NATIONAL ADMINISTRATIVE REGISTER · JANUARY 22, 1997

SEC COMMISSION RELEASE ANNOUNCING ADOPTION OF SUBORDINATION AGREEMENTS AND MARGIN RULES

SEC, January 22, 1997

Read online (full-text search, related cases, audio case brief): https://batas.org/library/f191bf479072/

With this release the Securities and Exchange Commission ("Commission") announces the adoption of the rules on Satisfactory Subordination Agreements and Margin.

The Net Capital Rule, RSA Rule 24(a)-1, which establishes requirements for the calculation of capital for brokers and dealers became effective on August 15, 1996. In order to meet the more stringent capital requirements of the Net Capital Rule, a broker or dealer may need to increase his capital base on either an interim or a long term basis. The Satisfactory Subordination Agreement Rule, RSA Rule 24 (a)-2, sets forth the minimum requirements necessary for a subordinated loan or secured demand note agreement to meet the requirements of the Net Capital Rule.

All subordinated loan agreements must be approved by the Philippine Stock Exchange ("PSE") for members of the Exchange. The PSE is presently establishing procedures for the approval process of such agreements entered into by members. In order to streamline the approval process, the Exchange is presently developing several standard forms of agreement which meet the requirements of Rule 24(a)-2. Copies of these forms will be provided to members of the Exchange.

This release also announces the adoption of the Margin Rule, RSA Rule 23(b)-1, which raises the allowable initial margin from forty (40) to fifty (50) percent.

In addition, the Commission is announcing minor technical changes to two other rules and the rescission of a significant number of old rules which no longer have relevance.

Old Rules Suspended which are no longer appropriate

- Trading Hours; Transactions Outside of Trading Hours, Rule A.1 of the 1938 Rules.

- Exchange Not to Trade on its Own Floor, Rule A.3 of the 1938 Rules.

- Member Limited to One Seat, Rule A.5 of the 1938 Rules.

- Odd Lot Dealers, Rule A.6 of the 1938 Rules.

- Specialists, Rule A.7 of the 1938 Rules.

- Application for Reinstatement, Rule A.15 of the 1938 Rules.

- Withdrawal or Striking from Listing, Rule A.19 of the 1938 Rules.

- Minimum Units of Trading, Rule A.22 of the 1938 Rules.

- Different Kinds of Contracts or Deliveries, Rule A.23 of the 1938 Rules

- All or None Offers, Rule A.25 of the 1938 Rules.

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

- Cross Sales by Members, Rule A.26 of the 1938 Rules.

- Price Quotations, Rule A.31 of the 1938 Rules.

- Broker's or Dealer's Reports, Rule B.6 of the 1938 Rules.

- Untitled, Miscellaneous Rules C.2, C.3, C.4 and C.5 of the 1938 Rules.

- SEC-BED Memorandum Circular No. 05, Series of 1989, entitled "Amendment to the Revised Rules Governing the Registration and/or Listing of Securities of Corporations" (February 8, 1989).

- Memorandum Circular No. 15, Series of 1987, entitled "Publication of Application for Listing of Securities" (September 18, 1987).

- BED Circular No. 2, Series of 1987, Untitled (February 26, 1987).

- Requirements and Procedures for Listing and Delisting of Securities (Undated)

- New Rules on Price Freezing of Securities Listed in the Stock Exchanges (May 22, 1987).

- Rules Requiring Attendance of SEC Representative in Press Conferences or Interviews Given by Listed Companies (April 17, 1974)

- BED Memorandum Circular No. 3, Series of 1987, entitled "SEC Regulations of July 1, 1973, Covering the Form and Content of Financial Statements" (March 5, 1987).

- SEC-BED Memorandum Circular No. 05, Series of 1988, entitled "Exemption from the Requirements of BED Memorandum Circular No. 3, Series of 1987 on the Form and Contents of Financial Statements (May 9, 1988).

- Order No. ___, Series of 1982, entitled "Report on Inventory of Stock Certificates" (July 27, 1982).

- SEC-BED Memo Circular No. 12, Series of 1989, entitled "Temporary Ban Against Short Selling" (Dec. 28, 1989)

Effective Date of the Rules

These rules shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation in the Philippines.

Adopted: 22 January 1997

(SGD.) PERFECTO R. YASAY, JR.

Chairman
Securities and Exchange Commission

(SGD.) FE ELOISA C. GLORIA

(SGD.) ROSALINDA U. CASIGURAN

(SGD.)EDIJER A. MARTINEZ

(SGD.) DANILO L. CONCEPCION
Associate Commissioner

Text of Rules Adopted by the Commission

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

RSA Rule 23 (b)-1 Margin

(a) A broker or dealer shall not extend credit to a customer in an amount that exceeds 50 per centum of the current market value of the security at the time of transaction. In no event shall new or additional credit be extended in an account in which the equity is P50,000 or less.

(b) The margin maintained in a margin account of a customer shall be no less than 25 per centum of the current market value of all securities "long" in the account and 30 per centum of the current market value of securities "short" in the account.

(c) When there is an insufficiency of margin, a call for additional margin shall be issued promptly by the broker or dealer to the customer. A call for initial margin shall be satisfied within five business days from the date the insufficiency is created. A call for maintenance margin shall be satisfied within 24 hours after the call is issued.

