

Rule 19 – Tender Offers

19.1. Definitions

19.1.1. “Beneficial owner” shall have the same meaning as defined in SRC Rule 3.

19.1.2. “Offeror” means any person who makes a tender offer or on whose behalf a tender offer is made.

19.1.3. “Commencement” means the date a tender offer is first published, sent or given to security holders.

19.1.4. “Issuer” means any person or entity subject to reporting obligations under Section 17.2 of the Code.

19.1.5. “Issuer Tender Offer” means a publicly announced intention by an Issuer to reacquire any of its own class of equity securities, or by an associate of such Issuer to acquire such securities.

19.1.6. “Security holders” mean holders of record and beneficial owners of securities that are the subject of a tender offer.

19.1.7. “Target company” means any Issuer whose equity securities are sought by an Offeror pursuant to a tender offer.

19.1.8. “Tender offer” means a publicly announced intention by a person acting alone or in concert with other persons (hereinafter referred to as “person”) to acquire outstanding equity securities of a public company as defined in SRC Rule 3, or outstanding equity securities of an associate or related company of such public company which controls the said public company.

19.1.9. “Tender offer materials” mean: (i) the Offeror’s formal offer, including all the material terms and conditions of the tender offer and all their amendments; (ii) the related transmittal letter (whereby equity securities of the target company that are sought in the tender offer may be transmitted to the Offeror or its depository) and all their amendments; and (iii) press releases, advertisements, letters and other documents published by the Offeror or sent or given by the Offeror to security holders which, directly or indirectly, solicit, invite or request tenders of the equity securities being sought in the tender offer.

19.1.10. “Termination” means the date after which equity securities may not be tendered pursuant to the tender offer.

19.2. Mandatory tender offers

19.2.1. Any person or group of persons acting in concert, who intends to acquire fifteen percent (15 %) of equity securities in a public company in one or more transactions within a period of twelve (12) months, shall file a declaration to that effect with the Commission.

19.2.2. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) of the outstanding voting shares or such outstanding voting shares that is sufficient to gain control of the board in a public company in one or more transactions within a period of twelve (12) months, shall disclose such intention and contemporaneously make a tender offer for the percentage sought to all holders of such securities within the said period.

If the tender offer is oversubscribed, the aggregate amount of securities to be acquired at the close of such tender offer shall be proportionately distributed across selling shareholders with whom the acquirer may have been in private negotiations and other shareholders. For purposes of SRC Rule 19.2.2, the last sale that meets the threshold shall not be consummated until the closing and completion of the tender offer.¹

19.2.3. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) of the outstanding voting shares or such outstanding voting shares that is sufficient to gain control of the board in a public company through the Exchange trading system shall not be required to make a tender offer even if such person or group of persons acting in concert acquire the remainder through a block sale if, after acquisition through the Exchange trading system, they fail to acquire their target of thirty five percent (35%) or such outstanding voting shares that is sufficient to gain control of the board.²

19.2.4. Any person or group of persons acting in concert, who intends to acquire thirty five percent (35%) of the outstanding voting shares or such outstanding voting shares that is sufficient to gain control of the board in a public company directly from one or more stockholders shall be required to make a tender offer for all the outstanding voting shares. The sale of shares

¹ Item 19.2.2 is in compliance with the SRC and Item 19.2.3 is in cases of change of control in a public company.

² Item 19.2.3 is a voluntary tender offer.

pursuant to the private transaction or block sale shall not be completed prior to the closing and completion of the tender offer.

19.2.5. If any acquisition that would result in ownership of over fifty percent (50%) of the total outstanding equity securities of a public company, the acquirer shall be required to make a tender offer under this Rule for all the outstanding equity securities to all remaining stockholders of the said company at a price supported by a fairness opinion provided by an independent financial advisor or equivalent third party. The acquirer in such a tender offer shall be required to accept all securities tendered.

19.2.6. Guidelines on the Conduct of Valuation and Issuance of a Fairness Opinion.

19.2.6.1. Only independent firms that are compliant with the qualifications prescribed in these Rules and Regulations Circular may conduct valuation and issue fairness opinion to comply with the above-quoted provisions of SRC Rule 19.

