



Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

EXPOSURE DRAFT OF THE CONSOLIDATED SCALE OF FINES AND PENALTIES

The public is advised that the Commission in its meeting on ____ November 2013 resolved to expose the draft Consolidated Scale of Fines and Penalties, as revised ("Revised Scale") for comments and suggestions of all concerned parties.

It is a declared policy under the Securities Regulation Code ("Code") that the State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.

The Commission is mandated to act with transparency and to have the powers and functions provided by the Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. It has jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government. In implementing its supervision authority, the Commission has the power under Section 5 of the Code to impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto.

Over the years, the Commission has been issuing Scales of Fines and numerous regulations that contain sanctions for violation of the requirements, the current ones of which include the following:

Title	Circular/Series
Guidelines on the Imposition of Fines or Penalties for Non-Compliance with Reportorial Requirements	Issued on July 31, 2002
Consolidated Scale of Fines	SEC Memo. Circular No. 6, Series of 2005
Submission of General Information Sheet and General and Special Forms of Financial Statements in Electronic Format	SEC Memo. Circular No. 6, Series of 2006
Revised Guidelines on Foundations	SEC Memo. Circular No. 8, Series of 2006
Revised Code on Corporate Governance	SEC Memo. Circular No. 6, Series of 2009
Scale of Fines for Non-Compliance with the Financial Reporting Requirements	SEC Memo. Circular No. 8, Series of 2009
Scale of Penalties for Lending Companies	SEC Memo. Circular No. 9, Series of 2010
Implementation of the Truth in Lending Act to Enhance Loan Transaction Transparency	SEC Memo. Circular No. 7, Series of 2011

The clarity of obligations and understandability of the consequences of violations is attained when the fines and penalties are updated and contained in one issuance. It is thus ideal that the Commission adopts a consolidated scale of fines covering the sanctions for violations of the various laws and rules it implements.

Based on the records of the Commission, the amounts of fines and penalties collected for the last five (5) years are presented below:

Year	Amount
2007	P 103.14 Million
2008	110.70 Million
2009	139.69 Million
2010	148.96 Million
2011	199.02 Million
2012	213.73 Million

The table above shows that there is an increasing trend in the amount fines being collected every year. The increase could be attributed to the Commission's efforts to monitor compliance of registered corporations. There is however, a concern that the numerous and repeated violations for which fines were imposed reflect that existing rates per scale of fines and penalties are not sufficient deterrent for corporations to violate the requirements.

In revising and consolidating the Scale of Fines, the Commission adopts the following framework and principles:

- a) The changes arising from the amendments to the Implementing Rules and Regulations of the Securities Regulation Code shall be considered in finalizing the revised Scale;
- b) The type of violation committed and its impact on concerned parties or the public shall be considered in rationalizing the amounts of fines;
- c) The definitions, as provided in the various laws and rules being implemented by the Commission, shall be adopted in the Revised Scale;
- d) Violations such as offering or selling of securities to the public or acting as a broker or dealers without permit or license may be committed by persons that are not registered under the Corporation Code.
- e) The requirements of laws and rules consist of three (3) dimensions particularly, licensing, reportorial and regulatory requirements. Thus, violations under this Revised Scale is presented according to said dimensions:
 - i. **Licensing.** Unauthorized activities such as public offering of securities without prior registration, representing as broker dealer of securities without license.
 - ii. **Reportorial.** Non-submission of the report; Late submission of the report; Material deficiency/ies in a report, application, record and other documents; Material misrepresentation or misleading information in the report, application, record and other documents; Material misstatement in the report, application, record and other documents.
 - iii. **Operational, Prudential and Other Requirements.** Excess over limits/restrictions; Failure to perform a prescribed activity/action or to meet the required quality of performance; Failure to adopt a required principle, standard, procedure or framework; Refusal to comply with an Order of the Commission; Performance of an act prohibited under the law or regulations; Failure to comply with the other conditions of accreditation or license; Other violations not categorized above.

As to reportorial violation, it has been recognized that a distinction between “Non-filing” and “Late filing” should be made and the corresponding penalties be differentiated. “Non-filing of the report” should mean continuous failure to submit a report on due date and even after the next reporting deadline. “Late

filing” should mean submission of the report after due date but before the next reporting deadline. Higher basic penalty and aggregate daily fine (if applicable) should be imposed for non-submission of reports.

The basis of computation of fines shall be aligned with the possible impact of the violation to concerned parties. Under the present scale for example, the use of a range based on Retained Earnings or Deficit for ordinary stock corporations’ violation of reportorial obligations does not represent the extent of adverse effect to the users of the reports such as suppliers, creditors, employees and stockholders. It could happen that a corporation with a Deficit pays a low amount of fine of P500 per report but its asset and liability sizes are very high such that its failure to submit reports would adversely affect greater number of stakeholders or even if few, it has material impact due to the size of corporation. Thus, a more reasonable basis of fines such as amount of Total Assets must be used to ensure that the impact of violation is appropriately quantified and assigned with a fine.

