



# MEMORANDUM

CN - No. 2022-0024

## 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 type="checkbox"/> Listing    | <input checked="" type="checkbox"/> Others:                |

**TO :** ALL MARKET PARTICIPANTS

**SUBJECT :** REVISED RULES ON BACKDOOR LISTING

**DATE :** May 26, 2022

Please be advised that the Revised Rules on Backdoor Listing shall take effect immediately pursuant to SRC Rule 40.3.2.

The salient provisions of the Revised Rules on Backdoor Listing are as follows:

### 1. Elements of Backdoor Listing

Backdoor listing is deemed to occur if the following elements are present:

- a. The listed company, directly or indirectly, acquires the shares or assets of an unlisted company or person or group of persons or *vice versa*; and
- b. Such transaction or series of transactions results or will result in:
  - i. change in control or de facto control of the listed company; and/or
  - ii. substantial change in the business of the listed company.

Change in control takes place when the purchaser acquires more than fifty percent (50%) of the voting power of the listed company while de facto control is acquired if the purchaser becomes the single largest substantial shareholder of the listed company after the transaction leading to the backdoor listing.

There is substantial change in business of the listed company if the value of the new business or assets acquired is more than fifty percent (50%) of the total assets of the listed company, based on the audited consolidated financial statements of the listed company as of the end of the fiscal year preceding the backdoor listing or the latest available interim financial statements, as may be applicable.

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## 2. Corporate Approvals for Primary Issuance of Shares Resulting in Backdoor Listing

If a transaction leading to backdoor listing involves the issuance of primary shares of the listed company, the following approvals are required:

- a. At least 2/3 of the entire membership of the Board of Directors, including the majority (but not less than two) of its independent directors; and
- b. Stockholders owning at least 2/3 of the total issued and outstanding shares of the listed company.

## 3. Required Confirmation from the Securities and Exchange Commission (“SEC”)

Where a transaction results in change of control of the listed company but the new controlling stockholder will not conduct a tender offer on the basis of any of the exemptions provided in SRC Rule 19.3, the new controlling stockholder or the listed company must submit to the Exchange a written confirmation from the SEC that the mandatory tender offer requirement is not applicable.

If the transaction results in substantial change in business of the listed company without the listed company effecting a change in its Registration Statement, the listed company must also submit a written confirmation from the SEC that amendment of its Registration Statement is not required.

Pending submission of these confirmations, the trading of the shares of the listed company will remain to be suspended.

## 4. Public Offering

A backdoor-listed company shall conduct a public offering of at least ten percent (10%) of its issued and outstanding shares within one (1) year from closing or completion of the transaction giving rise to backdoor listing. A stock rights offering (“SRO”) shall not be deemed a public offering for purposes of this rule.

Prior to the conduct of the public offering, the listed company shall not conduct any private capital-raising activity (except SRO, Employee Stock Option Plan and stock dividend declaration), unless the same is necessary to comply with the 20% MPO requirement.

Secondary offering of shares under trading suspension or lock-up shall not be allowed during the public offering.

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Non-compliance with the public offering requirement within the prescribed 1-year period shall result in trading suspension of the listed shares.

### 5. Lock-Up Rule

Shares acquired pursuant to the transaction giving rise to backdoor listing shall be locked up from closing or completion of the transaction until six (6) months after the conduct of the public offering.

Shares held by stockholders owning at least ten percent (10%) of the total issued and outstanding shares shall be locked up for one (1) year from closing or completion of the transaction giving rise to backdoor listing.

### 6. Backdoor Listing Fee

The backdoor listing fee shall be based on the book value of the outstanding shares of the unlisted company being backdoor listed:

<b>Total Book Value</b>	<b>Fee Rate</b>
(1) P15 Billion and below	1/10 of 1% of total book value but not lower than P500,000.00
(2) Over P15 Billion	P15 Million + 1/20 of 1% of the excess over P15 Billion book value

The backdoor listing fee is payable upon closing or completion of the transaction giving rise to backdoor listing and will be in addition to the listing fee for the listing of new shares issued pursuant to the backdoor listing transaction, if any, which shall be one-tenth (1/10) of one percent (1%) of the market capitalization of the new shares issued. The market capitalization of the new shares issued shall be based on the market price at the time of additional listing of new shares or the transaction price, whichever is higher.

