

655

CONGRESS OF THE PHILIPPINES }
ELEVENTH CONGRESS }
First Regular Session

SENATE

S. No. 1220

(In substitution of S. Nos. 204 and 529)

PREPARED BY THE COMMITTEES ON BANKS, FINANCIAL INSTITUTIONS AND CURRENCIES; TRADE AND COMMERCE; ECONOMIC AFFAIRS; AND CONSTITUTIONAL AMENDMENTS, REVISIONS OF CODES AND LAWS WITH SENATORS OSMENA III, ROCO, AND MAGSAYSAY, JR. AS AUTHORS

THE SECURITIES ACT OF 1998

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

CHAPTER I

Title and Definitions

1
2
3 **SECTION 1. *Title.*** - This Act shall be known as "The Securities
4 Act of 1998".

5 **SEC. 2. *Declaration of State Policy.*** - It is hereby declared to
6 be the policy of the State to encourage private corporations to broaden
7 the base of their ownership, to enhance a socially conscious-free
8 market that regulates itself, to promote the development of a capital
9 market and encourage the widest participation of ownership and

1 democratization of wealth, to favor publicly-listed corporations, and to
2 minimize if not totally eliminate insider trading and other manipulative
3 devices which create distortions in the free market.

4 To achieve these ends, the Securities Act of 1998 is hereby
5 enacted, to be administered by a more efficient and strengthened
6 Securities and Exchange Commission, hereafter the Commission.

7 SEC. 3. *Definitions* . - For purposes of this Act, unless the
8 context otherwise requires:

9 3.1. "Securities" are shares, participation or interests in a
10 corporation or in a commercial enterprise or profit-making venture and
11 evidenced by a certificate, contract or instrument. It includes:

12 a) Shares of stock, bonds, debentures, notes, evidences of
13 indebtedness, asset-backed securities;

14 b) Investment contracts, certificates of interest or participation in
15 a profit sharing agreement, certificates of deposit for a future
16 subscription;

17 c) Fractional undivided interests in oil, gas or other mineral
18 rights;

19 d) Derivatives like option and warrants;

20 e) Certificates of assignments, certificates of participation, trust
21 certificates, voting trust certificates or similar instruments;

22 f) Proprietary or non proprietary membership certificates in
23 corporations; and

24 g) Other instruments as may in the future be determined by the
25 Commission.

1 3.2 "Issuer" is the originator, maker, obligor, or creator of the
2 security.

3 3.3 "Dealer" means any person who buys and sells securities for
4 his own account in the ordinary course of business and holds himself
5 out as such.

6 3.4 "Salesman" is a natural person, employed as such or as an
7 agent, a dealer, issuer or broker to buy and sell securities.

8 3.5 "Broker" is a person engaged in the business of buying and
9 selling securities for the account of others.

10 3.6. "Clearing Agency" is any person who acts as an intermediary
11 in making payments or deliveries or both in connection with
12 transactions in securities, to provide facilities for comparison of data
13 respecting the terms of settlement of securities transactions. Such term
14 may also include a securities depository.

15 3.7. "Transfer agent" means any person who engages on behalf
16 of an issuer of securities or on behalf of itself as an issuer of securities
17 in: (a) countersigning such securities upon issuance; (b) monitoring the
18 issuance of such securities with a view to preventing unauthorized
19 issuance; (c) registering the transfer of such securities; (d) exchanging
20 or converting such securities; or (e) transferring record ownership of
21 securities by bookkeeping entry.

22 3.8. "Underwriter" means any person who is licensed to
23 guarantee on a firm commitment basis the distribution and sale of
24 securities of any kind by another company.

25 3.9. "Promoter" refers to any person who, acting alone or in

658

1 conjunction with one or more persons, directly or indirectly, takes
2 initiative in founding and organizing the business or enterprise of the
3 issuer and /or in connection therewith, directly or indirectly receives
4 consideration in services or property

5 3.10. "Prospectus" refers to the document made by or on behalf
6 of an issuer, underwriter or dealer to sell or offer for sale securities
7 offered to the public through a registration statement filed with the
8 Commission.

