrue statement or omission, may sue in a court of competent jurisdiction:

(1) Every person who signed the registration statement;

(2) Every person who was a director of, or any other person performing similar functions, or a partner in, the issuer at the time of the filing of the registration statement or any part, supplement or amendment thereof with respect to which his liability is asserted;

(3) Every person who is named in the registration statement as being or about to become a director of, or a person performing similar functions, or a partner in, the issuer and whose written consent thereto is filed with the registration statement;

(4) Every person whose profession gives authority to a statement made by him, who, with his written consent, which shall be filed with the registration statement, has been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with the registration statement, with respect to the statement in such registration statement, report, or valuation, which purports to have been prepared or certified by him.

(5) Every underwriter with respect to such security.

Nevertheless, no person, other than the issuer, shall be liable if he proves

Sec. 12 (b). Notwithstanding the provisions of subsection (a) no person, other than the issuer, shall be liable as provided therein if he proves—

That before the effective date of the part of the registration statement with respect to which his liability is asserted (A) he had resigned from or had taken such steps as are permitted by law to resign from, or ceased or refused to act in, every office, capacity, or relationship in which he was

described in the registration statement as acting or agreeing to act, and (B) he had advised the Commission and the issuer in writing that he had taken such action and that he would not be responsible for such part of the registration statement.¹¹⁹

VII. UNLAWFUL ACTIVITIES PROSCRIBED BY THE REVISED SECURITIES ACT

Sec. 26. Manipulation of security prices.—(a) It shall be unlawful for any person, directly or indirectly—

- (1) For the purpose of creating a false or misleading appearance of active trading in any security registered on a securities exchange, or a false or misleading appearance with respect to the market for any such security:
 - (i) to effect any transaction in such security which involves no change in the beneficial ownership thereof, or
 - (ii) to enter an order or orders for the purchase of such security with the knowledge that an order or orders of substantially the same size, time and price, for the sale of any such security, has or have been or will be entered by or for the same or different parties, or
 - (iii) to enter any order or orders for the sale of any such security with the knowledge that an order or orders of substantially the same size, time and price for the purchase of any such security, has or have been or will be entered by or for the same or different parties.
- (2) To effect, along or with one or more other persons, a series of transactions in securities that (i) raises their price for the purpose of inducing the purchase of a security, whether of the same or a different class, of the same issuer or of a controlling, controlled, or commonly controlled company by others, (ii) depresses their price for the purpose of inducing the sale of a security, whether of the same or a different class, of the same issuer or of a controlling, controlled, or commonly controlled company by others, or (iii) creates active trading, actual or apparent, for the purpose of inducing such a purchase or sale.
- (3) If a dealer or broker, or other persons selling or offering for sale, or purchasing or offering to purchase, the security, to induce the

¹¹⁹ *Id.* § 12.

- purchase or sale of any security registered on a securities exchange by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of anyone or more persons conducted for the purpose of raising or depressing the price of such security.
- (4) If a dealer or broker or other person selling or offering for sale or purchasing or offering to purchase the security, to make, regarding any such security registered on a securities exchange, for the purpose of inducing the purchase or sale of such security, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he know or had reasonable ground to believe was so false or misleading.
 - (5) For a consideration received directly or indirectly from a dealer or broker or other person selling or offering for sale or purchasing or offering to purchase the security, to induce the purchase or sale of any security registered on a securities exchange by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of anyone or more persons conducted for the purpose of raising or depressing the price of such security.
 - (6) To effect, either alone or with one or more other persons, any series of transactions for the purchase and/or sale of any security registered in a securities exchange for the purpose of pegging, fixing or stabilizing the price of such security.

Sec. 27. Manipulations and deceptive devices.—It shall be unlawful for any person, directly or indirectly, by the use of any facility of any exchange—

- (a) To effect a short sale, or to use or employ any stop-loss order in connection with the purchase or sale of any security registered on a securities exchange. In contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.
- (b) To use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance.

Sec. 28. Artificial measures of price control. - It shall be unlawful for any exchange to adopt and enforce artificial measures of price control of any nature whatsoever without the prior approval of the Commission which may be given only if it serves public interest and benefits the investors.

Sec. 29. Fraudulent transactions.—(a) It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities—

- (1) To employ any device, scheme, or artifice to defraud, or
- (2) To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or
- (3) To engage in any act, transaction, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Sec. 30. Insider's duty to disclose when trading. - (a) It shall be unlawful for an insider to sell or buy a security of the issuer, if he knows a fact of special significance with respect to the issuer or the security that is not generally available, unless (1) the insider proves that the fact is generally available or (2) if the other party to the transaction (or his agent) is identified, (a) the insider proves that the other party knows it, or (b) that other party in fact knows if from the insider or otherwise.

(b) 'Insider' means (1) the issuer, (2) a director or officer of, or a person controlling, controlled by, or under common control with, the issuer, (3) a person whose relationship or former relationship to the issuer gives or gave him access to a fact of special significance about the issuer or the security that is not generally available, or (4) a person who learns such a fact from any of the foregoing insiders as defined in this subsection, with knowledge that the person from whom he learns that fact is such an insider.

(c) A fact is 'of special significance' if (a) in addition to being material it would be likely, on being made generally available, to affect the market price of a security to a significant extent, or (b) a reasonable person would consider it especially important under the circumstances in determining his course of action in the light of such factors as the degree of its specificity, the extent of its difference from information generally available previously, and its nature and reliability.