



Republic of the Philippines
Department of Finance
Securities and Exchange Commission

**THE 2016 RULES OF PROCEDURE OF THE
SECURITIES AND EXCHANGE COMMISSION**

Pursuant to the Securities Regulation Code (R.A. No. 8799), Corporation Code (B.P. Blg. 68), Presidential Decree No. 902-A, as amended, and other related laws, the Securities and Exchange Commission hereby promulgates the following rules of procedure to govern the actions and proceedings before it:

PART I.

GENERAL PROVISIONS

RULE I. TITLE, SCOPE AND CONSTRUCTION

SEC. 1-1. Title. - These Rules shall be known as the "The 2016 Rules of Procedure of the Securities and Exchange Commission".

SEC. 1-2. Scope and Coverage. - These Rules shall govern pleadings, practice and procedure before the Commission in all matters of hearing, investigation and proceedings within its authority. However, these Rules shall exclude those registration and accreditation matters which do not involve violations of laws and rules; and those requests for exemptive and similar reliefs, and other matters which are not governed by the these Rules and are expressly referred to in other applicable rules.

SEC. 1-3. Definitions. - For the purpose of these Rules, the following terms shall mean:

- a. *Adjudicative action or proceeding* shall refer to any proceeding involving the determination of rights between opposing parties or the granting of reliefs to parties within the powers of the Commission;
- b. *Administrative action or proceeding* shall refer to any proceeding involving the determination of any violation of laws, rules, regulations, circulars, and orders being enforced by the Commission and the imposition of appropriate penalties relative thereto;

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- c. *Commission* or *SEC* shall refer to the Securities and Exchange Commission;
- d. *Commission En Banc* shall refer to the highest governing body of the Commission composed of Commissioners appointed pursuant to the SRC acting as a collegial body;
- e. *Commissioner* shall refer to the Chairperson or any of the Commissioners of the Commission;
- f. *Corporation* shall also refer to a partnership, association or any other entity registered or licensed by the Commission;
- g. *Decision* shall refer to the whole or any part of the final disposition issued by a Special Hearing Panel, Operating Department, or the Commission *En Banc* pertaining to any matter within its authority;
- h. *Director of the Operating Department* shall refer to Head of the Operating Department or to the Head of the Special Hearing Panel when applicable;
- i. *Electronic Service* shall refer to the service by email on a person, party or his counsel of papers, orders, decisions and resolutions emanating from the Commission;
- j. *Hearing Officer* shall refer to any officer of the Commission duly assigned and/or authorized to conduct hearings or proceedings in an action filed before or initiated by the Commission;
- k. *Initial Investigation* shall refer to an inquiry or proceeding by the Operating Department that has authority over the subject matter to determine, through the exercise of the powers enumerated in Section 2-2, Rule II of Part II of these Rules, if there are sufficient grounds to warrant the commencement of an administrative action;
- l. *Laws* shall refer to those enforced by the Commission, such as Securities Regulation Code (R.A. No. 8799), Corporation Code (B.P. Blg. 68), Lending Company Regulation Act (R.A. No. 9474), Financing Company Act (R.A. 8556), other related laws, and other future laws the Commission is tasked to implement;

- m. *Letter or Order* shall refer to any directive, other than a Decision of the Operating Department or Commission *En Banc*;
- n. *Operating Department* shall refer to the Company Registration and Monitoring Department, the Enforcement and Investor Protection Department, the Corporate Governance and Finance Department, the Markets and Securities Regulation Department, the Office of the General Accountant, the Office of the General Counsel, or the Extension Offices;
- o. *Person* shall refer to an individual, or a corporation as defined in Section 1-3 (m) of these Rules, or such other entities falling within the authority of the Commission;
- p. *Petitioner* shall refer to the person who filed the Verified Petition in an adjudicative action or proceeding;
- q. *Pleading* shall refer to any paper filed with the Commission in relation to an administrative or adjudicative action. This shall include a Verified Answer to Formal Charge in Administrative Actions, and a Petition and an Answer in Adjudicative Actions;
- r. *Respondent* shall refer to the person who is subject to a Formal Charge in an administrative action or proceeding, or the defending party in the adjudicative action or proceeding; and
- s. *Special Hearing Panel* shall refer to a panel of SEC officers duly designated or created pursuant to these Rules.

SEC. 1-4. Construction of Rules. -

a. These Rules shall be liberally construed and administered to promote public interest, to secure a just, prompt, expeditious, and inexpensive determination of every action and proceeding before the Commission and to carry out the objectives of the laws it is mandated to implement.

b. In any particular proceeding, to the extent that there is a conflict between these Rules and a procedural requirement contained in any law, the latter shall control.

c. For purposes of these Rules:

1. Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate; and
2. Any use of a masculine, feminine or neutral gender encompasses such other genders as would be appropriate.

SEC. 1-5. Suspension of Rules in Exceptional Cases. - In the broader interest of justice and in order to best serve public interest, the Commission may, in any particular matter, exempt it from these Rules in exceptional cases and apply such suitable, fair and reasonable procedure to improve the delivery of public service and to assist the parties in obtaining a speedy and judicious disposition of cases.

SEC. 1-6. Suppletory Application of the Rules of Court. - The pertinent provisions of the Rules of Court may, in the interest of expeditious dispensation of justice and whenever practicable, be applied by analogy or in a suppletory character and effect.

RULE II. VENUE AND AUTHORITY

SEC. 2-1. Venue of Actions. - All actions brought under these Rules shall be commenced and heard at the principal office of the Commission in Metro Manila.

Whenever practicable or when it serves public interest, a complaint or petition may be filed in the extension office which shall conduct the proceedings of the action, unless the Commission *En Banc* orders the transfer of the proceedings to Metro Manila or another extension office.

SEC. 2-2. Authority of Operating Departments over cases filed before the Commission. - For purposes of these Rules, the Operating Departments shall have original jurisdiction to hear and decide cases falling within their respective authorities, as specified in the succeeding paragraphs.

a. The **Company Registration and Monitoring Department (CRMD)** shall exercise authority over the following:

1. Petition for revocation of Certificate of Registration on, and petition to lift revocation orders arising from, any of the following grounds:

- a) Fraud in the procurement of certificate of registration;
- b) The corporation fails to formally organize and commence operation within two (2) years from the date of its incorporation;
- c) Continuous inoperation for a period of at least five (5) years;
- d) Failure to file its by-laws within the prescribed period; and
- e) Failure to file or register any of the following for a period of at least five (5) years: (a) Financial Statements; (b) General Information Sheet; and (c) Stock and Transfer Book or Membership Book.

2. Petition or opposition concerning the articles of incorporation, by-laws, certificates of approval thereof, and other registration or reportorial requirements of ordinary corporations, which do not involve violation of laws and rules, such as but not limited to the following:

- a) Failure to comply with the requirements of the Corporation Code;
- b) Correction of entries therein;
- c) Matters with respect to the payment in the form of property other than cash for the subscription of shares that is used as part of the paid-up capital of a corporation;
- d) Withdrawal of license of a foreign corporation to do business in the Philippines; and
- e) Matters concerning the status of a corporation as either registered, suspended, or revoked;

3. Petition or opposition concerning the use or reservation of a corporate name; and

4. Petition for the voluntary dissolution of a corporation not prejudicial to the interests of creditors.

b. The **Corporate Governance and Finance Department (CGFD)** shall exercise authority over the following:

1. Administrative and adjudicative actions involving any of the following regulated entities:
 - a) Registered Mutual Fund Companies (MFC);

- b) Registered Exchange Traded Funds (ETF);
- c) Registered Issuers of resorts or club shares, membership certificates and time shares;
- d) Public Companies, excepted publicly-listed companies;
- e) Registered Financing Companies and Lending Companies; and
- f) Foundations and other non-stock non-profit corporations as may be assigned by the Commission En Banc;

2. All matters relating to Corporate Governance for the following covered companies:

- a) Publicly-Listed Companies;
- b) Registered Issuers;
- c) Public Companies; and
- d) Registered Financing Companies.

c. The **Enforcement and Investor Protection Department (EIPD)** shall exercise authority over persons and entities, whether under the primary authority of other Operating Departments, involved in the following:

1. Investigations and administrative actions involving the following:
 - a) Market manipulation;
 - b) Insider trading;
 - c) Selling, offering or transacting unregistered securities by entities without secondary license;
 - d) Ultra vires acts committed in violation of the Corporation Code;
2. Petitions for revocation¹ of corporate registration in all cases, except those which fall under the original authority of CRMD;
3. Administrative actions for fraudulent transactions involving securities;
4. Administrative actions for all other violations under PD 902-A, except those cases which fall under the original authority of other Operating Departments;

¹ Revocation refers to involuntary dissolution of corporate registration pursuant to Section 121 of the Corporation Code.