(d) If a margin call is not met within the time prescribed in paragraph (c), the broker or dealer shall liquidate securities sufficient to meet the margin call or eliminate the margin deficiency existing on the day such liquidation is required, whichever is less. The broker or dealer shall liquidate the securities through the Exchange on which it is traded or in the best available public market. If the margin deficiency in the account is less than P10,000.00 no action need be taken by the broker or dealer.

(e) The required payment date for a call for initial margin may be extended by seven (7) days upon written request delivered by hand or facsimile transmission by the broker or dealer to the Philippine Stock Exchange in the case of members of that Exchange or to the Securities and Exchange Commission, in the case of non exchange members. In granting such an extension, the Exchange or Commission will take into consideration whether the broker or dealer and the customer are acting in good faith and whether exceptional circumstances warrant such extension. A written request for the extension must be received and acted upon before the expiration of the original payment period or the expiration of any previous extension. (Replaces Rules 12 through 16 of the 1937 Provisional Rules which were later incorporated into the 1938 Rules.)
RSA Rule 24(a)-2 Satisfactory Subordination Agreements

Introduction

(a) (1) This rule sets forth minimum and non-exclusive requirements for satisfactory subordination agreements (hereinafter "subordination agreement"). The Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission may require or the broker or dealer may include such other provisions as deemed necessary or appropriate to the extent such provisions do not cause the subordination agreement to fail to meet the minimum requirements of this rule.

Definitions

(2) For purposes of RSA Rule 24(a)-1 and this rule:

(A) A subordination agreement may be either a subordinated loan agreement or a secured demand note agreement.

(B) The term "subordinated loan agreement" shall mean the agreement or agreements evidencing or governing a subordinated borrowing of cash.

(C) The term "Collateral Value" of any securities pledged to secure a secured demand note shall mean the market value of such securities after reducing the market value of the securities by 30 percent, except for securities issued by the Republic of the Philippines. In lieu of the 30 percent deduction, the broker or dealer shall reduce the market value of securities issued by the Republic of the Philippines pledged to secure the secured demand note by the

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

percentage deductions set forth in paragraph (d)(2)(F)(iii) of RSA Rule 24(a)- 1.

(D) The term "Payment Obligation" shall mean the obligation of a broker or dealer in respect of any subordination agreement (i) to repay cash loaned to the broker or dealer pursuant to a subordinated loan agreement or (ii) to return a secured demand note contributed to the broker or dealer or reduce the unpaid principal amount thereof and to return cash or securities pledged as collateral to secure the secured demand note. "Payment" shall mean the performance by a broker or dealer of a Payment Obligation.

(E)(i) The term "secured demand note agreement" shall mean an agreement (including the related secured demand note) evidencing or governing the contribution of a secured demand note to a broker or dealer and the pledge of securities and/or cash with the broker or dealer as collateral to secure payment of such secured demand note. The secured demand note agreement may provide that neither the lender, his heirs, executors, administrators or assigns shall be personally liable on such note and that in the event of default the broker or dealer shall look for payment of such note solely to the collateral then pledged to secure the same.

(ii) The secured demand note shall be a promissory note executed by the lender and shall be payable on the demand of the broker or dealer to which it is contributed; provided, however, that the making of such demand may be conditioned upon the occurrence of any of certain events which are acceptable to the Securities and Exchange Commission and to the Philippine Stock Exchange in the case of a broker or dealer member of the Exchange.

(iii) If such note is not paid upon presentment and demand as provided for therein, the broker or dealer shall have the right to liquidate all or any part of the securities then pledged as collateral to secure payment of the same and to apply the net proceeds of such liquidation, together with any cash then included in the collateral, in payment of such note. Subject to the prior rights of the broker or dealer as pledgee, the lender, as defined herein, may retain ownership of the collateral and have the benefit of any increases and bear the risks of any decreases in the value of the collateral and may retain the right to vote securities contained within the collateral and any right to income therefrom or distributions thereon, except the broker or dealer shall have the right to receive and hold as pledgee all dividends payable in securities and all partial and complete liquidating dividends.

(iv) Subject to the prior rights of the broker or dealer as pledgee, the lender may have the right to direct the sale of any securities included in the collateral, to direct the purchase of securities with any cash included therein, to withdraw excess collateral or to substitute cash so other securities as collateral, provided that the net proceeds of any such sale and the cash so substituted and the securities so purchased or substituted are held by the broker or dealer, as pledgee, and are included within the collateral to secure payment of the secured demand note, and provided further that no such transaction shall be permitted if, after: giving effect thereto, the sum of the amount of any cash, plus the Collateral Value of the securities, then pledged as collateral to secure the secured demand note would be less than the unpaid principal amount of the secured demand note.

(v) Upon payment by the lender, as distinguished from a reduction by the lender which is provided for in paragraph (b)(6)(C) or reduction by the broker or dealer as provided for in paragraph (b)(7) of this rule, of all or any part of the unpaid principal amount of the secured demand note, a broker or dealer shall issue to the lender a subordinated loan agreement in the amount of such payment (or in the case of a broker or dealer that is a partnership credit a capital account of the lender) or issue preferred or common stock of the broker or dealer in the amount of such payment, or any combination of the foregoing, as provided for in the secured demand note agreement.