9 3.11. "Registration statement" refers to the application for the
10 recording of securities required to be filed with the Commission

11 3.12. "Associated person of a broker or dealer" means any
12 employee thereof who directly exercises control or supervisory
13 authority, but does not include a salesman, or an agent or a person
14 whose functions are solely clerical or ministerial.

15 3.13. "Self-regulatory organization" means any securities
16 exchange, clearing or depository agency or other securities-related
17 organization or association so organized which has the capacity to
18 comply with and enforce compliance from its members, with the
19 provisions of this Act or rules and regulations promulgated thereunder
20 and the rules of the organization, including the imposition of sanction
21 for violation thereof.

22 3.14. "Pre-Need Plans" refers to contracts which provide for the
23 performance of future services or the payment of future monetary
24 considerations at the time of actual need, for which planholders pay in
25 cash or installment at stated prices, with or without interest or

1 insurance coverage and includes life, pension, education, interment,
2 and other plans which the Commission may from time to time approve.

3 3.15. "Securities account" refers to the record of transactions
4 kept by a securities intermediary for and in behalf of another person.

5 3.16. "Securities intermediary" refers to a registered clearing
6 agency or a person registered or licensed by the Commission to
7 maintain securities accounts for others, or a bank that in the ordinary
8 course of business undertakes to maintain such accounts for others.

9 3.17. "Uncertificated security" means a security that is not
10 evidenced by a physical title.

11 3.18. "Insider" means: (a) the issuer; (b) a director or officer (or
12 person performing similar functions) of, or a person controlling the
13 issuer; (c) a person whose relationship or former relationship to the
14 issuer gives or gave him access to material information about the issuer
15 or the security that is not generally available to the public; or (d) a
16 person who learns such information by a communication from any of
17 the foregoing insiders.

18 The terms not otherwise defined under this Act shall be
19 construed in their usual and commonly understood trade, business,
20 commercial or investment meaning.

21 SEC. 4. *Administrative Agency.* -

22 4.1. This Act shall be administered by the Commission as a
23 collegial body. The Chairman, as chief executive officer of the
24 Commission, shall execute and administer the policies, decisions, orders
25 and resolutions approved by the Commission and shall have the

1660

1 general executive control, direction and supervision of the work and
2 operation of the Commission and of its members, bodies, boards,
3 offices, personnel and all its administrative business. In carrying out
4 any of its functions, he shall be governed by the general policies of the
5 Commission and by such regulatory decisions, findings and
6 determinations as the Commission may be authorized by law to make.

7 4.2. The salary of the Chairman and the Associate Commissioners
8 shall be fixed by the President of the Philippines at a sum commensurate
9 to the importance and responsibilities attached to position.

10 4.3. a) There shall be a Secretary appointed by the Commission,
11 who shall be of equal rank or level with that of a Director of a
12 Department and shall be the recorder and official reporter of the
13 proceedings of the Commission and shall have the authority to
14 administer oaths in all matters coming under the jurisdiction of the
15 Commission.

16 b) There shall be an Executive Director appointed by the
17 Commission who shall be responsible for the effective implementation
18 of the policies, rules and standards promulgated by the Commission,
19 to coordinate and supervise the activities of the different operating
20 units; to report to the Chairman on the operations of such units; to
21 monitor the fund-raising activities and financial operations of non-profit
22 foundations and organizations; and to perform such functions as may
23 be assigned to him by the Chairman and/or by the Commission.

24 4.4. The Commission shall hold meetings *en banc* for the conduct
25 of business as often as may be necessary at such times as the Chairman

1 may fix or such number of Commissioners constituting a quorum shall
 2 request. The notice of the meeting shall be given to all Commissioners
 3 and the presence of at least three (3) Commissioners shall constitute a
 4 quorum. In the absence of the Chairman, the most senior Commissioner
 5 shall act as presiding officer of the meeting.

6 4.5. a) The Commission *en banc* may delegate for purposes of
 7 efficiency, any of its functions to any department or office of the
 8 Commission, an individual commissioner or staff member of the
 9 Commission except its review or appellate authority and its power to
 10 adopt, alter and supplement any rule or regulation.

