



# MEMORANDUM

CN - No. 2021-0023

## THE PHILIPPINE STOCK EXCHANGE, INC.

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| <input type="checkbox"/> Trading            | <input type="checkbox"/> Public Advisory                   |
| <input type="checkbox"/> Disclosure         | <input type="checkbox"/> Administrative/Technology Matters |
| <input checked="" type="checkbox"/> Listing | <input type="checkbox"/> Others:                           |

**TO :** ALL MARKET PARTICIPANTS

**SUBJECT :** PROPOSED AMENDMENTS TO THE LOCK-UP RULE IN THE MAIN BOARD AND SME BOARD LISTING RULES

**DATE :** March 26, 2021

The Exchange is inviting all interested parties to submit their comments on the proposed amendments to the lock-up rule in Section 2(a), Article III, Parts D and E of the PSE Consolidated Listing and Disclosure Rules, as set out in the attached Consultation Paper.

Comments may be sent to the Office of the General Counsel at [ogc@pse.com.ph](mailto:ogc@pse.com.ph) until April 9, 2021.

*(Original Signed)*  
**Ramon S. Monzon**  
*President and CEO*

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**The Philippine Stock Exchange, Inc.**

## **Consultation Paper**

# **PROPOSED AMENDMENTS TO THE LOCK-UP RULE**

*Disclaimer: This Consultation Paper is disseminated for the purpose of soliciting comments from the concerned stakeholders. The final version of the Rules may differ from the draft rules contained in this Consultation Paper.*

## I. Consultation Process

This Consultation Paper is circulated to give concerned stakeholders an opportunity to submit their comments, if any, on the proposed amendments to the lock-up rule in Section 2(a), Article III, Part D (“Main Board Listing Rules”) and Section 2(a), Article III, Part E (“SME Board Listing Rules”) of the PSE Consolidated Listing and Disclosure Rules.

Interested parties may submit their comments and requests for clarifications by e-mail to [ogc@pse.com.ph](mailto:ogc@pse.com.ph) until April 9, 2021.

## II. Rationale for the Proposed Amendments

The Exchange reviewed the lock-up rule in the Main Board and SME Board Listing Rules (“Lock-Up Rule”) following receipt of queries from market participants regarding an initial public offering (“IPO”) exit route for alternative investment funds (“AIFs” such as private equity, venture capital, hedge fund, sovereign wealth funds, or other alternative investment funds) or their investment arms which invest in a company prior to the IPO in the form of convertible securities or any other security that gives them an option to subscribe to the company’s shares.

AIFs or their investment arms generally exercise their conversion or subscription rights close to the IPO at a price lower than the IPO price, triggering the application of the Lock-Up Rule which provides, in part, that:

### SECTION 2. Lock-Up

#### (a) ...

If there is any issuance or transfer of shares (*i.e.*, private placement, asset for shares swap or a similar transaction) or of instruments which leads to an issuance or transfer of shares (*i.e.*, convertible bonds, warrants or a similar instrument) done and fully paid for within one hundred eighty (180) days prior to the start of the Offering Period, or prior to the listing date in the case of Applicant Companies listing by way of introduction, and the transaction price is lower than that of the offer price in the Initial Public Offering or than that of the listing price in the case of Applicant Companies listing by way of introduction, all shares availed of shall be subject to a lock-up period of at least three hundred sixty five (365) days from the full payment of the aforesaid shares.

...

Thus, the shares of AIFs or their investment arm arising from the exercise of their conversion or subscription rights may be subject to lock-up and restrict them from making an IPO exit.

In reviewing the Lock-Up Rule, the Exchange gave due consideration to the following:

1. The inherent characteristic and purpose of an AIF or its investment arm is to exit when the investee-company has already stabilized its operations or when it goes public.
2. The IPO exit of an AIF or its investment arm from one company allows said AIF or investment arm to re-invest the proceeds of the secondary offering in other target firms which may likewise apply for listing, potentially setting off a chain of listings and AIF-backed IPOs.
3. Allowing AIFs or their investment arm to do a secondary offer during the IPO will result in the availability of more shares to IPO investors and prevent a large-scale divestment by AIFs (or their investment arm) of their shares post-IPO, which may cause a sharp decline in share price.

