

NOTICE TO THE PUBLIC

Subject: SECOND EXPOSURE DRAFT OF MEMORANDUM CIRCULAR ON THE PROPOSED AMENDMENTS TO SRC RULE 39.1.4 OR THE RULES GOVERNING REGISTRARS OF QUALIFIED INSTITUTIONAL AND INDIVIDUAL BUYERS

The public is advised that the Commission *En Banc*, in its meeting held on 18 December 2024 resolved to expose the draft Memorandum Circular on the *Proposed Amendments to SRC Rule 39.1.4 or the Rules Governing Registrars of Qualified Institutional and Individual Buyers for another round of comments*.

The Commission hereby requests for comments, suggestions and/or inputs from all concerned on the proposed draft Memorandum Circular by submitting written comments on or before **10 January 2025** through email at msrds submission@sec.gov.ph, japsescar@sec.gov.ph, and gclagonoy@sec.gov.ph with our proposed subject of **“COMMENTS ON THE PROPOSED AMENDMENTS TO SRC RULE 39.1.4 OR THE RULES GOVERNING REGISTRARS OF QUALIFIED INSTITUTIONAL AND INDIVIDUAL BUYERS.”**

Issued on 18 December 2024.



SEC MEMORANDUM CIRCULAR NO. _____
Series of 2024

TO : ALL CONCERNED

SUBJECT : PROPOSED AMENDMENTS TO SRC RULE 39.1.4 OR THE
RULES GOVERNING REGISTRARS OF QUALIFIED
INSTITUTIONAL AND INDIVIDUAL BUYERS

39.1.4 Rules Governing Registrars of Qualified Institutional and Individual Buyers

39.1.4.1. Authorized Registrars - The following entities which have been granted the appropriate secondary license by the Commission may be authorized to act as Registrar upon proper application and compliance with registration requirements under these rules:

- 39.1.4.1.1. Banks with respect to their registration as broker-dealer, Government Securities Eligible Dealer, Government Securities Brokers and/or underwriter of securities;
- 39.1.4.1.2. Brokers;
- 39.1.4.1.3. Dealers;
- 39.1.4.1.4. Investment Houses;
- 39.1.4.1.5. Investment Company Advisers; and
- 39.1.4.1.6. Issuer companies with respect to offerings of their own securities; and
- 39.1.4.1.7. Funding Portals registered under the SEC Crowdfunding Rules

39.1.4.2. Initiation and Cessation of Function as Registrar - An entity that wants to act as registrar of qualified buyers shall ~~inform the Commission in writing of such intention before it can perform the duties and responsibilities of a Registrar by filing SEC Form 39-Registrar.~~ **submit to the Commission electronically the following requirements before it can perform the duties and responsibilities of a Registrar, for the approval of the Commission:**

- 39.1.4.2.1 Letter informing the Commission of the intention to act as Registrar**
- 39.1.4.2.2 SEC Form 39-Registrar**
- 39.1.4.2.3 List of applicant's directors and officers**
- 39.1.4.2.4 Copy of the secondary license granted by the Commission**
- 39.1.4.2.5 Copies of the licenses of the person/s involved in evaluating the qualifications of the applicants for QBs**
- 39.1.4.2.6 Internal Procedure**

~~If a registrar entity no longer wants to act as Registrar, it shall inform the Commission in writing of such intention at least thirty (30) days before the intended cessation date. Notwithstanding the cessation of its Registrar functions, an entity shall continue to comply with its record-keeping obligations under these rules.~~

39.1.4.3. Cessation of Function as Registrar - **If a registrar-entity no longer wants to act as Registrar, it shall submit to the Commission electronically its letter of intent to cease as Registrar of QBs at least thirty (30) days before the intended cessation date. It shall also submit to the Commission electronically, the following:**

- 39.1.4.3.1 Board Resolution approving the cessation, certified under oath by the corporate secretary and attested to by the president or anyone performing a similar function;**
- 39.1.4.3.2 Proposed Letter addressed to the Clients and/or Other Counterparties informing them of the cessation of its functions as Registrar; and**

39.1.4.3.3 Proposed Notice of the Filing of Request to Withdraw and/or Cancel Registration as Registrar, for publication in at least two (2) national newspapers of general circulation.

Notwithstanding the cessation of its Registrar functions, an entity shall continue to comply with its record-keeping obligations under these rules.