“Independence” shall mean absence of any business interest or family relationship with any party to the transaction or of any of its directors, officers, or major stockholders, that could, or could reasonably be perceived to, materially interfere with the exercise of the professional judgment of the firm, its representative or any member of the engagement team, in carrying out their responsibilities in assessing the fairness of the issuer’s securities;

19.2.6.2. The following requirements must be observed in the conduct of the valuation and issuance of fairness opinion by an accredited firm:

19.2.6.2.1. The individual who acts on behalf of the accredited firm shall be a licensed professional who has at least ten (10) years experience in the field of accounting, finance or economics and holds a relevant advance degree;

19.2.6.2.2. The firm shall use in its assessment relevant and current data or those that are not more than three months from date of valuation;

19.2.6.2.3. The firm shall adopt more than one valuation methodology and compare the values derived from using different methodologies to minimize the risk that the opinion is unreliable. In addition to referencing the quoted price of the subject equity securities, valuation methodologies shall include balance sheet valuation or book value, dividend discount model, price/earnings ratio, and free cash flow approach;

19.2.6.2.4. If the firm's valuation of a company materially differs from the market price of the company's securities prior to the announcement of a proposed transaction, the firm shall comment on the difference and the factors underlying it;

19.2.6.2.5. The firm shall not include prospective financial information (including forecasts and projections) unless it has made sufficient inquiries to satisfy itself that the information on which it relied was prepared on a reasonable basis. It shall also disclose how and why it finds such inquiries sufficient and utilize several of the methodologies in 19.2.6.2.3 above. Discounted cash flow methodology which invariably uses forward looking information may only be used if the firm has reasonable grounds for doing so. If the firm considered the use of prospective information, the reasons shall be indicated in the report;

19.2.6.2.6. The firm shall notify the party commissioning the report within two (2) days from date of its knowledge of a significant change which may affect the contents of the report or from the date of its conclusion that a material statement in the report is misleading or deceptive. A copy of such a report shall be furnished to the Commission within the same period;

19.2.6.2.7. The following information shall be provided in the firm's Fairness Opinion Report:

19.2.6.2.7.1. All material assumptions and reasons for the opinion;

19.2.6.2.7.2. Justification of the choice of methodologies and description of the methods used by the firm;

19.2.6.2.7.3. Whether or not the opinion was approved by a committee created within the firm;

19.2.6.2.7.4. Whether or not the opinion expresses a judgment about the fairness of the transaction's compensation to any of the company's directors, officers or employees to the company's shareholders;

19.2.6.2.7.5. Whether or not the firm acted as a financial advisor to any party to the transaction, and whether or not it will receive compensation and/or other significant payments that is contingent on the successful completion of the transaction, for rendering the fairness opinion and/or serving as advisor;

19.2.6.2.7.6. Material relationships during the prior two (2) years or those contemplated between the firm and any party to the transaction in which any compensation was received or intended to be received. A relationship

shall be considered material if it would affect the independence of the firm, as defined under SRC Rule 19.2.6.1 , assuming that it is currently present;

19.2.6.2.7.7. Whether or not the firm independently verified any information that formed a substantial basis for the opinion, and whether or not such information was supplied to the firm by the company requesting the opinion. The information or the categories of information that were verified and not verified must be discussed and described;

19.2.6.2.7.8. The firm's discussion on any material difference between the valuation set and the market price of the company's securities prior to the announcement of the proposed transaction;

19.2.6.2.7.9. A written declaration of compliance by the firm's representative with the Code of Ethics applicable to his or her profession;

19.2.6.2.7.10. A brief description of the firm and the education and professional qualifications of its representative who conducted the valuation.

19.2.6.2.8. The Fairness Opinion Report shall be signed by the firm's representative of a rank not lower than a partner or a Vice-President or their equivalent respectively. He shall indicate his complete name, Professional License Number, Tax Identification Number, firm name and address, PSE Accreditation Number of the firm (if any) and other technical information.

19.3. Exemptions from the Mandatory Tender Offer Requirement

19.3.1. Unless the acquisition of equity securities is intended to circumvent or defeat the objectives of the tender offer rules, the mandatory tender offer requirement shall not apply to the following:

19.3.1.1. Any purchase of securities from the unissued capital stock; Provided, the acquisition will not result to a fifty percent (50%) or more ownership of securities by the purchaser or such percentage that is sufficient to gain control of the board;

19.3.1.2. Any purchase of securities from an increase in authorized capital stock;

19.3.1.3. Purchase in connection with foreclosure proceedings involving a duly constituted pledge or security arrangement where the acquisition is made by the debtor or creditor;

19.3.1.4. Purchases in connection with a privatization undertaken by the government of the Philippines;

19.3.1.5. Purchases in connection with corporate rehabilitation under court supervision;

19.3.1.6. Purchases in the open market at the prevailing market price; and

19.3.1.7. Merger or consolidation.

19.3.2. Purchasers of securities in the foregoing transactions shall, however, comply with the disclosure and other obligations under SRC Rules 18.1 and 23.

