

ICA RULE 35-1
THE INVESTMENT
COMPANY RULE

ICA Rule 35-1, The Investment Company Rule

(a) Definition of Terms

- (1) When used herein, unless the context otherwise requires:
 - (A) "Act" means the Investment Company Act, Republic Act No. 2629.
 - (B) "Close-end Company" shall refer to an investment company other than an open-end company.
 - (C) "Commercial Bank" shall refer to a commercial banking corporation as defined in the General Banking Act, Republic Act 337, as amended.
 - (D) "Commission" means the Securities and Exchange Commission.
 - (E) "Custodian" is a duly authorized local commercial bank of good repute.
 - (F) "Investment Company" shall refer to any issuer which is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting and trading in securities, as defined in Section 4 of the Act.
 - (G) "Investment House" shall have the same meaning as the term as defined in Presidential Decree No. 129.
 - (H) "Open-end Company" shall refer to an investment company which is offering for sale, or has outstanding, any redeemable security, of which it is the issuer.
 - (I) "Prospectus" means a prospectus meeting the requirements of these Rules and Section 8(a)(10) of the Revised Securities Act.
 - (J) "Revised Securities Act" means the Revised Securities Act, Batas Pambansa Blg. 178.
 - (K) "Rule" shall refer to these Rules and Regulations Governing Investment Companies under the Act.
- (2) Unless otherwise specifically provided, the terms used in these Rules shall have the same meaning as defined in the Act.

(b) Minimum Requirements

- (1) Investment companies shall be organized in the form of a stock corporation, and shall comply with the requirements of the Corporation Code of the Philippines, as well as the following additional requirements:
 - (A) minimum subscribed and paid-in capital of at least P50 million per investment company; Provided, however, that where the investment company is one of a group of investment companies to be created or already in existence under management by the same investment company manager, upon request, the Commission may grant lower paid-in capital requirement.

- (B) all members of the Board of Directors must be Filipino citizens.
 - (C) all shares of its capital stock shall be common and voting shares.
 - (D) the Articles of Incorporation of open-end companies shall provide for the waiver of pre-emptive rights of shareholders.
- (2) Any securities proposed to be issued and distributed or sold by the investment company shall be registered in accordance with the Revised Securities Act and rules adopted pursuant thereto.

(c) Sale of Securities

- (1) Unless the Commission shall otherwise prescribe, the minimum size of investment by any single investor in shares/securities issued by an investment company shall be the amount of P5,000.00. Securities sold by an investment company shall be on a cash basis. Installment sales are hereby expressly prohibited.
- (2) All proceeds from the sale of shares/securities, including the original subscription/payments at the time of incorporation constituting the original paid-in capital of the investment company shall be held by a custodian bank as required in paragraph (h) hereof.
- (3) The original proponents of the investment company who have subscribed and paid for the original capital of the investment company, shall not be allowed to sell, transfer, convey, encumber or otherwise dispose of their shares/securities within twelve (12) months from registration of said investment company.
- (4) In case of open-end investment funds, the investment company may establish a network of redemption centers acceptable to the Commission.

(d) Investment of the Fund

- (1) The investment objective(s) and initial investment plans of an investment company shall be clearly stated in the prospectus, and shall be classified in the following categories:
 - (A) aggressive (high risk), growth-oriented (moderate risk) or conservative (low risk).
 - (B) dealing in short term (one year or less), medium term (longer than one year but not exceeding three years) or long term (longer than three years) debt securities
 - (C) area of focus of investments, e.g. securities of companies engaged in real estate development, medium-sized gold mine operations, export of primary products, etc.
 - (D) mode of investment, e.g. common shares only, convertible preferred shares, loans with warrants to common, etc.

- (2) An investment company may not change its investment objective without prior approval of a majority of its shareholders.
- (3) The maximum investment of an investment company in any single enterprise shall not exceed an amount equivalent to ten percent (10%) of the investment company's net asset value except obligations of the Philippine Government and its instrumentalities, nor shall the total investment of the fund exceed ten percent (10%) of the outstanding securities of any one investee company.
- (4) For liquidity purposes, unless otherwise prescribed by the Commission, at least ten percent (10%) of an open-end company fund shall be invested in liquid/semi-liquid assets such as:
 - (A) Treasury notes or bills, Certificates of Indebtedness issued by the Bangko Sentral Ng Pilipinas which are short term, and other government securities or bonds and such other evidences of indebtedness or obligations, the servicing and repayment of which are fully guaranteed by the Republic of the Philippines.
 - (B) Savings or time deposits with government owned banks or commercial banks, provided that in no case shall any such savings or time deposit accounts be accepted or allowed under a "bearer", "numbered" account or other similar arrangement.
- (5) Until the Commission shall provide otherwise, no investment company shall sell securities short or invest in any of the following:
 - (A) margin purchases of securities (investment in partly paid shares are excluded);
 - (B) commodity futures contracts;
 - (C) precious metals;
 - (D) unlimited liability investments;
- (6) As provided in Section 15 of the Act, the total operational expenses of an investment company shall not exceed ten percent (10%) of its total investment fund or total net worth as shown in its previous year's audited financial statements.
- (7) No investment company shall incur any further debt or borrowing unless at the time of its incurrence or immediately thereafter there is an asset coverage of at least three hundred percent (300%) for all borrowings of the investment company.

Provided, however, that in the event that such asset coverage shall at any time fall below three hundred percent (300%), the company shall within three (3) days thereafter, reduce the amount of its borrowings to an extent that the asset coverage of such borrowings shall be at least three hundred percent (300%).

