

Rule 10.1 – Exempt Transactions

10.1.1. Disclosure to Investors

Any person claiming exemption under Section 10.1 of the Code shall provide to any party to whom it offers or sells securities in reliance on such exemption a written disclosure containing the following information:

10.1.1.1. The specific provision of Section 10.1 of the Code on which the exemption from registration is claimed; and

10.1.1.2. The following statement in bold face:

THE SECURITIES BEING OFFERED OR SOLD HEREIN HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES REGULATION CODE. ANY FUTURE OFFER OR SALE OF THE SECURITIES IS SUBJECT TO THE REGISTRATION REQUIREMENTS UNDER THE CODE UNLESS SUCH OFFER OR SALE QUALIFIES AS AN EXEMPT TRANSACTION.

10.1.2. Restrictions for Transactions under Section 10.1(k) of the Code

10.1.2.1. Sections 8 and 12 of the Code are violated if (a) the number of persons holding the exempt security under Section 10.1(k) exceeds nineteen (19) within a twelve (12) month period or (b) the sale, offer for sale, or distribution of a security, which is not exempt or which does not fall under an exempt transaction, is actively solicited from or marketed to non-qualified buyers in the Philippines by any entity, including its agents, representatives, employees or any person acting on its behalf.

In proper cases, the issuer of the security and its directors and officers shall be held liable.

10.1.2.2. A prima facie presumption of circumvention of Sections 8 and 12 of the Code shall arise when the number of non-qualified investors shall exceed nineteen (19) within one (1) year. The issuer shall be liable for penalty in accordance with the Scale of Fines of the Commission, without prejudice to other actions which may be taken against the issuer.

If the original purchaser/s shall resell said securities resulting in more than nineteen (19) holders, Sections 8 and 12 of the SRC shall apply,

notwithstanding the exemption of their issuances, unless such succeeding sale shall qualify as an exempt transaction.

10.1.2.3. Debt instruments issued by companies without quasi-banking licenses in excess of One Hundred Fifty Million Pesos (PhP 150,000,000) or such higher amount as the Commission may prescribe shall require prior approval by the Commission.

10.1.2.4. A confirmation of exemption made under Section 10.1(k), shall be subject to the following terms and conditions:

10.1.2.4.1. The Issuer or seller claiming relief shall not engage in any form of general solicitation or advertising in that connection;

10.1.2.4.2. Securities sold in any such transaction may only be sold to persons purchasing for their own account;

10.1.2.4.3. The sale may be made to not more than nineteen (19) buyers. A corporation, partnership or other entity shall be counted as one buyer; Provided, that if the entity is organized for the specific purpose of acquiring the securities offered and is not a qualified buyer under Section 10.1(l) of the Code, or under these rules, then each beneficial owner of equity securities in the entity shall be counted as a separate buyer under this Rule;

10.1.2.4.4. The issuer or seller provides any person to whom it offers for sale or sells securities the following information in writing:

10.1.2.4.4.1. Name of the issuer or seller and its or his predecessor, if any;

10.1.2.4.4.2. Address of its principal executive office;

10.1.2.4.4.3. Place of incorporation;

10.1.2.4.4.4. Title and class of the security;

10.1.2.4.4.5. Par or issue value of the security;

10.1.2.4.4.6. Number of shares or total amount of securities outstanding as of the end of the issuer's most recent fiscal year;

10.1.2.4.4.7. Name and address of the transfer agent;

10.1.2.4.4.8. Nature of the Issuer's business;

10.1.2.4.4.9. Nature of products or services offered;

10.1.2.4.4.10. Nature and extent of the Issuer's facilities;

10.1.2.4.4.11. Name of the chief executive officer and members of the board of directors;

10.1.2.4.4.12. The Issuer's most recent financial statements for the two preceding fiscal years or such shorter period as the issuer (including its predecessor) if it has been in existence;

10.1.2.4.4.13. Whether the person offering or selling the securities is affiliated, directly or indirectly, with the Issuer;

10.1.2.4.4.14. Whether the offering is being made directly or indirectly on behalf of the Issuer, or any director, officer or person who owns directly or indirectly more than ten percent (10%) of the outstanding shares of any equity security of the Issuer and, if so, the name of such person; and

10.1.2.4.4.15. Information required under SRC Rule 10.1.1; Provided, however, that if the Issuer is a reporting company under Section 17 of the Code, a copy of its most recent annual report may be used to provide the required information.

10.1.3. Offer or Sale of Securities to Qualified Buyers under Section 10.1(l) of the Code.

Section 8 and 12 shall not likewise apply to evidence of indebtedness issued and sold to the following qualified buyers:

10.1.3.1. Bank;

10.1.3.2. Registered investment house;

10.1.3.3. Insurance company;

10.1.3.4. Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the BSP to engage in trust functions;

10.1.3.5. Investment company; or

10.1.3.6. Such other person as the Commission may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience in financial and business matters, or amount of assets under management.

10.1.4. Issuance of Evidence of Indebtedness to Primary Institutional Lenders

Section 8 and 12 shall not likewise apply to issuance of evidence of indebtedness to the following primary institutional lenders: banks, including their trust accounts wherein the bank-trustee is granted discretionary powers in the investment disposition of the trust funds, investment houses including their trust accounts wherein the investment house-trustee is granted discretionary powers in the investment disposition of the trust funds, trust companies, financing companies, investment companies, pre-need companies, non-stock savings and loan associations, building and loans associations, venture capital corporation, insurance companies, government financial institutions, pawnshops, pension and retirement funds approved by the BIR, educational assistance funds established by the national government and other entities that may be classified as primary institutional lenders by the BSP, in consultation with the SEC; provided that all such evidence of indebtedness shall only be negotiated or assigned to any of the aforementioned primary institutional lenders or the Development Bank of the Philippines with respect to private development banks in relation with their rediscounting privileges; provided further that in case of non-banks without underwriting licenses, such negotiation or assignment shall be through banks or non-banks licensed to be an underwriter or a securities dealer; provided finally, that in no case shall said instrument be negotiated or assigned to non-qualified investors.