19.4. Tender Offer by an Issuer or Buy Back

19.4.1. A reacquisition or repurchase by an Issuer of its own securities shall only be made if such Issuer has unrestricted retained earnings in its books to cover the amount of shares to be purchased, and is undertaken for any of the following purposes:

19.4.1.1. To implement a stock option or stock purchase plan;

19.4.1.2. To meet short-term obligations which can be settled by the re-issuance of the repurchased shares;

19.4.1.3. To pay dissenting or withdrawing stockholders entitled to payment for their securities under the Corporation Code; and

19.4.1.4. Such other legitimate corporate purpose/s.

19.4.2. An Issuer that intends to reacquire its own securities through active and widespread solicitation from the stockholders in general and in substantial amounts as the Commission may determine shall comply with the disclosure and procedural requirements provided for in SRC Rules 19.4.3 and 19.4.4 , and the preceding provisions of this Rule.

19.4.3. If an Issuer publishes, sends or disseminates its tender offer to security holders by means of summary publication in the manner prescribed in this Rule, the summary publication shall disclose only the following information:

19.4.3.1. The identity of the Issuer making the tender offer;

19.4.3.2. The amount and class of securities being sought and the price being offered;

19.4.3.3. The information required by SRC Rule 19.7;

19.4.3.4. A statement of the purpose of the tender offer; and

19.4.3.5. The appropriate instruction for security holders on how to obtain promptly, at the expense of the Issuer making the tender offer, the information required in SRC Rule 19.7.

19.4.4. Until the expiration of at least ten (10) business days from the date of termination of the tender offer, the Issuer shall not make any repurchase, otherwise than pursuant to the tender offer, of:

19.4.4.1. Any security which is the subject of the tender offer, or any security of the same class and series, or any right to repurchase such securities; and

19.4.4.2. In the case of a tender offer which is an exchange offer, any security being offered pursuant to the exchange offer, or any security of the same class and series, or any right to repurchase any such security.

19.4.5. This rule shall not apply to -

19.4.5.1. Calls or redemption of any security in accordance with the terms and conditions of its governing instruments;

19.4.5.2. Offers to repurchase securities evidenced by a certificate, order form or similar document which represents a fractional interest in a share of stock or similar security.

19.5. Any person making a tender offer shall make an announcement of its intention in a newspaper of general circulation within five (5) business days from either the company's board approval authorizing negotiations relative to the purchase of shares that may result to a mandatory tender offer or thirty (30) business days prior to the commencement of the offer; Provided, that such announcement shall not be made until the Offeror has the resources to implement the offer in full. A copy of the said notice shall be submitted to the Commission on the date of its publication.

19.6. Filing Requirements

19.6.1. No Offeror shall make a tender offer unless the Offeror:

19.6.1.1. Has filed with the Commission SEC Form 19-1, including all its exhibits, and

19.6.1.2. Has hand delivered a copy of the SEC Form 19-1, including all its exhibits, to the target company at its principal executive office and to each Exchange where such class of the target company's securities is listed for trading.

19.6.2. The Offeror shall file with the Commission copies of any additional tender offer materials as exhibit to SEC Form 19-1 and, if a material change occurs in the information set forth in such SEC Form, copies of an amendment to such form. Copies of the additional tender offer materials and amendments shall be hand delivered to the target company and to any Exchange as required above.

19.6.3. The Offeror shall report the results of the tender offer to the Commission by filing, not later than ten (10) business days after the termination of the tender offer, copies of the final amendments to SEC Form 19-1.

19.7. Disclosure Requirements in Tender Offers

19.7.1. The Offeror shall publish, send or give to security holders in the manner prescribed by SRC Rule 19.9, a report containing the following information:

19.7.1.1. The identity of the Offeror including his or its present principal occupation or business;

19.7.1.2. The identity of the target company;

19.7.1.3. The amount of class of securities being sought and the type and amount of consideration being offered;

19.7.1.4. The scheduled expiration date of the tender offer, whether the tender offer may be extended and, if so, the procedures for extension of the tender offer;

19.7.1.5. The exact dates when security holders who deposit their securities shall have the right to withdraw their securities pursuant to this Rule and the manner by which shares will be accepted for payment and which withdrawal may be effected;

19.7.1.6. If the tender offer is for less than all of the securities of the class and the Offeror is not obligated to purchase all securities tendered, the exact date of the period during which securities will be accepted on a pro rata basis under this Rule and the present intention or plan of the Offeror with respect to the tender offer in the event of an oversubscription by security holders;

19.7.1.7. The confirmation by the Offeror's financial adviser or another appropriate third party that the resources available to the Offeror are sufficient to satisfy full acceptance of the offer; and

19.7.1.8. The information required in SEC Form 19-1.

19.7.2. If any material change occurs in the information previously disclosed to security holders, the Offeror shall disclose promptly such change in the manner prescribed by this Rule.

