

S. No. 1220

H. No. 8015

Begun and held in Metro Manila, on Monday, the seventeenth day of July, two thousand.

[REPUBLIC ACT No. 8799]

THE SECURITIES REGULATION CODE

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

TITLE AND DEFINITIONS

SECTION 1. *Title.* - This shall be known as "The Securities Regulation Code".

SEC. 2. *Declaration of State Policy.* - The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market.

To achieve these ends, this Securities Regulation Code is hereby enacted.

SEC. 3. *Definition of Terms.* - 3.1. "Securities" are shares, participation or interests in a corporation or in a commercial enterprise or profit-making venture and evidenced by a certificate, contract, instrument, whether written or electronic in character. It includes:

- (a) Shares of stock, bonds, debentures, notes, evidences of indebtedness, asset-backed securities;
- (b) Investment contracts, certificates of interest or participation in a profit sharing agreement, certificates of deposit for a future subscription;
- (c) Fractional undivided interests in oil, gas or other mineral rights;
- (d) Derivatives like option and warrants;
- (e) Certificates of assignments, certificates of participation, trust certificates, voting trust certificates or similar instruments;
- (f) Proprietary or nonproprietary membership certificates in corporations; and
- (g) Other instruments as may in the future be determined by the Commission.

3.2. "Issuer" is the originator, maker, obligor, or creator of the security.

3.3. "Broker" is a person engaged in the business of buying and selling securities for the account of others.

3.4. "Dealer" means any person who buys and sells securities for his/her own account in the ordinary course of business.

3.5. "Associated person of a broker or dealer" is an employee thereof who, directly exercises control of supervisory authority, but does not include a salesman, or an agent or a person whose functions are solely clerical or ministerial.

3.6. "Clearing agency" is any person who acts as intermediary in making deliveries upon payment to effect settlement in securities transactions.

3.7. "Exchange" is an organized marketplace or facility that brings together buyers and sellers and executes trades of securities and/or commodities.

3.8. "Insider" means: (a) the issuer; (b) a director or officer (or person performing similar functions) of, or a person controlling the issuer; (c) a person whose relationship or former relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public; (d) a government employee, or director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or (e) a person who learns such information by a communication from any of the foregoing insiders.

3.9. "Pre-need plans" are contracts which provide for the performance of future services or the payment of future monetary considerations at the time of actual need, for which planholders pay in cash or installment at stated prices, with or without interest or

insurance coverage and includes life, pension, education, interment, and other plans which the Commission may from time to time approve.

3.10. "Promoter" is a person who, acting alone or with others, takes initiative in founding and organizing the business or enterprise of the issuer and receives consideration therefor.

3.11. "Prospectus" is the document made by or on behalf of an issuer, underwriter or dealer to sell or offer securities for sale to the public through a registration statement filed with the Commission.

3.12. "Registration statement" is the application for the registration of securities required to be filed with the Commission.

3.13. "Salesman" is a natural person, employed as such or as an agent, by a dealer, issuer or broker to buy and sell securities.

3.14. "Uncertificated security" is a security evidenced by electronic or similar records.

3.15. "Underwriter" is a person who guarantees on a firm commitment and/or declared best effort basis the distribution and sale of securities of any kind by another company.

CHAPTER II

SECURITIES AND EXCHANGE COMMISSION

SEC. 4. *Administrative Agency.* - 4.1. This Code shall be administered by the Securities and Exchange Commission (hereinafter referred to as the "Commission") as a collegial body, composed of a Chairperson and four (4) Commissioners, appointed by the President for a term of seven (7) years each and who shall serve as such until their successor shall have been appointed and qualified. A Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his/her predecessor was appointed, shall serve only for the unexpired portion of such term. The incumbent Chairperson and Commissioners at the effectivity of this

Code, shall serve the unexpired portion of their terms under Presidential Decree No. 902-A. Unless the context indicates otherwise, the term "Commissioner" includes the Chairperson.

4.2. The Commissioners must be natural-born citizens of the Philippines, at least forty (40) years of age for the Chairperson and at least thirty-five (35) years of age for the Commissioners, of good moral character, of unquestionable integrity, of known probity and patriotism, and with recognized competence in social and economic disciplines: *Provided*, That the majority of Commissioners, including the Chairperson, shall be members of the Philippine Bar.

4.3. The Chairperson is chief executive officer of the Commission. The Chairperson shall execute and administer the policies, decisions, orders and resolutions approved by the Commission and shall have the general executive direction and supervision of the work and operation of the Commission and of its members, bodies, boards, offices, personnel and all its administrative business.

4.4. The salary of the Chairperson and the Commissioners shall be fixed by the President of the Philippines based on an objective classification system, at a sum comparable to the members of the Monetary Board and commensurate to the importance and responsibilities attached to the position.

4.5. The Commission shall hold meetings at least once a week for the conduct of business or as often as may be necessary upon call of the Chairperson or upon the request of three (3) Commissioners. The notice of the meeting shall be given to all Commissioners and the presence of three (3) Commissioners shall constitute a quorum. In the absence of the Chairperson, the most senior Commissioner shall act as presiding officer of the meeting.

4.6. The Commission may, for purposes of efficiency, delegate any of its functions to any department or office of the Commission, an individual Commissioner or staff member of the Commission except its review or appellate authority and its power to adopt, alter and supplement any rule or regulation.

The Commission may review upon its own initiative or upon the petition of any interested party any action of any department or office, individual Commissioner, or staff member of the Commission.

SEC. 5. *Powers and Functions of the Commission.* - 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

- (a) Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;
- (b) Formulate policies and recommendations on issues concerning the securities market, advise Congress and other government agencies on all aspects of the securities market and propose legislation and amendments thereto;
- (c) Approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications;
- (d) Regulate, investigate or supervise the activities of persons to ensure compliance;
- (e) Supervise, monitor, suspend or take over the activities of exchanges, clearing agencies and other SROs;
- (f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto;
- (g) Prepare, approve, amend or repeal rules, regulations and orders, and issue opinions and provide guidance on and supervise compliance with such rules, regulations and orders;

(h) Enlist the aid and support of and/or deputize any and all enforcement agencies of the Government, civil or military as well as any private institution, corporation, firm, association or person in the implementation of its powers and functions under this Code;

(i) Issue cease and desist orders to prevent fraud or injury to the investing public;

(j) Punish for contempt of the Commission, both direct and indirect, in accordance with the pertinent provisions of and penalties prescribed by the Rules of Court;

(k) Compel the officers of any registered corporation or association to call meetings of stockholders or members thereof under its supervision;

(l) Issue *subpoena duces tecum* and summon witnesses to appear in any proceedings of the Commission and in appropriate cases, order the examination, search and seizure of all documents, papers, files and records, tax returns, and books of accounts of any entity or person under investigation as may be necessary for the proper disposition of the cases before it, subject to the provisions of existing laws;

(m) Suspend, or revoke, after proper notice and hearing the franchise or certificate of registration of corporations, partnerships or associations, upon any of the grounds provided by law; and

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction

over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

SEC. 6. *Indemnification and Responsibilities of Commissioners.*
- 6.1. The Commission shall indemnify each Commissioner and other officials of the Commission, including personnel performing supervision and examination functions for all costs and expenses reasonably incurred by such persons in connection with any civil or criminal actions, suits or proceedings to which they may be or made a party by reason of the performance of their functions or duties, unless they are finally adjudged in such actions or proceedings to be liable for gross negligence or misconduct.

In the event of settlement or compromise, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Commission is advised by external counsel that the persons to be indemnified did not commit any gross negligence or misconduct.

The costs and expenses incurred in defending the aforementioned action, suit or proceeding may be paid by the Commission in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Commissioner, officer or employee to repay the amount advanced should it ultimately be determined by the Commission that he/she is not entitled to be indemnified as provided in this subsection.

6.2. The Commissioners, officers and employees of the Commission who willfully violate this Code or who are guilty of negligence, abuse or acts of malfeasance or fail to exercise extraordinary diligence in the performance of their duties shall be held liable for any loss or injury suffered by the Commission or other institutions as a result of such violation, negligence, abuse, malfeasance, or failure to exercise extraordinary diligence.

Similar responsibility shall apply to the Commissioners, officers and employees of the Commission for (1) the disclosure of any information, discussion or resolution of the Commission of a confidential nature, or about the confidential operations of the Commission, unless the disclosure is in connection with the performance of official functions with the Commission or with prior authorization of the Commissioners; or (2) the use of such information for personal gain or to the detriment of the government, the Commission or third parties: *Provided, however,* That any data or information required to be submitted to the President and/or Congress or its appropriate committee, or to be published under the provisions of this Code shall not be considered confidential.

SEC. 7. *Reorganization.* - 7.1. To achieve the goals of this Code, consistent with Civil Service laws, the Commission is hereby authorized to provide for its reorganization, to streamline its structure and operations, upgrade its human resource component and enable it to more efficiently and effectively perform its functions and exercise its powers under this Code.

7.2. All positions of the Commission shall be governed by a compensation and position classification systems and qualification standards approved by the Commission based on a comprehensive job analysis and audit of actual duties and responsibilities. The compensation plan shall be comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions and shall be subject to periodic review by the Commission no more than once every two (2) years without prejudice to yearly merit reviews or increases based on productivity and efficiency. The Commission shall, therefore, be exempt from laws, rules, and regulations on compensation, position classification and qualification standards. The Commission shall, however, endeavor to make its system conform as closely as possible with the principles under the Compensation and Position Classification Act of 1989 (Republic Act No. 6758, as amended).

CHAPTER III

REGISTRATION OF SECURITIES

SEC. 8. *Requirement of Registration of Securities.* - 8.1. Securities shall not be sold or offered for sale or distribution within the Philippines, without a registration statement duly filed with and approved by the Commission. Prior to such sale, information on the securities, in such form and with such substance as the Commission may prescribe, shall be made available to each prospective purchaser.

8.2. The Commission may conditionally approve the registration statement under such terms as it may deem necessary.

8.3. The Commission may specify the terms and conditions under which any written communication, including any summary prospectus, shall be deemed not to constitute an offer for sale under this Section.

8.4. A record of the registration of securities shall be kept in a Register of Securities in which shall be recorded orders entered by the Commission with respect to such securities. Such register and all documents or information with respect to the securities registered therein shall be open to public inspection at reasonable hours on business days.

8.5. The Commission may audit the financial statements, assets and other information of a firm applying for registration of its securities whenever it deems the same necessary to insure full disclosure or to protect the interest of the investors and the public in general.

SEC. 9. *Exempt Securities.* - 9.1. The requirement of registration under Subsection 8.1 shall not as a general rule apply to any of the following classes of securities:

(a) Any security issued or guaranteed by the Government of the Philippines, or by any political subdivision or agency thereof, or by any person controlled or supervised by, and acting as an instrumentality of said Government.

(b) Any security issued or guaranteed by the government of any country with which the Philippines maintains diplomatic relations, or by any state, province or political subdivision thereof on the basis of reciprocity: *Provided*, That the Commission may require compliance with the form and content of disclosures the Commission may prescribe.

(c) Certificates issued by a receiver or by a trustee in bankruptcy duly approved by the proper adjudicatory body.

(d) Any security or its derivatives the sale or transfer of which, by law, is under the supervision and regulation of the Office of the Insurance Commission, Housing and Land Use Regulatory Board, or the Bureau of Internal Revenue.

(e) Any security issued by a bank except its own shares of stock.

9.2. The Commission may, by rule or regulation after public hearing, add to the foregoing any class of securities if it finds that the enforcement of this Code with respect to such securities is not necessary in the public interest and for the protection of investors.

SEC. 10. *Exempt Transactions.* - 10.1. The requirement of registration under Subsection 8.1 shall not apply to the sale of any security in any of the following transactions:

(a) At any judicial sale, or sale by an executor, administrator, guardian or receiver or trustee in insolvency or bankruptcy.

(b) By or for the account of a pledge holder, or mortgagee or any other similar lien holder selling or offering for sale or delivery in the ordinary course of business and not for the purpose of avoiding the provisions of this Code, to liquidate a *bona fide* debt, a security pledged in good faith as security for such debt.

(c) An isolated transaction in which any security is sold, offered for sale, subscription or delivery by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of repeated and successive transactions of a like character by such owner, or on his account by such representative and such owner or representative not being the underwriter of such security.

(d) The distribution by a corporation, actively engaged in the business authorized by its articles of incorporation, of securities to its stockholders or other security holders as a stock dividend or other distribution out of surplus.

(e) The sale of capital stock of a corporation to its own stockholders exclusively, where no commission or other remuneration is paid or given directly or indirectly in connection with the sale of such capital stock.

(f) The issuance of bonds or notes secured by mortgage upon real estate or tangible personal property, where the entire mortgage together with all the bonds or notes secured thereby are sold to a single purchaser at a single sale.

(g) The issue and delivery of any security in exchange for any other security of the same issuer pursuant to a right of conversion entitling the holder of the security surrendered in exchange to make such conversion: *Provided*, That the security so surrendered has been registered under this Code or was, when sold, exempt from the provisions of this Code, and that the security issued and delivered in exchange, if sold at the conversion price, would at the time of such conversion fall within the class of securities entitled to registration under this Code. Upon such conversion the par value of the security surrendered in such exchange shall be deemed the price at which the securities issued and delivered in such exchange are sold.