5. All other matters involving investor protection filed by the public, referred by self-regulatory organizations, or referred by other Operating Departments after initial evaluation or findings that there is a possible violation of laws, rules or regulations that the Commission implements but do not fall under their respective original authority.

d. The **Extension Offices** shall exercise authority over the following:

1. Enforcement and investigation proceedings *motu proprio*, and/or in coordination with the Operating Departments, over persons and entities within their respective geographical jurisdiction; and

2. Petitions for corrections of entries in the Articles of Incorporation and/or By Laws of entities within their respective geographical jurisdiction.

e. The **Market and Securities Regulation Department (MSRD)** shall exercise authority over the following actions and matters committed in the regular course of operations:

1. Administrative and adjudicative actions involving securities markets and market institutions such as:

- a) Exchanges;
- b) Alternative Trading Systems;
- c) Over the Counter Markets and other Trading Markets;
- d) Self Regulatory Organizations;
- e) Clearing Agencies;
- f) Securities Lending Agencies;
- g) Depositaries;
- h) Custodians;
- i) Central Trade Reporting Systems;
- j) Registrar of qualified buyers; and
- k) Other Securities Related Organizations.

2. Administrative and adjudicative actions involving intermediaries and market professionals such as:

- a) Brokers/Dealers, unless subject to the authority of the Self Regulatory Organizations;
- b) Government Securities Eligible Dealers;
- c) Government Securities Brokers;
- d) Associated Persons and Salespersons of Brokers Dealers;
- e) Transfer Agents;
- f) Investment Houses;
- g) Investment Company Advisers;
- h) Mutual Fund Distributors;
- i) Compliance Officers and Certified Investment Solicitors of Investment Company Advisers / Mutual Fund Distributors; and
- j) Other Securities Market Participants.

3. Administrative and adjudicative actions involving publicly-listed companies and registered issuers not falling under the authority of the CGFD.

4. All matters relating to Corporate Governance over the foregoing covered regulated entities under its authority, except for registered issuers within the authority of CGFD and Publicly-Listed Companies.

f. The **Office of the General Accountant (OGA)** shall exercise original authority over the following:

1. All administrative actions relative to the Audited Financial Statements submitted by corporations; and
2. All administrative actions relative to non-compliance with Rules applicable to independent professionals or experts engaged by corporations (e.g. auditing firms, external auditors, appraisers or valuers and credit agencies).

g. The **Office of General Counsel (OGC)** shall exercise original authority over the following:

1. Petitions for voluntary dissolution where creditors are affected; and
2. Petitions requesting the calling of a stockholders or members' meeting

h. **All Operating Departments and Extensions Offices** shall have universal jurisdiction over the following:

1. Issuance and implementation of writs of execution in administrative and adjudicative actions within its authority; and
2. Such other matters as may be delegated by the Commission En Banc or as may be authorized by law.

SEC. 2-3. Creation of a Special Hearing Panel.— In cases involving public interest and falling within the authority of multiple Operating Departments requiring close coordination between them, the Commission En Banc, in its discretion, may create a Special Hearing Panel composed of at least three (3) members from these Operating Departments for the conduct of hearing, investigation and proceedings.

The Commission En Banc shall designate the Head of the Special Hearing Panel who shall be authorized to sign all interlocutory orders so issued. Matters heard by a Special Hearing Panel shall be decided or resolved with the concurrence of the majority of its members.

RULE III. APPEARANCE AND PLEADINGS BEFORE THE COMMISSION

SEC. 3-1. Appearance and Withdrawal of Counsel. - The petitioner or the respondent in these proceedings or person being investigated, as the case may be, may be represented by counsel who shall file a written entry of appearance.

The written entry of appearance may include the express consent, if any, of the party or counsel to the electronic service of orders, decisions, resolutions, and other papers emanating from the Commission. In such case, the consenting party or counsel shall provide the email address at which he agrees to accept such service.

Any withdrawal of counsel shall be made in accordance with Section 26, Rule 138 of the Rules of Court and any amendments thereto.

SEC. 3-2. Form of Pleadings. – All pleadings filed shall be written, printed or typed on bond paper in English or Filipino.

Each pleading shall contain a caption stating the Operating Department that has authority over the action, or Commission *En Banc* (in the case of appeals), the title of the case, the case number, and the violation or offense involved, if any.

No pleading shall be accepted by the Commission unless it conforms to the formal requirements provided for in these Rules.

SEC. 3-3. Prohibited Pleadings. - The following pleadings or any submission filed or made under a similar guise or title shall not be allowed:

- a. Motion to Dismiss;
- b. Motion for a Bill of Particulars;
- c. Motion for New Trial, or Reopening of Trial;
- d. Petition for relief from judgment;
- e. Motion for extension of time to file pleadings, affidavits, or any other submission of similar intent;
- f. Motion to declare a party in default;
- g. Motion for postponement and any other motions of similar intent; and
- h. Motion for leave to amend pleadings.

Should one be filed, said prohibited pleadings or submissions shall be automatically expunged from the records of the case. However, the Operating Department may consider said pleading or submission as filed in meritorious cases. In such cases, the Operating Department shall order other parties to the action to file their comments or oppositions thereto.

SEC. 3-4. Efficient Use of Paper Rule. - Efficient Use of Paper Rule issued by the Supreme Court under A.M. No. 11-9-4-SC with respect to all pleadings, motions, and similar papers intended for the Commission's consideration and action shall be applicable.

RULE IV. SERVICE AND FILING

SEC. 4-1. Manner and Proof of Filing. -

a. Manner of Filing. - The filing of pleadings and all other papers with the Commission shall be made in the following manner: (i) by presenting the original copies thereof personally to the Operating Department which has authority over the action, or the Commission *En Banc*, through the OGC; or (ii) by sending them by registered mail or by

private courier addressed to the Operating Department which has authority over the action, or the Commission *En Banc*, through the OGC.

In the *first case*, the Operating Department, or the OGC, on behalf of the Commission *En Banc*, shall stamp the date and hour of filing. In the *second case*, the date of the mailing of pleading or any other papers or payments or deposits, as shown by the post office stamp on the envelope or the registry receipt or the acknowledgement receipt issued by the private courier company, shall be considered as the date of their filing, payment or deposit in the Commission. The envelope, registry receipt and acknowledgement receipt, as the case may be, shall be attached to the record of the case.

Any person who filed by mail or private courier a pleading or paper with the Commission in an administrative action or adjudicative action shall immediately inform the Operating Department, or the OGC, on behalf of the Commission *En Banc*, about the fact of mailing and the timely filing of the pleading, attaching proof thereof. Failure to comply with this Rule may be a cause to consider the pleading or paper as not filed.

b. Proof of Filing. The filing of a pleading or paper shall be proved by its existence in the record of the case. If it is not in the record, but it is claimed to have been filed personally, the filing shall be proved by the written or stamped acknowledgement of its filing by the Operating Department or the Commission *En Banc*, through the OGC, on a copy of the same; if filed by registered mail or through private courier, by the registry receipt or the acknowledgement receipt issued by the courier company, as the case may be, and by the affidavit of the person who did the mailing, containing a full statement of the date and place of depositing the mail in the post office in a sealed envelope addressed to the Operating Department, or the Commission *En Banc*, through the OGC, with postage fully prepaid, and with instructions to the postmaster or private courier company to return the mail to the sender after ten (10) days if not delivered.

SEC. 4-2. Manner, Completeness and Proof of Service of Service of Papers Emanating from the Commission. -

a. To Individuals. - Papers, orders, including formal charges, decisions and resolutions emanating from the Commission under these Rules shall be served to the individual or to his agent authorized by appointment to receive such order.

Service to an individual or his authorized agent shall be made or effected (i) by handing a copy thereof to him in person; (ii) by leaving a copy at his principal office or

regular place of business with a clerk or some other person in charge thereof; (iii) by leaving a copy at his dwelling house or residence with some person of suitable age and discretion then residing therein; (iv) by sending a copy thereof addressed to him in a sealed envelope by registered mail or by private courier at his last known or registered office or residence address, with instructions to the postmaster or the courier to immediately provide proof of delivery, and obtaining a proof of service; (v) by sending him a copy at his email address if he consented expressly in writing either in the entry of appearance or written explanation or (vi) when allowed by these Rules, by publication of such order, decision or resolution of the Commission once in a newspaper of general circulation and in such places, including the Commission's website (*www.sec.gov.ph*).

When an individual or his duly authorized agent has been ordered to file his pleading by publication and has failed to appear in the action, final orders, decisions or resolutions against him shall be served upon him also by publication and by registered mail at his last known or registered address.

b. To Corporations, Partnerships, Associations or Entities. –Service of papers, orders, including formal charges, decisions and resolutions emanating from the Commission under these Rules to a juridical person shall be done by tendering a copy of the same to its president, managing partner, general manager, corporate secretary, treasurer, compliance officer, in-house counsel, director or trustee, incorporator, or such other officer identified in the latest available records filed with the Commission, its managing or general agent or any other agent authorized by appointment, in any method specified in paragraph (a) of this Section.

c. To Foreign Corporations Doing Business in the Philippines. - Service of papers, orders, including formal charges, decisions and resolutions emanating from the Commission under these Rules to a foreign corporation doing business in the Philippines may be made on its resident agent designated in accordance with existing laws for that purpose, or, if there is no such agent, the Commission shall transmit a copy of the same to the home office of said foreign entity by registered mail, by facsimile, by any other electronic means in accordance with existing laws, or by such other means as the Commission may, in its discretion, direct.

d. Last known or registered address. – For purposes of service of papers, orders, formal charges, decisions and resolutions emanating from the Commission, it shall be sufficient to serve them to the last known or registered address with the Commission of the person being served.

e. Completeness of service. – Service shall be deemed complete when (i) it is personally received by him or his authorized agent; (ii) it is received by the clerk or some other person in charge thereof at his principal office or regular place of business; (iii) it is received by some person of suitable age and discretion then residing at his dwelling house or residence; (iv) it is received by him in a sealed envelope by registered mail or by courier at his office or residence address or after five (5) days from the date he received the first notice of the postmaster or the private courier, whichever date is earlier; or (v) in the case of electronic service, upon transmission but is not effective if the person serving it learns that it did not reach the person to be served.

f. Proof of service. – Proof of service may consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. It shall specify the papers served and the name of the person who received them, and shall be sworn to when made by a person other than the server of the Commission.