### 7. Violations and Penalties

The following acts or omissions constitute violations of the Revised Rules on Backdoor Listing and shall result in the imposition of the following penalties:

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Violation	Penalty
Non-submission of the Comprehensive Corporate Disclosure (“CCD”) within five (5) trading days from receipt of the Exchange’s directive	Php50,000 basic fine plus Php1,000 per trading day of continuing violation until a compliant CCD is submitted
Failure to apply for listing the newly issued and fully paid shares within six (6) months from full payment	Php50,000 basic fine plus Php1,000 per trading day of continuing violation until rectified
Violation of the lock-up requirement, including non-submission of the proof of lock-up	Php1 Million for each violation

## 8. Restrictions

Backdoor listing shall not be allowed as a mode of compliance with any law or rule requiring a company to conduct a public offering or to list in the Exchange.

## 9. Applicability

A listed company that has a pending backdoor listing transaction shall comply with the regulatory requirements under the Revised Rules on Backdoor Listing and submit a CCD that is compliant with the Revised Guidelines on the Comprehensive Corporate Disclosure for Backdoor Listings.

A listed company is deemed to have a pending backdoor listing transaction if the Exchange has determined, prior to the effectivity of the Revised Rules on Backdoor Listing, that it is subject to backdoor listing but there has been no actual issuance or transfer of the shares, assets, or business which triggered the application of the Revised Rules on Backdoor Listing.

The Revised Rules on Backdoor Listing is attached herewith as **Annex “A”**.

For your information and guidance.

*(Original Signed)*

**Ramon S. Monzon**

*President and CEO*

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## Annex "A"



# REVISED RULES ON BACKDOOR LISTING

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## REVISED RULES ON BACKDOOR LISTING

**SECTION 1. Objectives and General Principles** – These Revised Backdoor Listing Rules (“Backdoor Listing Rules” or “Rules”) are governed by the following principles:

- A. Companies listing through backdoor listing shall be subject to the suitability rule of the Exchange, consistent with the principal objective of the Exchange to determine and ensure the suitability of securities for listing for the protection of public interest and maintenance of public confidence in the market at all times.
- B. Considering that the listed shares of a backdoor listed company may continue to be sold in the market without a re-admission process and without the benefit of a due diligence undertaken by an underwriter, backdoor listed companies shall be subject to regulatory requirements aimed at protecting public investors.
- C. The proper introduction of a company to the investing public based on the standards of suitability and full disclosure is paramount.
- D. A company subject of a backdoor listing, being a publicly listed company, must be accessible to retail investors and qualified institutional buyers alike.
- E. These Rules shall apply concurrently with the Securities Regulation Code (“SRC”) and its implementing rules and regulations (“SRC IRR”) and the Exchange’s Consolidated Listing and Disclosure Rules (“Consolidated Rules”), including any supplements or amendments thereto, as well as other related rules, policies, and requirements of the Securities and Exchange Commission (“SEC” or “Commission”) and the Exchange. In case of any inconsistencies between these Backdoor Listing Rules and the Consolidated Rules, these Backdoor Listing Rules shall prevail.

**SECTION 2. Elements and Basic Guidelines** – A backdoor listing is deemed to occur if the following elements are present:

- A. The listed company, directly or indirectly, acquires the shares or assets of an unlisted company or person or group of persons or *vice versa*; and
- B. Such transaction or series of transactions results in or will result in:
  - i. Change in control or de facto control of the listed company; and/or
  - ii. Substantial change in the business of the listed company.

The Exchange may rule that a transaction is not backdoor listing if issuer shows that the transaction is not aimed at circumventing the listing requirements.

There is change in control if the Acquirer acquires more than fifty percent (50%) of the voting power of the listed company.

There is change in de facto control if the Acquirer becomes the single largest substantial shareholder of the listed company after the transaction leading to the backdoor listing.

