



Republic of the Philippines
Department of Finance
Securities and Exchange Commission
 SEC Bldg. EDSA, Greenhills, Mandaluyong City

NOTICE

Notice is hereby given that the Commission has drafted a **SCALE OF FINES** imposable for non-compliance with the prescribed form and contents of financial statements under Section 141 of the Corporation Code, SRC Rule 68, SRC Rule 68.1 and the Pre-Need Uniform Chart of Accounts (PNUCA), as revised. The penalties for the said violation shall be in addition to the fine imposable for the late filing of the financial statements.

COMMENTS OR SUGGESTIONS ARE HEREBY REQUESTED ON THE DRAFT SCALE OF FINES PRESENTED BELOW INCLUDING ITS IMPLEMENTING PROVISIONS.

I. Scale of Fines

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

Violation		1 st Offense	2 nd Offense	3 rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Stock Corporations			
	Deficit	P500	P1,000	P2,000
	Retained Earnings:			
	0 to P100,000	P500	P1,000	P2,000
	P100,001 to P500,000	P1,000	P2,000	P4,000
	P500,001 to P5,000,000	P2,000	P4,000	P8,000
	P5,000,001 to P10,000,000	P3,000	P6,000	P12,000
	Above P10,000,000	P4,000	P8,000	P16,000
	Non-stock Corporations			
	Fund Balance/Equity			
	Up to P100,000	P500	P1,000	P2,000
	P100,001 to P500,000	P1,500	P3,000	P6,000
P500,001 to P10,000,000	P2,500	P5,000	P10,000	
P10,000,001 to P100,000,000	P3,500	P7,000	P14,000	
Above P100,000,000	P5,000	P10,000	P20,000	
Material misstatement in the financial statements		An amount based on above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

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

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

(C) Lending Companies; Transfer Agents

Violation		1 st Offense	2 nd Offense	3 rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rule	Deficit	P500	P1,000	P2,000
	Retained Earnings:			
	Up to P100,000	P1,000	P2,000	P4,000
	P100,001 to P500,000	P2,000	P4,000	P8,000
	P500,001 to P5,000,000	P3,000	P6,000	P12,000
	P5,000,001 to P10,000,000	P4,000	P8,000	P16,000
	Above P10,000,000	P5,000	P10,000	P20,000
Material misstatement in the financial statements	-	An amount based on above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

(D) Financing Companies

Violation		1 st Offense	2 nd Offense	3 rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P1,000	P2,000	P4,000
	Retained Earnings:			
	Up to P100,000	P2,000	P4,000	P8,000
	P100,001 to P500,000	P3,000	P6,000	P12,000
	P500,001 to P5,000,000	P4,000	P8,000	P16,000
	P5,000,001 to P10,000,000	P5,000	P10,000	P20,000
	Above P10,000,000	P6,000	P12,000	P24,000
Material misstatement in the financial statements	-	An amount based on above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

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

Violation		1 st Offense	2 nd Offense	3 rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P2,500	P5,000	P10,000
	Retained Earnings: Up to P1,000,000	P5,000	P10,000	P20,000
	P1,000,001 to P10,000,000	P6,000	P12,000	P24,000
	P10,000,001 to P20,000,000	P7,000	P14,000	P28,000
	P20,000,001 to P30,000,000	P8,000	P16,000	P32,000
	Above P30,000,000	P9,000	P18,000	P36,000
Material misstatement in the financial statements		An amount based on above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

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

Violation		1 st Offense	2 nd Offense	3 rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rule	Deficit	P5,000	P10,000	P20,000
	Retained Earnings: Up to P5,000,000	P10,000	P20,000	P40,000
	P5,000,001 to P15,000,000	P11,000	P22,000	P44,000
	P15,000,001 to P30,000,000	P12,000	P24,000	P48,000
	P30,000,001 to P50,000,000	P13,000	P26,000	P52,000
	Above P50,000,000	P14,000	P28,000	P56,000
Material misstatement in the financial statements		An amount based on above scale or 1/10 of 1% of the amount of misstatement, whichever is higher	An amount based on the above scale or 2/10 of 1% of the amount of misstatement whichever is higher	An amount based on the above scale or 4/10 of 1% of the amount of misstatement, whichever is higher

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

Violation		1 st Offense	2 nd Offense	3 rd Offense
Material deficiency in the financial statements or non-compliance with the requirements of the Rules	Deficit	P10,000	P20,000	P40,000
	Retained Earnings: Up to P10,000,000	P20,000	P40,000	P80,000
	P10,000,001 to P20,000,000	P21,000	P42,000	P84,000
	P20,000,001 to P50,000,000	P22,000	P44,000	P88,000
	P50,000,001 to P100,000,000	P23,000	P46,000	P92,000
	Above P100,000,000	P24,000	P48,000	P96,000

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

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

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

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

¹ With dealer license

² Without dealer license

II. Test of Materiality

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

- (i) Any of the following is not submitted with the FS:
 - (1) Balance Sheet;
 - (2) Income Statement;
 - (3) Cash Flow Statement;
 - (4) Notes to Financial Statements;
 - (5) Statement of Management's Responsibility.
 - (6) Auditor's Report.

