



Markets and Securities Regulation Department

## NOTICE

TO : ALL CONCERNED

FOR : REQUEST FOR COMMENTS ON THE AMENDMENTS TO RULES 4, 5, AND 11 OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. 9856 OR REAL ESTATE INVESTMENT TRUST (REIT) ACT

The Securities and Exchange Commission intends to issue **Amendments to Rules 4, 5, And 11 of The Implementing Rules and Regulations (IRR) Of Republic Act No. 9856 or Real Estate Investment Trust (REIT) Act**. Hence, the Commission invites all concerned to submit their views, comments, and inputs to the proposed amendments.

The draft SEC Memorandum Circular is attached herewith for reference.

Kindly address your comments to the **Markets and Securities Regulation Department (MSRD)**, Ground Floor Secretariat Building, PICC Complex, Roxas Boulevard, Pasay City, c/o **Atty. Glory Grace Arugay and Ms. Gretchen Lagonoy** not later than **12nn, 18 October 2019**. You may also email your comments to [mrd@sec.gov.ph](mailto:mrd@sec.gov.ph), [ggjarugay@sec.gov.ph](mailto:ggjarugay@sec.gov.ph) and [gclagonoy@sec.gov.ph](mailto:gclagonoy@sec.gov.ph).



SEC MEMORANDUM CIRCULAR NO. \_\_\_\_  
Series of 2019

TO: ALL CONCERNED

SUBJECT: AMENDMENTS TO RULES 4, 5, AND 11 OF THE IMPLEMENTING RULES AND REGULATIONS (IRR) OF REPUBLIC ACT NO. 9856 OR REAL ESTATE INVESTMENT TRUST (REIT) ACT

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**Rules 4, 5 and 11 of the Implementing Rules and Regulations (IRR) of Republic Act No. 9856 or REIT Act of 2009 shall be read as follows:**

**RULE 4 – REAL ESTATE INVESTMENT TRUST**

SEC. 5. Requirements. The REIT shall comply with the following requirements:

5.1 Body Corporate.

a. Minimum Public Ownership. A REIT shall be a public company and to be considered as such, a REIT shall: (a) maintain its status as a listed company; and (b) upon and after listing, have at least one thousand (1,000) Public Shareholders each owning at least fifty (50) shares of any class of shares, and who, in aggregate, **own at least one-third (1/3) of the outstanding capital stock of the REIT.**

A REIT shall, from the time of incorporation, issue shares to, or record the transfer of all its shares into the name of shareholders, investors or, securities intermediary in the form of uncertificated shares. It shall engage the services of a duly licensed transfer agent to monitor subsequent transfers of the shares. Said registrar shall ensure that the shares are traceable to the names of the shareholders or investors and for their own benefit and not for the benefit of any of the non-public shareholders.

The shares may be registered under a nominee and the nominee shall make available to the transfer agent the names of the shareholders in such frequency as may be necessary for the transfer agent to perform its basic functions.

Compliance with the minimum public ownership requirement under this section shall be duly certified by the transfer agent upon listing, as of record date for any dividend declaration or any corporate action requiring shareholder approval and other relevant times as may be required by the Commission.

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- e. Reinvestment in the Philippines. In line with the policy to promote the development of the capital market and Filipino participation in the real estate industry, reinvestment in the Philippines shall be an indispensable requisite for any Sponsor/Promoter who contributes income-generating Real Estate to a REIT.

The relevant listing rules shall be issued which primarily requires the submission of a Reinvestment Plan with a firm undertaking to reinvest (a) any proceeds realized by the Sponsor/Promoter from the sale of REIT shares or other securities issued in exchange for income-generating Real Estate transferred to the REIT and (b) any money raised by the Sponsor/Promoter from the sale of any of its income-generating Real Estate to the REIT, in any Real Estate and/or Infrastructure Projects<sup>1</sup> in the Philippines. This reinvestment shall be made within one (1) year from the date of receipt of proceeds or money by the Sponsor/Promoter.

The exchange shall furnish the Commission with a copy of the Reinvestment Plan in no more than three (3) days from receipt thereof.

The exchange shall also adopt in its rules the appropriate mechanism, internal controls, and procedures to include, among others, requiring the Sponsor/Promoter to be a party to the Listing Agreement and prescribing reporting requirements to monitor the REIT.

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<sup>1</sup> As defined in R.A. No. 6975, as amended by R.A. No. 7718, and in Constructors' Performance Evaluation System Implementing Guidelines for Infrastructure Projects, CPES Implementing Guidelines as approved by the NEDA Board Committee on Infrastructure (INFRACOM) on 20 November 2014 under Resolution No. 01, Series of 2014 has defined *Infrastructure Projects* as construction, improvement or rehabilitation of roads and highways, airports and air navigation facilities, railways, ports, flood control and drainage, water supply and sewerage, irrigation systems, dams, buildings, communication facilities, dredging and reclamation, power generating plants, power transmission and distribution facilities and other related construction projects.

## RULE 5 – Allowable Investments of the REIT

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Sec. 9. Related Party Transactions. Any contract or amendment thereto, between the REIT and Related Parties, including contracts involving the acquisition or lease of assets and contracts for services, shall comply with the following minimum requirements:

- a. Full, fair, timely and accurate disclosures on the identity of the parties, their relationship with the REIT, and other important terms and conditions of the transaction have been made to the Exchange and the Commission;
- b. Be on fair and reasonable terms, including the contract price;
- c. Approved by at least a majority of the entire membership of the board of directors, including the unanimous vote of all independent directors of the REIT;
- d. Must also be approved by the Related Party Transactions Committee, which is constituted with the sole task of reviewing related party transactions. Majority of its members must be independent directors who shall vote unanimously in approving such related party transactions.**
- e. Compliance with SEC Memorandum Circular No. 10, series of 2019 on the Rules on Material Related Party Transactions for Publicly-Listed Companies.**
- f. Accompanied by a fairness opinion by an independent appraiser done in accordance with the valuation methodology prescribed by the Commission, in the case of an acquisition or disposition of real estate assets and property or share swaps or similar transactions; and
- g. Any other matter that may be materially relevant to a prospective investor in deciding whether or not to invest in the REIT.

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SEC. 12.1 Reportorial and Disclosure Requirements. The REIT shall comply with the reportorial and disclosure requirements prescribed by the Corporation Code, the SRC and the relevant Exchange. The BIR shall likewise be furnished copies of the reports herein prescribed. At the minimum, the REIT shall disclose the following information in its Annual, Quarterly or Current Report.

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- x. **Any other disclosures as may be required by the Commission or the relevant Exchange including, where applicable, compliance by the Sponsor/Promoter with its Reinvestment Plan.**

## RULE 11 – Miscellaneous Provisions

**SEC. 4. Administrative Sanctions. The Commission shall, in its discretion, impose sanctions provided by law in the event of violation of any provision of the REIT Act, or this Rule or any applicable rules under the SRC and its respective IRR.**

FOR THE COMMISSION:

**EMILIO B. AQUINO**  
Chairperson