(h) Broker's transactions, executed upon customer's orders, on any registered Exchange or other trading market.

(i) Subscriptions for shares of the capital stock of a corporation prior to the incorporation thereof or in pursuance of an increase in its authorized capital stock under the Corporation Code, when no expense is incurred, or no commission, compensation or remuneration is paid or given in connection with the sale or disposition of such securities, and only when the purpose for soliciting, giving or taking of such subscriptions is to comply with the requirements of such law as to the percentage of the capital stock of a corporation which should be subscribed before it can be registered and duly incorporated, or its authorized capital increased.

(j) The exchange of securities by the issuer with its existing security holders exclusively, where no commission or other remuneration is paid or given directly or indirectly for soliciting such exchange.

(k) The sale of securities by an issuer to fewer than twenty (20) persons in the Philippines during any twelve-month period.

(l) The sale of securities to any number of the following qualified buyers:

(i) Bank;

(ii) Registered investment house;

(iii) Insurance company;

(iv) Pension fund or retirement plan maintained by the Government of the Philippines or any political subdivision thereof or managed by a bank or other persons authorized by the Bangko Sentral to engage in trust functions;

(v) Investment company; or

(vi) Such other person as the Commission may by rule determine as qualified buyers, on the basis of such factors as financial sophistication, net worth, knowledge, and experience

in financial and business matters, or amount of assets under management.

10.2. The Commission may exempt other transactions, if it finds that the requirements of registration under this Code is not necessary in the public interest or for the protection of the investors such as by reason of the small amount involved or the limited character of the public offering.

10.3. Any person applying for an exemption under this Section, shall file with the Commission a notice identifying the exemption relied upon on such form and at such time as the Commission by rule may prescribe and with such notice shall pay to the Commission a fee equivalent to one-tenth (1/10) of one percent (1%) of the maximum aggregate price or issued value of the securities.

SEC. 11. *Commodity Futures Contracts.* - No person shall offer, sell or enter into commodity futures contracts except in accordance with rules, regulations and orders the Commission may prescribe in the public interest. The Commission shall promulgate rules and regulations involving commodity futures contracts to protect investors to ensure the development of a fair and transparent commodities market.

SEC. 12. *Procedure for Registration of Securities.* - 12.1. All securities required to be registered under Subsection 8.1 shall be registered through the filing by the issuer in the main office of the Commission, of a sworn registration statement with respect to such securities, in such form and containing such information and documents as the Commission shall prescribe. The registration statement shall include any prospectus required or permitted to be delivered under Subsections 8.2, 8.3 and 8.4.

12.2. In promulgating rules governing the content of any registration statement (including any prospectus made a part thereof or annexed thereto), the Commission may require the registration statement to contain such information or documents as it may, by rule, prescribe. It may dispense with any such requirement, or may require

additional information or documents, including written information from an expert, depending on the necessity thereof or their applicability to the class of securities sought to be registered.

12.3. The information required for the registration of any kind, and all securities, shall include, among others, the effect of the securities issue on ownership, on the mix of ownership, especially foreign and local ownership.

12.4. The registration statement shall be signed by the issuer's executive officer, its principal operating officer, its principal financial officer, its comptroller, its principal accounting officer, its corporate secretary or persons performing similar functions accompanied by a duly verified resolution of the board of directors of the issuer corporation. The written consent of the expert named as having certified any part of the registration statement or any document used in connection therewith shall also be filed. Where the registration statement includes shares to be sold by selling shareholders, a written certification by such selling shareholders as to the accuracy of any part of the registration statement contributed to by such selling shareholders shall also be filed.

12.5. (a) Upon filing of the registration statement, the issuer shall pay to the Commission a fee of not more than one-tenth (1/10) of one *per centum* (1%) of the maximum aggregate price at which such securities are proposed to be offered. The Commission shall prescribe by rule diminishing fees in inverse proportion the value of the aggregate price of the offering.

(b) Notice of the filing of the registration statement shall be immediately published by the issuer, at its own expense, in two (2) newspapers of general circulation in the Philippines, once a week for two (2) consecutive weeks, or in such other manner as the Commission by rule shall prescribe, reciting that a registration statement for the sale of such security has been filed, and that the aforesaid registration statement, as well as the papers attached thereto are open to inspection at the Commission during business hours, and copies thereof,

photostatic or otherwise, shall be furnished to interested parties at such reasonable charge as the Commission may prescribe.

12.6. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 14 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements have been complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors.

12.7. Upon effectivity of the registration statement, the issuer shall state under oath in every prospectus that all registration requirements have been met and that all information are true and correct as represented by the issuer or the one making the statement. Any untrue statement of fact or omission to state a material fact required to be stated therein or necessary to make the statement therein not misleading shall constitute fraud.

SEC. 13. Rejection and Revocation of Registration of Securities.

- 13.1. The Commission may reject a registration statement and refuse registration of the security thereunder, or revoke the effectivity of a registration statement and the registration of the security thereunder after due notice and hearing by issuing an order to such effect, setting forth its findings in respect thereto, if it finds that:

(a) The issuer:

(i) Has been judicially declared insolvent;

(ii) Has violated any of the provisions of this Code, the rules promulgated pursuant thereto, or any order of the Commission of which the issuer has notice in connection with the offering for which a registration statement has been filed;

(iii) Has been or is engaged or is about to engage in fraudulent transactions;

(iv) Has made any false or misleading representation of material facts in any prospectus concerning the issuer or its securities;

(v) Has failed to comply with any requirement that the Commission may impose as a condition for registration of the security for which the registration statement has been filed; or

(b) The registration statement is on its face incomplete or inaccurate in any material respect or includes any untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements therein not misleading; or

(c) The issuer, any officer, director or controlling person of the issuer, or person performing similar functions, or any underwriter has been convicted, by a competent judicial or administrative body, upon plea of guilty, or otherwise, of an offense involving moral turpitude and/or fraud or is enjoined or restrained by the Commission or other competent judicial or administrative body for violations of securities, commodities, and other related laws.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction as provided for under the Rules of Court.

13.2. The Commission may compel the production of all the books and papers of such issuer, and may administer oaths to, and examine the officers of such issuer or any other person connected therewith as to its business and affairs.

13.3. If any issuer shall refuse to permit an examination to be made by the Commission, its refusal shall be ground for the refusal or revocation of the registration of its securities.

13.4. If the Commission deems it necessary, it may issue an order suspending the offer and sale of the securities pending any investigation. The order shall state the grounds for taking such action, but such order of suspension although binding upon the persons notified thereof, shall be deemed confidential, and shall not be published. Upon the issuance of the suspension order, no further offer or sale of such security shall be made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.

13.5. Notice of issuance of such order shall be given to the issuer and every dealer and broker who shall have notified the Commission of an intention to sell such security.

13.6. A registration statement may be withdrawn by the issuer only with the consent of the Commission.

SEC. 14. *Amendments to the Registration Statement.* - 14.1. If a registration statement is on its face incomplete or inaccurate in any material respect, the Commission shall issue an order directing the amendment of the registration statement. Upon compliance with such order, the amended registration statement shall become effective in accordance with the procedure mentioned in Subsection 12.6 hereof.

14.2. An amendment filed prior to the effective date of the registration statement shall recommence the forty-five (45) day period within which the Commission shall act on a registration statement. An amendment filed after the effective date of the registration statement shall become effective only upon such date as determined by the Commission.

14.3. If any change occurs in the facts set forth in a registration statement, the issuer shall file an amendment thereto setting forth the change.

14.4. If, at any time, the Commission finds that a registration statement contains any false statement or omits to state any fact required to be stated therein or necessary to make the statements therein not misleading, the Commission may conduct an examination, and, after due notice and hearing, issue an Order suspending the

effectivity of the registration statement. If the statement is duly amended, the suspension order may be lifted.

14.5. In making such examination the Commission or any officer or officers designated by it may administer oaths and affirmations and shall have access to, and may demand the production of, any books, records or documents relevant to the examination. Failure of the issuer, underwriter, or any other person to cooperate, or his obstruction or refusal to undergo an examination, shall be a ground for the issuance of a suspension order.

SEC. 15. *Suspension of Registration.* - 15.1. If, at any time, the information contained in the registration statement filed is or has become misleading, incorrect, inadequate or incomplete in any material respect, or the sale or offering for sale of the security registered thereunder may work or tend to work a fraud, the Commission may require from the issuer such further information as may in its judgment be necessary to enable the Commission to ascertain whether the registration of such security should be revoked on any ground specified in this Code. The Commission may also suspend the right to sell and offer for sale such security pending further investigation, by entering an order specifying the grounds for such action, and by notifying the issuer, underwriter, dealer or broker known as participating in such offering.

15.2. The refusal to furnish information required by the Commission may be a ground for the issuance of an order of suspension pursuant to Subsection 15.1. Upon the issuance of any such order and notification to the issuer, underwriter, dealer or broker known as participating in such offering, no further offer or sale of any such security shall be made until the same is lifted or set aside by the Commission. Otherwise, such sale shall be void.

15.3. Upon issuance of an order of suspension, the Commission shall conduct a hearing. If the Commission determines that the sale of any security should be revoked, it shall issue an order prohibiting sale of such security.

Until the issuance of a final order, the suspension of the right to sell, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice. If, however, the Commission finds that the sale of the security will neither be fraudulent nor result in fraud, it shall forthwith issue an order revoking the order of suspension, and such security shall be restored to its status as a registered security as of the date of such order of suspension.

CHAPTER IV

REGULATION OF PRE-NEED PLANS

SEC. 16. *Pre-Need Plans.* - No person shall sell or offer for sale to the public any pre-need plan except in accordance with rules and regulations which the Commission shall prescribe. Such rules shall regulate the sale of pre-need plans by, among other things, requiring the registration of pre-need plans, licensing persons involved in the sale of pre-need plans, requiring disclosures to prospective plan holders, prescribing advertising guidelines, providing for uniform accounting system, reports and record keeping with respect to such plans, imposing capital, bonding and other financial responsibility, and establishing trust funds for the payment of benefits under such plans.

CHAPTER V

REPORTORIAL REQUIREMENTS

SEC. 17. *Periodic and Other Reports of Issuers.* - 17.1. Every issuer satisfying the requirements in Subsection 17.2 hereof shall file with the Commission:

- (a) Within one hundred thirty-five (135) days, after the end of the issuer's fiscal year, or such other time as the Commission may prescribe, an annual report which shall include, among others, a balance sheet, profit and loss statement and statement of cash flows, for such

last fiscal year, certified by an independent certified public accountant, and a management discussion and analysis of results of operations; and

(b) Such other periodical reports for interim fiscal periods and current reports on significant developments of the issuer as the Commission may prescribe as necessary to keep current information on the operation of the business and financial condition of the issuer.

17.2. The reportorial requirements of Subsection 17.1 shall apply to the following:

(a) An issuer which has sold a class of its securities pursuant to a registration under Section 12 hereof: *Provided, however,* That the obligation of such issuer to file reports shall be suspended for any fiscal year after the year such registration became effective if such issuer, as of the first day of any such fiscal year, has less than one hundred (100) holders of such class of securities or such other number as the Commission shall prescribe and it notifies the Commission of such;

(b) An issuer with a class of securities listed for trading on an Exchange; and

(c) An issuer with assets of at least Fifty million pesos (P50,000,000.00) or such other amount as the Commission shall prescribe, and having two hundred (200) or more holders each holding at least one hundred (100) shares of a class of its equity securities: *Provided, however,* That the obligation of such issuer to file reports shall be terminated ninety (90) days after notification to the Commission by the issuer that the number of its holders holding at least one hundred (100) shares is reduced to less than one hundred (100).

17.3. Every issuer of a security listed for trading on an Exchange shall file with the Exchange a copy of any report filed with the Commission under Subsection 17.1 hereof.

17.4. All reports (including financial statements) required to be filed with the Commission pursuant to Subsection 17.1 hereof shall be

in such form, contain such information and be filed at such times as the Commission shall prescribe, and shall be in lieu of any periodical or current reports or financial statements otherwise required to be filed under the Corporation Code.

17.5. Every issuer which has a class of equity securities satisfying any of the requirements in Subsection 17.2 shall furnish to each holder of such equity security an annual report in such form and containing such information as the Commission shall prescribe.

17.6. Within such period as the Commission may prescribe preceding the annual meeting of the holders of any equity security of a class entitled to vote at such meeting, the issuer shall transmit to such holders an annual report in conformity with Subsection 17.5.