### **III. Proposed Amendments**

In view of the foregoing, the Exchange proposes to exempt shares issued to AIFs (or their investment arm) within the 180-day period prior to the IPO at a price lower than the IPO from the application of the above-quoted Lock-Up Rule, subject to the following conditions:

- a. The shares are issued pursuant to an exercise of rights granted under convertible securities, warrants, options or similar instruments that have been held and fully paid for by the AIF or its investment arm for at least 365 days prior to the offer (“Holding Period”);
- b. The AIF or its investment arm is entitled to convert its holdings or subscribe to the underlying shares during the entire Holding Period; and
- c. The AIF or its investment arm sells the exempted shares during the IPO.

Shares of the AIF or its investment arm which are covered by this exemption but are not sold during the IPO shall be subject to the 365-day lock-up.

A copy of Section 2(a) of Article III, Parts D and E of the Consolidated Listing and Disclosure Rules, with the proposed amendments, is attached as Annex “A”.

**ARTICLE III  
EQUITY SECURITIES**

**PART D  
MAIN BOARD LISTING**

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**SECTION 2. Lock-Up -**

- (a) An Applicant Company shall cause its existing stockholders who own an equivalent of at least 10% of the issued and outstanding shares of stock of the company to refrain from selling, assigning or in any manner disposing of their shares for a period of:
- i. One hundred eighty (180) days after the listing of said shares if the Applicant Company meets the track record requirements in Section 1 hereof; or
  - ii. Three hundred sixty-five (365) days after the listing of said shares if the Applicant Company is exempt from the track record and operating history requirements of the Rules.

If there is any issuance or transfer of shares (*i.e.*, private placement, asset for shares swap or a similar transaction) or of instruments which leads to an issuance or transfer of shares (*i.e.*, convertible bonds, warrants or a similar instrument) done and fully paid for within one hundred eighty (180) days prior to the start of the Offering Period, or prior to the listing date in the case of Applicant Companies listing by way of introduction, and the transaction price is lower than that of the offer price in the Initial Public Offering (**IPO**) or than that of the listing price in the case of Applicant Companies listing by way of introduction, all shares availed of shall be subject to a lock-up period of at least three hundred sixty-five (365) days from the full payment of the aforesaid shares.

**THE LOCK-UP REQUIREMENT IN THE IMMEDIATELY PRECEDING PARAGRAPH SHALL NOT APPLY TO SHARES ISSUED TO ALTERNATIVE INVESTMENT FUNDS OR THEIR INVESTMENT ARM WITHIN ONE HUNDRED EIGHTY (180) DAYS PRIOR TO THE START OF THE OFFERING PERIOD AT A PRICE LOWER THAN THE IPO PRICE IF:**

- I. THE SHARES ARE ISSUED PURSUANT TO AN EXERCISE OF RIGHTS GRANTED UNDER CONVERTIBLE SECURITIES, WARRANTS, OPTIONS OR SIMILAR INSTRUMENTS THAT HAVE BEEN HELD AND FULLY PAID FOR BY THE ALTERNATIVE INVESTMENT FUND OR ITS**

- INVESTMENT ARM FOR AT LEAST 365 DAYS PRIOR TO THE OFFER (“HOLDING PERIOD”);**
- II. THE FUND OR ITS INVESTMENT ARM IS ENTITLED TO CONVERT ITS HOLDINGS OR SUBSCRIBE TO THE UNDERLYING SHARES DURING THE ENTIRE HOLDING PERIOD; AND**
- III. THE FUND OR ITS INVESTMENT ARM SELLS THE EXEMPTED SHARES DURING THE IPO.**

**SHARES HELD BY THE ALTERNATIVE INVESTMENT FUND OR ITS INVESTMENT ARM WHICH ARE COVERED BY THIS EXEMPTION BUT ARE NOT SOLD DURING THE IPO SHALL BE LOCKED UP FOR THREE HUNDRED SIXTY-FIVE (365) DAYS FROM FULL PAYMENT OF THE SHARES.**

The lock-up requirement shall be stated in the Articles of Incorporation of the Applicant Company.