- (ii) The following shall likewise render the financial statements significantly not compliant:
 - (1) If the auditor's opinion is qualified and the reporting company is a listed company, public company, mutual fund or an issuer of securities to the public. In the case however of a listed bank, a qualified opinion of the external auditor shall not be considered a non-compliance with SRC Rule 68 if the qualification pertains to a deviation adopted by the Bangko Sentral ng Pilipinas as part of its prudential reporting;
 - (2) If the auditor's report is not compliant with the wordings prescribed under Philippine Standards on Auditing (PSA) No. 700, as revised, and other applicable auditing standards and practices.

- (iii) The Statement of Management's Responsibility is not notarized in case of a listed or public company;

- (iv) There is no accounting policy provided on a significant account;

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

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

- (1) 5% or more of Total Current Asset, if it is one of the current asset items;
- (2) 5% or more of Total Non-Current Asset, if it is one of the non-current asset items;
- (3) 5% or more of Total Current Liabilities, if it is one of the current liabilities items;
- (4) 5% or more of Total Long-Term Liabilities, if it is one of the long-term liabilities items;
- (5) 5% or more of the Total Stockholders' Equity, if it is one of the equity items or the amount of Total Assets if there is capital deficiency;
- (6) 5% or more of the Net Income, if it is one of the Income Statement items.

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

- (iv) The required disclosures or presentations under the applicable financial reporting framework and SRC Rule 68/68.1 for a significant account are not provided in the financial statements. In case however of disclosures on related party transactions as required under PAS 24, any deficiency thereof shall be considered material whether or not the amount involved in the said transaction is significant;
- (v) Three (3) or more of the following minor deficiencies are noted:
 - (1) The financial statements are not presented in the prescribed comparative format;
 - (2) There is no distinction between the current and non-portion of assets or liabilities;
 - (3) There are no cross-references to the notes to financial statements;
 - (4) One or two required disclosure items are not provided for a significant account;
 - (5) The Statement of Management's Responsibility is not signed by one of the required signatories;
 - (6) Such other deficiencies as the Commission may consider minor.

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

- (1) An accounting policy for a significant account is not consistent with PFRS or GAAP, e.g., for non-publicly accountable entities or pre-need companies;
- (2) An accounting policy for a significant account is not consistently applied between periods or to similar transactions and events (inconsistent application); or
- (3) The estimate or assumption used on a significant account is unreasonable and resulted to material¹ misstatement of the financial statements;
- (4) There are more than one (1) minor misstatement and the aggregate amount involved for said misstatements meets the test of materiality;
- (5) The financial statements of a corporation with a subsidiary or subsidiaries are not presented on a consolidation basis in violation of PAS 27;
- (6) Such other misstatement in the financial statement, i.e., overstatement or understatement of income, asset, liability or equity, that the Commission may consider material.

III. Reckoning Date of Computation of Penalty

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

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

submission shall include the revised financial statements (if applicable) or an addendum to the financial statements.

IV. Delinquency

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

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

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

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

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

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

The non-payment of the above monetary penalty shall constitute a derogatory record on each of the director and officer of the corporation.

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

V. Coverage of the Penalty

A. The penalty imposable under these Guidelines shall be in addition to the fine imposable for the late submission of the financial statements or annual report of the company.

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

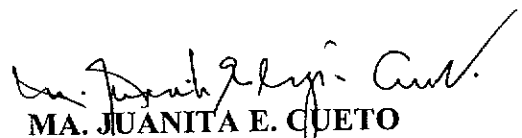
VI. Transitory Clause

This Scale of Fines shall be applied for violations of Section 141 of the Corporation ^{Code} and SRC Rule 68 and 68.1 in prior years in so far as the computed penalty would be favorable to the corporation. Otherwise, the proposed Guidelines shall cover financial statements for the period ended December 31, 2008 and onwards.”

Written comments or suggestions must be filed on or before February 27, 2009 to the Office of the General of the Accountant, 7th Floor, SEC Building, EDSA, Mandaluyong City.

Issued this 23rd day of January 2009.

For the Commission:


MA. JUANITA E. CUETO
Officer-In-Charge