To rationalize the basis of imposable fines, the following changes are embodied in the Exposure Draft of the Consolidated Scale:

- a. **ORDINARY CORPORATIONS** with no secondary license. The basis of penalty (other than for misstatements) for violation involving major reports has been changed from amount of Retained Earnings/Fund Balance to amount of Total Assets subject to the limits prescribed under the Corporation Code¹ and Securities Regulation Code².
- b. **FOUNDATIONS.** (i) The basis of penalty (other than for misstatements) for violation involving major reports has been changed from amount of Retained Earnings/Fund Balance to amount of Total Assets subject to the limits prescribed under the Corporation Code and Securities Regulation Code, and (ii) The imposition of a specific penalty for the non-submission of the prescribed Sworn Statement and Certifications.
- c. **BRANCHES AND REGIONAL OFFICES OF FOREIGN CORPORATIONS LICENSED TO OPERATE IN THE PHILIPPINES.** The basis of penalty (other than for misstatements) for violation involving major reports has been changed from amount of Net Cash Receipts to amount of Total Assets subject to the limits prescribed under the Corporation Code and Securities Regulation Code.
- d. **LENDING COMPANIES.** The basis of penalty (other than for misstatements) involving violation of prescribed limits has been changed from a fixed fine to the amount representing the breach/excess, subject to the limits prescribed under the Lending Company Act³ and Securities Regulation Code.
- e. **FINANCING COMPANIES.** The basis of penalty (other than for misstatements) involving violation of prescribed limits has been changed from a fixed fine to the amount representing the breach/excess, subject to the limits prescribed under the Financing Company Act⁴ and Securities Regulation Code.
- f. **BROKERS AND DEALERS OF SECURITIES AND GOVERNMENT SECURITIES ELIGIBLE DEALERS (GSEDS),** the basis of penalty (other than for misstatements) has been changed from the amount of Retained Earnings/Deficit to amount of Paid-In Capital Stock subject to the limits prescribed under the Securities Regulation Code.

¹ A fine of not less than P1,000.00 but not more than P10,000.00 (Sec. 144 of CCP)

² A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation (Sec. 54 of SRC)

³ A fine of not less than P10,000.00 and not more than P50,000.00 (Section 12 of Lending Company Act)

⁴ A fine of not less than P10,000.00 and not more than P100,000.00 (Section 14 of Financing Company Act)

- g. **INVESTMENT HOUSES, UNIVERSAL BANKS REGISTERED AS UNDERWRITERS OF SECURITIES & INVESTMENT COMPANY ADVISERS.** The basis of penalty (other than for misstatements) has been changed from amount of Retained Earnings/Deficit to amount of Paid-In Capital Stock subject to the limits prescribed under the Investment Houses Law⁵ and Securities Regulation Code.
- h. **CLEARING AGENCY AND CLEARING AGENCY AS DEPOSITORY AND STOCK AND SECURITIES EXCHANGES.** The basis of penalty (other than for misstatements) has been changed from amount of Retained Earnings/Deficit to amount of Paid-In Capital Stock subject to the limits prescribed under the Securities Regulation Code.
- i. **ISSUERS OF REGISTERED SECURITIES TO THE PUBLIC.** The imposable fines (other than for misstatements) for violation involving major reports shall be based on the amount of securities issued to the public of subject to the limits prescribed under the Securities Regulation Code.

INVITATION TO COMMENT

Please submit duly signed written comments on the draft Circular and Consolidated Scale of Fines to the following address or fax number on or before **22 December 2013**:

Economic Research and Training Department

10th Floor, SEC Building

EDSA, Greenhills

Mandaluyong City

Fax No. 584 5526

⁵ A fine of not exceeding P200 per day of every day during which such violation or non-compliance continues, and/or suspend its certificate of registration (Section 16 of the Investment Houses Law)



Republic of the Philippines
Department of Finance
SECURITIES AND EXCHANGE COMMISSION
SEC Bldg. EDSA, Greenhills, Mandaluyong City

SEC MEMORANDUM CIRCULAR _____
Series of 2013

CONSOLIDATED SCALE OF FINES AND PENALTIES, AS REVISED

Pursuant to its powers under the Corporation Code, Securities Regulation Code and other relevant laws, the Commission in its meeting on _____, resolved to adopt the Consolidated Scale of Fines and Penalties, as revised ("Revised Scale").

1. Objectives

The objectives of the revisions are as follows:

- (a) To provide clarity of obligations and understandability of the consequences of violations by consolidating the various issuances of the Commission covering fines and penalties;
- (b) To rationalize within the limits of the laws, the fines and penalties based on the impact of violation to public interest, gravity of offense, frequency and such other relevant factors;
- (c) To enhance awareness of the consequences of the violations and discourage commission of the same.