If the service is by registered mail or by private courier, proof thereof shall consist of an affidavit of the person who undertook the mailing stating facts showing compliance with paragraph (a) (iv) of this Section, and the registry receipt issued by the mailing office, or any proof of delivery issued by the private courier. The registry return card or any other proof of delivery shall be filed immediately upon its receipt by the sender, or in lieu thereof, the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

If electronic service is resorted to, the proof thereof shall consist of an affidavit of the person who undertook such service by stating the following: (a) the email address that was employed to transmit the email; (b) the date and time of the electronic service; (c) the name and email address of the person served; and (d) that the document was served electronically.

Service by publication in a newspaper of general circulation or SEC website may be proven by the respective affidavit of the editor, business/advertising manager or SEC website administrator, to which affidavit a copy of the publication shall be attached, and if applicable, by an affidavit showing deposit of a copy of the order, decision or resolution and/or its attachments in the post office directed to the party by registered mail to his last known or registered address.

In case any paper, order, formal charge, decision or resolution emanating from the Commission is returned unserved at the last known or registered address, proof of service shall consist of the affidavit of the person serving or the person who undertook the mailing, as the case may be, stating facts surrounding such service, including a full statement of the date, place and manner of service, if applicable, the name of the addressee, and the reason for the return of the paper, order, formal charge, decision or resolution. It shall be accompanied by the unserved paper, order, formal charge, decision or resolution of the Commission and the envelope containing the same, and by any proof showing that it is the last known or registered address of the person being served.

SEC. 4-3. Manner, Completeness and Proof of Service of Pleadings on Other Parties to the Action. -

a. **Manner of Service.** - Except for the initiatory pleading in an adjudicative action, copies of all pleadings and other papers filed by one party shall be furnished by said party to the other parties in the action in the manner provided below, with proof of service.

Service of pleadings and other papers shall be made or effected (i) by handing a copy thereof to the other party or his authorized agent in person; or (ii) by leaving a copy at his principal office or regular place of business with a clerk or some other person in charge thereof; or (iii) by leaving a copy at his dwelling house or residence with some person of suitable age and discretion then residing therein; or (iv) by sending a copy thereof addressed to him in a sealed envelope by registered mail or by courier at his office or residence address, with instructions to the postmaster or courier to immediately provide proof of delivery, and obtaining a proof of service, or if undelivered, to return the mail to the sender after ten (10) days. If service of pleadings cannot be made through any of the foregoing modes, the party required to serve shall submit to the Commission proof of failure of service. Service shall be deemed complete at the time of such submission.

Service of pleadings and other papers to a juridical person shall be made in the same manner as specified in paragraph (b) of this Section.

b. **Completeness of service.** - Service shall be deemed complete when (i) it is personally received by the other party or his authorized agent; (ii) it is received by the clerk or some other person in charge thereof at his principal office or regular place of business; (iii) it is received by some person of suitable age and discretion then residing at his dwelling house or residence; or (iv) it is received by him in a sealed envelope by registered mail or by courier at his office or residence address or after five (5) days from

the date he received the first notice of the postmaster or the private courier, whichever date is earlier.

c. Proof of service. – Proof of service may consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. It shall specify the papers served and the name of the person who received them, and shall be sworn to when made by a person other than the server of the Commission.

If the service is by registered mail or by private courier, proof thereof shall consist of an affidavit of the person who undertook the mailing stating facts showing compliance with paragraph (a) (iv) of this Section, and the registry receipt issued by the mailing office, or any proof of delivery issued by the private courier. The registry return card or any other proof of delivery shall be filed immediately upon its receipt by the sender, or in lieu thereof, the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

SEC. 4-4. Service of Orders, Decisions and Other Papers on Counsel. – When any person has appeared by counsel, service of orders, formal charge, decisions, resolutions, pleadings and other papers shall be made upon his counsel of record, unless the Commission has ordered the service upon the person subject of the investigation. Where one counsel appears for several parties, he shall only be entitled to one copy of any order, decision, resolution or other papers served upon him.

RULE V. COMPUTATION OF PERIOD FIXED IN THESE RULES

SEC. 5-1. Computation of Period. – In computing any period of time prescribed in or allowed by these Rules, the first day of the period shall be excluded and the last day included. In case the last day falls on a Saturday, Sunday, or a legal holiday, the deadline for filing shall be the first working day following the Sunday or legal holiday, as the case may be.

Days mentioned in these rules shall be understood to refer to calendar days.

PART II.

INVESTIGATION PROCEEDINGS IN GENERAL AND ADMINISTRATIVE ACTION

RULE I. SCOPE AND APPLICATION

SEC. 1-1. Scope and Application of the Rules. - The provisions in Part II of these Rules shall apply only in any investigation being conducted for possible violation of laws, rules, regulations, circulars or orders being implemented by the Commission and for imposition of corresponding administrative penalties as well for the possible institution of a criminal action with the Department of Justice. These Rules do not apply to adjudicative actions or proceedings before the Commission, except as otherwise provided herein.

RULE II. INVESTIGATION PROCEEDINGS IN GENERAL

SEC. 2-1. Commencement of Investigation Proceedings. - An investigation for possible violation of laws, rules, regulations, circulars and orders being implemented by the Commission may be commenced by the Operating Department that has authority over the subject matter, either *motu proprio*, or upon receipt of a complaint from the public, a referral from a government instrumentality or a self-regulatory organization, or an anonymous tip.

SEC. 2-2. Investigative Powers of the Operating Departments. - During the initial investigation, the Operating Department has the obligation to establish sufficient grounds that warrants the commencement of an administrative action, which is an action that determines whether the laws, rules, regulations, circulars and orders being implemented by the Commission are being, or about to be, or were violated, or are being abetted or aided to be violated by the person being investigated. Pursuant thereto, the Operating Department may exercise any of the following powers:

- a. Monitor compliance by the corporation or such other persons with the laws, rules, regulations, circulars and orders being implemented by the Commission, and request the submission of certain documents relevant and material to the inquiry;
- b. Administer oaths and affirmations, and issue subpoena ad testificandum to compel attendance of a person subject of the investigation and witnesses;

issue subpoena duces tecum for the production of any book, paper, correspondence, memorandum and other records which the Commission deems relevant and material to the inquiry;

- c. Hold conferences and interviews with the complainant, possible witnesses, person being investigated, and other relevant persons;
- d. Conduct surveillance, ocular inspection, audit, and perform other visitorial powers of the Commission;
- e. Seek assistance from other government agencies and instrumentalities in the conduct of such investigation or proceedings;
- f. Cite in contempt the person being investigated, his counsel or any person in accordance with these Rules and the pertinent provisions of the Rules of Court;
- g. Require any person to file a statement in writing as to all facts and circumstances concerning the matter to be investigated; and
- h. Perform such other acts necessary in the conduct of such investigation or proceedings.

The Operating Department may request another Department to provide technical assistance within its expertise on a matter subject of and relevant to the investigation or proceeding.

Further, that any person requested or subpoenaed to produce documents or testify in any investigation shall simultaneously be notified in writing of the purpose of such investigation.

SEC. 2-3. Investigative Discretion. - The Operating Department shall not be bound by the contents of the complaint, tip or referral, and has full discretion to expand its investigation based on the evidence gathered.

SEC. 2-4. Confidentiality of Investigation Proceedings. - Any information, document or records obtained by the Commission in the course of any investigation or examination shall be deemed non-public, unless otherwise required by any other pertinent law or by the Operating Department or the Commission *En Banc*.

SEC. 2-5. Effects of Withdrawal of a Complaint. - Withdrawal of a complaint under Part II does not automatically result in the outright dismissal of the investigation, nor discharge the person subject of the investigation from a possible imposition of any administrative sanction or penalty when there is merit to the charges, or where there is documentary evidence which would tend to establish a prima facie case warranting the continuation of the investigation.

SEC. 2-6. Termination of Investigation. - The Operating Department may, in its discretion, terminate an investigation based on any of the following grounds:

- a. The Operating Department or the Commission does not have the jurisdiction to act over the subject matter of the investigation; or
- b. The Operating Department finds no sufficient ground to warrant the commencement of an administrative action.

If the investigation is initiated through a complaint or referral, the Operating Department shall issue a letter or order citing the ground for the termination of investigation, and the reason or basis for such termination.

A letter or order terminating the investigation based on the above-mentioned grounds shall be final and unappealable. In cases where the termination of the investigation is based on subparagraph (b) of this Section, the same is terminated without prejudice.