11 b) The delegation of functions, notwithstanding as provided in
 12 paragraph a) of Subsection 4.5 hereof, the Commission, *en banc*, shall
 13 retain the discretionary power to review upon its own initiative or upon
 14 the petition of any interested party any action of any department or
 15 office, individual Commissioner, or staff member of the Commission.
 16 The vote of one (1) Commissioner shall be sufficient to bring any such
 17 action before the Commission, *en banc*, for review.

18 If no review is sought within the prescribed time or the
 19 Commission, *en banc*, declines to exercise review, the action taken
 20 pursuant to delegated authority shall for all purposes be deemed the
 21 action of the Commission.

22 4.6. The Chairman may upon application by a party at any stage
 23 of the action or proceeding before the Commission prior to judgment
 24 or final order, issue a temporary restraining order to restrain the
 25 Commission, or continuance of the act or acts complained of, or require

1 the performance of an act or acts: *Provided*, That such temporary
2 restraining order shall be issued only in urgent cases where the
3 Commission, *en banc*, cannot be immediately convened and where it is
4 necessary to prevent irreparable damage to legitimate investors.

5 The temporary restraining order issued by the Chairman shall be
6 effective for a period of ten (10) days from its issuance unless ratified
7 by the Commission, *en banc*, within said period, in which case, it shall
8 be effective for a period of twenty (20) days.

9 In no event shall the temporary restraining order be issued by
10 the Chairman unless the party applying for the same shall post a bond
11 in such amount as may be sufficient to compensate the party against
12 whom it is issued for any damage he may suffer.

13 4.7. The Commission shall provide for its organization and staff
14 of officers and employees and upon recommendation of the
15 Chairman, fix their remuneration and other emoluments. All positions
16 in the Commission shall be governed by the Civil Service law and by
17 the compensation, position classification systems and qualifications
18 standards approved by the Commission based on a comprehensive job
19 analysis of actual duties and responsibilities. The Commission shall,
20 therefore, be exempt from existing laws, rules, and regulations on
21 compensation, position classification and qualification standards. The
22 Commission shall however, endeavor to make its system conform as
23 closely as possible with the principles under the Compensation and
24 Position Classification Act of 1989 (Republic Act No. 6758, as
25 amended).

1 4.8. The Commission shall act with transparency and shall have
 2 the power to promulgate rules, regulations, orders, and opinions as it
 3 may consider appropriate in the public interest or for the protection of
 4 investors to enforce the intent, purposes and policies of the provisions
 5 of this Act. The Monetary Board of the *Bangko Sentral ng Pilipinas*
 6 shall, however, have the power to promulgate its own rules on the
 7 monetary and credit aspects of securities issuances.

8 CHAPTER II

9 Registration of Securities

10 SEC. 5. *Requirement of Registration of Securities.* -

11 5.1. No securities shall be sold or offered for sale or distribution
 12 within the Philippines, unless a registration statement registering the
 13 securities to be offered has been filed with the Commission and is in
 14 effect.

15 5.2. No securities required to be registered pursuant to
 16 Subsection 5.1 shall be sold unless prior to such sale information on
 17 the securities, in such form and with such substance as the Commission
 18 may prescribe, is made available to each prospective purchaser.

19 5.3. The Commission may permit securities required to be
 20 registered under Subsection 5.1 to be offered for sale after the filing of
 21 a registration statement for such securities, but prior to its effectivity,
 22 upon such terms and conditions as the Commission may prescribe:
 23 *Provided, however,* That no offer for sale under this subsection shall
 24 be made by means of any written communication except a preliminary
 25 prospectus conforming in form and content to requirements for

1 preliminary prospectuses which the Commission may prescribe except
2 for institutional investors.

3 5.4. The Commission may specify the terms and conditions under
4 which any written communication, including any summary prospectus,
5 shall be deemed not to constitute an offer for sale under this Section.

6 5.5. A record of the registration of securities shall be kept in a
7 Register of Securities in which shall be recorded orders entered by the
8 Commission with respect to such securities. Such register and all
9 documents or information with respect to the securities registered
10 therein shall be open to public inspection at reasonable hours on
11 business days.