(F) The term "lender" shall mean the person who lends cash to a broker or dealer pursuant to a subordinated loan agreement and the person who contributes a secured demand note to a broker or dealer pursuant to a secured demand note agreement.

Minimum Requirements for Subordination Agreements

(b)(1) Subject to paragraph (a) above, a subordination agreement shall mean a written agreement between the broker or dealer and the lender, which (A) has a minimum term of one year, except for temporary subordination agreements provided for in paragraph (c) (5) of this rule, and (B) is a valid and binding obligation enforceable in accordance with its terms (subject as to enforcement to applicable bankruptcy; insolvency, reorganization, moratorium and other similar laws) against the broker or dealer and the lender and their respective heirs, executors, administrators, successors and assigns.

Specific Amount

(2) All subordination agreements shall be for a specific peso amount which shall not be reduced for the duration of the agreement except by installments as specifically provided for therein and except as otherwise provided in this rule.

Effective Subordination

(3) The subordination agreement shall effectively subordinate any right of the lender to receive any Payment with respect thereto, together with accrued interest or compensation, to the prior payment or provision for payment in full of all claims of all present and future creditors of the broker or dealer arising out of any matter occurring prior to the date on which the related Payment Obligation matures consistent with the provisions of RSA Rule 24(a)- 1 and this rule, except for claims which are the subject of subordination agreements which rank on the same priority as or junior to the claim of the lender under such subordination agreements.

Proceeds for Subordinated Loan Agreements

(4) The subordinated loan agreement shall provide that the cash proceeds thereof shall be used and dealt with the broker or dealer as part of its capital and shall be subject to the risks of the business.

Certain Rights of the Broker or Dealer

(5) The subordination agreement shall provide that the broker or dealer shall have the right to:

(A) Deposit any cash proceeds for a subordinated loan agreement and any cash pledged as collateral to a secure demand note in an account or accounts in its own name in any bank;

(B) Pledge and repledge any or all of the securities pledged as collateral to secure a secured demand note, without notice, separately or in common with other securities or property for the purpose of securing any indebtedness of the broker or dealer; and

(C) Lend to itself or others any or all of the securities and cash pledged as collateral to secure a secured demand note.

Collateral for Secured Demand Notes

(6) Only cash and securities which are fully paid for, which have a ready market, and which may be publicly offered or sold without registration, and the offer, sale and transfer of which are not otherwise restricted, may be pledged as collateral to secure a secured demand note. The secured demand note agreement shall provide that if at any time the sum of the amount of any cash, plus the Collateral Value of any securities, then pledged as collateral to secure the secured demand note is less than the unpaid principal amount of the secured demand note, the broker or dealer must immediately transmit written notice to that effect to the lender and the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission in the case of a non-member. The secured demand note agreement shall also require that after such transmittal:

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

(A) The lender, prior to noon of the business day following the transmittal of such notice, may pledge as collateral additional cash or securities sufficient, after giving effect to such pledge, to bring the sum of the amount of any cash plus the Collateral Value of any securities, then pledged as collateral to secure the secured demand note, up to an amount not less than the unpaid principal amount of the secured demand note; and

(B) Unless additional cash or securities are pledged by the lender as provided for in paragraph (b)(6)(A) of this rule, the broker or dealer at noon on the business day following the transmittal of notice to the lender must sell, for the account of the lender, such of the securities then pledged as collateral to secure the secured demand note and apply so much of the net proceeds thereof, together with such of the cash then pledged as collateral to secure the secured demand note as may be necessary to eliminate the unpaid principal amount of the secured demand note; provided, however, that the unpaid principal amount of the secured demand note need not be reduced below the sum of the amount of any remaining cash, plus the Collateral Value of the remaining securities, then pledged as collateral to secure the secured demand note. The broker or dealer may not purchase for its own account any securities subject to such a sale.

(C) The secured demand note agreement also may provide that, in lieu of the procedures specified in the provisions required by paragraph (b)(6)(B) of this rule, the lender with the prior written consent of the broker or dealer and the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member, may reduce the unpaid principal amount of the secured demand note. After giving effect to such reduction, the aggregate indebtedness of the broker or dealer may not exceed 1500 percent of its net capital and its net capital may not be less than 120 percent of the minimum peso amount required by paragraph (b) of RSA Rule 24(a)-1. No single secured demand note shall be permitted to be reduced by more than 15 percent of its original principal amount and after such reduction no excess collateral may be withdrawn.

Permissive Prepayments

(7) A broker or dealer at its option but not at the option of the lender may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective. This restriction shall not apply to temporary subordination agreements that comply with the provisions of paragraph (c)(5) of this rule. No

Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due either within six months after the date such Prepayment is to occur or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1500 percent of its net capital or its net capital would be less than 120 percent of the minimum peso amount required by paragraph (b) of RSA Rule 24(a)-1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission in the case of a non-member.

Suspended Repayment

(8)(A) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding that

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

are scheduled to mature on or before such Payment Obligation) either (i) the aggregate indebtedness of the broker or dealer would exceed 1500 percent of its net capital, or (ii) its net capital would be less than 120 percent of the minimum peso amount required by paragraph (b) of RSA Rule 24(a)-1. The subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of RSA Rule 24(a)-1 and this rule.