SEC. 2-7. Actions that may be taken after investigation. - The Operating Department may, in its discretion, take one or more of the following actions after resolution of the investigation:

- a. Initiate an administrative action for the imposition of corresponding administrative sanctions or penalties;
- b. Continuously monitor compliance by the corporation or such other person with the laws, rules, regulations, circulars and orders being implemented by the Commission; or

- c. Refer the matter to the Commission En Banc, and secure the latter's approval of the request made by domestic and foreign governmental authorities or foreign securities authorities, self-regulatory organizations, and other persons or entities, for access of files in relation to the investigation.

SEC. 2-8. Criminal complaints for Investigation. - In the case of a criminal complaint for violation of the laws, rules, regulations, circulars and orders being implemented by the Commission, such complaint must first be filed with the Operating Department that has authority over the subject matter. After investigation, the Operating Department shall present its complete findings with its recommendations to the Commission *En Banc*, who will decide if there is basis to file a criminal action. If there is basis to file a criminal action, the Commission En Banc shall refer the case to the EIPD for the preparation of the necessary criminal complaint and filing with the Department of Justice.

RULE III. ADMINISTRATIVE ACTION

SEC. 3-1. Commencement of Administrative Action. - An administrative action filed under these Rules shall be commenced (i) upon the issuance of a Formal Charge by the Operating Department that has authority to act over the subject matter, or (ii) upon the issuance of an ex-parte cease and desist order by the Commission En Banc.

SEC. 3-2. Formal Charge. - If the Operating Department finds sufficient grounds that warrants the commencement of an administrative action, which is an action that determines whether the laws, rules, regulations, circulars and orders being implemented by the Commission are being, or about to be, or were violated, or are being abetted or aided to be violated by the person to whom it is issued justifying the imposition of an administrative sanction or penalty against such person, the said Operating Department shall issue a Formal Charge. The person subject of the Formal Charge shall be referred as *respondent*.

The Formal Charge shall contain a specification of charge/s, a brief statement of material or relevant facts, accompanied by certified true copies of the documentary evidence, if any, sworn statements covering the testimony of witnesses, and a directive to file a Verified Answer pursuant to Section 3-3, Rule III of Part II, in not less than fifteen (15) days from receipt thereof.

SEC. 3-3. Verified Answer to the Formal Charge. - Within fifteen (15) days from receipt of the Formal Charge, the respondent shall file an Answer, which shall either be verified by a statement therein, or by attaching a separate affidavit, which states that the respondent has read the Formal Charge and that the allegations in the Answer are true and correct of his personal knowledge or based on authentic records. An answer or affidavit, containing a verification based on "information and belief," or upon "knowledge, information and belief," or lacking a proper verification, shall be treated as an unsigned answer.

The Verified Answer may contain the following: (i) facts or circumstances relevant and necessary to explain why such person shall not be held liable for the alleged violation of the laws, rules, regulations, circulars or orders being implemented by the Commission; (ii) the legal grounds on which such Answer is based; (iii) the supporting documents and/or evidence, if any, to support its claims or arguments; (iv) the express consent, if any, of the respondent or his counsel to the electronic service of papers, orders, decisions and resolutions emanating from the Commission; and (v) such other matters it deems necessary to include.

In the case of (iv) above, the respondent or his counsel, as the case may be, shall state the email address at which he agrees to accept such service.

SEC. 3-4. Supplemental Pleading. - Upon the order of the Operating Department, a supplemental pleading may be filed by the respondent for the purpose of clarifying and supplementing facts, issues and other matters that are relevant and necessary to the proceedings, including but not limited to those that are raised after the filing of the Verified Answer.

SEC. 3-5. Clarificatory Conference. - Before the rendition of a decision, the Operating Department, in its discretion, may conduct a clarificatory conference for the purpose of ascertaining facts, issues and other matters necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents pertinent thereto.

SEC. 3-5. Decision. - A decision shall be rendered by the Operating Department pursuant to Part IV of these Rules.

RULE IV. CEASE AND DESIST ORDERS AND INJUNCTIONS

SEC. 4-1. How commenced. – An action for the issuance of a CDO or injunction may be commenced upon the filing of an application with the Commission En Banc, through the OGC, by any Operating Department, either *motu proprio* or upon a verified complaint by the public, after conducting a proper investigation or verification, if there is a finding that the grounds for the issuance of the CDO or injunction are present.

The application for the issuance of a CDO and/or injunction shall specify (a) the ground and the law, rules and regulations relied upon for such issuance; (b) the acts constituting the basis for such issuance; (c) the name, capacity and address of the person found to have or about to have committed or has aided or abetted the commission of such acts; and (d) the evidence and documents supporting and relevant to the issuance of a CDO or injunction.

SEC. 4-2. Effect of the Issuance of a CDO. — Upon the issuance of the CDO by the Commission En Banc, the CDO shall be immediately executory until it is lifted pursuant to the next section. However, the CDO will not be suspended by the filing of a petition to lift the CDO.

SEC. 4-3. Procedure to Lift the CDO — A CDO may be lifted under any of the following circumstances:

a. For a CDO issued ex-parte under Sec. 53.3 of the SRC, the same is automatically lifted after ten (10) days from receipt of the CDO by the person subject thereof;

b. For a CDO issued ex-parte under Sec. 64 of the SRC and other special laws, the same may be lifted upon filing by the person subject thereof of a verified motion to lift the CDO within five (5) days from receipt of said Order. Said motion to lift shall be set for hearing by the Commission En Banc not later than fifteen (15) days from its filing, and the resolution thereof shall be made not later than ten (10) days from the termination of the hearing. If the Commission fails to resolve the request within the period herein prescribed, the CDO shall automatically be lifted;

c. In paragraph (b) of this Section, if the Commission En Banc denies the Motion to Lift, or if the person subject of the CDO fails to file the appropriate pleading within the period prescribed in these Rules, the CDO shall be deemed permanent, and can only be lifted by the Commission En Banc in its own discretion and upon a finding that the grounds for the issuance of the same no longer exist or the objective of the CDO of protecting the public from harm or fraud has already been accomplished.

SEC. 4-4. Resolution of the Motion to Lift CDO. – The Commission En Banc shall issue a resolution on the motion to lift CDO in such a manner that the parties to the proceedings can know the various issues involved and the reason for the decision rendered.

SEC. 4-5. CDO issued before or during Investigation. — The issuance of a CDO prior to or during a parallel investigation into the unlawful activities of the person subject thereof shall not be interpreted to prejudice the same. The investigation by the appropriate Operating Department shall be treated as a separate and distinct proceeding from the CDO proceeding.

RULE V. SETTLEMENT OFFERS

SEC. 5-1. Settlement Offers. - Any person who is the subject of an investigation which may ripen into an administrative action, or any person already subject of an administrative action, may, at any time, propose in writing to the Director of the EIPD an offer of settlement under SRC Rule 55.1.

Further, the following cases shall not be the subject of a settlement offer:

- a. Non-filing of required reports;
- b. Late-filing of required reports;
- c. Cases involving the Foreign Investments Act of 1991;
- d. Fines for violation of the Corporation Code; and
- e. Violations of the Revised Penal Code and special laws.

SEC. 5-2. Form and Content of Settlement Offer. – An offer of settlement shall be in writing and signed by the person making the offer. If the proposer is a juridical person, the proper board resolution certified by the corporate secretary shall be attached to the offer. Further, an offer of settlement shall state that it is being made pursuant to Section 55 of the SRC and SRC Rule 55.1, and shall recite or incorporate as part of the offer the provisions of SRC Rules 55.1.3.4 and 55.1.3.5.

In those cases which have been appealed to the Commission En Banc, the proposer shall also file the necessary manifestation with the Commission En Banc informing the latter that it has filed an offer of settlement with the EIPD.

Upon submission of an offer of settlement, the proposer shall simultaneously tender the amount offered either in cash, manager's check or cashier's check.

SEC. 5-3. Criteria for Settlement Offer. - In the evaluation of an offer of settlement, the Director of the EIPD, upon consultation with the handling staff/team, shall take into consideration the following:

- a. The act or omission involved fraud;
- b. The gravity of the offense;
- c. The damage caused, actual or estimated, if any;
- d. The time and other resources spent by or required of the Commission on the case;
- e. The amount of the imposable administrative penalty and the financial capacity of the proposer to pay the same;
- f. The level of cooperation of the proposer in the investigation or proceedings;
- g. The proposer has been found to have previously violated any laws or rules enforced by the Commission;
- h. The evidence of guilt or wrongdoing is strong;
- i. Public interest; and
- j. Other meritorious considerations.

RULE VI. REDUCTION OF AN ADMINISTRATIVE PENALTY

SEC. 6-1. Reduction of Administrative Penalty. Whenever applicable, each Operating Department may reduce the administrative penalty imposed for meritorious reasons in accordance with the relevant Memorandum Circulars, orders and other issuances, which is, however, subject to the approval of the Commission *En Banc* in exceptional cases.

PART III.

ADJUDICATIVE ACTION

RULE I. SCOPE AND APPLICATION

SEC. 1-1. Scope and Application of the Rules. - The provisions in Part III of these Rules shall apply only in adjudicative actions before the Commission.

RULE II. PARTIES

SEC. 2-1. Who may be Parties. - Only natural or juridical persons or entities authorized by law or a party in interest acting through an attorney-in-fact, where applicable, may be parties to an adjudicative action before the Commission.