12 5.6 The Commission, in a decision made *en banc*, may audit the
13 financial statements, assets and other information of a firm applying for
14 registration of its securities whenever it deems the same necessary to
15 insure full disclosure or to protect the interest of the investors and the
16 public in general.

17 SEC. 6. *Exempt Securities.* -

18 6.1. The requirement of registration under Subsection 5.1 shall not
19 as a general rule apply to any of the following classes of securities:

20 a) Any security issued or guaranteed by the Government of the
21 Philippines, or by any political subdivision or agency thereof, or by any
22 person controlled or supervised by, and acting as an instrumentality of
23 said Government.

24 b) Any security issued or guaranteed by the government of any
25 country with which the Philippines maintains diplomatic relations, or by

1 any state, province or political subdivision thereof on the basis of
2 reciprocity: *Provided*, That the Commission may require compliance
3 with the form and content of disclosures the Commission may
4 prescribe.

5 c) Certificates issued by a receiver or by a trustee in bankruptcy
6 duly approved by the court.

7 d) Any security or its derivatives the sale or transfer of which,
8 by law, is under the supervision and regulation of the Office of the
9 Insurance Commission, Housing and Land Use Regulatory Board, the
10 *Bangko Sentral ng Pilipinas*, or the Bureau of Internal Revenue.

11 6.2. The Commission may, from time to time and subject to such
12 terms and conditions as may be prescribed after public hearing, add to
13 the foregoing any class of securities if it finds that the enforcement of
14 this Act with respect to such securities is not necessary in the public
15 interest and for the protection of investors.

16 SEC. 7. *Exempt Transactions.* -

17 7.1. The requirement of registration under Subsection 5.1 shall not
18 apply to the sale of any security in any of the following transactions:

19 a) At any judicial sale, or sale by an executor, administrator,
20 guardian or receiver or trustee in insolvency or bankruptcy.

21 b) By or for the account of a pledge holder, or mortgagee or any
22 other similar lien holder selling or offering for sale or delivery in the
23 ordinary course of business and not for the purpose of avoiding the
24 provisions of this Act, to liquidate a *bona fide* debt, a security pledged
25 in good faith as security for such debt.

666

1 c) An isolated transaction in which any security is sold, offered
2 for sale, subscription or delivery by the owner thereof, or by his
3 representative for the owner's account, such sale or offer for sale,
4 : subscription or delivery not being made in the course of repeated and
5 successive transactions of a like character by such owner, or on his
6 account by such representative and such owner or representative not
7 being the underwriter of such security.

8 d) The distribution by a corporation, actively engaged in the
9 business authorized by its articles of incorporation, of securities to its
10 stockholders or other security holders as a stock dividend or other
11 distribution out of surplus.

12 e) The sale of capital stock of a corporation to its own
13 stockholders exclusively, where no commission or other remuneration
14 is paid or given directly or indirectly in connection with the sale of such
15 capital stock.

16 f) The issuance of bonds or notes secured by mortgage upon real
17 estate or tangible personal property, where the entire mortgage together
18 with all the bonds or notes secured thereby are sold to a single
19 purchaser at a single sale.

20 g) The issue and delivery of any security in exchange for any
21 other security of the same issuer pursuant to a right of conversion
22 entitling the holder of the security surrendered in exchange to make
23 such conversion: *Provided*, That the security so surrendered has been
24 registered under this Act or was, when sold, exempt from the provisions
25 of this Act, and that the security issued and delivered in exchange, if

667

1 sold at the conversion price, would at the time of such conversion fall
2 within the class of securities entitled to registration under this Act.
3 Upon such conversion the par value of the security surrendered in
4 such exchange shall be deemed the price at which the securities issued
5 and delivered in such exchange are sold.

6 h) Broker's transactions, executed upon customer's orders, on
7 any registered Exchange or other trading market.

8 i) Subscriptions for shares of the capital stock of a corporation
9 prior to the incorporation thereof or in pursuance of an increase in its
10 authorized capital stock under the Corporation Code, when no expense
11 is incurred, or no commission, compensation or remuneration is paid or
12 given in connection with the sale or disposition of such securities, and
13 only when the purpose for soliciting, giving or taking of such
14 subscriptions is to comply with the requirements of such law as to the
15 percentage of the capital stock of a corporation which should be
16 subscribed before it can be registered and duly incorporated, or its
17 authorized capital increased.