There is substantial change in the business of the listed company if the value of the new business or assets acquired is more than fifty percent (50%) of the total assets of the listed company, based on the audited consolidated financial statements of the listed company as of the end of the fiscal year preceding the backdoor listing or the latest available interim financial statements, as may be applicable.

### **SECTION 3. Trading Suspension and Halts to be Imposed by the Exchange -**

**SECTION 3.1.** The Exchange shall impose a trading suspension on the listed company's securities immediately after the Exchange's evaluation of the disclosure/s submitted by the listed company regarding the transaction and the Exchange's determination of the applicability of the Backdoor Listing Rules. Trading suspension shall be lifted one (1) full trading day after dissemination by the Exchange of the comprehensive corporate disclosure and submission of the required confirmations from the SEC under Section 6 below, if applicable.

**SECTION 3.2.** In connection with the conduct of the Mandatory Public Offering under Section 8 hereof, the Exchange shall impose a one (1) hour trading halt upon initial disclosure of the final offer price (or dividend rate, as may be applicable) of the securities subject of the Mandatory Public Offering.

**SECTION 3.3.** The trading suspension or trading halt under Sections 3.1 and 3.2 shall commence on the same trading day as the posting of the disclosures or Exchange Notices referred to in said sections if the posting occurs during trading hours. Otherwise, the trading suspension or trading halt shall commence on the immediately following trading day.

**SECTION 3.4.** The listed company may request for extension of the trading suspension or trading halt under Sections 3.1 and 3.2. The Exchange may approve such request for extension *in toto* or with modification, as the Exchange deems appropriate under the circumstances.

**SECTION 4. Comprehensive Corporate Disclosure -** A comprehensive corporate disclosure ("CCD") containing the information set out in Annex "A" and signed by the Corporate Information Officer of the listed company shall be submitted within five (5) trading days from receipt of a directive from the Exchange.

**SECTION 5. Required Corporate Approvals** - If a transaction leading to backdoor listing involves issuance of primary shares of the listed company, the following approvals are required:

- A. At least two-thirds (2/3) of the entire membership of the listed company's Board of Directors, including the majority, but not less than two, of all of its independent directors; and
- B. Stockholders owning at least two-thirds (2/3) of the total issued and outstanding shares of the listed company.

The stockholders shall cast their votes either in person or by proxy in a duly convened stockholders' meeting, or when so authorized in the listed company's by-laws, through remote communication, voting in absentia or by written assent.

The stockholders owning at least 2/3 of the total issued and outstanding shares of the listed company may delegate their authority to approve the transaction to the Board of Directors, provided that any approval made by the Board of Directors must be subsequently ratified by stockholders owning at least 2/3 of the total issued and outstanding shares of the listed company.

The approvals should contain all the relevant information about the transaction that leads to backdoor listing.

Shares which have been issued and fully paid must be applied for listing within six (6) months from full payment.

**SECTION 6. Required Confirmation from the SEC -**

**SECTION 6.1.** Where a transaction results in change of control of the listed company but the new controlling stockholder will not conduct a tender offer on the basis of any of the exemptions provided in Rule 19.3 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code, the new controlling stockholder or the listed company must submit to the Exchange a written confirmation from the SEC that the mandatory tender offer requirement is not applicable.

**SECTION 6.2.** If the transaction results in substantial change in business of the listed company without the listed company effecting a change in its Registration Statement, the listed company must also submit a written confirmation from the SEC that amendment of its Registration Statement is not required.

**SECTION 6.3.** Pending submission of the aforementioned confirmations from the SEC, the trading of the securities of the listed company shall remain suspended.



## **SECTION 7. Compliance with the Minimum Public Ownership Requirement -**

**SECTION 7.1.** Upon and after the backdoor listing, the listed company shall have a minimum public ownership (“MPO”) of twenty percent (20%), or as may be amended (the “MPO Requirement”). Compliance with the MPO Requirement shall be reckoned from closing or completion of the transaction giving rise to backdoor listing.