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**ARTICLE III  
EQUITY SECURITIES**

**PART E  
SMALL, MEDIUM AND EMERGING (SME) BOARD LISTING**

...

**Section 2. Lock-Up -**

- (a) The Applicant Company shall cause its existing non-public stockholders and their related parties to refrain from selling, assigning, encumbering or in any manner disposing of their shares for a period of one (1) year after the listing of such shares. All other stockholders shall not be subject to mandatory lock-up under this provision.

For purposes of this section, “non-public stockholders” shall mean the Applicant Company’s: (i) principal stockholders (*i.e.*, the owner of ten percent (10%) or more of the issued and outstanding shares); (ii) subsidiaries or affiliates; (iii) directors; (iv) principal officers; and (v) any other person who has substantial influence on how the Applicant Company is being managed.

The term “related parties” shall mean the non-public stockholder’s: (i) principal stockholders (*i.e.*, the owner of ten percent (10%) or more of the issued and outstanding shares); (ii) subsidiaries or affiliates; (iii) directors; (iv) principal officers; and (v) members of the immediate families sharing the same household of any of its principal stockholders, directors, or principal officers.

If there is any issuance or transfer of shares (*i.e.*, private placements, asset for shares swap or a similar transaction) or instruments which lead to issuance of shares (*i.e.*, convertible bonds, warrants or a similar instrument) done and fully paid for within ~~six (6) months~~ **ONE HUNDRED EIGHTY (180) DAYS** prior to the start of the offering period, or prior to listing date in case of companies listing by way of introduction, and the transaction price is lower than that of the offer price in the Initial Public Offering (**IPO**), or listing price for listing by way of introduction, all shares subscribed or acquired shall be subject to a lock-up period of at least ~~one (1) year~~ **THREE HUNDRED SIXTY-FIVE (365) DAYS** from listing of the aforesaid shares.

**THE LOCK-UP REQUIREMENT IN THE IMMEDIATELY PRECEDING PARAGRAPH SHALL NOT APPLY TO SHARES ISSUED TO ALTERNATIVE INVESTMENT FUNDS OR THEIR INVESTMENT ARM WITHIN ONE HUNDRED EIGHTY (180) DAYS PRIOR TO THE START OF THE OFFERING PERIOD AT A PRICE LOWER THAN THE IPO PRICE IF:**

- IV. THE SHARES ARE ISSUED PURSUANT TO AN EXERCISE OF RIGHTS GRANTED UNDER CONVERTIBLE SECURITIES, WARRANTS, OPTIONS OR SIMILAR INSTRUMENTS THAT HAVE BEEN HELD AND FULLY PAID FOR BY THE ALTERNATIVE INVESTMENT FUND OR ITS INVESTMENT ARM FOR AT LEAST 365 DAYS PRIOR TO THE OFFER (“HOLDING PERIOD”);
- V. THE FUND OR ITS INVESTMENT ARM IS ENTITLED TO CONVERT ITS HOLDINGS OR SUBSCRIBE TO THE UNDERLYING SHARES DURING THE ENTIRE HOLDING PERIOD; AND
- VI. THE FUND OR ITS INVESTMENT ARM SELLS THE EXEMPTED SHARES DURING THE IPO.

**SHARES HELD BY THE ALTERNATIVE INVESTMENT FUND OR ITS INVESTMENT ARM WHICH ARE COVERED BY THIS EXEMPTION BUT ARE NOT SOLD DURING THE IPO SHALL BE LOCKED UP FOR THREE HUNDRED SIXTY-FIVE (365) DAYS FROM FULL PAYMENT OF THE SHARES.**

The lock-up requirement shall be stated in the Articles of Incorporation of the Applicant Company.