SEC. 18. *Reports by Five per centum (5%) Holders of Equity Securities.* - 18.1. In every case in which an issuer satisfies the requirements of Subsection 17.2 hereof, any person who acquires directly or indirectly the beneficial ownership of more than five *per centum* (5%) of such class or in excess of such lesser *per centum* as the Commission by rule may prescribe, shall, within ten (10) days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the Exchange where the security is traded, and to the Commission a sworn statement containing the following information and such other information as the Commission may require in the public interest or for the protection of investors:

(a) The personal background, identity, residence, and citizenship of, and the nature of such beneficial ownership by, such person and all other persons by whom or on whose behalf the purchases are effected; in the event the beneficial owner is a juridical person, the lines of business of the beneficial owner shall also be reported;

(b) If the purpose of the purchases or prospective purchases is to acquire control of the business of the issuer of the securities, any plans or proposals which such persons may have that will effect a major change in its business or corporate structure;

(c) The number of shares of such security which are beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly, by: (i) such person, and (ii) each associate of such person, giving the background, identity, residence, and citizenship of each such associate; and

(d) Information as to any contracts, arrangements, or understanding with any person with respect to any securities of the issuer including but not limited to transfer, joint ventures, loan or option arrangements, puts or calls, guarantees or division of losses or profits, or proxies naming the persons with whom such contracts, arrangements, or understanding have been entered into, and giving the details thereof.

18.2. If any change occurs in the facts set forth in the statements, an amendment shall be transmitted to the issuer, the Exchange and the Commission.

18.3. The Commission, may permit any person to file in lieu of the statement required by Subsection 17.1 hereof, a notice stating the name of such person, the shares of any equity securities subject to Subsection 17.1 which are owned by him, the date of their acquisition and such other information as the Commission may specify, if it appears to the Commission that such securities were acquired by such person in the ordinary course of his business and were not acquired for the purpose of and do not have the effect of changing or influencing the control of the issuer nor in connection with any transaction having such purpose or effect.

CHAPTER VI

PROTECTION OF SHAREHOLDER INTERESTS

SEC. 19. *Tender Offers.* -19.1. (a) Any person or group of persons acting in concert who intends to acquire at least fifteen percent (15%) of any class of any equity security of a listed corporation or of any class of any equity security of a corporation with assets of

at least Fifty million pesos (P50,000,000.00) and having two hundred (200) or more stockholders with at least one hundred (100) shares each or who intends to acquire at least thirty percent (30%) of such equity over a period of twelve (12) months shall make a tender offer to stockholders by filing with the Commission a declaration to that effect; and furnish the issuer, a statement containing such of the information required in Section 17 of this Code as the Commission may prescribe. Such person or group of persons shall publish all requests or invitations for tender, or materials making a tender offer or requesting or inviting letters of such a security. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe, and shall be filed with the Commission and sent to the issuer not later than the time copies of such materials are first published or sent or given to security holders.

(b) Any solicitation or recommendation to the holders of such a security to accept or reject a tender offer or request or invitation for tenders shall be made in accordance with such rules and regulations as the Commission may prescribe.

(c) Securities deposited pursuant to a tender offer or request or invitation for tenders may be withdrawn by or on behalf of the depositor at any time throughout the period that the tender offer remains open and if the securities deposited have not been previously accepted for payment, and at any time after sixty (60) days from the date of the original tender offer or request or invitation, except as the Commission may otherwise prescribe.

(d) Where the securities offered exceed that which a person or group of persons is bound or willing to take up and pay for, the securities that are subject of the tender offer shall be taken up as nearly as may be *pro rata*, disregarding fractions, according to the number of securities deposited by each depositor. The provisions of this subsection shall also apply to securities deposited within ten (10) days after notice of an increase in the consideration offered to security holders, as described in paragraph (e) of this subsection, is first published or sent or given to security holders.

(e) Where any person varies the terms of a tender offer or request or invitation for tenders before the expiration thereof by increasing the consideration offered to holders of such securities, such person shall pay the increased consideration to each security holder whose securities are taken up and paid for whether or not such securities have been taken up by such person before the variation of the tender offer or request or invitation.

19.2. It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer or request or invitation for tenders, or any solicitation of security holders in opposition to or in favor of any such offer, request, or invitation. The Commission shall, for the purposes of this subsection, define and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative.

SEC. 20. *Proxy Solicitations.* - 20.1. Proxies must be issued and proxy solicitation must be made in accordance with rules and regulations to be issued by the Commission;

20.2. Proxies must be in writing, signed by the stockholder or his duly authorized representative and filed before the scheduled meeting with the corporate secretary.

20.3. Unless otherwise provided in the proxy, it shall be valid only for the meeting for which it is intended. No proxy shall be valid and effective for a period longer than five (5) years at one time.

20.4. No broker or dealer shall give any proxy, consent or authorization, in respect of any security carried for the account of a customer, to a person other than the customer, without the express written authorization of such customer.

20.5. A broker or dealer who holds or acquires the proxy for at least ten *per centum* (10%) or such percentage as the Commission may prescribe of the outstanding share of the issuer, shall submit a report identifying the beneficial owner within ten (10) days after such acquisition, for its own account or customer, to the issuer of the security, to the Exchange where the security is traded and to the Commission.

SEC. 21. *Fees for Tender Offers and Certain Proxy Solicitations.*

- At the time of filing with the Commission of any statement required under Section 19 for any tender offer or Section 72.2 for issuer repurchases, or Section 20 for proxy or consent solicitation, the Commission may require that the person making such filing pay a fee of not more than one-tenth (1/10) of one *per centum* (1%) of:

21.1. The proposed aggregate purchase price in the case of a transaction under Sections 20 or 72.2; or

21.2. The proposed payment in cash, and the value of any securities or property to be transferred in the acquisition, merger or consolidation, or the cash and value of any securities proposed to be received upon the sale or disposition of such assets in the case of a solicitation under Section 20. The Commission shall prescribe by rule diminishing fees in inverse proportion to the value of the aggregate price of the offering.

SEC. 22. *Internal Record Keeping and Accounting Controls.* -

Every issuer which has a class of securities that satisfies the requirements of Subsection 17.2 shall:

22.1. Make and keep books, records, and accounts which, in reasonable detail accurately and fairly reflect the transactions and dispositions of assets of the issuer;

22.2. Devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that: (a) Transactions and access to assets are pursuant to management authorization; (b) Financial statements are prepared in conformity with generally accepted

accounting principles that are adopted by the Accounting Standards Council and the rules promulgated by the Commission with regard to the preparation of financial statements; and (c) Recorded assets are compared with existing assets at reasonable intervals and differences are reconciled.

SEC. 23. *Transactions of Directors, Officers and Principal Stockholders.* - 23.1. Every person who is directly or indirectly the beneficial owner of more than ten *per centum* (10%) of any class of any equity security which satisfies the requirements of Subsection 17.2, or who is a director or an officer of the issuer of such security, shall file, at the time either such requirement is first satisfied or within ten days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is listed for trading on an Exchange, also with the Exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is listed for trading on an Exchange, shall also file with the Exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

23.2. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months. Suit to recover such profit may be instituted before the Regional Trial Court by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty (60) days after request or shall fail diligently to prosecute the same thereafter, but no such suit shall be brought more than two (2) years after the date such profit was realized. This subsection shall not be construed to cover

any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.

23.3. It shall be unlawful for any such beneficial owner, director, or officer, directly or indirectly, to sell any equity security of such issuer if the person selling the security or his principal: (a) Does not own the security sold; or (b) If owning the security, does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation; but no person shall be deemed to have violated this subsection if he proves that notwithstanding the exercise of good faith he was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.

23.4. The provisions of Subsection 23.2 shall not apply to any purchase and sale, or sale and purchase, and the provisions of Subsection 23.3 shall not apply to any sale, of an equity security not then or thereafter held by him in an investment account, by a dealer in the ordinary course of his business and incident to the establishment or maintenance by him of a primary or secondary market, otherwise than on an Exchange, for such security. The Commission may, by such rules and regulations as it deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

CHAPTER VII

PROHIBITIONS ON FRAUD, MANIPULATION AND INSIDER TRADING

SEC. 24. *Manipulation of Security Prices; Devices and Practices.*

- 24.1 It shall be unlawful for any person acting for himself or through a dealer or broker, directly or indirectly:

(a) To create a false or misleading appearance of active trading in any listed security traded in an Exchange or any other trading market (hereafter referred to purposes of this Chapter as "Exchange"):

(i) By effecting any transaction in such security which involves no change in the beneficial ownership thereof;

(ii) By entering an order or orders for the purchase or sale of such security with the knowledge that a simultaneous order or orders of substantially the same size, time and price, for the sale or purchase of any such security, has or will be entered by or for the same or different parties; or

(iii) By performing similar act where there is no change in beneficial ownership.

(b) To effect, alone or with others, a series of transactions in securities that: (i) Raises their price to induce the purchase of a security, whether of the same or a different class of the same issuer or of a controlling, controlled, or commonly controlled company by others; (ii) Depresses their price to induce the sale of a security, whether of the same or a different class, of the same issuer or of a controlling, controlled, or commonly controlled company by others; or (iii) Creates active trading to induce such a purchase or sale through manipulative devices such as marking the close, painting the tape, squeezing the float, hype and dump, boiler room operations and such other similar devices.

(c) To circulate or disseminate information that the price of any security listed in an Exchange will or is likely to rise or fall because of manipulative market operations of any one or more persons conducted for the purpose of raising or depressing the price of the security for the purpose of inducing the purchase or sale of such security.

(d) To make false or misleading statement with respect to any material fact, which he knew or had reasonable ground to believe was so false or misleading, for the purpose of inducing the purchase or sale of any security listed or traded in an Exchange.

(e) To effect, either alone or others, any series of transactions for the purchase and/or sale of any security traded in an Exchange for the purpose of pegging, fixing or stabilizing the price of such security, unless otherwise allowed by this Code or by rules of the Commission.

24.2. No person shall use or employ, in connection with the purchase or sale of any security any manipulative or deceptive device or contrivance. Neither shall any short sale be effected nor any stop-loss order be executed in connection with the purchase or sale of any security except in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

24.3. The foregoing provisions notwithstanding, the Commission, having due regard to the public interest and the protection of investors, may, by rules and regulations, allow certain acts or transactions that may otherwise be prohibited under this Section.

SEC. 25. *Regulation of Option Trading.* - No member of an Exchange shall, directly or indirectly endorse or guarantee the performance of any put, call, straddle, option or privilege in relation to any security registered on a securities exchange.

The terms "put", "call", "straddle", "option", or "privilege" shall not include any registered warrant, right or convertible security.

SEC. 26. *Fraudulent Transactions.* - It shall be unlawful for any person, directly or indirectly, in connection with the purchase or sale of any securities to:

26.1. Employ any device, scheme, or artifice to defraud;

26.2. Obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

26.3. Engage in any act, transaction, practice or course of business which operates or would operate as a fraud or deceit upon any person.

SEC. 27. *Insider's Duty to Disclose When Trading.* - 27.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (a) The insider proves that the information was not gained from such relationship; or (b) If the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8, or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material nonpublic information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for the market to absorb such information: *Provided, however,* That this presumption shall be rebutted upon a showing by the purchaser or seller that he was not aware of the material nonpublic information at the time of the purchase or sale.

27.2. For purposes of this Section, information is "material nonpublic" if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.

27.3. It shall be unlawful for any insider to communicate material nonpublic information about the issuer or the security to any person who, by virtue of the communication, becomes an insider as defined in Subsection 3.8, where the insider communicating the information knows or has reason to believe that such person will likely buy or sell a security of the issuer while in possession of such information.

27.4. a) It shall be unlawful where a tender offer has commenced or is about to commence for:

(i) Any person (other than the tender offeror) who is in possession of material nonpublic information relating to such tender offer, to buy or sell the securities of the issuer that are sought or to be sought by such tender offer if such person knows or has reason to believe that the information is nonpublic and has been acquired directly or indirectly from the tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, or any insider of such issuer; and

(ii) Any tender offeror, those acting on its behalf, the issuer of the securities sought or to be sought by such tender offer, and any insider of such issuer to communicate material nonpublic information relating to the tender offer to any other person where such communication is likely to result in a violation of Subsection 27.4 (a)(i).

(b) For purposes of this subsection the term "securities of the issuer sought or to be sought by such tender offer" shall include any securities convertible or exchangeable into such securities or any options or rights in any of the foregoing securities.

CHAPTER VIII

REGULATION OF SECURITIES MARKET PROFESSIONALS

SEC. 28. *Registration of Brokers, Dealers, Salesmen and Associated Persons.* - 28.1. No person shall engage in the business of buying or selling securities in the Philippines as a broker or dealer, or as a salesman, or an associated person of any broker or dealer unless registered as such with the Commission.

28.2. No registered broker or dealer shall employ any salesman or any associated person, and no issuer shall employ any salesman, who is not registered as such with the Commission.

28.3. The Commission, by rule or order, may conditionally or unconditionally exempt from Subsections 28.1 and 28.2 any broker, dealer, salesman, associated person of any broker or dealer, or any class of the foregoing, as it deems consistent with the public interest and the protection of investors.

