
SEC issues beneficial ownership transparency guidelines

Beginning January 27, 2021, all nominee directors/trustees, nominee shareholders, incorporators/applicants for incorporation, and all concerned corporations subject to the supervision and jurisdiction of the Securities and Exchange Commission (“SEC”) shall comply with the guidelines provided in Memorandum Circular No. 1, series of 2021 (“SEC MC No. 1-2021”) to prevent the misuse of corporations for illicit activities through measures designed to promote transparency of beneficial ownership. For purposes of this guidelines, a beneficial owner is defined as natural person/s who ultimately owns, controls, or exercises ultimate effective control over the corporation.

SEC MC No. 1-2021 provides that no person or entity shall issue, sell, or offer for sale or distribution bearer shares and bearer share warrants. Bearer shares are defined as (a) equity securities owned by the person or entity that holds the physical certificate which enables the transfer of ownership of shares of stock by mere delivery of such certificate, and (b) instruments that accord ownership in a juridical person to the person or entity who possesses or is the holder of the bearer share certificate. On the other hand, bearer share warrants are defined as documents certifying that the bearer is entitled to a certain amount of the fully paid shares of stock of a corporation.

In addition, the alienation, sale, or transfer of shares of stock (except of publicly listed companies through the Philippine Stock Exchange), the date thereof, by whom and to whom made, shall be disclosed and recorded in the Stock and Transfer Book of the issuing corporation within thirty (30) days from date of such alienation, sale, or transfer. No dividends shall also be paid to any person or entity unless his/her/its name appears in the records of the corporation as the owner of the shares of stock for which dividends are being paid.

SEC MC No. 1-2021 further provides for the following mandatory disclosures to be done online:

1. The incorporators of a corporation shall disclose to the SEC, within thirty (30) days from the issuance of the company’s Certificate of Registration, the person/s on whose behalf the registration of the corporation was applied for. Nominee incorporators or applicants for registration, as well as the nominee directors/trustees and nominee shareholders of the applicant corporation, shall also disclose their respective principals or nominators. Otherwise, they shall submit to the SEC a declaration within the same period that they are not nominee incorporators/nominee applicants/nominee directors/nominee subscribers, if such be the fact, and that they are not acting as such for and on behalf of another person.

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2. Nominee shareholders as well as nominee directors/trustees of registered corporations shall disclose to the SEC their nominators and principals or persons on whose behalf they act as such shareholders/directors/trustees. Such information shall likewise be disclosed to the corporation in which they are or act as nominee shareholders or directors/trustees. These shall not apply to the PCD Nominee. The disclosures shall be submitted within thirty (30) days from January 27, 2021 or from the time the nominee shareholders/directors/trustees became or assumed the role of or started acting as such (in case of persons nominated after January 27, 2021). As a general rule, the disclosures shall not apply to all Covered Institutions as enumerated under Section 3(a) of the Anti-Money Laundering Act ("AML"), as amended, and SEC Memorandum Circular No. 16, Series of 2018 or any of its amendments. However, the exemption from the disclosure requirement only applies to nominee/trustee arrangements related to products and services offered by Covered Institutions/Persons that are already subject to Customer Identification Requirements and Record Keeping by Supervising Authorities under AML. SEC Covered Persons having an overall rating of 1 in the SEC's Anti-Money Laundering and Combating the Financing of Terrorism Risk Rating System may nonetheless be directed to comply with the disclosure requirements as part of its close monitoring measures.

All corporations registered with the SEC must also keep and preserve in its principal office adequate, timely, and accurate information relating to its beneficial owner/s. The information on beneficial ownership is adequate when the corporation has the complete names, specific residential addresses, dates of birth, nationalities, tax identification numbers, if any, and percentage of ownership, if applicable, of all its beneficial owners. It is timely if the beneficial ownership information or any change thereto is promptly reflected on record within three (3) days from the time the information becomes available or is reasonably expected to be available to the corporation within the exercise of due diligence. It is accurate if the information is correct in all its details.

Violation of these guidelines may result to administrative and criminal sanctions.

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