(B) The date on which the liquidation commences shall be the maturity date for each subordination agreement of the broker or dealer then outstanding, but the rights of the respective lenders to receive payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of RSA Rule 24(a)-1 and this rule.

Accelerated Maturity — Obligation to Repay to Remain Subordinate

(9)(A) Subject to the provisions of paragraph (b)(8) of this rule, a subordination agreement may provide that the lender may, upon prior written notice to the broker or dealer and the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member, given not earlier than six months after the effective date of such subordination agreement, accelerate the date on which the Payment Obligation of the broker or dealer, together with accrued interest or compensation, is scheduled to mature to a date not earlier than six months after the giving of such notice, but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of RSA Rule 24(a)-1 and this rule.

Accelerated Maturity of Subordination Agreements on Event of Default and Event of Acceleration — Obligation to Repay to Remain Subordinate

(10)(A) A subordination agreement may provide that the lender may, upon prior written notice to the broker or dealer and the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member, of the occurrence of any Event of Acceleration (as hereinafter defined) given no sooner than six months after the effective date of such subordination agreement, accelerate the date on which the Payment Obligation of the broker or dealer, together with accrued interest or compensation, is scheduled to mature, to the last business day of a calendar month which is not less than six months after notice of acceleration is received by the broker or dealer and the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member. Any subordination agreement containing such Events of Acceleration may also provide, that if upon such accelerated maturity date the Payment Obligation of the broker or dealer is suspended as required by paragraph (b)(8) of this rule and liquidation of the broker or dealer has not commenced on or prior to such accelerated maturity date, then notwithstanding paragraph (b)(8) of this rule the Payment Obligation of the broker or dealer with respect to such subordination agreement shall mature on the day immediately following such accelerated maturity date and in any such event the Payment Obligation of the broker or dealer with respect to all other subordination agreements then outstanding shall also mature at the same time but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this rule. Events of Acceleration which may be included in a subordination agreement complying with this paragraph (b)(10) shall be limited to:

(i) failure to pay interest or any installment of principal on a subordination agreement as scheduled;

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

(ii) failure to pay when due other money obligations of a specified material amount;

(iii) discovery that any material, specified representation or warranty of the broker or dealer which is included in the subordination agreement and on which the subordination agreement was based or continued was inaccurate in a material respect at the time made;

(iv) any continued failure to perform agreed covenants included in the subordination agreement relating to the conduct of the business of the broker of dealer or relating to the maintenance and reporting of its financial position; and

(B) Notwithstanding the provisions of paragraph (b)(8) of this rule, a subordination agreement may provide that, if liquidation of the business of the broker or dealer has not already commenced, the Payment Obligation of the broker or dealer shall mature, together with accrued interest or compensation, upon the occurrence of an Event of Default (as hereinafter defined). Such agreement may also provide that, if liquidation of the business of the broker or dealer has not already commenced, the rapid and orderly liquidation of the business of the broker or dealer shall then commence upon the happening of an Event of Default. The date on which such Event of Default occurs shall be the date on which the Payment Obligations of the broker or dealer with respect to all other subordination agreements then outstanding shall mature but the rights of the respective lenders to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of this rule. Events of Default which may be included in a subordination agreement shall be limited to:

(i) the aggregate indebtedness of the broker or dealer exceeding 2000 percent of its net capital throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member, or the Philippine Stock Exchange or the Securities and Exchange Commission first determines and notifies the broker or dealer of such fact;

(ii) the Securities and Exchange Commission shall revoke the registration of the broker or dealer;

(iii) the Philippine Stock Exchange, in the case of a member of the Exchange, shall suspend (and not reinstate within 10 days) or revoke the broker's or dealer's status as a member thereof;

(iv) any receivership, insolvency, liquidation, bankruptcy, assignment for the benefit of creditors, reorganization whether or not pursuant to bankruptcy laws, or any other marshaling of the assets and liabilities or the broker or dealer.

A subordination agreement which contains any of the provisions permitted by this paragraph (b)(10) shall not contain the provision otherwise permitted by paragraph (b)(9)(A).

MISCELLANEOUS PROVISIONS

Prohibited Cancellation

(c)(1) The subordination agreement shall not be subject to cancellation by either party; no Payment shall be made with respect thereto and the agreement shall not be terminated, rescinded or modified by mutual consent or otherwise if the effect thereof would be inconsistent with the requirements of RSA Rule 24(a)-1 and this rule.

Notice of Maturity or Accelerated Maturity

(2) Every broker or dealer shall immediately notify the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission in the case of a non-member, if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding that are then due or mature

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1500 percent of its net capital or its net capital would be less 120 percent of the minimum peso amount required by paragraph (b) of RSA Rule 24(a)-1.

Certain Legend

(3) If all the provisions of a satisfactory subordination agreement do not appear in a single instrument, then the debenture or other evidence of indebtedness shall bear on its face an appropriate legend stating that it is issued subject to the provisions of a satisfactory subordination agreement which shall be adequately referred to and incorporated by reference.

Legal Title to Securities

(4) All securities pledged as collateral to secure a demand note must be in bearer form, or registered in the name of the broker or dealer or the name of its nominee or custodian.