28.4. The Commission shall promulgate rules and regulations prescribing the qualifications for registration of each category of applicant, which shall, among other things, require as a condition for registration that:

(a) If a natural person, the applicant satisfactorily pass a written examination as to his proficiency and knowledge in the area of activity for which registration is sought;

(b) In the case of a broker or dealer, the applicant satisfy a minimum net capital as prescribed by the Commission, and provide a bond or other security as the Commission may prescribe to secure compliance with the provisions of this Code; and

(c) If located outside of the Philippines, the applicant file a written consent to service of process upon the Commission pursuant to Section 65 hereof.

28.5. A broker or dealer may apply for registration by filing with the Commission a written application in such form and containing such information and documents concerning such broker or dealer as the Commission by rule shall prescribe.

28.6. Registration of a salesman or of an associated person of a registered broker or dealer may be made upon written application filed with the Commission by such salesman or associated person. The application shall be separately signed and certified by the registered broker or dealer to which such salesman or associated person is

become affiliated, or by the issuer in the case of a salesman employed, appointed or authorized solely by such issuer. The application shall be in such form and contain such information and documents concerning the salesman or associated person as the Commission by rule shall prescribe. For purposes of this Section, a salesman shall not include any employee of an issuer whose compensation is not determined directly or indirectly on sales of securities of the issuer.

28.7. Applications filed pursuant to Subsections 28.5 and 28.6 shall be accompanied by a registration fee in such reasonable amount prescribed by the Commission.

28.8. Within thirty (30) days after the filing of any application under this Section, the Commission shall by order: (a) Grant registration if it determines that the requirements of this Section and the qualifications for registration set forth in its rules and regulations have been satisfied; or (b) Deny said registration.

28.9. The names and addresses of all persons approved for registration as brokers, dealers, associated persons or salesmen and all orders of the Commission with respect thereto shall be recorded in a Register of Securities Market Professionals kept in the office of the Commission which shall be open to public inspection.

28.10. Every person registered pursuant to this Section shall file with the Commission, in such form as the Commission shall prescribe, information necessary to keep the application for registration current and accurate, including in the case of a broker or dealer changes in salesmen, associated persons and owners thereof.

28.11. Every person registered pursuant to this Section shall pay to the Commission an annual fee at such time and in such reasonable amount as the Commission shall prescribe. Upon notice by the Commission that such annual fee has not been paid as required, the registration of such person shall be suspended until payment has been made.

28.12. The registration of a salesman or associated person shall be automatically terminated upon the cessation of his affiliation with said registered broker or dealer, or with an issuer in the case of a salesman employed, appointed or authorized by such issuer. Promptly following any such cessation of affiliation, the registered broker or dealer, or issuer, as the case may be, shall file with the Commission a notice of separation of such salesman or associated person.

SEC. 29. *Revocation, Refusal or Suspension of Registration of Brokers, Dealers, Salesmen and Associated Persons.* - 29.1. Registration under Section 28 of this Code may be refused, or any registration granted thereunder may be revoked, suspended, or limitations placed thereon, by the Commission if, after due notice and hearing, the Commission determines the applicant or registrant:

(a) Has willfully violated any provision of this Code, any rule, regulation or order made hereunder, or any other law administered by the Commission, or in the case of a registered broker, dealer or associated person has failed to supervise, with a view to preventing such violation, another person who commits such violation;

(b) Has willfully made or caused to be made a materially false or misleading statement in any application for registration or report filed with the Commission or a self-regulatory organization, or has willfully omitted to state any material fact that is required to be stated therein;

(c) Has failed to satisfy the qualifications or requirements for registration prescribed under Section 28 and the rules and regulations of the Commission promulgated thereunder;

(d) Has been convicted, by a competent judicial or administrative body of an offense involving moral turpitude, fraud, embezzlement, counterfeiting, theft, estafa, misappropriation, forgery, bribery, false oath, or perjury, or of a violation of securities, commodities, banking, real estate or insurance laws;

(e) Is enjoined or restrained by a competent judicial or administrative body from engaging in securities, commodities, banking,

real estate or insurance activities or from willfully violating laws governing such activities;

(f) Is subject to an order of a competent judicial or administrative body refusing, revoking or suspending any registration, license or other permit under this Code, the rules and regulations promulgated thereunder, any other law administered by the Commission;

(g) Is subject to an order of a self-regulatory organization suspending or expelling him from membership or participation therein or from association with a member or participant thereof;

(h) Has been found by a competent judicial or administrative body to have willfully violated any provisions of securities, commodities, banking, real estate or insurance laws, or has willfully aided, abetted, counseled, commanded, induced or procured such violation; or

(i) Has been judicially declared insolvent.

For purposes of this subsection, the term "competent judicial or administrative body" shall include a foreign court of competent jurisdiction and a foreign financial regulator.

29.2. (a) In cases of charges against a salesman or associated person, notice thereof shall also be given the broker, dealer or issuer employing such salesman or associated person.

(b) Pending the hearing, the Commission shall have the power to order the suspension of such broker's, dealer's, associated person's or salesman's registration: *Provided*, That such order shall state the cause for such suspension. Until the entry of a final order, the suspension of such registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it shall appear that the order of suspension has been violated after notice.

29.3. The order of the Commission refusing, revoking, suspending or placing limitations on a registration as herein above provided, together with its findings, shall be entered in the Register of Securities

Market Professionals. The suspension or revocation of the registration of a dealer or broker shall also automatically suspend the registration of all salesmen and associated persons affiliated with such broker or dealer.

29.4. It shall be sufficient cause for refusal, revocation or suspension of a broker's or dealer's registration, if any associated person thereof or any juridical entity controlled by such associated person has committed any act or omission or is subject to any disability enumerated in paragraphs (a) through (i) of Subsection 29.1 hereof.

SEC. 30. *Transactions and Responsibility of Brokers and Dealers.*

- 30.1. No broker or dealer shall deal in or otherwise buy or sell, for its own account or for the account of customers, securities listed on an Exchange issued by any corporation where any stockholder, director, associated person or salesman, or authorized clerk of said broker or dealer and all the relatives of the foregoing within the fourth civil degree of consanguinity or affinity, is at the time holding office in said issuer corporation as a director, president, vice-president, manager, treasurer, comptroller, secretary or any office of trust and responsibility, or is a controlling person of the issuer.

30.2. No broker or dealer shall effect any transaction in securities or induce or attempt to induce the purchase or sale of any security except in compliance with such rules and regulations as the Commission shall prescribe to ensure fair and honest dealings in securities and provide financial safeguards and other standards for the operation of brokers and dealers, including the establishment of minimum net capital requirements, the acceptance of custody and use of securities of customers, and the carrying and use of deposits and credit balances of customers.

SEC. 31. *Development of Securities Market Professionals.* -

The Commission, in joint undertaking with self regulatory organizations, organizations and associations of finance professionals as well as private educational and research institutions shall undertake or facilitate/organize continuing training, conferences/ seminars, updating programs, research and development as well as technology transfer at the latest

and advanced trends in issuance and trading of securities, derivatives, commodity trades and other financial instruments, as well as securities markets of other countries.

CHAPTER IX

EXCHANGES AND OTHER SECURITIES TRADING MARKETS

SEC. 32. *Prohibition on Use of Unregistered Exchange; Regulation of Over-the-Counter Markets.* - 32.1. No broker, dealer, salesman, associated person of a broker or dealer, or Exchange, directly or indirectly, shall make use of any facility of an Exchange in the Philippines to effect any transaction in a security, or to report such transaction, unless such Exchange is registered as such under Section 33 of this Code.

32.2. (a) No broker, dealer, salesman or associated person of a broker or dealer, singly or in concert with any other person, shall make, create or operate, or enable another to make, create or operate, any trading market, otherwise than on a registered Exchange, for the buying and selling of any security, except in accordance with rules and regulations the Commission may prescribe.

(b) The Commission may promulgate rules and regulations governing transactions by brokers, dealers, salesmen or associated persons of a broker or dealer, over any facilities of such trading market and may require such market to be administered by a self-regulatory organization determined by the Commission as capable of insuring the protection of investors comparable to that provided in the case of a registered Exchange. Such self-regulatory organization must provide a centralized marketplace for trading and must satisfy requirements comparable to those prescribed for registration of Exchanges in Section 33 of this Code.

SEC. 33. *Registration of Exchanges.* - 33.1. Any Exchange may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section and Section 40 hereof,

by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

(a) An undertaking to comply and enforce compliance by its members with the provisions of this Code, its implementing rules or regulations and the rules of the Exchange;

(b) The organizational charts of the Exchange, rules of procedure, and a list of its officers and members;

(c) Copies of the rules of the Exchange; and

(d) An undertaking that in the event a member firm becomes insolvent or when the Exchange shall have found that the financial condition of its member firm has so deteriorated that it cannot readily meet the demands of its customers for the delivery of securities and/or payment of sales proceeds, the Exchange shall, upon order of the Commission, take over the operation of the insolvent member firm and immediately proceed to settle the member firm's liabilities to its customers.

33.2. Registration of an Exchange shall be granted upon compliance with the following provisions:

(a) That the applicant is organized as a stock corporation: *Provided*, That any registered Exchange existing prior to the effectivity of this Code shall within one (1) year reorganize as a stock corporation pursuant to a demutualization plan approved by the Commission;

(b) That the applicant is engaged solely in the business of operating an exchange: *Provided, however*, That the Commission may adopt rules, regulations or issue an order, upon application, exempting an Exchange organized as a stock corporation and owned and controlled by another juridical person from this restriction.

(c) Where the Exchange is organized as a stock corporation, that no person may beneficially own or control, directly or indirectly, more than five percent (5%) of the voting rights of the Exchange and no

industry or business group may beneficially own or control, directly or indirectly, more than twenty percent (20%) of the voting rights of the Exchange: *Provided, however,* That the Commission may adopt rules, regulations or issue an order, upon application, exempting an applicant from this prohibition where it finds that such ownership or control will not negatively impact on the exchange's ability to effectively operate in the public interest.

(d) The expulsion, suspension, or disciplining of a member and persons associated with a member for conduct or proceeding inconsistent with just and equitable principles of fair trade, and for violations of provisions of this Code, or any other Act administered by the Commission, the rules, regulations and orders thereunder, or the rules of the Exchange;

(e) A fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking to be a member, the barring of any person from association with a member, and the prohibition or limitation of any person from access to services offered by the Exchange;

(f) That the brokers in the board of the Exchange shall comprise of not more than forty-nine percent (49%) of such board and shall proportionately represent the Exchange membership in terms of volume/value of trade and paid up capital, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose: *Provided,* That any registered Exchange existing prior to the effectivity of this Code shall immediately comply with this requirement;

(g) For the board of the Exchange to include in its composition (i) the president of the Exchange, and (ii) no less than fifty one percent (51%) of the remaining members of the board to be comprised of three (3) independent directors and persons who represent the interests of issuers, investors, and other market participants, who are not associated with any broker or dealer or member of the Exchange for a period of two (2) years prior to his/her appointment. No officer or employee of a member, its subsidiaries or affiliates or related interests shall become

an independent director: *Provided, however,* That the Commission may by rule, regulation, or order upon application, permit the exchange organized as a stock corporation to use a different governance structure: *Provided, further,* That the Commission is satisfied that the Exchange is acting in the public interest and is able to effectively operate as a self-regulatory organization under this Code: *Provided, finally,* That any registered exchange existing prior to the effectivity of this Code shall immediately comply with this requirement.

(h) The president and other management of the Exchange to consist only of persons who are not members and are not associated in any capacity, directly or indirectly with any broker or dealer or member or listed company of the Exchange: *Provided,* That the Exchange may only appoint, and a person may only serve, as an officer of the exchange if such person has not been a member or affiliated with any broker, dealer, or member of the Exchange for a period of at least two (2) years prior to such appointment;

(i) The transparency of transactions on the Exchange;

(j) The equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls;

(k) Prevention of fraudulent and manipulative acts and practices, promotion of just and equitable principles of trade, and, in general, protection of investors and the public interest; and

(l) The transparent, prompt and accurate clearance and settlement of transactions effected on the Exchange.

33.3. If the Commission finds that the applicant Exchange is capable of complying and enforcing compliance by its members, and persons associated with such members, with the provisions of this Code, its rules and regulations, and the rules of the Exchange, and that the rules of the Exchange are fair, just and adequate, the Commission shall cause such Exchange to be registered. If, after notice due and hearing, the Commission finds otherwise, the application shall be denied.

33.4. Within ninety (90) days after the filing of the application the Commission may issue an order either granting or denying registration as an Exchange, unless the Exchange applying for registration shall withdraw its application or shall consent to the Commission's deferring action on its application for a stated longer period after the date of filing. The filing with the Commission of an application for registration by an Exchange shall be deemed to have taken place upon the receipt thereof. Amendments to an application may be made upon such terms as the Commission may prescribe.

33.5. Upon the registration of an Exchange, it shall pay a fee in such amount and within such period as the Commission may fix.

33.6. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, an Exchange may withdraw its registration or suspend its operations or resume the same.