SEC. 2-2. Parties in Interest. - All adjudicative actions filed with the Commission must be pursued and defended in the name of the real party in interest. All persons who have an interest in the subject of an action and in obtaining the relief demanded shall be joined as complainants. All persons who claim an interest in the controversy, or the subject thereof which is adverse to that of the complainant, or is necessary for a complete resolution or settlement of the action shall be joined as respondents.

SEC. 2-3. Intervention. - A natural or juridical person may, at any stage of the proceedings, be permitted by the Commission En Banc, the Director of the Operating Department, or the Special Hearing Panel, as the case may be, to intervene in an adjudicative action if he has a legal interest therein or when he is so situated as to be adversely affected by the decision of the Commission.

The said party may file a motion to intervene or oppose the adjudicative action, stating therein the reason for his intervention or opposition and attaching therein all relevant supporting documents and evidence.

Said motion, if allowed, may be treated as a petition-in-intervention. The Commission En Banc, the Director of the Operating Department, or the Special Hearing Panel, as the case may be, may require the original parties to the action to answer or comment on the intervention as may be warranted by the circumstances, or require them to submit their arguments in their respective position papers.

An answer to the intervention, when so required, should be filed within ten (10) days from receipt of the corresponding order.

RULE III. COMMENCEMENT OF AN ADJUDICATIVE ACTION

SEC. 3-1. How commenced. - An adjudicative action may be commenced by filing a verified petition, accompanied by any relevant documents, affidavits of merit and such other evidence as would reasonably tend to establish prima facie the truth of the

factual allegations contained therein, with the Operating Department that has jurisdiction over the subject matter.

SEC. 3-2. Pleadings Allowed. - The only pleadings that can be filed in any adjudicative action are the petition, answer, position paper and if applicable, motions in intervention.

The original and three (3) signed copies of the pleading shall be filed with the Operating Department that has jurisdiction over the subject matter. Copies of every pleading and other papers filed in connection with any action or proceeding before such Operating Department must be served on all other persons admitted to the action or proceeding, except for the petition or complaint which shall be furnished by the said Operating Department to the respondent.

All other pleadings shall be disallowed unless they are filed with leave of the Operating Department.

SEC. 3-3. Verification. - The petition and answer shall be verified in the same manner as the Verified Answer under Section 3-3, Rule III of Part II of these Rules.

SEC. 3-4. Non-Forum Shopping. - The petitioner shall certify under oath that: (i) he has not commenced any action or filed any petition involving the same subject matter or issues in any court, tribunal or agency and, to the best of his knowledge, no such other action is pending therein; (ii) if there is such other pending action, a complete statement of its present status; and (iii) if he should thereafter learn that the same or similar action has been filed or is pending, he shall report that fact within five (5) days from such knowledge to the Operating Department concerned.

Failure to comply with any of the foregoing requirements shall result in the dismissal without prejudice of the petition. The submission of a false certification or non-compliance with any of the undertakings enumerated in the immediately preceding paragraph shall constitute indirect contempt of the Commission and may give rise to the imposition of administrative and criminal sanctions. If the acts of the party or his counsel constitute willful forum shopping, the same shall be considered a justifiable ground for the summary dismissal with prejudice of the action and constitute direct contempt of the Commission with the attendant administrative and criminal consequences.

SEC. 3-5. Outright Dismissal of a Petition. - After an initial examination of the allegations in the petition and such evidence that may be attached to it, the Director of the Operating Department may dismiss outright the petition based on any of the following grounds:

a. The Commission or the Operating Department has no jurisdiction over the subject matter of the adjudicative action; or

b. The Operating Department finds insufficient evidence as would reasonably tend to establish *prima facie* the truth of the factual allegations contained therein, on the basis of the documents, affidavits and other evidence attached to the petition.

SEC. 3-6. Contents of a Verified Petition. - The petition shall contain the following: (i) the complete name and address of the parties; (ii) a concise statement of the ultimate facts constituting the cause of action; (iii) a brief statement of the right sought to be enforced; (iv) the law, rule or regulation on which the petition is based; (v) a summary of the petitioner's claims; (vi) a statement of the issues to be resolved; (viii) the affidavits of witnesses, if any and such other evidence establishing the facts relied upon; (ix) the express consent, if any, of the petitioner, or his counsel, of the electronic service of papers, orders, decisions and resolutions emanating from the Commission; and (x) the reliefs sought.

In the case of (ix) above, the consenting petitioner or his counsel, as the case may be, shall state the email address at which he agrees to accept such service.

SEC. 3-7. Verified Answer. - Within fifteen (15) days from the receipt of summons, the respondent shall file his verified answer to the petition and serve a copy thereof to the petitioner. The answer shall contain the affidavits of witnesses, if any, and such other evidence necessary to establish the facts relied upon.

The answer may include the express consent, if any, of the respondent or his counsel to the electronic service of papers, orders, decisions and resolutions emanating from the Commission. In which case, the respondent or his counsel shall provide the email address at which he agrees to accept such service.

SEC. 3-8. Effect of Failure to Answer. - If the respondent fails to answer the petition or the petition-in-intervention within the period fixed in these Rules, the Commission En Banc or the Director of the Operating Department, as the case may be, shall, *motu proprio*, proceed to render a judgment granting such relief as the petition or petition-

in-intervention and the evidence presented may warrant. The Director of the Operating Department may require the petitioner to submit additional evidence *ex parte*.

SEC. 3-9. Affidavits, Documents and Other Evidence. – The affidavits of the parties' respective witnesses, if applicable, documents, and other supporting evidence shall be attached to the appropriate pleading.

Supporting affidavits shall be made on personal knowledge, shall set forth such facts as will be admissible in evidence, and shall show affirmatively that the affiant is competent to testify on the matters stated therein.

SEC. 3-10. Docket Fee. – A docket fee shall be assessed by the Operating Department concerned for any initiatory pleading filed under these Rules in accordance with the Schedule of Fees² or any amendments thereto that shall form part of these Rules, and which fee shall be paid upon the filing of the subject pleading.

RULE IV. SUMMONS

SEC. 4-1. Issuance of Summons. – Upon the filing of the petition, the payment of filing fees and the determination by the Director of the Operating Department of its authority to act over the petition and of the sufficiency in substance of the petition, the Operating Department shall issue the corresponding summons.

SEC. 4-2. Contents of the Summons. – The summons shall be directed to the respondent under the seal of the Commission and shall contain the following: (i) the names of the parties to the action; (ii) an order to the respondent to file a verified answer responding to the allegations made in the petition within the period fixed by these Rules; and (iii) a notice that his failure to do so will cause the Director of the Operating Department to render a judgment granting such relief as the petition and evidence presented may warrant.

A copy of the petition, together with its supporting documents and other evidence, shall be attached to the original and each copy of the summons.

SEC. 4-3. Alias Summons. – If the summons is returned unserved on any or all the respondents, or is lost, one (1) alias summons in the same form as the original summons may be issued at the instance of the petitioner.

² SEC Memorandum Circular No. 09, series of 2004.

SEC. 4-4. By Whom Summons May Be Served. - The summons may be served by the designated server of the Commission.

SEC. 4-5. Service of Summons; Proof of Service; Voluntary Appearance. -

a. To Individuals. - Summons issued by the Commission under Part III of these Rules shall be served to the individual, or to his agent authorized by appointment or by law to receive the same.

Service to an individual or his authorized agent shall be made or effected through any of the following means: (i) by handing a copy thereof to him or his authorized agent in person; (ii) by leaving a copy at his principal office or regular place of business with a clerk or some other person in charge thereof; (iii) by leaving a copy at his dwelling house or residence with some person of suitable age and discretion then residing therein; or (iv) by sending a copy thereof addressed to him in a sealed envelope by registered mail or by private courier at his last known or registered office or residence address, with instructions to the postmaster or private courier to immediately provide proof of delivery, and obtaining a proof of service.

b. To Corporations, Partnerships, Associations or Entities. - Summons issued by the Commission under Part III of these Rules shall be served to a person other than a natural person by tendering a copy of the same to its president, managing partner, general manager, corporate secretary, treasurer, compliance officer, in-house counsel, director or trustee, incorporator, or such other officer identified in the latest available records filed with the Commission, its managing or general agent or any other agent authorized by appointment, in any method specified in paragraph (a) of this Section.

c. To Foreign Corporations Doing Business in the Philippines. - Service of summons issued by the Commission under Part III of these Rules to a foreign corporation doing business in the Philippines may be made on its resident agent designated in accordance with existing law for that purpose, or, if there is no such agent, the Commission shall transmit a copy of the same to the home office of said foreign entity by registered mail, by facsimile, by any other electronic means in accordance with existing laws, or by such other means as the Commission may in its discretion direct.

e. Service by Publication. - If the address of the respondent is unknown or, even if known, his whereabouts cannot be ascertained by diligent inquiry, service of summons

may, by leave of the Director of the Operating Department, be effected on him by publication of the petition once in a newspaper of general circulation and in such places as the Commission may determine, including the Commission's website (www.sec.gov.ph), and for such time as may be ordered. The publication expenses shall be for the petitioner's account.