Revolving Subordination Agreements

(5) A broker or dealer shall be permitted to enter into a revolving subordinated loan agreement with a financial institution (which in the ordinary course of its business lends funds to brokers or dealers) which provides for prepayment within less than one year of all or any portion of the Payment Obligation thereunder at the option of the broker or dealer upon the prior written approval of the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member. The Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non- member, however, shall not approve any prepayment if:

(A) After giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements then outstanding, the maturity or accelerated maturities of which are scheduled to fall due either within six months after the date such prepayment is to occur or on or prior to the date on which the Payment Obligation in respect of such prepayment is scheduled to mature, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1500 percent of its net capital or its net capital would be less than 150 percent of the minimum peso amount required by paragraph (b) of RSA Rule 24(a)-1 or

(B) Pre-tax losses during the latest three-month period equaled more than 15% of current excess net capital.

Any subordination agreement entered into pursuant to this paragraph (c)(5) shall be subject to all the other provisions of this rule.

Filing

(6)(A) Two copies of any proposed subordination agreement (including non-conforming subordination agreements) shall be filed 30 days prior to the proposed execution date of the agreement with the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member. The broker or dealer shall also file with the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member, a statement setting forth the name and address of the lender, the business relationship of the lender to the broker or dealer, and whether the broker or dealer carried funds or securities for the lender at or about the time the proposed agreement was so filed. All agreements shall be examined by the Philippine Stock Exchange, in the case of a member of the Exchange, or the Securities and Exchange Commission, in the case of a non-member, prior to their becoming effective. No proposed agreement shall be a satisfactory subordination agreement for the purposes of this rule unless and until

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

the Philippine Stock Exchange, in the case of a member of the Exchange. or the Securities and Exchange Commission in the case of a non-member, has found the agreement acceptable and such agreement has become effective in the form found acceptable.

(B) The Philippine Stock Exchange shall file with the Securities and Exchange Commission on a monthly basis reports summarizing for the period, on a firm-by-firm basis, the subordination agreements it has approved for that period. Such reports should include at the minimum, the amount of the loan and its duration, the name of the lender and the business relationship of the lender to the broker or dealer.

Minor Rule Changes

Deleted language is bracketed and new language is underlined. All other portions of the particular rule remains unchanged.

RSA Rule 25-1 Purchases and Sales in Cash Account

Change to subsection (a):

(a) Purchase by a customer in a cash account shall be paid in full within three (3) to four (4) business days after the trade date.

RSA Rule 37(a)-6 Annual Audited Financial Reports of Brokers

and Dealers

Changes to subsections (b) and (c):

(b) Unless the broker or dealer notifies the Commission otherwise and receives written approval to change the date, December 31st of each year shall be considered the closing of the fiscal year, and the Annual Audited Financial Report is due within 105 days after the close of such fiscal year. One original and one conformed copy of the Report on SEC Form 37-AR should be filed with the Commission. Members of the Philippine Stock Exchange shall simultaneously provide a copy of such report to the Exchange.

(c) The Annual Audited Financial Report Form Code shall contain a Statement of Financial Condition in the format outlined in SEC Form 37-AR, a Statement of Income, a Statement of Changes in Financial Condition, a Statement of Changes in Stockholders or Partners or Sole Proprietor's Equity, a Statement of Changes in Liabilities Subordinated to Claims of General Creditors, a Computation of Net Capital under RSA Rule 24(a)-1, Information relating to the Possession or Control Requirements under Appendix A of RSA Rule 24(b)-2 and a Computation for Determination of Reserve Requirements under Appendix B of RSA Rule 24 (b)-2. Reports filed on SEC Form 37-AR shall be deemed to satisfy Section 141 of the Corporation Code of the Philippines.

January 22, 1997

COMMISSION RELEASE ANNOUNCING ADOPTION OF CLEARING AND SETTLEMENT RULES

The Securities and Exchange Commission ("Commission") announces the adoption of new rules which set requirements for registration of clearing agencies and transfer agents and govern clearing and settlement of securities.

Along with the adoption of these new rules which create a logical framework within which the SCCP and PCDI can function, the Commission is rescinding a significant number of existing rules which are no longer appropriate. Many of these old rules are procedural in nature and will be replaced by procedures to be established by the SCCP and PCDI.

Old Rules Suspended which are no longer appropriate

- "Future Delivery," Rule A.24 of the 1938 Rules.

- "Customer Indorsement", Rule B.8 of the 1938 Rules

- "Qualifications", Rule 1 of the 1970 Rules Governing Transfer Agents, Brokers and Clearing Houses in Connection with the Issuance of Stock Certificates (As amended).

- "Duties of Transfer Agents", Rule 2 of the 1970 Rules Governing transfer Agents, Brokers and Clearing Houses in Connection with the Issuance of Stock Certificates (As amended).

- "Transfer Agent Not to Act as Registrar or Auditor of Same Company," Rule 3 of 1970 Rules Governing Transfer Agents, Brokers and Clearing Houses in Connection with the Issuance of Stock Certificates (As amended).

- "Deadlines for Delivery of Documents", Rule 4 of 1970 Rules Governing Transfer Agents, Brokers and Clearing Houses in Connection with the Issuance of Stock Certificates (As Amended).