SEC. 34. Segregation and Limitation of Functions of Members, Brokers and Dealers. - 34.1. It shall be unlawful for any member-broker of an Exchange to effect any transaction on such Exchange for its own account, the account of an associated person, or an account with respect to which it or an associated person thereof exercises investment discretion: *Provided, however,* That this Section shall not make unlawful -

- (a) Any transaction by a member-broker acting in the capacity of a market maker;
- (b) Any transaction reasonably necessary to carry on an odd-lot transactions;
- (c) Any transaction to offset a transaction made in error; and
- (d) Any other transaction of a similar nature as may be defined by the Commission.

34.2. In all instances where the member-broker effects a transaction on an Exchange for its own account or the account of an associated person or an account with respect to which it exercises investment discretion, it shall disclose to such customer at or before the completion of the transaction it is acting for its own account: *Provided, further,* That this fact shall be reflected in the order ticket and the confirmation slip.

34.3. Any member-broker who violates the provisions of this Section shall be subject to the administrative sanctions provided in Section 54 of this Code.

SEC. 35. *Additional Fees of Exchanges* - In addition to the registration fee prescribed in Section 33 of this Code, every Exchange shall pay to the Commission, on a semestral basis on or before the tenth day of the end of every semester of the calendar year, a fee in such an amount as the Commission shall prescribe, but not more than one-hundredth of one *per centum* (1%) of the aggregate amount of the sales of securities transacted on such Exchange during the preceding calendar year, for the privilege of doing business, during the preceding calendar year or any part thereof.

SEC. 36. *Powers with Respect to Exchanges and Other Trading Market.* - 36.1. The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors and the public interest so requires, summarily to suspend trading in any listed security on any Exchange or other trading market for a period not exceeding thirty (30) days or, with the approval of the President of the Philippines, summarily to suspend all trading on any securities Exchange or other trading market for a period of more than thirty (30) but not exceeding ninety (90) days: *Provided, however,* That the Commission, promptly following the issuance of the order of suspension, shall notify the affected issuer of the reasons for such suspension and provide such issuer with an opportunity for hearing to determine whether the suspension should be lifted.

36.2. Wherever two (2) or more Exchanges or other trading markets exist, the Commission may require and enforce uniformity of trading regulations in and/or between or among said Exchanges or other trading markets.

36.3. In addition to the existing Philippine Stock Exchange, the Commission shall have the authority to determine the number, size and location of stock Exchanges, other trading markets and commodity Exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve or rationalize investment.

36.4. The Commission, having due regard to the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents, shall promulgate rules and regulations for the prompt and accurate clearance and settlement of securities transactions.

36.5. (a) The Commission may establish or facilitate the establishment of trust funds which shall be contributed by Exchanges, brokers, dealers, underwriters, transfer agents, salesmen and other persons transacting in securities, as the Commission may require, for the purpose of compensating investors for the extraordinary losses or damage they may suffer due to business failure or fraud or mismanagement of the persons with whom they transact, under such rules and regulations as the Commission may from time to time prescribe or approve in the public interest.

(b) The Commission may, having due regard to the public interest or the protection of investors, regulate, supervise, examine, suspend or otherwise discontinue such and other similar funds under such rules and regulations which the Commission may promulgate, and which may include taking custody and management of the fund itself as well as investments in and disbursements from the funds under such forms of control and supervision by the Commission as it may from time to time require. The authority granted to the Commission under this subsection shall also apply to all funds established for the protection of investors, whether established by the Commission or otherwise.

SEC. 37. *Registration of Innovative and Other Trading Markets.*

- The Commission, having due regard for national economic development, shall encourage competitiveness in the market by promulgating within six (6) months upon the enactment of this Code, rules for the registration and licensing of innovative and other trading markets or Exchanges covering, but not limited to, the issuance and trading of innovative securities, securities of small, medium, growth and venture enterprises, and technology-based ventures pursuant to Section 33 of this Code.

SEC. 38. *Independent Directors.*-Any corporation with a class of equity securities listed for trading on an Exchange or with assets in excess of Fifty million pesos (P50,000,000.00) and having two hundred (200) or more holders, at least of two hundred (200) of which are holding at least one hundred (100) shares of a class of its equity securities or which has sold a class of equity securities to the public pursuant to an effective registration statement in compliance with Section 12 hereof shall have at least two (2) independent directors or such independent directors shall constitute at least twenty percent (20%) of the members of such board, whichever is the lesser. For this purpose, an "independent director" shall mean a person other than an officer or employee of the corporation, its parent or subsidiaries, or any other individual having a relationship with the corporation, which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

CHAPTER X

REGISTRATION, RESPONSIBILITIES AND OVERSIGHT OF SELF-REGULATORY ORGANIZATIONS.

SEC. 39. *Associations of Securities Brokers, and Dealers, and Other Securities Related Organizations.* - 39.1. The Commission shall have the power to register as a self-regulatory organization, or otherwise grant licenses, and to regulate, supervise, examine, suspend or otherwise discontinue, as a condition for the operation of organizations whose operations are related to or connected with the securities market such

as but not limited to associations of brokers and dealers, transfer agents, custodians, fiscal and paying agents, computer services, news disseminating services, proxy solicitors, statistical agencies, securities rating agencies, and securities information processors which are engaged in the business of: (a) Collecting, processing, or preparing for distribution or publication, or assisting, participating in, or coordinating the distribution or publication of, information with respect to transactions in or quotations for any security; or (b) Distributing or publishing, whether by means of a ticker tape, a communications network, a terminal display device, or otherwise, on a current and continuing basis, information with respect to such transactions or quotations. The Commission may prescribe rules and regulations which are necessary or appropriate in the public interest or for the protection of investors to govern self-regulatory organizations and other organizations licensed or regulated pursuant to the authority granted in Subsection 39.1 including the requirement of cooperation within and among, and electronic integration of the records of, all participants in the securities market to ensure transparency and facilitate exchange of information.

39.2. An association of brokers and dealers may be registered as a securities association pursuant to Subsection 39.3 by filing with the Commission an application for registration in such form as the Commission, by rule, may prescribe containing the rules of the association and such other information and documents as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

39.3. An association of brokers and dealers shall not be registered as a securities association unless the Commission determines that:

(a) The association is so organized and has the capacity to be able to carry out the purposes of this Code and to comply with, and to enforce compliance by its members and persons associated with its members, with the provisions of this Code, the rules and regulations thereunder, and the rules of the association.

(b) The rules of the association, notwithstanding anything in the Corporation Code to the contrary, provide that:

(i) Any registered broker or dealer may become a member of the association;

(ii) There exist a fair representation of its members to serve on the Board of Directors of the association and in the administration of its affairs, and that any natural person associated with a juridical entity that is a member shall himself be deemed to be a member for this purpose;

(iii) The Board of Directors of the association includes in its composition: (a) The president of the association and (b) Persons who represent the interests of issuers and public investors and are not associated with any broker or dealer or member of the association; that the president and other management of the association not be a member or associated with any broker, dealer or member of the association;

(iv) For the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls;

(v) For the prevention of fraudulent and manipulative acts and practices, the promotion of just and equitable principles of trade, and, in general, the protection of investors and the public interest;

(vi) That its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this Code, the rules or regulations thereunder, or the rules of the association;

(vii) That a fair procedure for the disciplining of members and persons associated with members, the denial of membership to any person seeking membership therein, the

barring of any person from becoming associated with a member thereof, and the prohibition or limitation by the association of any person with respect to access to services offered by the association or a member thereof.

39.4. (a) A registered securities association shall deny membership to any person who is not a registered broker or dealer.

(b) A registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if such broker or dealer:

(i) Does not meet the standards of financial responsibility, operational capability, training, experience, or competence that are prescribed by the rules of the association; or

(ii) Has engaged, and there is a reasonable likelihood it will again engage, in acts or practices inconsistent with just and equitable principles of fair trade.

(c) A registered securities association may deny membership to a registered broker or dealer not engaged in a type of business in which the rules of the association require members to be engaged: *Provided, however,* That no registered securities association may deny membership to a registered broker or dealer by reason of the amount of business done by the broker or dealer.

A registered securities association may examine and verify the qualifications of an applicant to become a member in accordance with procedures established by the rules of the association.

(d) A registered securities association may bar a salesman or person associated with a broker or dealer from being employed by a member or set conditions for the employment of a salesman or associated if such person:

(i) Does not meet the standards of training, experience, or competence that are prescribed by the rules of the association; or

(ii) Has engaged, and there is a reasonable likelihood he will again engage, in acts or practices inconsistent with just and equitable principles of fair trade.

A registered securities association may examine and verify the qualifications of an applicant to become a salesman or associated person employed by a member in accordance with procedures established by the rules of the association. A registered association also may require a salesman or associated person employed by a member to be registered with the association in accordance with procedures prescribed in the rules of the association.

39.5. In any proceeding by a registered securities association to determine whether a person shall be denied membership, or barred from association with a member, the association shall provide notice to the person under review of the specific grounds being considered for denial, afford him an opportunity to defend against the allegations, and keep a record of the proceedings. A determination by the association to deny membership shall be supported by a statement setting forth the specific grounds on which the denial is based.

SEC. 40. Powers with Respect to Self-Regulatory Organizations.

- 40.1. Upon the filing of an application for registration as an Exchange under Section 33, a registered securities association under Section 39, a registered clearing agency under Section 42, or other self-regulatory organization under this Section, the Commission shall have ninety (90) days within which to either grant registration or institute a proceeding to determine whether registration should be denied. In the event proceedings are instituted, the Commission shall have two hundred seventy (270) days within which to conclude such proceedings at which time it shall, by order, grant or deny such registration.

40.2. Every self-regulatory organization shall comply with the provisions of this Code, the rules and regulations thereunder, and its own rules, and enforce compliance therewith, notwithstanding any provision of the Corporation Code to the contrary, by its members, persons associated with its members or its participants.

40.3. (a) Each self-regulatory organization shall submit to the Commission for prior approval any proposed rule or amendment thereto, together with a concise statement of the reason and effect of the proposed amendment.

(b) Within sixty (60) days after submission of a proposed amendment, the Commission shall, by order, approve the proposed amendment. Otherwise, the same may be made effective by the self-regulatory organization.

(c) In the event of an emergency requiring action for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds, a self-regulatory organization may put a proposed amendment into effect summarily: *Provided, however,* That a copy of the same shall be immediately submitted to the Commission.

40.4. The Commission is further authorized, if after making appropriate request in writing to a self-regulatory organization that such organization effect on its own behalf specified changes in its rules and practices and, after due notice and hearing it determines that such changes have not been effected, and that such changes are necessary, by rule or regulation or by order, may alter, abrogate or supplement the rules of such self-regulatory organization in so far as necessary or appropriate to effect such changes in respect of such matters as:

(a) Safeguards in respect of the financial responsibility of members and adequate provision against the evasion of financial responsibility through the use of corporate forms or special partnerships;

(b) The supervision of trading practices;

- (c) The listing or striking from listing of any security;
- (d) Hours of trading;
- (e) The manner, method, and place of soliciting business;
- (f) Fictitious accounts;
- (g) The time and method of making settlements, payments, and deliveries, and of closing accounts;
- (h) The transparency of securities transactions and prices;
- (i) The fixing of reasonable rates of fees, interest, listing and other charges, but not rates of commission;
- (j) Minimum units of trading;
- (k) Odd-lot purchases and sales;
- (l) Minimum deposits on margin accounts; and
- (m) The supervision, auditing and disciplining of members or participants.

40.5. The Commission, after due notice and hearing, is authorized, in the public interest and to protect investors:

- (a) To suspend for a period not exceeding twelve (12) months or to revoke the registration of a self-regulatory organization, or to censure or impose limitations on the activities, functions, and operations of such self-regulatory organization, if the Commission finds that such a self-regulatory organization has willfully violated or is unable to comply with any provision of this Code or of the rules and regulations thereunder, or its own rules, or has failed to enforce compliance therewith by a member of, person associated with a member, or a participant in such self-regulatory organization;

(b) To expel from a self-regulatory organization any member thereof or any participant therein who is subject to an order of the Commission under Section 29 of this Code or is found to have willfully violated any provision of this Code or suspend for a period not exceeding twelve (12) months for violation of any provision of this Code or any other laws administered by the Commission, or the rules and regulations thereunder, or effected, directly or indirectly, any transaction for any person who, such member or participant had reason to believe, was violating in respect of such transaction any of such provisions; and

(c) To remove from office or censure any officer or director of a self-regulatory organization if it finds that such officer or director has violated any provision of this Code, any other law administered by the Commission, the rules or regulations thereunder, or the rules of such self-regulatory organization, abused his authority, or without reasonable justification or excuse has failed to enforce compliance with any of such provisions.

40.6. (a) A self-regulatory organization is authorized to discipline a member of or participant in such self-regulatory organization, or any person associated with a member, including the suspension or expulsion of such member or participant, and the suspension or bar from being associated with a member, if such person has engaged in acts or practices inconsistent with just and equitable principles of fair trade or in willful violation of any provision of the Code, any other law administered by the Commission, the rules or regulations thereunder, or the rules of the self-regulatory organization. In any disciplinary proceeding by a self-regulatory organization (other than a summary proceeding pursuant to paragraph (b) of this subsection) the self-regulatory organization shall bring specific charges, provide notice to the person charged, afford the person charged with an opportunity to defend against the charges, and keep a record of the proceedings. A determination to impose a disciplinary sanction shall be supported by a written statement of the offense, a summary of the evidence presented and a statement of the sanction imposed.