For purposes of Sections 7, 8, 9 and 10 of these Rules, “closing or completion of the transaction giving rise to backdoor listing” shall mean the actual issuance or transfer (as may be applicable) of the securities, assets or business which triggered the application of the Backdoor Listing Rules and provided said issuance or transfer is already recorded in the books of the Company.

**SECTION 7.2.** A backdoor listed company that breaches the MPO requirement as a result of the implementation of the transaction leading to backdoor listing shall be subject to the consequences for non-compliance under the Exchange’s Rule on Minimum Public Ownership.

## **SECTION 8. Mandatory Public Offering -**

**SECTION 8.1.** A backdoor listed company shall conduct a public offering of at least ten percent (10%) of its issued and outstanding shares (the “Mandatory Public Offering”) within one (1) year from closing or completion of the transaction giving rise to backdoor listing. A stock rights offering (“SRO”) shall not be deemed a public offering for purposes of this rule.

The Exchange retains the discretion to rule whether a public offering proposed by a listed company is in compliance with the Mandatory Public Offering requirement.

**SECTION 8.2.** Unless otherwise provided in these Rules, the Mandatory Public Offering shall comply with the prevailing rules of the Exchange relating to follow-on offerings, except that the rule on allocation to local small investors in Article III, Part F, Section 3 of the Consolidated Rules shall be mandatory and not discretionary on the part of the listed company. The Exchange may add to, supplement, or in any other manner modify any requirement under the rules governing follow-on offerings and these Rules as it may deem appropriate, taking into account the nature of business and/or track record of the Acquirer, as well as the rationale for the transaction.

**SECTION 8.3.** Secondary offering of shares under trading suspension or lock-up shall not be allowed during the Mandatory Public Offering.

**SECTION 8.4.** Prior to the conduct of the Mandatory Public Offering, the listed company shall not conduct any private capital-raising activity (except SRO, employee stock option plan and stock dividend declaration), unless the same is necessary to comply with the MPO Requirement under Section 7.1.

**SECTION 8.5.** Non-compliance with the Mandatory Public Offering requirement within the prescribed 1-year period shall result in the trading suspension of the listed securities.

**SECTION 9. Lock-up Requirement –**

**SECTION 9.1.** Shares of the backdoor listed company that are acquired pursuant to the transaction giving rise to backdoor listing shall not be sold or offered for sale, assigned or in any manner disposed of from closing or completion of the transaction giving rise to backdoor listing and until six (6) months after the conduct of the Mandatory Public Offering.

**SECTION 9.2.** Shares of the backdoor listed company that are held by stockholders owning at least ten percent (10%) of the total issued and outstanding shares shall not be sold or offered for sale, assigned or in any manner disposed of for a period of one (1) year from closing or completion of the transaction giving rise to backdoor listing.

**SECTION 9.3.** The lock-up requirement under Sections 9.1 and 9.2 shall be implemented in accordance with Article III, Part A, Section 17 of the Consolidated Rules, or any amendment thereto. Further, the Company shall submit a sworn undertaking to comply with this Section 9 upon determination by the Exchange of the applicability of these Rules.

**SECTION 9.4.** The listed company shall submit proof of lock-up of the covered shares (e.g., signed escrow or lock-up agreement) at least two (2) trading days prior to the commencement of the lock-up period. The draft escrow or lock-up agreement shall be submitted to the Exchange for review prior to its execution.

**SECTION 10. Backdoor Listing Fee –** The backdoor listing fee shall be computed based on the total book value of the outstanding shares of the unlisted company being backdoor listed:

<u><b>Total Book Value</b></u>	<u><b>Fee Rate</b></u>
(1) P15 Billion and below	1/10 of 1% of total book value but not lower than P500,000.00
(2) Over P15 Billion	P15 Million + 1/20 of 1% of the excess over P15 Billion book value

The backdoor listing fee is payable upon closing or completion of the transaction giving rise to backdoor listing.

The listing fee for the listing of new shares issued pursuant to the transaction leading to backdoor listing shall be one-tenth (1/10) of one percent (1%) of the market capitalization of the new shares issued. The market capitalization of the new shares issued should be based on the market price at the time of additional listing of new shares or the transaction price, whichever is higher.