If the respondent does not reside or is not found in the Philippines, service may, by leave of the Director of the Operating Department, be effected out of the Philippines by service in the manner provided for in paragraph (a) of this Section; or by publication of the petition once in a newspaper of general circulation in the Philippines and/or the country where the respondent may be found in such places as the Director of the Operating Department may order; provided that the petition and the order granting such leave shall be sent by registered mail to the last known address of the respondent.

Any order granting such leave shall specify reasonable time within which the respondent must answer, which shall not be less than thirty (30) days from the date of last publication, in the case of a resident respondent whose address is unknown or whose whereabouts cannot be ascertained; and not less than sixty (60) days from the date of the last publication, in the case of a non-resident respondent.

Any application for leave to effect service of summons by publication shall be made by motion in writing and supported by an affidavit of the petitioner or some person on his behalf, setting forth the grounds for the application.

f. Proof of service. - Proof of service of summons shall be made in accordance with Section 4-2 (g), Rule I of Part I of these Rules.

g. Voluntary Appearance. - The respondent's voluntary appearance before the Commission shall be equivalent to service of summons for purposes of acquiring jurisdiction over his person, unless he makes an express reservation regarding on the nature of his appearance therein.

SEC. 4-6. Return of Summons. - When the service has been completed, the designated server shall return the summons, together with the proof of service, to the originating Operating Department, as the case may be.

RULE V. PROCEEDINGS BEFORE THE SPECIAL HEARING PANEL OR HEARING OFFICER

SEC. 5-1. Preliminary Conference. - When allowed by existing rules on Alternative Dispute Resolution (ADR), the Special Hearing Panel or the Director of the Operating Department, as the case may be, shall set the case for conference within fifteen (15) days after an answer is filed or upon expiration of the period to file the same. The parties and/or their counsels, the latter with the requisite special power-of-attorney in the absence of his client, shall be directed to appear before any Special Hearing Panel or Hearing Officer on the date set in the notice to consider the following actions:

- a. The possibility of an amicable settlement which includes referral to mediation and other forms of ADR, if applicable;
- b. Stipulation of facts;
- c. The simplification of the issues;
- d. Obtaining the latest office or residential address of the parties and/or their counsels;
- e. Inquiring from the parties and/or their counsels whether or not they are amenable to the electronic service of orders, decisions, resolutions, and other papers emanating from the Commission, if they have not consented to such service; and if amenable, the parties and/or their counsels be informed that their express written consent be stated in their position paper referred to in Section 5-5 of this Rule;
- f. Such other matters that may aid in the just and speedy disposition of the case.

The Special Hearing Panel or Director of the Operating Department may terminate the conference stage if, after two (2) conferences, the parties fail to settle their differences.

SEC. 5-2. Amicable Settlement. - During the conference, the Special Hearing Panel or Hearing Officer shall ensure that the parties exhaust all available means to arrive at a fair and reasonable settlement of the case. The parties, with or without the assistance of the counsel, shall submit during the conference specific proposals or counter-proposals to arrive at an amicable settlement of the case.

Amicable settlement shall be encouraged at any stage of the proceedings, provided it is not prejudicial to the public interest or third parties, or contrary to law, rules or regulations of the Commission, or against good morals or public policy. The amicable settlement shall be reduced into writing, duly signed by the parties and/or their counsels, and shall be the basis of the appropriate Order or Decision of the Special Hearing Panel or the Director of the Operating Department.

SEC. 5-3. Failure to Appear at the Conference. – The failure of the petitioner to appear at the conference shall result in the dismissal of the petition, unless it involves public interest whereby the Special Hearing Panel or Hearing Officer may, *motu proprio*, reset the case for a conference within five (5) days from the last conference. The respondent who appears in the absence of the petitioner shall be entitled to judgment based on the facts alleged, evidence submitted and reliefs prayed for in the answer.

If the sole respondent fails to appear, the petitioner shall be entitled to judgment in accordance with the immediately preceding paragraph unless there is no sufficient evidence to support allegations stated in the petition. However, this rule shall not apply if one or more respondents who have been sued under a common cause of action and who have pleaded a common defense appear at the conference.

No subsequent conference shall be called in the event any of the parties to the action fails to attend the first conference called for this purpose, except for valid reasons as determined by the Special Hearing Panel or Hearing Officer.

SEC. 5-4. Preliminary Conference Order. – After the preliminary conference, the Special Hearing Panel or Hearing Officer shall issue an Order that may state the following: (i) the action taken during the conference; (ii) the stipulations made by the parties on any of the matters considered; (iii) the evidence that the parties have presented; and (iv) other matters taken up during the preliminary conference.

SEC. 5-5. Submission of affidavits and position papers. – Within fifteen (15) days from receipt of the order terminating the preliminary conference, the parties shall submit their respective position papers setting forth the law and the facts relied upon by them, with supporting affidavits and other evidence on such facts.

The position paper may include the express consent of the parties or their counsel to the electronic service of papers, orders, decisions and resolutions emanating from the Commission, if no consent has been made in the parties' respective pleadings. In which case, the parties or their counsel shall provide the email address at which they agree to accept such service. However, the inclusion of the email address in the position paper does not imply the consent of the parties or their counsel.

Upon submission of the position paper, or upon the expiration of the period mentioned above, and no position paper has been filed, the case shall be deemed submitted for resolution.

SEC. 5-6. Clarificatory Conference. - Should the Special Hearing Panel or the Hearing Officer find it necessary to clarify certain material facts, it may, before rendition of judgment, conduct a clarificatory conference for the purpose of ascertaining facts, issues and other matters that are necessary and relevant to the resolution of the proceedings, and further examination or submission of additional documents pertinent thereto.

PART IV.

DECISIONS, FINAL ORDERS, RESOLUTIONS AND OTHER RELATED ORDERS OF THE COMMISSION

RULE I. SCOPE AND APPLICATION

SEC. 1-1 Scope and Application of the Rules. - The provisions in Part IV of these Rules shall apply to administrative and adjudicative actions or proceedings before the Commission.

RULE II. DECISIONS, FINAL ORDERS, RESOLUTIONS AND ENTRY THEREOF

SEC. 2-1. Rendition of Judgment - The Commission En Banc, Special Hearing Panel or the Director of the Operating Department, as the case may be, shall render judgment within thirty (30) days from the time the case is submitted for resolution.

A case is considered submitted for resolution upon the issuance of an order that the same is submitted for resolution, or upon submission of the last pleading allowed under these Rules or the expiration of the period to submit the same, or upon the last clarificatory conference conducted, whichever comes later.

SEC. 2-2. Form and Contents. - All decisions, resolutions and final orders of the Commission shall contain a concise statement of the facts, findings and conclusions, the reasons and the law on which it is based, the names of persons responsible or liable, if applicable, the appropriate order, sanction, relief or denial thereof or such other conditions or terms it may impose, and a demand for payment of the penalties, if applicable.

It shall be signed by the Commission En Banc, the Director of the Operating Department or the members of the Special Hearing Panel exercising authority to act over the case, and shall be served on the person being investigated or petitioner and respondent, as the case may be, not later than ten (10) days after its promulgation.

SEC. 2-3. Administrative Sanctions and/or Penalties. - The administrative sanctions and/or penalties to be imposed shall be based on the corresponding penalties for violations prescribed by the SRC, the Corporation Code, Presidential Decree 902-A, the Foreign Investment Act, the Lending Company Regulation Act, the Financing Company Act, the Investment Houses Law and all other applicable laws and their respective implementing rules and regulations, and the circulars and orders issued by the Commission.

SEC. 2-4. Finality of Decisions, Orders or Resolutions of the Commission En Banc or the Operating Department. - (a) If no appeal or motion for reconsideration is filed within the period fixed in these Rules or the Rules of Court, the decision, final order or resolution of the Commission En Banc, Special Hearing Panel or the Director of the Operating Department, as the case may be, shall become final and executory.

(b) Upon expiration of the period to appeal as fixed in these Rules, the Commission En Banc, the Director of the Operating Department or the Special Hearing Panel, as the case may be, shall cause the entry of judgment or final order in the Book of Entries of Judgments in accordance with Rule 36 of the Rules of Court and any amendments thereto.

Each Operating Department shall keep and maintain its own Book of Entries of Judgments. Decisions of the Special Hearing Panel shall be kept and maintained by the Director of the Operating Department charged to head the Special Hearing Panel.

SEC. 2-5. Decisions or Final Orders not stayed by Appeal or Certiorari. - Cease and desist orders, and such other decisions or final orders as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom or by a petition for certiorari, unless otherwise ordered by the Court of Appeals or the Supreme Court, as the case may be, upon such terms as it may deem just.

RULE III. CONTEMPT PROCEEDINGS

SEC. 3-1. Contempt. - The Commission En Banc, the Director of the Operating Department, any member of the Special Hearing Panel, or any authorized officer exercising authority to act over the case may summarily adjudge a person guilty of acts of direct contempt, or indirect contempt after hearing.

In an adjudicative action, any party adversely affected by any contumacious act may also initiate proceedings for indirect contempt.

SEC. 3-2. Grounds and Penalty for Direct Contempt. - A person guilty of any of the following acts may be punished for direct contempt: (i) acts committed in the presence of, or so near, the Chairman or any Commissioner, the Director of the Operating Department, a member of the Special Hearing Panel, or the Hearing Officer, as the case may be, as to obstruct or interrupt the proceedings; (ii) disrespect toward the Chairman or any Commissioner, the Director of the Operating Department, the Special Hearing Panel or the Hearing Officer; (iii) offensive acts towards others; and (iv) other contumacious acts. Those persons found to be guilty of direct contempt shall be punished by a fine not exceeding two thousand pesos (Php 2,000.00) or imprisonment not exceeding ten (10) days, or both.