(b) A self-regulatory organization may summarily: (i) Suspend a member, participant or person associated with a member who has been or is expelled or suspended from any other self-regulatory organization; or (ii) Suspend a member who the self-regulatory organization finds to be in such financial or operating difficulty that the member or participant cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, participants or the self-regulatory organization: *Provided*, That the self-regulatory organization immediately notifies the Commission of the action taken. Any person aggrieved by a summary action pursuant to this paragraph shall be promptly afforded an opportunity for a hearing by the association in accordance with the provisions of paragraph (a) of this subsection. The Commission, by order, may stay a summary action on its own motion or upon application by any person aggrieved thereby, if the Commission determines summarily or after due notice and hearing (which hearing may consist solely of the submission of affidavits or presentation of oral arguments) that a stay is consistent with the public interest and the protection of investors.

40.7. A self-regulatory organization shall promptly notify the Commission of any disciplinary sanction on any member thereof or participant therein, any denial of membership or participation in such organization, or the imposition of any disciplinary sanction on a person associated with a member or a bar of such person from becoming so associated. Within thirty (30) days after such notice, any aggrieved person may appeal to the Commission from, or the Commission on its own motion within such period, may institute review of, the decision of the self-regulatory organization, at the conclusion of which, after due notice and hearing (which may consist solely of review of the record before the self-regulatory organization), the Commission shall affirm, modify or set aside the sanction. In such proceeding the Commission shall determine whether the aggrieved person has engaged or omitted to engage in the acts and practices as found by the self-regulatory organization, whether such acts and practices constitute willful violations of this Code, any other law administered by the

Commission, the rules or regulations thereunder, or the rules of the self-regulatory organization as specified by such organization, whether such provisions were applied in a manner consistent with the purposes of this Code, and whether, with due regard for the public interest and the protection of investors the sanction is excessive or oppressive.

40.8. The powers of the Commission under this section shall apply to organized exchanges and registered clearing agencies.

CHAPTER XI

ACQUISITION AND TRANSFER OF SECURITIES AND SETTLEMENT OF TRANSACTIONS IN SECURITIES

SEC. 41. *Prohibition on Use of Unregistered Clearing Agency.*
- It shall be unlawful for any broker, dealer, salesman, associated person of a broker or dealer, or clearing agency, directly or indirectly, to make use of any facility of a clearing agency in the Philippines to make deliveries in connection with transactions in securities or to reduce the number of settlements of securities transactions or to allocate securities settlement responsibilities or to provide for the central handling of securities so that transfers, loans and pledges and similar transactions can be made by bookkeeping entry or otherwise to facilitate the settlement of securities transactions without physical delivery of securities certificates, unless such clearing agency is registered as such under Section 42 of this Code or is exempted from such registration upon application by the clearing agency because, in the opinion of the Commission, by reason of the limited volume of transactions which are settled using the clearing agency, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.

SEC. 42. *Registration of Clearing Agencies.* - 42.1. Any clearing agency may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

(a) An undertaking to comply and enforce compliance by its participants with the provisions of this Code, and any amendment thereto, and the implementing rules or regulations made or to be made thereunder, and the clearing agency's rules;

(b) The organizational charts of the Exchange, its rules of procedure, and a list of its officers and participants;

(c) Copies of the clearing agency's rules.

42.2. No registration of a clearing agency shall be granted unless the rules of the clearing agency include provision for:

(a) The expulsion, suspension, or disciplining of a participant for violations of this Code, or any other Act administered by the Commission, the rules, regulations, and orders thereunder, or the clearing agency's rules;

(b) A fair procedure for the disciplining of participants, the denial of participation rights to any person seeking to be a participant, and the prohibition or limitation of any person from access to services offered by the clearing agency;

(c) The equitable allocation of reasonable dues, fees, and other charges among participants;

(d) Prevention of fraudulent and manipulative acts and practices, promotion of just and equitable principles of trade, and, in general, protection of investors and the public interest;

(e) The transparent, prompt and accurate clearance and settlement of transactions in securities handled by the clearing agency. and

(f) The establishment and oversight of a fund to guarantee the prompt and accurate clearance and settlement of transactions executed on an exchange, including a requirement that members each contribute an amount based on their volume and a relevant percentage of the

daily exposure of the four (4) largest trading brokers which adequately reflects trading risks undertaken or pursuant to another formula set forth in Commission rules or regulations or order, upon application: *Provided, however,* That a clearing agency engaged in the business of a securities depository shall be exempt from this requirement.

42.3. In the case of an application filed pursuant to this Section, the Commission shall grant registration if it finds that the requirements of this Code and the rules and regulations thereunder with respect to the applicant have been satisfied, and shall deny registration if it does not make such finding.

42.4. Upon appropriate application in accordance with the rules and regulations of the Commission and upon such terms as the Commission may deem necessary for the protection of investors, a clearing agency may withdraw its registration or suspend its operation or resume the same.

42.5. Section 32 of this Code shall apply to every registered clearing agency.

SEC. 43. *Uncertificated Securities.* - Notwithstanding Section 63 of the Corporation Code of the Philippines: 43.1. A corporation whose securities are registered pursuant to this Code or listed on a securities Exchange may:

(a) If so resolved by its Board of Directors and agreed by a shareholder, investor or securities intermediary, issue shares to, or record the transfer of some or all of its shares into the name of said shareholders, investors or, securities intermediary in the form of uncertificated securities. The use of uncertificated securities in these circumstances shall be without prejudice to the rights of the securities intermediary subsequently to require the corporation to issue a certificate in respect of any shares recorded in its name; and

(b) If so provided in its articles of incorporation and by-laws, issue all of the shares of a particular class in the form of uncertificated securities and subject to a condition that investors may not require the corporation to issue a certificate in respect of any shares recorded in their name.

43.2. The Commission by rule may allow other corporations to provide in their articles of incorporation and by-laws for the use of uncertificated securities.

43.3. Transfers of securities, including an uncertificated securities, may be validly made and consummated by appropriate book-entries in the securities accounts maintained by securities intermediaries, or in the stock and transfer book held by the corporation or the stock transfer agent and such bookkeeping entries shall be binding on the parties to the transfer. A transfer under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of security or right transferred, including the unrestricted negotiability of that security by reason of such delivery. However, transfer of uncertificated shares shall only be valid, so far as the corporation is concerned, when a transfer is recorded in the books of the corporation so as to show the names of the parties to the transfer and the number of shares transferred.

However, nothing in this Code shall preclude compliance by banking and other institutions under the supervision of the Bangko Sentral ng Pilipinas and their stockholders with the applicable ceilings on shareholdings prescribed under pertinent banking laws and regulations.

SEC. 44. *Evidentiary Value of Clearing Agency Record.* - The official records and book entries of a clearing agency shall constitute the best evidence of such transactions between clearing agency and its participants and members, without prejudice to the right of participants' or members' clients to prove their rights, title and entitlement with respect to the book-entry security holdings of the participants or members held on behalf of the clients. However, the corporation shall not be bound by the foregoing transactions unless

the corporate secretary is duly notified in such manner as the Commission may provide.

SEC. 45. *Pledging a Security or Interest Therein.* - In addition to other methods recognized by law, a pledge of, or release of a pledge of, a security, including an uncertificated security, is properly constituted and the instrument proving the right pledged shall be considered delivered to the creditor under Articles 2093 and 2095 of the Civil Code if a securities intermediary indicates by book-entry that such security has been credited to a specially designated pledge account in favor of the pledgee. A pledge under this subsection has the effect of the delivery of a security in bearer form or duly indorsed in blank representing the quantity or amount of such security or right pledged. In the case of a registered clearing agency, the procedures by which, and the exact time at which, such book-entries are created shall be governed by the registered clearing agency's rules. However, the corporation shall not be bound by the foregoing transactions unless the corporate secretary is duly notified in such manner as the Commission may provide.

SEC. 46. *Issuer's Responsibility for Wrongful Transfer to Registered Clearing Agency.* - The registration of a transfer of a security into the name of and by a registered clearing agency or its nominee shall be final and conclusive unless the clearing agency had notice of an adverse claim before the registration was made. The above provision shall be without prejudice to any rights which the claimant may have against the issuer for wrongful registration in such circumstances.

SEC. 47. *Power of the Commission With Respect to Securities Ownership.* - The Commission is authorized, having due regard to the public interest and the protection of investors, to promulgate rules and regulations which:

47.1. Validate the transfer of securities by book-entries rather than the delivery of physical certificates;

47.2. Establish when a person acquires a security or an interest therein and when delivery of a security to a purchaser occurs;

47.3. Establish which records constitute the best evidence of a person's interests in a security and the effect of any errors in electronic records of ownership;

47.4. Codify the rights of investors who choose to hold their securities indirectly through a registered clearing agency and/or other securities intermediaries;

47.5. Codify the duties of securities intermediaries (including clearing agencies) who hold securities on behalf of investors; and

47.6. Give first priority to any claims of a registered clearing agency against a participant arising from a failure by the participant to meet its obligations under the clearing agency's rules in respect of the clearing and settlement of transactions in securities, in a dissolution of the participant, and any such rules and regulations shall bind the issuers of the securities, investors in the securities, any third parties with interests in the securities, and the creditors of a participant of a registered clearing agency.

CHAPTER XII

MARGIN AND CREDIT

SEC. 48. *Margin Requirements.* - 48.1. For the purpose of preventing the excessive use of credit for the purchase or carrying of securities, the Commission, in accordance with the credit and monetary policies that may be promulgated from time to time by the Monetary Board of the Bangko Sentral ng Pilipinas, shall prescribe rules and regulations with respect to the amount of credit that may be extended on any security. For the extension of credit, such rules and regulations shall be based upon the following standard:

An amount not greater than whichever is the higher of -

(a) Sixty-five *per centum* (65%) of the current market price of the security, or

(b) One hundred *per centum* (100%) of the lowest market price of the security during the preceding thirty-six (36) calendar months, but not more than seventy-five *per centum* (75%) of the current market price.

However, the Monetary Board may increase or decrease the above percentages, in order to achieve the objectives of the Government with due regard for promotion of the economy and prevention of the use of excessive credit.

Such rules and regulations may make appropriate provision with respect to the carrying of undermargined accounts for limited periods and under specified conditions; the withdrawal of funds or securities; the transfer of accounts from one lender to another; special or different margin requirements for delayed deliveries, short sales, arbitrage transactions, and securities to which letter (b) of the second paragraph of this subsection does not apply; the bases and the methods to be used in calculating loans, and margins and market prices; and similar administrative adjustments and details.

48.2. No member of an Exchange or broker or dealer shall, directly or indirectly, extend or maintain credit or arrange for the extension or maintenance of credit to or for any customer:

(a) On any security unless such credit is extended and maintained in accordance with the rules and regulations which the Commission shall prescribe under this Section including rules setting credit in relation to net capital of such member, broker or dealer; and

(b) Without collateral or on any collateral other than securities, except (i) to maintain a credit initially extended in conformity with the rules and regulations of the Commission and (ii) in cases where the extension or maintenance of credit is not for the purpose of purchasing or carrying securities or of evading or circumventing the provisions of paragraph (a) of this subsection.

48.3. Any person not subject to Subsection 48.2 hereof shall extend or maintain credit or arrange for the extension or maintenance of credit for the purpose of purchasing or carrying any security, only

in accordance with such rules and regulations as the Commission shall prescribe to prevent the excessive use of credit for the purchasing or carrying of or trading in securities in circumvention of the other provisions of this Section. Such rules and regulations may impose upon all loans made for the purpose of purchasing or carrying securities limitations similar to those imposed upon members, brokers, or dealers by Section 48.2 and the rules and regulations thereunder. This subsection and the rules and regulations thereunder shall not apply.

(a) To a credit extension made by a person not in the ordinary course of business; (b) To a loan to a dealer to aid in the financing of the distribution of securities to customers not through the medium of an Exchange; or (c) To such other credit extension as the Commission shall exempt from the operation of this subsection and the rules and regulations thereunder upon specified terms and conditions or for stated period.

SEC. 49. Restrictions on Borrowing by Members, Brokers and Dealers. - It shall be unlawful for any registered broker or dealer, or member of an Exchange, directly or indirectly:

49.1. To permit in the ordinary course of business as a broker or dealer his aggregate indebtedness including customer's credit balances, to increase such percentage of the net capital (exclusive of fixed assets and value of Exchange membership) employed in the business, but not exceeding in any case two thousand *per centum* (2,000%), as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors.

49.2. To pledge, mortgage, or otherwise encumber or arrange for the pledge, mortgage or encumbrance of any security carried for the account of any customer under circumstances: (a) That will permit the commingling of his securities, without his written consent with the securities of any customer; (b) That will permit such securities to be commingled with the securities of any person other than a *bona fide* customer; or (c) That will permit such securities to be pledged, mortgaged or encumbered, or subjected to any lien or claim of the pledgee, for a sum in excess of the

aggregate indebtedness of such customers in respect of such securities. However, the Commission, having due regard to the protection of investors, may, by rules and regulations, allow certain transactions that may otherwise be prohibited under this subsection.

