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SEC RAISES CORPORATE GOVERNANCE STANDARDS FOR PUBLIC COMPANIES, REGISTERED ISSUERS

The Securities and Exchange Commission (SEC) has issued the Code of Corporate Governance for Public Companies and Registered Issuers as part of its efforts to promote good corporate governance in the country.

The Code, issued through SEC Memorandum Circular No. 24, Series of 2019 last December 19, applies to public companies, or those with assets of at least P50 million and having 200 or more shareholders holding at least 100 shares each of equity securities.

It also covers companies that issue proprietary and/or non-proprietary shares/certificates; equity securities offered to the public but are not listed in an Exchange; or debt securities offered to the public and required to be registered with the SEC, whether or not listed in an Exchange.

The Code is part of a series of Corporate Governance Codes that the SEC will issue for different types of corporations. It is rooted in the same corporate governance principles provided in the Code of Corporate Governance for Publicly-Listed Companies with the same intention of raising the corporate governance standards of Philippine corporations consistent with the G20/OECD Principles of Corporate Governance and other internationally recognized corporate governance principles.

The Code adopts a comply-or-explain approach to allow companies some flexibility in establishing their corporate governance practices, taking into consideration the principle of proportionality. Companies do not have to comply with the Code, but they must state in their Annual Corporate Governance Reports whether they comply with the Code's provisions, identify any areas of non-compliance, and explain the reasons for non-compliance.

"The Code of Corporate Governance aims to steer public companies and registered issuers in the Philippines toward higher standards of corporate governance," SEC Chairperson Emilio B. Aquino said.

“Compliance with the higher standards of corporate governance should translate to better value propositions for shareholders and customers, minimized risks, growth and sustainability,” he added.

The Code promotes 16 principles across different corporate governance subjects, namely: board’s governance responsibilities, disclosure and transparency, internal control and risk management frameworks, cultivating a synergic relationship with shareholders/members, and duties to stakeholders.

Among others, the Code recommends that the covered companies’ board of directors should have a policy on diversity to avoid groupthink and ensure that optimal decision-making is achieved.

To reinforce its independence, the board should also be composed of a majority of non-executive directors and have at least two (2) independent directors, or such number as to constitute at least one-third of the members of the board, whichever is higher.

The Code further encourages the establishment of board committees such as the audit committee, corporate governance committee and board risk oversight committee to support the effective performance of the board’s functions.

The board should also ensure a policy and system governing related party transactions and other unusual or infrequently occurring transactions, particularly those which pass certain thresholds of materiality. The policy should include the appropriate review and approval of material related party transactions, which guarantee fairness and transparency of the said transactions.

To promote disclosure and transparency, the Code outlines recommendations aimed at enhancing company disclosure policies and procedures, strengthening external auditor’s independence and improving audit quality, increasing focus on non-financial sustainability reporting and promoting a comprehensive and cost-efficient access to relevant information.

The Code likewise encourages covered companies to have a strong and effective internal control system and enterprise risk management system and an independent internal audit function.

Covered companies should likewise establish an Investor Relations Office or Customer Relations Office or its equivalent to ensure constant engagement and communication with its shareholders/members.

Further, the Code recommends that covered companies should fully disclose basic shareholder/ member rights in its Manual on Corporate Governance, and make available, at the option of a shareholder/member, an alternative dispute mechanism to resolve intra-corporate disputes in an amicable and effective manner.

In addition, the Code underscores the duty of covered companies to respect the rights of stakeholders and allow for effective redress for violation of their rights. It also outlines recommendations aimed at encouraging employee's participation and promoting sustainability and social responsibility.

Covered companies shall submit a revised Manual on Corporate Governance within six (6) months from the effectivity of SEC Memorandum Circular No. 24, Series of 2019 and an annual corporate governance report, among others.

Notwithstanding the issuance of the Code, covered companies shall be required to submit a Compliance Officer Certification on the extent of the company's compliance with the Revised Code of Corporate Governance and Corporate Secretary Certification on record of attendance in board meetings for the covered year 2019 on or before 30 January 2020.

The Code supersedes SEC Memorandum Circular No. 6, Series of 2009 (Revised Code of Corporate Governance); SEC Memorandum Circular No. 9, Series of 2014 (Amendment to the Revised Code of Corporate Governance); and SEC Memorandum Circular No. 4, Series of 2017 (Term Limits of Independent Directors).

The repealed memorandum circulars shall remain in effect for other covered companies, when applicable.

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