2. Definitions

- (a) The definitions, as provided in the various laws and rules being implemented by the Commission, shall be adopted in the Revised Scale.
- (b) "**Persons**" as hereinafter referred to are corporations, associations, partnerships and individuals. It is understood that violations such as offering or selling of securities to the public or acting as a broker or dealers without permit or license may be committed by persons that are not registered under the Corporation Code.
- (c) "**Non-filing**" shall mean continuous failure to submit a report on due date and even after the next reporting deadline. "**Late filing**" shall mean submission of the report after due date but before the next reporting deadline.

3. Reckoning Date of Computation of Daily Fine

If a daily fine is applicable, its computation shall start from the date of declaration of violation based on the results of evaluation of the written explanation of the subject person. The counting of days shall end at the date when the person completely complied with the directives of the Commission such as payment of the fine and/or submission of an amended report. This provision shall not apply to any violation of reportorial requirements wherein the due date of submission of the report is fixed in which case, the daily fine shall reckon from the said due date.

4. Test of Materiality of Deficiencies or Deviations in the Financial Reports

The guidelines provided under SRC Rule 68 or any of its amendments shall be observed in determining the materiality of any deficiency or deviations in financial reports.

5. Frequency of Offenses

- (a) The penalty of suspension (30, 60, 90 days) or revocation of registration/license shall be imposed starting from fourth offense in addition to the maximum fine based on third offense, except for certain violations under which a suspension or revocation of license or accreditation is imposable even for first to third offense due to its adverse impact to public interest.
- (b) For individuals covered by the Scale, the penalties for fourth offenses onwards shall be a multiple of three based on the immediately preceding assessed fine.
- (c) For domestic stock and non-stock corporations with no secondary license that committed a violation beyond the third offense, an additional fine shall be imposed representing 30% of the total fine for late or non-filing of General Information Sheet and/or Annual Financial Statements. An increment of 10% on said fine shall be added for every subsequent offense.
- (d) For corporations that filed a Petition to Set Aside Revocation of Registration, an additional fine shall be imposed representing 100% of the total fine for late or non-filing of General Information Sheet and/or Annual Financial Statements.

6. Imposition of Administrative Fines and Penalties

- (a) The fines and penalties indicated in the **attached Consolidated Scale** shall be imposed on any person who committed any of the violations indicated therein, after due process. If for any reason, a violation is not included in the Scale, it shall be dealt with and penalized in accordance with the provisions of the law and rules under which it is sanctioned.
- (b) A public company engaged in education or health care services may request the Commission for a reduction of the imposable fine subject to the submission of a Sworn Statement by the company's President as to the extent of its public service, financial difficulty to settle the full amount, and an undertaking to henceforth, be diligent in complying with the requirements.

- (c) The amount of imposable fines under the Revised Scale shall be within the statutory limits provided under relevant laws, as follows:
- (i) A fine of not less than P1,000.00 but not more than P10,000.00 per Section 144 of the Corporation Code of the Philippines;
 - (ii) A fine of no less than P10,000.00 nor more than P1,000,000.00 plus not more than P2,000.00 for each day of continuing violation per Section 54 of Securities Regulation Code;
 - (iii) A fine of not less than P10,000.00 and not more than P50,000.00 per Section 12 of Lending Company Act;
 - (iv) A fine of not less than P10,000.00 and not more than P100,000.00 per Section 14 of Financing Company Act;
 - (v) A fine of not exceeding P200.00 per day of every day during which such violation or non-compliance continues, and/or suspend its certificate of registration per Section 16 of the Investment Houses Law;
 - (vi) Such other limitations as may be prescribed by any new or amended law.
- (d) For public offering of securities without prior registration under the Securities Regulation Code, a fine of P1,000,000.00 shall be imposable on the erring entity. The Commission may adjust the said amount depending on the presence of any or combination of the following mitigating circumstances, as maybe raised by the company through a Sworn Statement supported by reliable documents:
- (i) The total amount of securities being offered, if determinable, does not exceed P50,000,000.00;
 - (ii) The offering has been conducted in one or two locations only and the number of total attendees did not exceed fifty (50);
 - (iii) The management of the entity does not appear to have technical knowledge on securities laws in view of their profession and experience;
 - (iv) There is a legitimate business or project where the proceeds of the offering are intended to be used;
 - (v) Such other circumstances that the Commission may consider mitigating.
- (e) As provided for under Section 54.2 of the Securities Regulation Code, the imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against any person responsible for the violation.

7. Transitory Provisions

The fines and penalties provided in the Revised Scale shall apply to violations committed from the date of its effectivity or the date fifteen (15) days after publication in two (2) newspapers of general circulation in the Philippines.

A violation committed prior to the effectivity of this Revised Scale shall not be counted for purposes of determining the level of offenses unless it is a continuing violation due to failure of the erring person to comply with the directive of the Commission to settle the fine and submit the report or to observe a particular requirement.

8. Repealing Clause

The pertinent provisions of the rules, circulars and guidelines containing fines and penalties for violations included in the Revised Scale are hereby repealed.

Issued this ____day of _____ 2013, Mandaluyong City, Philippines.

For the Commission:

TERESITA J. HERBOSA
Chairperson