49.3. To lend or arrange for the lending of any security carried for the account of any customer without the written consent of such customer or in contravention of such rules and regulations as the Commissioner shall prescribe.

SEC. 50. *Enforcement of Margin Requirements and Restrictions on Borrowing.* - To prevent indirect violations of the margin requirements under Section 48, the broker or dealer shall require the customer in non-margin transactions to pay the price of the security purchased for his account within such period as the Commission may prescribe, which shall in no case exceed the prescribed settlement date. Otherwise, the broker shall sell the security purchased starting on the next trading day but not beyond ten (10) trading days following the last day for the customer to pay such purchase price, unless such sale cannot be effected within said period for justifiable reasons. The sale shall be without prejudice to the right of the broker or dealer to recover any deficiency from the customer. To prevent indirect violation of the restrictions on borrowings under Section 49, the broker shall, unless otherwise directed by the customer, pay the net sales price of the securities sold for a customer within the same period as above prescribed by the Commission: *Provided*, That the customer shall be required to deliver the instruments evidencing the securities as a condition for such payment upon demand by the broker.

CHAPTER XIII

GENERAL PROVISIONS

SEC. 51. *Liabilities of Controlling Persons, Aider and Abettor and Other Secondary Liability.* - 51.1 Every person who, by or through stock ownership, agency, or otherwise, or in connection with an agreement or understanding with one or more other persons, controls any person liable under this Code or the rules or regulations of the Commission thereunder, shall also be liable

jointly and severally with and to the same extent as such controlled persons to any person to whom such controlled person is liable, unless the controlling person proves that, despite the exercise of due diligence on his part, he has no knowledge of the existence of the facts by reasons of which the liability of the controlled person is alleged to exist.

51.2. It shall be unlawful for any person, directly or indirectly, to do any act or thing which it would be unlawful for such person to do under the provisions of this Code or any rule or regulation thereunder.

51.3. It shall be unlawful for any director or officer of, or any owner of any securities issued by, any issuer required to file any document report or other information under this Code or any rule or regulation of the Commission thereunder, without just cause, to hinder, delay or obstruct the making or filing of any such document, report, or information.

51.4. It shall be unlawful for any person to aid, abet, counsel, command, induce or procure any violation of this Code, or any rule, regulation or order of the Commission thereunder.

51.5. Every person who substantially assists the act or omission of any person primarily liable under Sections 57, 58, 59 and 60 of this Code, with knowledge or in reckless disregard that such act or omission is wrongful, shall be jointly and severally liable as an aider or abettor for damages resulting from the conduct of the person primarily liable; *Provided, however,* That an aider and abettor shall be liable only to the extent of his relative contribution in causing such damages in comparison to that of the person primarily liable, or the extent to which the aider and abettor was unjustly enriched thereby, whichever is greater.

SEC. 52. *Accounts and Records, Reports, Examination of Exchanges, Members, and Others.* - 52.1. Every registered Exchange, broker or dealer, transfer agent, clearing agency, securities

association, and other self-regulatory organization, and every other person required to register under this Code, shall make, keep and preserve for such periods, records, furnish such copies thereof, and make such reports as the Commission by its rules and regulations may prescribe. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time to such reasonable periodic, special or other examinations by representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the special protection of the investors.

52.2. Any broker, dealer or other person extending credit, who is subject to the rules and regulations prescribed by the Commission pursuant to this Code, shall make such reports to the Commission as may be necessary or appropriate to enable it to perform the functions conferred upon it by this Code.

52.3. For purpose of this Section, the term "records" refers to accounts, correspondence, memoranda, tapes, discs, papers, books and other documents or transcribed information of any type, whether written or electronic in character.

SEC. 53. Investigations, Injunctions and Prosecution of Offenses.

- 53.1. The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. The Commission may publish information concerning any such violations, and to investigate any fact, condition, practice or matter which it may deem necessary or proper to aid in the enforcement of the provisions of this Code, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this Code relates: *Provided, however,* 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: *Provided, further,* That all criminal complaints for violations of this Code, and the implementing rules and regulations enforced or administered by the Commission shall be referred to the Department of Justice for preliminary investigation and prosecution before the proper court. *Provided, furthermore,* That in instances where the law allows independent civil or criminal proceedings of violations arising from the same act, the Commission shall take appropriate action to implement the same: *Provided, finally,* That the investigation, prosecution, and trial of such cases shall be given priority.

53.2. For the purpose of any such investigation, or any other proceeding under this Code, the Commission or any officer designated by, it is empowered to administer oaths and affirmations, *subpoena* witnesses, compel attendance, take evidence, require the production of any book, paper, correspondence, memorandum, or other record which the Commission deems relevant or material to the inquiry, and to perform such other acts necessary in the conduct of such investigation or proceedings.

53.3. Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Code, any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency or other self-regulatory organization, it may issue an order to such person to desist from committing such act or practice: *Provided, however,* That the Commission shall not charge any person with violation of the rules of an Exchange or other self-regulatory organization unless it appears to the Commission that such Exchange or other self-regulatory organization is unable or unwilling to take action against such person. After finding that such person has engaged in any such act or practice and that there is a reasonable likelihood of continuing, further or future violations by such person, the Commission may issue *ex-parte* a cease and desist order for a maximum period of ten (10) days, enjoining the violation and compelling compliance with such provision. The Commission may transmit such evidence as may be available concerning any violation of any provision of this Code,

or any rule, regulation or order thereunder, to the Department of Justice, which may institute the appropriate criminal proceedings under this Code.

53.4. Any person who, within his power but without cause, fails or refuses to comply with any lawful order, decision or *subpoena* issued by the Commission under Subsection 53.2 or Subsection 53.3 or Section 64 of this Code, shall after due notice and hearing, be guilty of contempt of the Commission. Such person shall be fined in such reasonable amount as the Commission may determine, or when such failure or refusal is a clear and open defiance of the Commission's order, decision or *subpoena*, shall be detained under an arrest order issued by the Commission, until such order, decision or *subpoena* is complied with.

SEC. 54. *Administrative Sanctions.* - 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, 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, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

- (i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten thousand pesos (P10,000.00) nor more than One million pesos (P1,000,000.00) plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose.

54.2. The imposition of the foregoing administrative sanctions shall be without prejudice to the filing of criminal charges against the individuals responsible for the violation.

54.3. The Commission shall have the power to issue writs of execution to enforce the provisions of this Section and to enforce payment of the fees and other dues collectible under this Code.

SEC. 55. *Settlement Offers.* - 55.1. At any time, during an investigation or proceeding under this Code, parties being investigated and/or charged may propose in writing an offer of settlement with the Commission.

55.2. Upon receipt of such offer of settlement, the Commission may consider the offer based on timing, the nature of the investigation or proceeding, and the public interest.

55.3. The Commission may only agree to a settlement offer based on its findings that such settlement is in the public interest. Any

agreement to settle shall have no legal effect until publicly disclosed. Such decision may be made without a determination of guilt on the part of the person making the offer.

55.4. The Commission shall adopt rules and procedures governing the filing, review, withdrawal, form of rejection and acceptance of such offers.

SEC. 56. *Civil Liabilities on Account of False Registration Statement.* - 56.1. Any person acquiring a security, the registration statement of which or any part thereof contains on its effectivity an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make such statements not misleading, and who suffers damage, may sue and recover damages from the following enumerated persons, unless it is proved that at the time of such acquisition he knew of such untrue statement or omission:

(a) The issuer and every person who signed the registration statement;

(b) Every person who was a director of, or any other person performing similar functions, or a partner in, the issuer at the time of the filing of the registration statement or any part, supplement or amendment thereof with respect to which his liability is asserted;

(c) Every person who is named in the registration statement as being or about to become a director of, or a person performing similar functions, or a partner in, the issuer and whose written consent thereto is filed with the registration statement;

(d) Every auditor or auditing firm named as having certified any financial statements used in connection with the registration statement or prospectus.

(e) Every person who, with his written consent, which shall be filed with the registration statement, has been named as having prepared or certified any part of the registration statement, or as having prepared or certified any report or valuation which is used in connection with

the registration statement, with respect to the statement, report, or valuation, which purports to have been prepared or certified by him.

(f) Every selling shareholder who contributed to and certified as to the accuracy of a portion of the registration statement, with respect to that portion of the registration statement which purports to have been contributed by him.

(g) Every underwriter with respect to such security.

56.2. If the person who acquired the security did so after the issuer has made generally available to its security holders an income statement covering a period of at least twelve (12) months beginning from the effective date of the registration statement, then the right of recovery under this subsection shall be conditioned on proof that such person acquired the security relying upon such untrue statement in the registration statement or relying upon the registration statement and not knowing of such income statement, but such reliance may be established without proof of the reading of the registration statement by such person.

SEC. 57. Civil Liabilities Arising in Connection With Prospectus, Communications and Reports. - 57.1. Any person who:

(a) Offers to sell or sells a security in violation of Chapter III, or

(b) Offers to sell or sells a security, whether or not exempted by the provisions of this Code, by the use of any means or instruments of transportation or communication, by means of a prospectus or other written or oral communication, which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of such untruth or omission), and who shall fail in the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of such untruth or omission, shall be liable to the person purchasing such security from him, who may sue to recover the consideration paid for such security with interest thereon, less the

amount of any income received thereon, upon the tender of such security, or for damages if he no longer owns the security.

57.2. Any person who shall make or cause to be made any statement in any report, or document filed pursuant to this Code or any rule or regulation thereunder, which statement was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, shall be liable to any person who, not knowing that such statement was false or misleading, and relying upon such statements shall have purchased or sold a security at a price which was affected by such statement, for damages caused by such reliance, unless the person sued shall prove that he acted in good faith and had no knowledge that such statement was false or misleading.

SEC. 58. *Civil Liability for Fraud in Connection with Securities Transactions.* - Any person who engages in any act or transaction in violation of Sections 19.2, 20 or 26, or any rule or regulation of the Commission thereunder, shall be liable to any other person who purchases or sells any security, grants or refuses to grant any proxy, consent or authorization, or accepts or declines an invitation for tender of a security, as the case may be, for the damages sustained by such other person as a result of such act or transaction.

SEC. 59. *Civil Liability for Manipulation of Security Prices.* - Any person who willfully participates in any act or transaction in violation of Section 24 shall be liable to any person who shall purchase or sell any security at a price which was affected by such act or transaction, and the person so injured may sue to recover the damages sustained as a result of such act or transaction.

SEC. 60. *Civil Liability with Respect to Commodity Futures Contracts and Pre-need Plans.* - 60.1. Any person who engages in any act or transaction in willful violation of any rule or regulation promulgated by the Commission under Section 11 or 16, which the Commission denominates at the time of issuance as intended to prohibit fraud in the offer and sale of pre-need plans or to prohibit fraud, manipulation, fictitious transactions, undue speculation, or other unfair

or abusive practices with respect to commodity future contracts, shall be liable to any other person sustaining damage as a result of such act or transaction.

60.2. As to each such rule or regulation so denominated, the Commission by rule shall prescribe the elements of proof required for recovery and any limitations on the amount of damages that may be imposed.

SEC. 61. *Civil Liability on Account of Insider Trading.* - 61.1. Any insider who violates Subsection 27.1 and any person in the case of a tender offer who violates Subsection 27.4 (a)(i), or any rule or regulation thereunder, by purchasing or selling a security while in possession of material information not generally available to the public, shall be liable in a suit brought by any investor who, contemporaneously with the purchase or sale of securities that is the subject of the violation, purchased or sold securities of the same class unless such insider, or such person in the case of a tender offer, proves that such investor knew the information or would have purchased or sold at the same price regardless of disclosure of the information to him.

61.2. An insider who violates Subsection 27.3 or any person in the case of a tender offer who violates Subsection 27.4 (a), or any rule or regulation thereunder, by communicating material nonpublic information, shall be jointly and severally liable under Subsection 61.1 with, and to the same extent as, the insider, or person in the case of a tender offer, to whom the communication was directed and who is liable under Subsection 61.1 by reason of his purchase or sale of a security.

SEC. 62. *Limitation of Actions.* - 62.1. No action shall be maintained to enforce any liability created under Section 56 or 57 of this Code unless brought within two (2) years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1 (a), unless brought within two (2) years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section

56 or Subsection 57.1 (a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1 (b) more than five (5) years after the sale.

62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued.

SEC. 63. *Amount of Damages to be Awarded.* - 63.1. All suits to recover damages pursuant to Sections 56, 57, 58, 59, 60 and 61 shall be brought before the Regional Trial Court, which shall have exclusive jurisdiction to hear and decide such suits. The Court is hereby authorized to award damages in an amount not exceeding triple the amount of the transaction plus actual damages.

Exemplary damages may also be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of this Code or the rules and regulations promulgated thereunder.

The Court is also authorized to award attorney's fees not exceeding thirty *per centum* (30%) of the award.