The Director of the Operating Department may, through the Office of the General Counsel, request the law enforcement agencies of the locality where the hearing or investigation is being conducted to assist in the exercise of this disciplinary authority.

SEC. 3-3. Grounds and Penalty for Indirect Contempt. - A person may be guilty of indirect contempt, after hearing, on any of the grounds set forth under Rule 71 of the Revised Rules of Court and any amendments thereto, and as may be authorized by law. Those persons found to be guilty of indirect contempt may be punished by a fine not exceeding thirty thousand pesos (Php 30,000.00) or imprisonment not exceeding six (6) months, or both.

SEC. 3-4. Non-Interruption of Proceedings or Investigation. Any proceedings for indirect contempt made before the Commission shall not toll or suspend any proceeding or investigation pending before it.

**RULE IV. SUBPOENA AD TESTIFICANDUM, SUBPOENA
DUCES TECUM AND EXAMINATION/INSPECTION ORDERS**

SEC. 4-1. When Issued. - If the attendance of a witness or the production of specified documents or an examination or inspection of all documents, papers, files and records, tax returns and books of accounts of any entity or person under investigation is necessary in the course of any investigation or proceedings, the Commission En Banc, the Director of an Operating Department, the Special Hearing Panel or any of its members may, *motu proprio* or upon request, issue a letter-request, subpoena ad testificandum, subpoena duces tecum or examination/inspection order.

SEC. 4-2. Form and Contents. - A letter-request or subpoena shall state the title of the action, investigation or proceeding, and shall be directed to the person whose attendance is required or to the custodian of the documents requested. In the case of a subpoena *duces tecum*, it shall also contain a reasonable description of the books, documents or things demanded relevant to the action, investigation or proceeding.

An examination/inspection order shall specify the date and place of the inspection, the names of individuals authorized to inspect and the taking of copies and photographs of relevant documents, and may prescribe other terms and conditions that are justified by the circumstances.

PART V.

MOTION FOR RECONSIDERATION, APPEAL AND EXECUTION PROCEEDINGS

RULE I. SCOPE AND APPLICATION

SEC. 1-1. Scope and Application of the Rules. - The provisions in Part V of these Rules shall apply in administrative and adjudicative actions before the Commission, except for proceedings where the Commission (i) issued a cease and desist order, or (ii) denied a request for reduction of penalty, a request for payment of administrative penalty by installment or a settlement offer.

SEC. 1-2. Party to an Action. - As used in Part V of these Rules, a party to an action shall refer to the petitioner or a respondent in an adjudicative action or a person subject of an administrative action. For purposes of appeal, a party to an action shall also refer to a person aggrieved by a decision or resolution of a Self-Regulatory Organization.

RULE II. MOTION FOR RECONSIDERATION OF DECISIONS, FINAL ORDERS AND RESOLUTIONS OF THE COMMISSION

SEC. 2-1. Who can file. – A party to an action may move for a reconsideration of an adverse decision, final order or resolution of the Director of an Operating Department, the Special Hearing Panel or any of its members within fifteen (15) days from receipt thereof, provided that all parties on record shall be furnished a copy of the same.

SEC. 2-2. Grounds for Reconsideration. – A motion for reconsideration shall be based on any of the following grounds:

- a. The evidence on record is insufficient to justify the decision, final order or resolution; or
- b. The decision, final order or resolution is contrary to law.

SEC. 2-3. Contents of a Motion for Reconsideration. – The motion shall be made in writing stating the ground relied upon. It shall point out specifically the findings of fact or conclusions of law in the decision, final order or resolution which are not supported by evidence, or which are contrary to law, and such other supporting evidence as may be relevant to the action.

A motion for reconsideration need not be set for hearing.

SEC. 2-4. Comment / Opposition to the Motion. – In an adjudicative action, a comment/opposition to the motion may be filed within fifteen (15) days from receipt thereof. It shall be accompanied by supporting affidavits and documents, and shall specify the relevant date of receipt of the motion.

SEC. 2-5. Second Motion for Reconsideration Not Allowed. – Only one motion for reconsideration shall be allowed. A second or subsequent motion for reconsideration, if filed, shall not be acted upon.

SEC. 2-6. Resolution of Motion. – A motion for reconsideration shall be resolved within thirty (30) days from the time it is submitted for resolution.

RULE III. APPEAL TO THE COMMISSION EN BANC

SEC. 3-1. Subject of Appeal to the Commission En Banc. – A party to an action may appeal to the Commission En Banc an adverse decision, final order or resolution of a Director of an Operating Department, the members of a Special Hearing Panel or a Self-Regulatory Organization, if there are (i) questions of fact, or (ii) questions of law, or (iii) questions of rule implementation, or (iv) mixed questions of fact, law and rule implementation.

No appeal may be taken from:

- a. An interlocutory order;
- b. An order disallowing or dismissing an appeal;
- c. An order of execution;
- d. An order denying the settlement offer;
- e. An order dismissing an action without prejudice;
- f. An order adjudging a person guilty of direct contempt or
- g. An order dismissing an action on the ground of absence of authority or jurisdiction of the Operating Department to act over the subject matter.

In any of the foregoing circumstances, an appropriate petition for certiorari as provided in Rule 65 of the Rules of Court, as amended, may be filed by a party aggrieved thereby.

SEC. 3-2. Period of Appeal. – An appeal to the Commission En Banc may be taken within fifteen (15) days from receipt by the party to an action of the adverse decision, final order or resolution of a Director of an Operating Department or the Special Hearing Panel.

An appeal to the Commission En Banc may be taken within thirty (30) days from receipt by the party to an action of an adverse decision, final order or resolution of a Self-Regulatory Organization.

SEC. 3-3. Perfection of Appeal. - The appellant shall perfect an appeal by filing the following with the Commission En Banc, through the Office of the General Counsel, within the period prescribed in the preceding section: (i) an appeal memorandum in six (6) legible copies; (ii) proof of service of a copy of the appeal memorandum on the appellee and/or the Director of the Operating Department, the Special Hearing Panel or the Self-Regulatory Organization concerned, as the case may be; and (iii) payment of the appeal fee and other applicable fees.

SEC. 3-4. Appeal Memorandum; Form and Contents. - The appeal memorandum shall include the following: (i) the full name, capacity and address of the parties to the appeal; (ii) the material dates showing that it was filed on time; (iii) a concise statement of the matters involved, the issues raised, the specification of errors or arguments relied upon in support of the appeal; (iv) an attached copy of the decision, final order or resolution of the Director of the Operating Department, Special Hearing Panel or Self-Regulatory Organization, as the case may be, being appealed and of the material portions of the record as would support the allegations of the appeal; and (v) the express consent, if any, of the appellant, or his counsel, of the electronic service of papers, orders, decisions and resolutions emanating from the Commission.

In the case of (v) above, the consenting appellant or his counsel, as the case may be, shall state the email address at which he agrees to accept such service.

No appeal shall be given due course, unless it includes a certification of non-forum shopping as provided in Section 3-4, Rule III of Part III of these Rules.

SEC. 3-5. Action on the Appeal Memorandum. -

a. Grounds for Outright Dismissal of an Appeal. - From an initial examination of the allegations or averments in the appeal memorandum and such documents that may be attached thereto, the appeal may be dismissed outright for failure to comply with requirements set forth under these Rules.

b. Order to File a Comment to the Appeal Memorandum. - If the appeal memorandum is filed on time and complies with the jurisdictional and formal requirements under these Rules, the Office of the General Counsel shall order the appellee to file a comment to the appeal memorandum within fifteen (15) days from receipt of a copy of the order.

The Director of the Operating Department, Special Hearing Panel or the Self-Regulatory Organization concerned may be ordered to forward the records of the case to the Commission En Banc, through the Office of the General Counsel.

SEC. 3-6. Comment to Appeal Memorandum. - The appellee shall file with the Commission En Banc, through the Office of the General Counsel, six (6) copies of its comment to the appeal memorandum, attaching thereto supporting documents and evidence, and furnishing copies thereof to the appellant and/or the Director of the

Operating Department, the Special Hearing Panel or the Self-Regulatory Organization concerned within fifteen (15) days from receipt of the Order to file a comment to the appeal memorandum.

The comment to the appeal memorandum may include the express consent, if any, of the appellee or his counsel to the electronic service of papers, orders, decisions and resolutions emanating from the Commission. In which case, the appellee or his counsel shall provide the email address at which he agrees to accept such service.

Failure to file a comment to the appeal memorandum within the period fixed in these Rules shall be construed as a waiver to file the same.

SEC. 3-7. Verification. - The Appeal Memorandum and Comment to the Appeal Memorandum shall be verified in the same manner as a verified answer under Section 3-3, Rule III of Part II of these Rules.

SEC. 3-8. Clarificatory Hearing. - At any time before the promulgation of the decision, the Commission En Banc, in its discretion, may call the parties to appear before the OGC, acting as the hearing officer, for a clarificatory hearing to take up any matter pertinent to the resolution of the case including the possibility of amicable settlement or mediation.