- "Penalties", Rule 5 of the 1970 Rules Governing Transfer Agents, Brokers and Clearing Houses in Connection with the Issuance of Stock Certificates (As amended).

- SEC-BED Memorandum Circular #9, Series of 1987, entitled "Filing of Reports in Connection with Issuance of Stock Certificates; Deadlines for Delivery of Documents/Penalties" except for the rules on "Deadlines for Delivery of Documents".

- "There shall be Personnel Responsible for Securing Customers' Specimen Signature", Rule 1 of 1974 Rules to Avoid Delays in the Issuance of Stock Certificate.

- "Clearing House to Report to Stock Exchange Failure of Broker to Make Good Delivery", Rule 2 of 1974 Rules to Avoid Delays in the Issuance of Stock Certificate.

- "Clearing House to Make Daily Deliveries to Transfer Offices", Rule 3 of 1974 Rules to Avoid Delays in the Issuance of Stock Certificate.

- "To Indicate Always in Transfer Instructions Complete Name, Address and Citizenship of Buyers", Rule 4 of 1974 Rules to Avoid Delays in the Issuance of Stock Certificate.

- "Notice Necessary when Issuing Stock Certificate in Street Name", Rule 5 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate.

- "Broker to Index Breakdown of Several Certificates to be Issued", Rule 6 of 1974 Rules to Avoid Delay in the Issuance of Stock A Certificate.

- "DTI to Accompany Stock Power Acknowledged by Transfer Office", Rule 7 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate.

- "Prior Clearance of Stock Powers to Accompany DTL Necessary", Rule 8 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate.

- "Brokers Shall Endorse Stock Powers", Rule 9 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate.

- "Certificates Already Disposed of Under Stock Powers to be Returned", Rule 12 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

- "Penalties", Rule 14 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate

- "Repealing Clause", Rule 15 of 1974 Rules to Avoid Delay in the Issuance of Stock Certificate.

Effective Date of the Rules

These rules shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation in the Philippines.

(SGD.) PERFECTO R. YASAY, JR.
ChairmanSecurities and Exchange Commission

(SGD.) FE ELOISA C. GLORIA

(SGD.) ROSALINDA U. CASIGURAN

(SGD.)EDIJER A. MARTINEZ

(SGD.) DANILO L. CONCEPCION
Associate Commissioner

Text of Rules Adopted by the Commission

RSA Rule 19-17 Brokers to Distribute Dividends to Customers Immediately After Receipt

In the case of cash dividends, the beneficial owners of shares held by the broker as of the cash dividend record date and the amount of cash dividends to which each such beneficial owner is entitled shall be determined by the broker not later than thirty-one (31) trading days after the dividend record date.

Within the same period the broker shall furnish the transfer agent with sworn statements specifying the number of shares that are not subject to withholding tax. The broker shall secure his dividend check from the transfer office on the dividend payment date and shall forthwith distribute the same to his customers, except where the customer has an unpaid account with the broker, in which case, a credit to the customer's account with the proper notice given to him shall constitute prompt delivery of his cash dividend.

The stock and transfer books of the corporation which declared the dividend should be closed for not more than thirty-one trading days from the dividend record date. (Replaces Rule 11 of 1974 Rules to Avoid Delays in the Issuance of Stock Certificate).

RSA Rule 39-1 Settlement and Delivery

(a) Uniform Settlement

No broker or dealer shall accept an order from a customer pursuant to an arrangement whereby payment of securities purchased or delivery of securities sold is to be made to or by a settlement agent of the customer unless all of the following procedures are followed:

(1) The broker or dealer has received from the customer prior to or at the time of accepting the order, the name and address of the settlement agent and account number of the customer on file with the agent;

(2) Each order accepted from the customer pursuant to such an arrangement is identified as either a delivery or receipt against payment trade;

(3) The broker or dealer provides to the customer a confirmation by electronic, physical, facsimile or verbal

means of all relevant data and information required to be contained in a confirmation made pursuant to RSA Rule 19-5(b) with respect to the execution of the trade, in whole or in part, as early as possible on the next business day following such execution, provided that the broker or dealer complies with the requirements of RSA Rule 19-5(b) to the extent it has not done so pursuant to this subparagraph (3).

(4) The broker or dealer has obtained an agreement from the customer that the customer will furnish its settlement agent with instructions with respect to the receipt or delivery of the securities involved in the transaction promptly upon receipt by the customer of each such confirmation, or the relevant date and information as to each execution, relating to such order (even though such execution represents the purchase or sale of only a part of the order), and that in any event the customer will ensure that its settlement agent affirms the transaction no later than the second business day after the date of execution of the trade to which the confirmation relates.

(5) The customer and its settlement agent utilize the facilities or system of a registered clearing agency for the affirmation and settlement of all depository eligible transactions through such facilities or system including record-entry or certificated settlement.

(b) Settlement and delivery through registered clearing agency.

Good delivery of securities eligible to the records-entry system operated by a registered clearing agency between broker and dealers who are participants in such system and any other such participants are made by entries in the records maintained by such registered clearing agency.

All trades by brokers and dealers in securities which are eligible to the record-entry system operated by a registered clearing agency are settled through such system in accordance with this Rule and the rules of the registered clearing agency.