39.1.4.3. 39.1.4.4 Registrar's Internal Procedures - A Registrar shall establish its own internal procedures, **subject to the approval of the Commission**, to guide its personnel in evaluating the qualifications of applicants for qualified buyer status **which shall include the following at the minimum**: ~~Provided that, only registered persons (salesman, fixed income market salesman, certified investor solicitor and associated person) shall conduct such evaluation, It shall act with due diligence in the conduct of the evaluation and ensure that the required supporting documents are submitted to it at the time of registration. These documents shall be considered and treated as records of the Registrar in accordance with the applicable provisions of the Code.~~

39.1.4.4.1 Organization Chart, indicating all filled and unfilled positions and the identity of the registered persons (salesman, fixed income market salesman, certified investor solicitor and associated person) that will conduct the evaluation of QIB applications; the chart should also be accompanied by a list of qualifications or requirements and a statement of duties and responsibilities for each position;

39.1.4.4.2 Legal basis or criteria for evaluating the QIB applicants;

39.1.4.4.3 Guidelines for conducting due diligence and Know-Your-Customer on the applicants;

39.1.4.4.4 QIB registration procedure which shall include the required documents, the responsible person or department and turnaround time on each process;

39.1.4.4.5 Control mechanisms to allow Registrars to verify continued compliance of the QIB with the required qualifications and submitted undertaking;

39.1.4.4.6 Renewal process under the authority of the Registrar, which shall include the initiation of the renewal process, additional requirements for renewal among others;

39.1.4.4.7 Cessation process which shall include the initiation of the cessation process, requirements for cessation among others;

39.1.4.4.8 Disqualification or revocation procedures under the authority of the Registrar and the Commission, which shall include the grounds for disqualification or revocation,, notification to QIBs among others;

39.1.4.4.9 Record-keeping policies and information security guidelines to ensure that all relevant documents are maintained and accessible for regulatory review;

39.1.4.4.10 Privacy policy and risk mitigation measures to protect QIB data against security threats, unauthorized access, as well as policies and procedures on data breaches;

39.1.4.4.11 Complaints handling guidelines outlining the policies and procedures for receiving, recording, evaluating, resolving, monitoring, and reporting QIB complaints;

39.1.4.4.12 Internal audit program to regularly assess and ensure compliance with internal procedures, the SRC, and other relevant regulations.

39.1.4.4-39.1.4.5. Responsibilities of a Registrar - The duties and responsibilities of a registrar in relation to applicants for registration and registrants (persons who have been registered as qualified buyers) shall be as follows:

~~39.1.4.4.1~~ **39.1.4.5.1.** Ensure that the applicants for registration affirm in writing that the information and documents that they have submitted to it **pursuant to Rule 39.1.4.5b.1 to b.3** are true and correct;

~~39.1.4.4.2.~~ **39.1.4.5.2** Inform the applicants that the qualifications prescribed for registration should be maintained during the registration period.

~~39.1.4.4.3.~~ **39.1.4.5.3** Require the registrants to submit an undertaking that they shall refrain from representing themselves or dealing in securities as qualified buyers if, after their registration, there are circumstances that disqualify them from enjoying that status, such as - diminution of their net worth below the prescribed minimum, or commission of acts that constitute misrepresentation, fraud or deceit under the SRC and its implementing rules and regulations.

~~39.1.4.4.4.~~ **39.1.4.5.4** Prepare a letter of undertaking for the registrant and cause its signature, which shall state, among others, that the registrant shall comply with the requirements for qualified buyer status, and that the registrant ~~authorizes~~ **acknowledges that** the Commission's representatives ~~to may~~ inspect and examine the documents it submitted to the registrar **upon the Commission's directive to submit the documents for audit, investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws. The registrant should also acknowledge that the Commission will conduct verification procedures to ensure compliance with regulatory requirements.**

~~39.1.4.4.5.~~ **39.1.4.5.5** Issue a certificate of registration in favor of the registrant who shall acknowledge receipt thereof. The certificate of registration shall be valid for ~~three (3)-five (5)~~ years from the date of **issuance of the certificate of registration** ~~of an audit, provided that the prescribed qualifications are maintained.~~

39.1.4.5.6 Facilitate the renewal of qualified buyer status for clients that have been registered with the same Registrar, without requiring additional documentation unless there had been significant changes, by attesting that the client still meets the financial eligibility criteria based on internal holdings or transactions of the client with the Registrar.

~~39.1.4.4.6.~~ **39.1.4.5.7** Inform the applicant that the SEC Information Sheets and the supporting documents ~~will be submitted to the Commission as required in these rules for purposes of verification, and~~ **may be** submitted to the Commission **upon the Commission's directive**, in pursuance of an **audit**, investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws, ~~and secure the applicant's written consent to such submission.~~

~~39.1.4.4.7—~~ **39.1.4.5.8.** File with the Commission **electronically** a report using SEC Form 39-Registrar- AR which shall include the following information: total number of registered qualified institutional and individual buyers; number of registered qualified individual buyers whose registrations have been effective for more than ~~three (3) years~~ **five (5) years**; number of registered qualified institutional and individual buyers whose registrations have been renewed for during the covered year; number of registered qualified institutional and individual buyers whose registrations have expired during the covered year; **number of registered QIBs that were disqualified during the covered year**; key objectives for the investment being considered as stated in the Information Sheet; status of current portfolio investments; current total portfolio of securities; intended investment horizon; appetite for risk; current net worth; years of experience in trading in securities personally or through a fund manager. This report shall be filed with the Commission not later than thirty (30) days from the end of the covered calendar year.