63.2. The persons specified in Sections 56, 57, 58, 59, 60 and 61 hereof shall be jointly and severally liable for the payment of damages. However, any person who becomes liable for the payment of such damages may recover contribution from any other person who, if sued separately, would have been liable to make the same payment, unless the former was guilty of fraudulent representation and the latter was not.

63.3. Notwithstanding any provision of law to the contrary, all persons, including the issuer, held liable under the provisions of Sections 56, 57, 58, 59, 60 and 61 shall contribute equally to the total liability adjudged herein. In no case shall the principal stockholders, directors and other officers of the issuer or persons occupying similar positions therein, recover their contribution to the liability from the issuer. However, the right of the issuer to recover from the guilty

parties the amount it has contributed under this Section shall not be prejudiced.

SEC. 64. *Cease and Desist Order.* - 64.1. The Commission, after proper investigation or verification, *motu proprio*, or upon verified complaint by any aggrieved party, may issue a cease and desist order without the necessity of a prior hearing if in its judgment the act or practice, unless restrained, will operate as a fraud on investors or is otherwise likely to cause grave or irreparable injury or prejudice to the investing public.

64.2. Until the Commission issues a cease and desist order, the fact that an investigation has been initiated or that a complaint has been filed, including the contents of the complaint, shall be confidential. Upon issuance of a cease and desist order, the Commission shall make public such order and a copy thereof shall be immediately furnished to each person subject to the order.

64.3. Any person against whom a cease and desist order was issued may, within five (5) days from receipt of the order, file a formal request for a lifting thereof. Said request shall be set for hearing by the Commission 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 time herein prescribed, the cease and desist order shall automatically be lifted.

SEC. 65. *Substituted Service Upon the Commission.* - Service of summons or other process shall be made upon the Commission in actions or legal proceedings against an issuer or any person liable under this Code who is not domiciled in the Philippines. Upon receipt by the Commission of such summons, the Commission shall within ten (10) days thereafter, transmit by registered mail a copy of such summons and the complaint or other legal process to such issuer or person at his last known address or principal office. The sending thereof by the Commission, the expenses for which shall be advanced by the party at whose instance it is made, shall complete such service.

SEC. 66. *Revelation of Information Filed with the Commission.*

66.1. All information filed with the Commission in compliance with the requirements of this Code shall be made available to any member of the general public, upon request, in the premises and during regular office hours of the Commission, except as set forth in this Section.

66.2. Nothing in this Code shall be construed to require, or to authorize the Commission to require, the revealing of trade secrets or processes in any application, report, or document filed with the Commission.

66.3. Any person filing any such application, report or document may make written objection to the public disclosure of information contained therein, stating the grounds for such objection, and the Commission may hear objections as it deems necessary. The Commission may, in such cases, make available to the public the information contained in any such application, report, or document only when a disclosure of such information is required in the public interest or for the protection of investors; and copies of information so made available may be furnished to any person having a legitimate interest therein at such reasonable charge and under such reasonable limitations as the Commission may prescribe.

66.4. It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer or employee of the Commission or to use for personal benefit, any information contained in any application, report, or document filed with the Commission which is not made available to the public pursuant to Subsection 66.3.

66.5. Notwithstanding anything in Subsection 66.4 to the contrary, on request from a foreign enforcement authority of any country whose laws grant reciprocal assistance as herein provided, the Commission may provide assistance in accordance with this subsection, including the disclosure of any information filed with or transmitted to the Commission, if the requesting authority states that it is conducting an investigation which it deems necessary to determine whether any person

has violated, is violating, or is about to violate any laws relating to securities or commodities matters that the requesting authority administers or enforces. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of law of the Philippines.

SEC. 67. Effect of Action of Commission and Unlawful Representations with Respect Thereto. - 67.1. No action or failure to act by the Commission in the administration of this Code shall be construed to mean that the Commission has in any way passed upon the merits of or given approval to any security or any transaction or transactions therein, nor shall such action or failure to act with regard to any statement or report filed with or examined by the Commission pursuant to this Code or the rules and regulations thereunder to be deemed a finding by the Commission that such statements or report is true and accurate on its face or that it is not false or misleading. It shall be unlawful to make, or cause to be made, to any prospective purchaser or seller of a security any representation that any such action or failure to act by the Commission is to be so construed or has such effect.

67.2. Nothing contained in Subsection 67.1 shall, however, be construed as an exemption from liability of an employee or officer of the Commission for any nonfeasance, misfeasance or malfeasance in the discharge of his official duties.

SEC. 68. Special Accounting Rules. - The Commission shall have the authority to make, amend, and rescind such accounting rules and regulations as may be necessary to carry out the provisions of this Code, including rules and regulations governing registration statements and prospectuses for various classes of securities and issuers, and defining accounting, technical and trade terms used in this Code. Among other things, the Commission may prescribe the form or forms in which required information shall be set forth, the items or details to be shown in the balance sheet and income statement, and the methods to be followed in the preparation of accounts, appraisal or valuation of assets and liabilities, determination of depreciation and depletion, differentiation of recurring and non-recurring income, differentiation of

investment and operating income, and in the preparation, where the Commission deems it necessary or desirable, of consolidated balance sheets or income accounts of any person directly or indirectly controlling or controlled by the issuer, or any person under direct or indirect common control with, the issuer.

SEC. 69. *Effect on Existing Law.* - The rights and remedies provided by this Code shall be in addition to any and all other rights and remedies that may now exist. However, except as provided in Sections 56 and 63 hereof, no person permitted to maintain a suit for damages under the provisions of this Code shall recover, through satisfaction of judgment in one or more actions, a total amount in excess of his actual damages on account of the act complained of: *Provided*, That exemplary damages may be awarded in cases of bad faith, fraud, malevolence or wantonness in the violation of this Code or the rules and regulations promulgated thereunder.

SEC. 70. *Judicial Review of Commission Orders.* - Any person aggrieved by an order of the Commission may appeal the order to the Court of Appeals by petition for review in accordance with the pertinent provisions of the Rules of Court.

SEC. 71. *Validity of Contracts.* - 71.1. Any condition, stipulation, provision binding any person to waive compliance with any provision of this Code or of any rule or regulation thereunder, or of any rule of an Exchange required thereby, as well as the waiver itself, shall be void.

71.2. Every contract made in violation of any provision of this Code or of any rule or regulation thereunder, and every contract, including any contract for listing a security on an Exchange heretofore or hereafter made, the performance of which involves the violation of, or the continuance of any relationship or practice in violation of, any provision of this Code, or any rule or regulation thereunder, shall be void:

(a) As regards the rights of any person who, in violation of any such provision, rule or regulation, shall have made or engaged in the performance of any such contract, and

(b) As regards the rights of any person who, not being a party to such contract, shall have acquired any right thereunder with actual knowledge of the facts by reason of which the making or performance of such contract was in violation of any such provision, rule or regulation.

71.3. Nothing in this Code shall be construed:

(a) To affect the validity of any loan or extension of credit made or of any lien created prior or subsequent to the effectivity of this Code, unless at the time of the making of such loan or extension of credit or the creating of such lien, the person making such loan or extension of credit or acquiring such lien shall have actual knowledge of the facts by reason of which the making of such loan or extension of credit or the acquisition of such lien is a violation of the provisions of this Code or any rules or regulations thereunder; or

(b) To afford a defense to the collection of any debt, obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation or lien in good faith, for value and without actual knowledge of the violation of any provision of this Code or any rule or regulation thereunder affecting the legality of such debt, obligation or lien.

SEC. 72. *Rules and Regulations; Effectivity.* - 72.1. This Code shall be self-executory. To effect the provisions and purposes of this Code, the Commission may issue, amend, and rescind such rules and regulations and orders necessary or appropriate, including rules and regulations defining accounting, technical, and trade terms used in this Code, and prescribing the form or forms in which information required in registration statements, applications, and reports to the Commission shall be set forth. For purposes of its rules or regulations, the Commission may classify persons, securities, and other matters within its jurisdiction, prescribe different requirements for different classes of

persons, securities, or matters, and by rule or order, conditionally or unconditionally exempt any person, security, or transaction, or class or classes of persons, securities or transactions, from any or all provisions of this Code.

Failure on the part of the Commission to issue rules and regulations shall not in any manner affect the self-executory nature of this Code.

72.2. The Commission shall promulgate rules and regulations providing for reporting, disclosure and the prevention of fraudulent, deceptive or manipulative practices in connection with the purchase by an issuer, by tender offer or otherwise, of an equity security of a class issued by it that satisfies the requirements of Subsection 17.2. Such rules and regulations may require such issuer to provide holders of equity securities of such dates with such information relating to the reasons for such purchase, the source of funds, the number of shares to be purchased, the price to be paid for such securities, the method of purchase and such additional information as the Commission deems necessary or appropriate in the public interest or for the protection of investors, or which the Commission deems to be material to a determination by holders whether such security should be sold.

72.3. For the purpose of Subsection 72.2, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to the control of the issuer or any such person, shall be deemed to be a purchase by the issuer. The Commission shall have the power to make rules and regulations implementing this subsection, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this subsection shall be deemed to be a purchase by the issuer for the purpose of some or all of the provisions of Subsection 72.2.

72.4. The rules and regulations promulgated by the Commission shall be published in two (2) newspapers of general circulation in the Philippines, and unless otherwise prescribed by the Commission, the

same shall be effective fifteen (15) days after the date of the last publication.

SEC. 73. *Penalties.* - Any person who violates any of the provisions of this Code, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Code, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than Fifty thousand pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty may in the discretion of the court be imposed upon such juridical entity and upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

SEC. 74. *Transitory Provisions.* - The Commission, as organized under existing laws, shall continue to exist and exercise its powers, functions and duties under such laws and this Code: *Provided*, That until otherwise mandated by a subsequent law, the Commission shall continue to regulate and supervise commodity futures contracts as provided in Section 11 and pre-need plans and the pre-need industry as provided in Section 16 of this Code.

All further requirements herein shall be complied with upon approval of this Code: *Provided, however*, That compliance may be deferred for such reasonable time as the Commission may determine but not to exceed one (1) year from approval of this Code: *Provided, further*, That securities which are being offered at the time of effectivity of this Code pursuant to an effective registration and permit, may continue to be offered and sold in accordance with the provisions of the Revised Securities Act in effect immediately prior to approval of this Code.

All unexpended funds for the calendar year, properties, equipment and records of the Securities and Exchange Commission are hereby retained by the Commission as reorganized under this Code and the amount of Two hundred million pesos (P200,000,000.00) or such amount necessary to carry out the reorganization provided in this Code is hereby appropriated.

All employees of the Commission who voluntarily retire or are separated from the service with the Commission and whose retirement or separation has been approved by the Commission, shall be paid retirement or separation benefits and other entitlements granted under existing laws.

SEC. 75. *Partial Use of Income.* - To carry out the purposes of this Code, the Commission is hereby authorized, in addition to its annual budget, to retain and utilize an amount equal to One hundred million pesos (P100,000,000.00) from its income.

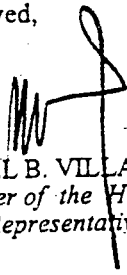
The use of such additional amount shall be subject to the auditing requirements, standards and procedures under existing laws.

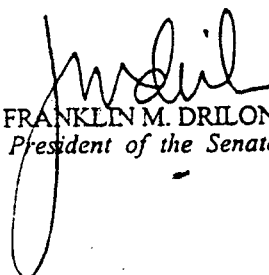
SEC. 76. *Repealing Clause.* - The Revised Securities Act (Batas Pambansa Blg. 178), as amended, in its entirety, and Sections 2, 4 and 8 of Presidential Decree 902-A, as amended, are hereby repealed. All other laws, orders, rules and regulations, or parts thereof, inconsistent with any provision of this Code are hereby repealed or modified accordingly.

SEC. 77. *Separability Clause.* - If any portion or provision of this Code is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby shall continue in full force and effect.

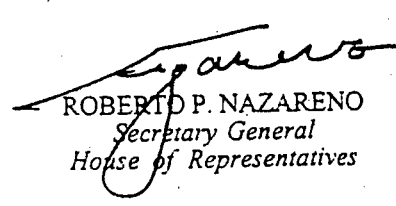
SEC. 78. *Effectivity.* - This Code shall take effect fifteen (15) days after its publication in the *Official Gazette* or in two (2) newspapers of general circulation.


Approved,


MANUEL B. VILLAR, JR.
*Speaker of the House
of Representatives*

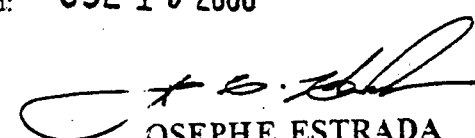

FRANKLIN M. DRILON
President of the Senate

This Act, which is a consolidation of Senate Bill No. 1220 and House Bill No. 8015 was finally passed by the Senate and the House of Representatives on July 17, 2000 and July 18, 2000, respectively.


ROBERTO P. NAZARENO
*Secretary General
House of Representatives*


EMMA LIRIO-REYES
Acting Secretary of the Senate

Approved: JUL 19 2000


JOSEPH E. ESTRADA
President of the Philippines



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