**SECTION 11. Violations and Penalties** – The following acts or omissions constitute violations of these Backdoor Listing Rules and shall result in the imposition of the following penalties:

Violation	Penalty
Non-submission of the CCD within five (5) trading days from receipt of the Exchange’s directive	Php50,000 basic fine plus Php1,000 per trading day of continuing violation until a compliant CCD is submitted
Failure to apply for listing the newly issued and fully paid shares within six (6) months from full payment	Php50,000 basic fine plus Php1,000 per trading day of continuing violation until rectified
Violation of the lock-up requirement, including non-submission of the proof of lock-up	Php1 Million for each violation

**SECTION 12. Non-applicability of Backdoor Listing** – Backdoor listing shall not be allowed as a mode of compliance with any law or rule requiring a company to conduct a public offering or to list in the Exchange. Companies mandated by law or regulation to list in the Exchange or offer their shares to the public may do so by conducting an initial public offering or a listing by way of introduction.

**SECTION 13. Effectivity** – These Rules shall take effect immediately.

A listed company that has a pending backdoor listing transaction shall comply with the regulatory requirements under these Rules, and submit a comprehensive corporate disclosure compliant with the Revised Guidelines on the Comprehensive Corporate Disclosure for Backdoor Listings.

For purposes of this section, a listed company is deemed to have a pending backdoor listing transaction if the Exchange has made a determination of the applicability of the Backdoor Listing Rules but there has been no actual issuance or transfer (as may be applicable) of the securities, assets, or business which triggered the application of the Backdoor Listing Rules.

**REVISED GUIDELINES ON THE COMPREHENSIVE CORPORATE  
DISCLOSURE FOR BACKDOOR LISTINGS**

The following additional information shall be disclosed within five (5) trading days from receipt of directive from the Exchange to aid the Exchange in evaluating whether the listed company continues to meet the listing requirements of the Exchange:

- a. Copies of all agreements duly executed that are relevant to the transaction;
- b. Nature and description of the proposed transaction, including the timetable for implementation, and related regulatory requirements if applicable;
- c. Reason/purpose of the transaction including the benefits which are expected to accrue to the listed company as a result of the transaction;
- d. The aggregate value of the consideration, explaining how this is to be satisfied, including the terms of any arrangements for payment on a deferred basis;
- e. The basis upon which the consideration or the issue value was determined with a detailed explanation thereof;
- f. For cash considerations, the detailed work program of the application of proceeds, the corresponding timetable of disbursements and status of each project included in the work program. For debt retirement application, state which projects were financed by debt being retired, the project cost, amount of project financed by debt and financing sources for the remaining cost of the project;
- g. A statement of active business pursuits and objectives which details the steps undertaken and proposed to be undertaken by the listed company in order to advance its business;
- h. Comparison before and after the transaction of the following:
  1. authorized capital stock,
  2. nature of business or primary purpose,
  3. Board of Directors, principal officers and major shareholders,
  4. name of the listed company,
  5. ownership structure (including percentage holdings to total outstanding shares before and after the transaction),
  6. capital structure,
  7. public float, and
  8. registration statement of the listed company;

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- i. Additional information on the unlisted company including but not limited to:
    1. Articles of Incorporation, By-laws, and General Information Sheet,
    2. Discussion of major projects and investments,
    3. Capital structure,
    4. Ownership Structure (including percentage holdings),
    5. Board of Directors, principal officers and major shareholders,
    6. Audited financial statements or Annual Report for the last three (3) years, and
    7. Other relevant information;
  - j. The interest which directors of the parties to the transaction have in the transaction;
  - k. Statement as to the steps to be taken, if any, to safeguard the interests of the shareholders which shall include the company's concrete and detailed plans of compliance with the mandatory tender offer requirements under the Securities Regulation Code and all relevant rules of the Commission and the Exchange, if applicable;
  - l. Statement as to the steps to be taken by the listed company in complying with the mandatory public offering requirement under these rules; and
  - m. Other relevant information as may be required by the Exchange.