~~39.1.4.4.8.~~ **39.1.4.5.9** Report to the Commission any change in the information provided in their application forms and other information that may be required under these rules or orders. Such report must be in SEC Form 39 - Registrar-A and must be filed within seven (7) days from such change.

39.1.4.5. 39.1.4.6 Registry Book of Qualified Buyers - A registrar shall maintain and make available for inspection by the Commission's representatives, a registry book of qualified buyers, in manual or electronic form, which shall contain a chronological listing of the following information of qualified buyers based on the dates they were qualified and registered:

~~39.1.4.5a.1.~~ **39.1.4.6.a.1.** The names of the qualified buyer;

~~39.1.4.5a.2.~~ **39.1.4.6.a.2** Name and designation of the registrar's personnel who conducted the evaluation;

~~39.1.4.5a.3.~~ **39.1.4.6.a.3** Date of evaluation; and

~~39.1.4.5a.4~~ **39.1.4.6.a.4.** Other details that the registrar may deem necessary.

The following **documents** shall also be maintained by the registrar:

~~39.1.4.5b.1.~~ **39.1.4.6.b.1.** Signed SEC Information Sheet;

~~39.1.4.5b.2.~~ **39.1.4.6.b.2.** Applicant's ~~written consent~~ **signed letter of undertaking**; ~~to the submission of such information and verification procedures to be conducted by to the Commission; and in pursuance of an investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws. The applicant should also acknowledge that the Commission will conduct verification procedures to ensure compliance with regulatory requirements.~~

~~39.1.4.5b.3.~~ **39.1.4.6.b.3.** Supporting documents required by the registrar and submitted by the applicant to prove financial capacity and sophistication.

The supporting documents that may be required in evaluating the applicant's financial capacity and sophistication include the certified true copies of income tax returns, audited financial statements, statements of account and certificates of deposit issued by the applicant's bank, statements of portfolio investments issued by the applicant's securities brokers or investment managers, certificates of employment with statement of income issued by the applicant's employer and other sources of information which are equally objective, reliable and verifiable that may prove financial capacity and sophistication.

If, after verification a qualified buyer is found to be no longer entitled to that status due to intervening events, the registrar shall note that fact in the registry that such person ~~is~~ **is** no longer a qualified buyer.

~~39.1.4.6~~ **39.1.4.7. Report of List of Qualified Buyers** - A registrar shall submit to the Commission **electronically** the list of persons on whom it conferred the status of "qualified institutional buyers" and "qualified individual buyers", within seven (7) days from the date of conferment or renewal of said status. ~~The list shall contain the following information:~~ **The submission shall be made using the SEC Form 39-Registrar-QB and shall include the information stated therein:**

~~39.1.4.6.1.~~ **39.1.4.7.1** The names of the qualified buyers;

~~39.1.4.6.2.~~ **39.1.4.7.2** The name and designation of the Registrar's personnel who conducted the evaluation;

~~39.1.4.6.3.~~ **39.1.4.7.3** Date of evaluation; **and**

~~39.1.4.6.4.~~ **39.1.4.7.4** Date of registration as qualified buyer;

~~39.1.4.6.5~~

The signed SEC Information Sheets, and supporting documents required by the Registrar and submitted by the applicant to prove financial capacity and sophistication, **and the applicant's signed undertaking which acknowledges that written consent to the submission of such information shall be submitted to the Commission upon the Commission's directive to submit the same during the conduct of an audit, investigation, examination, official inquiry or as part of a surveillance procedures, and/or in compliance with other pertinent laws. The applicant should also acknowledge that the Commission will conduct random verification procedures to ensure compliance with regulatory requirements.** The applicant's written consent to the submission of such information, verification and use to be conducted by the Commission.

39.1.4.7. 39.1.4.8 Central Registry of Qualified Buyers - The Commission shall maintain a central registry of qualified institutional and individual buyers based on the reports submitted by the Registrars. A Registrar may request the Commission to treat such report as confidential pursuant to Section 66 of the Code.