(c) Definitions. For the purposes of this Rule

(1) "Registered clearing agency" means a clearing agency registered with the Commission pursuant to Section 40 of the RSA.

(2) "Depository eligible transactions" means trades in securities in respect of which affirmation and settlement can be performed through the facilities or services of a registered clearing agency.

(3) "Settlement agent" means a financial institution acting as the custodian of securities or funds or both of a person who has instructed such institution to deliver or receive securities or funds or both in order to effect the settlement of securities transactions on behalf and for the account of such person.

(d) Exemptions. The provisions of subparagraph (5) of paragraph (a) and paragraph (b) of this Rule do not apply to trades:

(1) To be settled outside the Philippines; or

(2) Where both broker or dealer and the settlement agent are not participant in the same registered clearing agency or the same facilities or system of such registered clearing agency required in respect of the trade.

RSA Rule 39-2 Endorsement Guarantee

To provide for the prompt clearing and settlement of transactions, the broker or dealer shall guarantee the signature of his customer by use of the term "endorsement of owner guaranteed" or simply "endorsement guaranteed" on the stock certificate or the stock power. The use of these terms shall mean the genuineness of the endorsement thereon and the guarantor shall be liable accordingly. (Replaces Rule 9 of 1974 Rules to Avoid Delays in the Issuance of Stock Certificate).

RSA Rule 40-1 Registration of Clearing Agencies

(a) An application for registration as a clearing agency, as defined in the Revised Securities ("Act"), or an amendment to any such application, shall be filed with the SEC ("Commission") on FORM 40-CA, in accordance with the instructions contained therein. One original and one conformed copy of the Form shall be filed.

(b) A filing fee of P3,000.00 and other fees shall be collected by the Commission upon filing of the application.

(c) After reviewing a filing of an application for registration as a clearing agency, or an amendment thereto, the Commission shall:

1) grant registration or approve the amendment;

2) require a change in the constituting documents, by-laws, contracts, rules or procedures to ensure their fair administration or to make them conform to the requirements of or otherwise further the purposes of the Act prior to further consideration of the application or amendment; or

3) deny registration or the amendment if:

i) the clearing agency is not organized in a manner and would not have the capacity and resources to enforce compliance with its constituting documents, by-laws, rules, contracts and procedures as proposed or amended; or

ii) the constituting documents, by-laws, contracts, rules and procedures or the amendment thereto would be inconsistent with provisions of the Act or with the development and operation of a prompt and accurate clearance and settlement system and the safeguarding of money and securities in its custody, within its control or for which it is responsible; or

iii) the application for registration or an amendment thereto is incomplete or inaccurate in any material respect or includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the application or amendment not misleading.

4) conditionally or unconditionally exempt registrant from the registration and other provisions of the Act or the rules or regulations thereunder.

(d) If any of the information reported on SEC Form 40-CA becomes inaccurate, misleading or incomplete or requires updating for any reason, including changes to rules, operating procedures, and the list of directors and officers, the registrant shall correct the information by filing an amendment within 10 calendar days after the date on which the information contained in the application became inaccurate, misleading or incomplete. Amendments to SEC Form 40-CA which update the registrant's list of officers and directors shall be deemed to satisfy Section 26 of the Corporation Code of the Philippines.

(e) On an annual basis, a registered clearing agency shall file with the Commission one signed original and four (4) copies of the audited balance sheet and statement of income and expenses, and all notes or schedules thereto within 105 days of the end of its fiscal year. Financial statements filed pursuant to this subsection shall be deemed to satisfy Section 141 of the Corporation Code of the Philippines.

RSA Rule 40-2 Registration of Transfer Agents

(a) No person shall act as a transfer agent for an issue which is listed on an exchange without being registered with the Commission in accordance with the provisions of this Rule.

(b) To apply for registration under this Rule, a transfer agent must:

(1) be a corporation or a partnership;

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

(2) have paid-up capital of at least P500,000.00 or more;

(3) have a partner or officer who is a certified public accountant; and

(4) have a signed agreement with the Philippine Central Depository, Inc. (PCDI)

(c) An application for registration as a transfer agent, or an amendment to any such application, shall be filed with the Commission on SEC Form 40-TA, in accordance with the instructions contained therein. One original and one conformed copy of the Form shall be filed.

(d) A filing fee of P3,000.00 and other fees shall be collected by the Commission upon filing of the application.

(e) If any of the information reported on SEC Form 40-TA becomes inaccurate, misleading, or incomplete or requires updating for any reason, such as changes in operating procedures and the list of directors and officers, the registrant shall file an amendment within ten calendar days after the date on which the information in the application became inaccurate, misleading, or incomplete.