SEC. 3-9. Submission of Supplemental Memorandum. - At any time after the filing of the comment to the appeal memorandum, the Commission En Banc may order the parties to submit their respective supplemental memorandum within fifteen (15) days from receipt of a copy of the order.

SEC. 3-10. When Appeal Deemed Submitted for Decision. - Upon filing of the last pleading allowed under these Rules with the Commission En Banc, or after the expiration of the period to file the same, the appeal shall be deemed submitted for decision, unless the Commission En Banc motu proprio, or upon motion and for special reason, sets the case for oral arguments.

SEC. 3-11. Review Standard. - Findings of fact by the Operating Department, the Special Hearing Panel or the Self-Regulatory Organization shall not be disturbed by the Commission En Banc, unless serious errors of fact have been committed.

SEC. 3-12. Disposition of the Appeal. - The Commission En Banc may affirm, reverse or modify the decision, final order or resolution appealed from, or direct further proceedings to be taken thereon, on the basis of the evidence presented and the records of the case. No motion for reconsideration of the Decision of the Commission En Banc shall be entertained.

RULE IV. EXECUTION

SEC. 4-1. Execution of Decision, Final Order or Resolution.-

a. A writ of execution shall be issued as a matter of course in administrative cases or by a motion in adjudicative cases, upon a decision, order or resolution of the Commission En Banc, Director of the Operating Department or Special Hearing Panel that has become final and executory.

b. In adjudicative actions, a motion for execution shall be filed, a copy of which shall be furnished to the other parties, the Commission En Banc, Director of the Operating Department or Special Hearing Panel concerned, accompanied by the original copy or certified true copy of the entry of judgment or certificate or order of finality issued by the Commission En Banc, the Court of Appeals or the Supreme Court, as the case may be; and certified true copies of all the decisions, orders or resolutions on the case.

An opposition may be filed within a period of ten (10) days from receipt of the motion for execution. The Operating Department concerned shall resolve the motion and/or issue the writ of execution within a period of thirty (30) days from receipt of the opposition.

c. The Commission En Banc, Director of the Operating Department or Special Hearing Panel, after entering final and executory decisions, orders and resolutions in its own Book of Entries, shall furnish the Office of Commission Secretary a copy of the same. The Office of Commission Secretary shall also keep and maintain the Commission's Book of Entries of Judgments.

SEC. 4-2. Issuance, Contents and Effectivity of a Writ of Execution. - The writ of execution shall be issued in the name of the Republic of the Philippines signed by the Commission En Banc, Director of the Operating Department or Special Hearing Panel, as the case may be, requiring the appropriate officer, personnel, or sheriff of the Commission, or such other duly authorized government agent, officer or personnel to execute the

decision, final order, or resolution as shown in the Book of Entries of Judgments of the Commission or the appellate courts (where such Decision, Order or Resolution was appealed with the said courts).

The writ of execution must contain the complete name of the party against whom the said writ of execution was issued, the dispositive portion thereof, the amount, and all other fees or fines to be collected from the losing party or any other person required by law to obey the same, if applicable, or the specific act sought to be performed or the specific act that the party should refrain from doing.

A writ of execution shall be effective for a period of five (5) years from issuance thereof. In case of partial satisfaction of the decision, final order or resolution during the lifetime of the writ wherein a certain amount was collected, the Commission En Banc, Director of the Operating Department or Special Hearing Panel, as the case may be, shall, *motu proprio* in administrative actions or upon motion of the concerned party in adjudicative actions, issue an updated writ reflecting the amount collected and the remaining balance thereof.

SEC. 4-3. Implementation of Writ of Execution. - Upon the issuance of a writ of execution, the Commission En Banc, Director of the Operating Department or Special Hearing Panel, as the case may be, may request the appropriate officer, personnel, or sheriff of the Commission, or, pursuant to Subsection 5.1 (h) of the SRC, enlist such other duly authorized government agent, officer or personnel having jurisdiction over the area where the principal office and/or business or where the real or personal property of the losing party is located, to implement the writ of execution.

SEC. 4-4. Manner of Execution. - In executing a decision, final order or resolution of the Commission, the appropriate officer, personnel, or sheriff of the Commission, or such other duly authorized government agent, officer or personnel duly authorized to execute and enforce said decision, final order or resolution shall be guided by their respective Manual or Rules on Execution of Judgments. In the absence of applicable rules, the Rules of Court, as amended, shall be applied by analogy or in a suppletory manner.

Where a decision, final order or resolution of the Commission to be enforced or executed involves the collection of fees, penalties and other amounts owed to the Commission, the appropriate officer, personnel, or sheriff of the Commission concerned or such other government agent, officer or personnel duly authorized to execute and enforce said decision, final order or resolution, shall enforce or execute the same by demanding

from the judgment obligor the payment of the full amount stated in the writ of execution. The judgment obligor or party against whom the decision, final order or resolution is being implemented shall pay in cash or manager's check the amount stated in the writ of execution.

In the event the party against whom the writ is issued refuses to pay the full amount stated in the writ of execution, the appropriate officer, personnel, or sheriff of the Commission concerned or such other government agent, officer or personnel duly authorized to execute and enforce said decision, final order or resolution, shall, within five (5) days from demand, execute the same by garnishing bank deposits, credits, receivables and other personal property not capable of manual delivery, if the same is not enough, proceed to levy personal property of the losing party, and if still insufficient, against the real property not exempt from execution, sufficient to cover the amount stated in the writ of execution, which may be disposed of for value at a public auction to the highest bidder.

Where a decision, final order or resolution of the Commission to be enforced or executed requires a person to perform or refrain from performing a specific act, a copy of such decision, final order or resolution shall be attached to the writ of execution and shall be served by the executing sheriff, officer, personnel or agent concerned upon the person against whom such decision, final order or resolution is rendered, or upon any other person required thereby, or by law, to obey the same, and such person may be punished for contempt if he disobeys such decision, final order or resolution.

SEC. 4-5. Return of Writ of Execution. - The appropriate officer, personnel, or sheriff of the Commission, or such other duly authorized government agent, officer or personnel implementing the writ of execution shall be requested to submit his return to the Commission En Banc, Director of the Operating Department or Special Hearing Panel, as the case may be, immediately after the full satisfaction thereof. In case of partial or non-satisfaction of the judgment, the officer, personnel, or sheriff of the Commission, or such other duly authorized government agent, officer or personnel enforcing the writ shall submit a report updating the Commission on the status of the enforcement thereof, not later than thirty (30) days from receipt of such writ and every thirty (30) days thereafter during the lifetime of the writ unless fully satisfied. The return shall state the mode of service, the name of the person served and the date of receipt. The return shall also indicate legibly, the full name of the serving officer. The return shall form part of the records of the case.

The return of the officer, personnel, or sheriff of the Commission, or such other duly authorized government agent, officer or personnel shall also state the compensation and reimbursement of actual expenses he may be entitled to, in accordance with respective Manual or Rules on Execution of Judgments, from the Commission which shall be charged against the losing party. For purposes of reimbursement of actual expenses, the sheriff or other duly authorized government agent is required to submit a statement of expenses and itinerary of travel to the Commission.

Proceeds of execution in administrative actions shall be deposited with the Cashier of the Commission within the same day it is collected from the judgment obligor. Where payment is made in the form of a check, the same shall be payable to the "Securities and Exchange Commission". In either case, the cashier of the Commission shall issue an Official Receipt stating therein the case for which the proceeds were remitted. The Official Receipt shall form part of the records of the case and submitted to the Operating Department concerned that imposed the penalty.

PART VI.

MISCELLANEOUS PROVISIONS

RULE I. TRANSITORY PROVISIONS

SEC. 1-1. Transitory Provision. - These Rules shall apply only to cases commenced after its effectivity. All matters pending resolution before the Commission under other rules of procedure shall be decided under said rules. In all other cases, these Rules shall apply.

Decisions, final orders and resolutions of the Commission En Banc, Director of the Operating Department or Special Hearing Panel which have become final and executory prior to the effectivity of these Rules shall be executed in accordance with the provisions of these Rules.

RULE II. REPEALING AND SEPARABILITY CLAUSE

SEC. 2-1. Repealing and Separability Clause. - The 2006 Rules of Procedure, in its entirety, and Memorandum Circular No. 10, series of 2010,³ are hereby repealed. All other existing rules, circulars, procedures, practices, orders or any part thereof that are

³ Rules of Procedure on Appeals from Decisions of Self Regulatory Organizations.

inconsistent with these Rules are hereby repealed, amended or modified accordingly. If any part or provision of these Rules is declared unconstitutional or illegal, the other parts or provisions shall remain valid.

RULE III. EFFECTIVITY

SEC. 3-1. Effectivity. – These Rules shall take effect fifteen (15) days after publication in two (2) newspapers of general circulation. The Commission Secretary shall immediately file three (3) certified copies of these Rules with the University of the Philippines Law Center, and one (1) certified copy each with the Department of Finance and the Supreme Court of the Philippines.

Mandaluyong City, 4 October 2016.


TERESITA J. HERBOSA
Chairperson


MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE *
Commissioner

EPHYRO LUIS B. AMATONG *
Commissioner


BLAS JAMES G. VITERBO
Commissioner

*On Official Business