19.8. Dissemination Requirements

19.8.1. An Offeror or Issuer shall publish the terms and conditions of the tender offering in two (2) national newspapers of general circulation in the Philippines on the date of commencement of the tender offer and for two (2) consecutive days after compliance with SRC Rule 19.7.1.

19.8.2. If a material change occurs in the information published, sent or given to security holders, the Offeror shall disseminate promptly a disclosure of such change in a manner reasonably calculated to inform security holders of such change.

19.9. Period and Manner of Making Tender Offers

19.9.1. A tender offer shall, unless withdrawn, remain open until the expiration of:

19.9.1.1. At least twenty (20) business days from its commencement; Provided, that an offer should as much as possible be completed within sixty (60) business days from the date the intention to make such offer is publicly announced; or

19.9.1.2. At least ten (10) business days from the date the notice of a change in the percentage of the class of securities being sought or in the consideration offered is first published, sent or given to security holders.

19.9.2. In a mandatory tender offer, the Offeror shall be compelled to offer the highest price paid by him for such securities during the preceding six (6) months. If the offer involves payment by transfer or allotment of securities, such securities must be valued on an equitable basis.

19.9.3. In case of a tender offer other than by an Issuer, the subject of the tender offer (“the target company”) shall not engage in any of the following transactions during the course of a tender offer, or before its commencement if its board has reason to believe that an offer might be imminent, except if such transaction is pursuant to a contract entered into earlier, or with the approval of the shareholders in a general meeting or, where special circumstances exist, the Commission’s approval has been obtained:

19.9.3.1. Issue any authorized but unissued shares;

19.9.3.2. Issue or grant options in respect to any unissued shares;

19.9.3.3. Create or issue, or permit the creation or issuance of, any securities carrying rights of conversion into, or subscription to, shares;

19.9.3.4. Sell, dispose of or acquire, or agree to acquire, any asset whose value amounts to five percent (5 %) or more of the total value of the assets prior to acquisition; or

19.9.3.5. Enter into contracts that are not in the ordinary course of business.

19.9.4. The Offeror in a tender offer shall permit the securities tendered to be withdrawn (i) at any time during the period such tender offer remains open; and(ii) if not yet accepted for payment, after the expiration of sixty (60) business days from the commencement of the tender offer.

19.9.5. If the tender offer shall be for less than the total outstanding securities of a class, but a greater number of securities is tendered, the Offeror shall be obliged to accept and pay the securities on a pro rata basis, disregarding fractions, according to the number of securities tendered by each security holder during the period the offer was open.

19.9.6. In the event the Offeror in a tender offer increases the consideration offered after the tender offer has commenced, the Offeror shall pay such increased consideration to all security holders whose tendered securities have been accepted for payment by such Offeror, whether or not the securities were tendered prior to the variation of the tender offer’s terms.

19.9.7. The Offeror in a tender offer shall either pay the consideration offered, or return the tendered securities, not later than ten (10) business days after the termination or the withdrawal of the tender offer.

19.9.8. No tender offer shall be made unless:

19.9.8.1. It is open to all security holders of the class of securities subject to the tender offer; and

19.9.8.2. The consideration paid to any security holder pursuant to the tender offer shall be the highest consideration paid to any other security holder during such tender offer.

19.9.9. The Offeror shall not extend the period of a tender offer without prior clearance from the Commission and without issuing a notice of such extension by publication in a national newspaper of general circulation. The notice shall include a disclosure of the number of securities deposited to date and shall be made public not later than the scheduled original expiration date of the offer.

19.10. Transactions Based on Material, Non-Public Information

If a person shall become aware of a potential tender offer before the tender offer has been publicly announced, such person shall not buy or sell, directly or indirectly, the securities of the target company until the tender offer shall have been publicly announced. Such buying or selling shall constitute insider trading under Section 27.4 of the Code.

19.11. Withdrawal or Lapse of the Tender Offer

Unless with the prior approval of the Commission, if an offer has been announced but has not become unconditional in all respects and has been withdrawn or has lapsed, neither the Offeror nor any person who acted in concert with it in the course of the offer may, within six (6) months from the date on which such offer has been withdrawn or has lapsed, announce an offer for the target company nor acquire any securities of the target company which would require such person to make a mandatory tender offer under this Rule and Section 19.1 of the Code.

19.12. Prohibited practices

The following acts are prohibited in any tender offer:

19.12.1. To employ any device, scheme or artifice to defraud any person;

19.12.2. To make any untrue statement of a material fact or to omit 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

19.12.3. To engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

19.13. Violation

If equity securities of a public company are purchased at threshold amounts provided for in this Rule without complying with the tender offer requirements under this Rule, the Commission may, upon complaint, nullify such purchase and order the conduct of a tender offer, without prejudice to the imposition of other sanctions under the Code.