10.1.5 Application for Confirmation or Declaration of Exemption

10.1.5.1. If the Issuer wants a confirmation of exemption under Section 10.1 of the Code, it shall file SEC Form 10-1 with the Commission.

10.1.5.2. In cases involving the distribution of securities through stock dividends, the Commission shall determine the sufficiency of the retained earnings of the Issuer prior to issuing a confirmation of exemption.

10.1.5.3. If the consideration for the offered securities is other than cash, except in the case of issuance of shares by way of stock dividends, a request for confirmation of exemption from registration shall be filed with the Company Registration and Monitoring Department of the Commission and shall be deemed to include an application for approval of valuation required under Section 62 of the Corporation Code and vice versa.

10.1.6. Exempt Commercial Paper Transactions

An Issuer of commercial papers in an exempt transaction shall:

10.1.6.1. File a Notice or Application for Confirmation of Exemption (SEC Form 10-1) prior to issuance. The application shall make a disclosure of the following financial ratios:

$$\text{Current Ratio} = \frac{\text{Current Assets}}{\text{Current Liabilities}}$$

$$\text{Debt to Equity Ratio} = \frac{\text{Total Liabilities}}{\text{Stockholders' Equity}}$$

10.1.6.2. Indicate in bold letters on the face of the instrument the words:

NON-NEGOTIABLE/NON-ASSIGNABLE

10.1.6.3. The Issuer of outstanding commercial papers shall also file the prescribed disclosure statement and pay the corresponding fee.

10.1.7. Isolated Transactions under Section 10.1(c)

10.1.7.1. A request for confirmation of exemption under Section 10.1(c) of the Code shall be available to issuers and sellers.

10.1.7.2. The Commission may take any action it may deem appropriate in an application for confirmation even if it is filed after the offer or sale of the securities without prejudice to the imposition of penalties if warranted.

10.1.8. Burden of Proof on the Availability of Exemption

Unless a confirmation of exemption is issued under this Rule, any person claiming exemption under Section 10 of the Code has the burden of proof, if challenged, of showing that it is entitled to the exemption. The Commission may challenge such exemption any time.

10.1.9. Exempt from Registration, But Not From Other Requirements and Liabilities

Notwithstanding that a particular class of securities issued under Section 10.1 is exempt from registration, the conduct by any person in the purchase, sale, distribution of such securities, settlement and other post-trade activities shall comply with the provisions of the Code and the rules issued thereunder.

Moreover, the sale or offer for sale of a security in an exempt transaction under Section 10 of the Code shall not be exempt from civil liability and other related liabilities and other applicable provisions of the Code on fraud, among others.

Consistent with public interest and for the protection of investors, the Commission, may require an Issuer of a class of securities exempted from registration, to make available to investors and file with the Commission periodic disclosures regarding the Issuer, its business operations, its financial condition, its governance principles and practices, its use of investor funds, and other appropriate matters, and may also provide for suspension and termination of such requirement with respect to such Issuer.

10.1.10. Exemption Not Available For Scheme To Evade Compliance

A request for confirmation of exemption under Section 10 of the Code shall not be available to any Issuer or other persons to any transaction or chain of transactions that, although it may appear to be in compliance with the Code and these Rules, is a part of a plan or scheme to evade compliance with the registration requirements of the Code. In such cases, registration shall be mandatory.

10.1.11. Qualified Buyers

10.1.11.1 For purposes of Section 10 of the Code, a natural person shall be considered a qualified individual buyer if he has registered as such with entities that are authorized by the Commission to act as registrar of qualified buyers pursuant to the rules provided under SRC Rule 39.1.4.

A natural person must possess the following qualifications:

10.1.11.1.1. Has an annual gross income of at least Ten Million Pesos (Php10,000,000.00) at least two (2) years prior to registration, or a total portfolio investment in securities registered with the Commission of at least Ten Million Pesos (Php10,000,000.00), or a personal net worth of not less than Thirty Million Pesos (Php30,000,000.00); and

10.1.11.1.2. Has been engaged in securities trading personally or through a fund manager for a minimum period of one (1) year, or has held for at least two (2) years a position of responsibility in any professional business entity that requires knowledge or expertise in securities trading, such as, legal consultant, financial adviser, sales person, or associated person of a broker-dealer, bank finance or treasury officer, trust officer or other similar executive officers.

10.1.11.2. If the buyer is a juridical person, it shall, at the time of registration with an authorized registrar, (i) have gross assets of at least One Hundred Million Pesos (Php100,000,000.00) or (ii) a total portfolio investment in securities registered with the Commission or financial instruments issued by the government of at least Sixty Million Pesos (Php 60,000,000.00).

10.1.11.3. All persons registering as qualified buyers shall, in addition, show proof that they possess the above-enumerated qualifications and submit under oath certified copies of the documents or their equivalent that show the following matters:

10.1.11.3.1. Total portfolio of securities;

10.1.11.3.2. Annual gross income;

10.1.11.3.3. Their net worth; and

10.1.11.3.4. Threshold risk (low, medium, high risk).

10.1.11.4. The registration as qualified buyers shall be valid for 3 years if the qualifications provided for in 10.1.10.1 and 10.1.10.2 above are continuously complied with. Any application for renewal shall be subject to new evaluation by the registrar and accompanied by updated information sheets. For this purpose, the registrar shall maintain a registry book of qualified buyers that shall be open for inspection by the Commission.