39.1.4.8. 39.1.4.9 Confidentiality of Information

39.1.4.9.1 Information obtained from qualified buyers shall be treated with utmost confidentiality by the registrar and shall not be disclosed to unauthorized persons; Provided that, such treatment of confidentiality shall not apply to the Commission

39.1.4.9.2 All information submitted to the Commission pursuant to the requirements of these provisions, including but not limited to the list of qualified institutional buyers and qualified individual buyers, shall be considered confidential. The Commission shall take all necessary measures to ensure the confidentiality of such information and shall disclose it only as required by law subject to the rules on Confidentiality of Information Filed with the Commission, Rule 66 of the Implementing Rules and Regulations of the SRC, and Sec 66 of the SRC.

39.1.4.10. Qualified Buyer Registration Reliance - A Registrar shall be allowed to rely on the existing registration of the same qualified buyer with another Registrar through its certificate of registration as QB. This includes events such as but not limited to: QBs who intend to execute exempt transactions on another Registrar, QBs who intend to transfer from its Registrar that has ceased operations, QBs who intend to register or renew on another Registrar.

Additional documents shall be in discretion of the Registrar and shall be reflected in its Internal Procedures.

39.1.4.8. 39.1.4.11 Other Records - A Registrar shall maintain and make available for inspection by the Commission's representatives the registrant's application forms, information sheets and proof of qualifications **in a consistent format, either physical or electronic,** for a period of at least ~~five (5)~~ **ten (10)** years **from the date of the registrant's submission of final documents.**

It shall retain the records that relate to an on-going investigation beyond this period until the Commission declares the case closed and terminated.

The Commission may require the Registrar and any qualified buyer to furnish it with copies of the records mentioned in the preceding sections or to file reports based on the same records.

39.1.4.910. 39.1.4.12 Review of Registration - The Commission reserves the authority to review the registration of qualified buyers to ensure that the requirements prescribed herein are complied with. **The Commission will conduct post-audits and random verification as part of this review process.** Non-compliance with any of these requirements shall cause the revocation of the certificate of registration of the qualified buyer and shall constitute a ground for the imposition of sanctions against the Registrar and the registrant if warranted.

In line with the proposed revisions under Section 39.1.4 of the SRC IRR, the following are the proposed revisions of the SEC Information Sheet and Undertaking as well:

SEC INFORMATION SHEET

xxx

I/We affirm that the foregoing information and representation are true and correct. I/We ~~consent to~~ **acknowledge** the submission of the same information and other information and documents related to my application as Qualified Individual/Institutional Buyer to the Securities and Exchange Commission (SEC), **upon the Commission's directive for the regulator's examination and verification pursuant to an audit, investigation, examination, official inquiry or as part of surveillance procedures, and/or in compliance with other pertinent laws. I/We further acknowledge that the Commission will conduct verification procedures to ensure compliance with regulatory requirements.**

xxx

SEC UNDERTAKING FOR QUALIFIED INDIVIDUAL BUYERS

I, _____, of legal age, ~~with home/office address at _____~~, state that:

I shall comply with the requirements for qualified buyer status;

I shall refrain from representing myself or dealing in securities as a Qualified Buyer if, after my registration, there are circumstances that disqualify me from enjoying that status, such as diminution of net worth below the prescribed minimum;

I shall not commit any act that constitutes misrepresentation, fraud or deceit under the Securities Regulation Code and its implementing rules and regulations; and

I ~~authorize~~ **acknowledge that** the representatives of the Securities and Exchange Commission ~~to may~~ inspect and examine the documents I submitted to the registrar in relation to my application for registration as a qualified buyer **upon the Commission's directive to submit the documents pursuant to an audit, investigation, examination, official inquiry or as part of surveillance procedures, and/or in compliance with other pertinent laws.**

I further acknowledge that the Commission will conduct verification procedures to ensure compliance with regulatory requirements.

I hereby declare that the documents submitted herewith are true, correct, and authentic to the best of my/our knowledge and belief.

SEC UNDERTAKING FOR QUALIFIED INSTITUTIONAL BUYERS

I/We, _____, as the _____ of _____ ~~with principal office address at xxx~~, state that:

The Company shall comply with the requirements for qualified buyer status;

The Company shall refrain from representing itself or dealing in securities as a Qualified Buyer if, after its registration, there are circumstances that disqualify it from enjoying that status, such as diminution of net worth below the prescribed minimum;

The Company shall not commit any act that constitutes misrepresentation, fraud or deceit under the Securities Regulation Code and its implementing rules and regulations;

The Company ~~authorize/s~~ **acknowledges that** the representatives of the Securities and Exchange Commission ~~to may~~ inspect and examine the documents I submitted to the registrar in relation to my application for registration as a qualified buyer **upon the Commission's directive to submit the documents pursuant to an audit, investigation, examination, official inquiry or as part of surveillance procedures, and/or in compliance with other pertinent laws.**

The company further acknowledges that the Commission will conduct verification procedures to ensure compliance with regulatory requirements.

The Company hereby declare that the documents submitted herewith are true, correct, and authentic to the best of my/our knowledge and belief.