(f) The SEC shall, by order, deny registration, place limitations on the activities, functions or operations of, suspend for a period not exceeding twelve (12) months, or revoke the registration of a transfer agent if the SEC finds, after notice and opportunity for hearing, that such order is in the public interest, that the registrant does not meet applicable qualifications, or that the transfer agent, whether prior or subsequent to registration has been found to:

(1) not be solvent or in sound financial condition,

(2) have violated or not have complied with the applicable provisions of the Revised Securities Act or the rules promulgated pursuant thereto, or any order of the Commission;

(3) have engaged in or be engaged in or about to engage in fraudulent transactions;

(4) be in any other way dishonest or not of good repute;

(5) not conduct its business in accordance with law or be engaged in a business that is illegal or contrary to government rules and regulations;

(6) have an officer, member of the board of directors or principal shareholder who is disqualified to be such an officer, director or principal shareholder;

(7) have a backlog of share certificate transfers which indicates an inability of the Registrant to fulfill its responsibilities as a transfer agent;

(8) have repeatedly or materially failed to comply with its procedures or those of a registered clearing agency; or

(9) have filed an application for registration or an amendment thereto which is incomplete or inaccurate in any material respect or which includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the application or amendment not misleading.

(g) A transfer agent must maintain in force an insurance policy known as a Financial Institution Bond in an amount and a coverage appropriate to the number and value of securities for which it acts as a transfer agent. A transfer agent must provide to the SEC upon request at any time a confirmation of the insurance evidencing such coverage and amounts.

(h) A transfer agent cannot be the auditor of an issuer for whom it acts as transfer agent.

(i) The provisions of the Corporation Code notwithstanding, an issuer whose securities are listed on an exchange

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

which acts as its own transfer agent shall establish a separate subsidiary to carry out its transfer agent activities.

(j) The procedures of a transfer agent are binding on and enforceable against issuers for which they act, registered securities holders and transferees who present securities for transfer. To minimize the issuance and movement of and to facilitate other dealings with those securities eligible to the operations of a registered clearing agency, a transfer agent and clearing agency shall jointly formulate and abide by written procedures addressing certificated and uncertificated securities issuance, transfers, cancellations, registration, confirmation and reconciliation of positions in securities, audit, replacement of lost securities, signature guarantees, delivery processes and turn around times.

(k) Every transfer agent registered pursuant to this Rule shall file the appropriate registration renewal form within 30 calendar days of June 1 of every year and pay to the Commission an annual renewal fee of P3,000.00 and other fees.
RSA Rule 40-3 Reports from Transfer Agents

(a) Annual Report. Every registered transfer agent shall file with the SEC an annual report on SEC Form 40-AR in accordance with the instructions contained therein within 105 days after the end of its fiscal year. Reports filed on SEC Form 40-AR shall be deemed to satisfy Section 141 of the Corporation Code of the Philippines. One original and one conformed copy of the Form shall be filed.

(b) Exception Report to SEC. For any security for which the transfer agent acts in that capacity, a transfer agent shall provide to the SEC within seven (7) days of the occurrence of any of the following events, a report detailing the reasons and circumstances for:

(1) any delay in the turnaround or processing of an issue, transfer or replacement of a security;

(2) any discrepancy between its records and those of the issuer and, if the securities are eligible to its operations, those of the registered clearing agency;

(3) any loss of securities reported to it; and

(4) its ceasing to perform transfer agent functions for any security.

(c) Periodic Reporting to Issuer. At regular intervals within each and every year and upon request by the issuer, a transfer agent shall supply the issuer, for whom it acts in that capacity, with the list of holders of its securities, as shown by the register of holders of securities, and the changes to the register of transfers, showing the name and registered address of, and the number or face value of the securities held by each such holder and supply any other statements, lists, entries, information and material concerning issues, transfers and cancellations of securities or any other material undertaken by the transfer agent in that capacity.

(d) Complaint Log. A record of all claims and complaints made to a transfer agent shall be kept by it at its principal office. The record shall contain:

(1) the name of the security holder and a description of the security;

(2) the date of the complaint or claim and a complete description thereof; and

(3) the steps taken by the transfer agent, the manner in which the complaint or claim is resolved and any subsequent action taken or to be taken by the holder or the transfer agent.

The record shall be open for inspection during normal business hours by the SEC and by any issuer with respect to securities issued by it.
RSA Rule 40-4 Reports from Clearing Agencies

If a registered clearing agency at any time becomes aware of any development relating to a Participant firm that leads such clearing agency to believe that 1) the firm has breached, is in breach or is about to breach the clearing agency's rules or procedures, or 2) the firm has experienced, is experiencing or is about to experience material operational or financial difficulties, which breach or difficulties may adversely affect the clearing agency's Participant firms, such registered clearing agency shall immediately notify the SEC and provide any documentation or evidence leading the clearing agency to such determination. (Replaces Old Rule 22 of the 1937 Provisional Rules).
RSA Rule 40-5 Records Retention by Transfer Agents

a) In addition to the records required to be maintained pursuant to Section 74 of the Corporation Code of the Philippines, every transfer agent shall make and retain for a period of five (5) years the following books and records relating to its transfer agent activities:

(1) its rules and procedures;

(2) policy of Financial Institution Bond coverage;

(3) exception reports filed with the Commission pursuant to RSA Rule 40-3;

(4) complaint log as required to be maintained under RSA Rule 40-3;

(5) reports to the issuers for whom the firm acts as transfer agent as required under RSA Rule 40-3;

(6) Annual report on SEC Form 40-AR.

(b) Every transfer agent shall make available any or all of its books and records upon request of an authorized representative of the Securities and Exchange Commission. Failure to do so shall result in an immediate suspension of the transfer agent's registration. Such suspension shall continue until such time as the books and records are made available to the Commission.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.