



# MEMO FOR BROKERS

## The Philippine Stock Exchange, Inc.

<input type="checkbox"/>	Disclosures	<input type="checkbox"/>	Stockholders' Meeting	Others: <u>PSE Regulations</u>
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Date : **November 27, 2007**

Subject : **Interpretation of the Suitability Rule of the Exchange**

Please be advised that the Exchange has recently adopted the attached **INTERPRETATION OF THE SUITABILITY RULE OF THE EXCHANGE**, particularly Section 1(c), Part B, Article I of the Revised Listing Rules.

For your information and guidance.

  
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## INTERPRETATION OF THE SUITABILITY RULE OF THE EXCHANGE

### POLICY FRAMEWORK

Section 1 (c), Part B, Article I of the Revised Listing Rules of the Exchange on Suitability Rule provides that:

**SECTION 1. Suitability Rule; Disqualifications from Listing of Securities** – The Exchange retains full discretion to accept or reject listing applications. In reaching its decision, the Exchange shall consider the following grounds for disqualification from listing of securities in the Exchange:

. . . .

(c) There is a serious question relating to the integrity or capability of the Issuer or any of its director, executive officer, promoter or control person. A serious question exists relative to the above parties if, during the past five (5) years any of the following events occurred:

. . . .

(ii) Any conviction by final judgment in a criminal proceeding for an offense involving moral turpitude, domestic or foreign, including a *nollo contendere* case, or being subject to a pending criminal proceeding for an offense involving moral turpitude, domestic or foreign, excluding traffic violations and other minor offenses . . . .

(Underscoring supplied).

With regard to the phrase **“being subject to a pending criminal proceeding for an offense involving moral turpitude”**, it appears that such provision is a ground for rejection of the listing of securities of applicant companies.

However, the plenary powers of the Exchange as a self-regulatory organization (SRO) to adopt its own rules, including interpretations thereof, provide sufficient basis to interpret the rules on suitability requirement to mean that only those situations where there was already a conviction in the Regional Trial Court (or Municipal Trial Court and other trial courts) would be a ground for rejection for listing.

Such interpretation of the Suitability Rule is in accord with the presumption of innocence contained in Article III, Section 14(2) of the 1987 Constitution, which states that:

“SECTION 14.

XXX

(2) **In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved**, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.” (emphasis supplied)

In this respect, the Supreme Court held that “[o]nly by proof beyond reasonable doubt which requires moral certainty, ‘a certainty that convinces and satisfies the reason and conscience of those who are to act upon it’ may the presumption of innocence be overcome.”

#### **INTERPRETATION OF THE SUITABILITY RULE**

Following the constitutional precept on presumption of innocence and in recognition of its duty to protect the investing public, the Exchange shall only consider, in connection with the Suitability Rule, criminal cases involving moral turpitude where there was already a conviction in the Regional Trial Court (or Municipal Trial Court and other trial courts) in determining the suitability of the directors of listed and applicant companies.

Thus, with respect to pending criminal cases involving estafa, plunder and violations of the Anti-Graft and Corrupt Practices Act, which cases involve moral turpitude in accordance with Supreme Court decisions, and where trial courts have **NOT** yet rendered any decision, the pendency of said criminal proceedings will not be considered as a ground for the rejection of the listing of securities of applicant companies.