- (8) No investment company shall participate in an underwriting or selling group in connection with the public distribution of securities, except its own capital stock.
- (9) No investment company shall purchase from or sell to any of its officers or directors or the officers or directors of its investment adviser/s, manager or distributor/s or firm/s of which any of them are members, any securities other than the capital stock of the investment company.

(e) Redemption of Securities in Open-end Companies

- (1) Investors in redeemable securities issued by an open-end investment company shall have the right to have their securities redeemed in accordance with the terms of the issue thereof and the procedures indicated in the prospectus.
- (2) The redemption price of securities surrendered for redemption before the daily cut-off time shall be the next computed net asset value per share. Requests for redemption received after the daily cut-off time shall be deemed to have been received the following day. The daily cut-off time shall be 12:00 o'clock noon.
- (3) Investment companies shall compute and post their net asset value per share on a daily basis and shall publish such daily prices in at least two (2) newspapers of general circulation in the Philippines and post them daily in a conspicuous place at the principal office of the open-end Company as well as in all its branches or correspondent offices which are designated redemption centers.
- (4) The net asset value per share computation shall be made in accordance with the valuation method indicated in the prospectus and shall be applied consistently. Any change in the net asset value per share calculation or valuation method shall be subject to approval by the Commission. Except as the Commission shall, from time to time prescribe, the net asset value shall be calculated by adding (A) the aggregate value of the portfolio securities and other assets, (B) the cash on hand, (C) any dividends on stock trading ex-dividend, (D) any accrued interest on portfolio securities, and subtracting (E) taxes and other charges against the fund not previously deducted, (F) accrued expenses and fees, and (G) cash held for distribution to securities holders on a prior date.
- (5) Payments for securities redeemed shall be effected within seven (7) banking days from receipt of the request for redemption.
- (6) The Commission may, whenever necessary or appropriate in the public interest or for the protection of investors, suspend the redemption of securities of open-end companies.

(f) Directors and Officers

- (1) No person shall be elected as a director of an investment company unless he is a Filipino citizen, and no person shall act as director or officer who is possessed of any disqualifications provided in the Act.
- (2) No member of the Board of Directors or any executive official shall receive any salary or emolument from the investment company at a rate higher than that

fixed by the Commission after taking into consideration; the experience and qualification of the official concerned; the amount, nature of securities issued by the company; the size and standing of the company in the business community; the volume of business done by the company; the number of years the company has been in business; and other pertinent conditions and circumstances.

- (3) An advisory board may be created by an investment company.

(g) Investment Company Manager

- (1) Any person designated, or who intends to act as investment manager or adviser for an investment company, shall, before acting as such, file an application with the Commission, containing such data and such documents as the Commission shall require, in addition to the following:
- (A) minimum unimpaired net worth of at least P10 million exclusive of revaluation surplus;
 - (B) curriculum vitae of directors;
 - (C) audited financial statements for the last three (3) years, to the extent applicable.
- (2) The Commission shall grant the registration of an investment manager or adviser with respect to an investment company, if it finds that the requirements of paragraph (g)(1) have been met, but shall disapprove an applicant who, or any principal officer or any director of which:
- (A) has willfully made or caused to be made in any application for registration or reports required to be filed with the Commission, any material false or misleading statement, or willfully omitted any material fact which is required to be stated therein;
 - (B) has been convicted of a crime involving moral turpitude which involved the purchase or sale of any securities, or which arises out of the conduct of the business of a broker, dealer, investment adviser, investment house, bank, trustee or other fiduciary capacity;
 - (C) has willfully violated, or has willfully aided, abetted, counseled, commanded, induced or procured the violation by any person of any provision of the Act, the Revised Securities Act or the rules adopted thereunder.

(h) Custodian

- (1) No person shall act as custodian to hold the funds and securities of an investment company except a commercial bank of good repute duly authorized by the Bangko Sentral Ng Pilipinas to perform trust functions. The custodian may likewise act as transfer agent or dividend disbursing agent, but shall not perform any management or investment advisory function in the sale of the shares of the same investment company.

(i) Reportorial Requirements

- (1) Registered investment companies are subject to the reporting provisions of RSA Rule 11(a)-1.
- (2) Within thirty (30) days from effectivity of the Order declaring effective the registration of the investment company, and within the first ten (10) days of every month thereafter, the investment company shall submit to the Commission a report under oath executed on its behalf by its Treasurer or any other officer, showing the following information:
 - (A) the total amount received from sale of shares;
 - (B) the total amount of redemptions;
 - (C) the number of shares outstanding at the beginning of the month;
 - (D) the number of shares sold during the month;
 - (E) the number of shares redeemed during the month;
 - (F) the number of shares outstanding at the end of the month; and
 - (G) the percentage of the outstanding shares owned by Filipinos

(j) Fees

The fees prescribed under the Investment Company Act, the Revised Securities Act and other applicable fees prescribed by the Commission shall be imposed in the registration of the investment company and its securities.

(k) Administrative Sanctions

If the Commission finds that there is a violation of any provision of the Act, or this Rule or any applicable rules under the Revised Securities Act, or that any issuer, in a registration statement or its supporting papers, as well as in the periodic reports required to be filed with the Commission has made any untrue statement of a material fact or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading or refuses to permit any lawful examination into its corporate affairs, the Commission shall, in its discretion impose sanctions as provided by law.

(l) Repealing Clause

The Rules and Regulations Governing Investment Companies Under Republic Act 2629 dated October 31, 1989 is hereby rescinded.

(m) Effectivity

This Rule shall take effect fifteen (15) days after publication in two newspapers of general circulation in the Philippines.

Note: This Rule was published on April 27, 1998 and therefore took effect on May 12, 1998.