18 j) The exchange of securities by the issuer with its existing
19 security holders exclusively, where no commission or other
20 remuneration is paid or given directly or indirectly for soliciting such
21 exchange.

22 k) The sale of securities by an issuer to fewer than twenty (20)
23 persons in the Philippines during any twelve-month period.

24 l) The sale of securities to any number of the following qualified
25 buyers:

- 1 (i) Bank;
- 2 (ii) Registered investment house;
- 3 (iii) Insurance company;
- 4 (iv) Pension fund or retirement plan maintained by the
- 5 Government of the Philippines or any political subdivision thereof or
- 6 managed by a bank or other persons authorized by the *Bangko Sentral*
- 7 to engage in trust functions;
- 8 (v) Investment company; or
- 9 (vi) Such other person as the Commission may by rule determine
- 10 as qualified buyers, on the basis of such factors as financial
- 11 sophistication, net worth, knowledge, and experience in financial and
- 12 business matters, or amount of assets under management.

13 7.2. The Commission by rule may, from time to time and subject

14 to such terms and conditions as it may prescribe, exempt transactions

15 other than those provided in the preceding subsection, if it finds that

16 the enforcement of the requirements of registration under this Act with

17 respect to such transactions is not necessary in the public interest and

18 for the protection of the investors such as by reason of the small

19 amount involved or the limited character of the public offering.

20 7.3. Any person claiming any exemption under this Section, shall

21 file with the Commission a notice identifying the exemption relied upon

22 on such form and at such time as the Commission by rule may prescribe

23 and with such notice shall pay to the Commission a fee equivalent to

24 one-tenth (1/10) of one *per centum* (1%) of the maximum aggregate

25 price or issued value of the securities.

1 SEC. 8. *Commodity Futures Contracts.* - Notwithstanding the
2 provisions regarding exemptions, commodity futures contracts may be
3 registered or otherwise regulated, and futures commission merchant,
4 futures brokers, floor brokers, pool operators and advisors licensed and
5 supervised in accordance with the rules and regulations that shall be
6 promulgated in the public interest and for the protection of investors
7 by the Commission, with the approval of the Monetary Board of
8 *Bangko Sentral ng Pilipinas.* Such rules and regulations may, among
9 other things provide for the establishment and maintenance by futures
10 commission merchants, futures brokers, floor brokers, pool operators
11 and advisors of bank accounts exclusively for margin deposit of and/
12 or other receipts from customers, the monitoring of withdrawals from
13 such account through periodic reports and/or examination, the
14 requirement that at least one of the signatories to the fund withdrawals
15 from such account must a Filipino citizen and a resident of the
16 Philippines, the posting by futures commission merchants, futures
17 brokers, floor brokers, pool operators and advisors of a bond in an
18 amount sufficient to meet possible claims against them, taking into
19 account the volume of margin deposits held by them, the establishment
20 of a common compensation fund to be contributed by all futures
21 commission merchants, futures brokers, floor brokers, pool operators
22 and advisors and subject to the control and supervision of the
23 Commission, and the registration and use by futures commission
24 merchants, futures brokers, floor brokers, pool operators and advisors
25 of official receipts to evidence commissions received by them from

1 customers. However, the Commission shall, after proper notice and
 2 opportunity for hearing, prohibit transactions with respect to all or
 3 specified commodity futures contract if it shall find that such
 4 transactions are mainly speculative in nature such that they may take
 5 the form of gambling or will be inimical to the economic interest of the
 6 country or may cause grave or irreparable injury or prejudice to the
 7 investing public.

8 SEC. 9. *Procedure for Registration of Securities.* -

9 9.1. All securities required to be registered under Subsection
 10 5.1 shall be registered through the filing by the issuer in the main office
 11 of the Commission, of a sworn registration statement with respect to
 12 such securities, in such form and containing such information and
 13 documents as the Commission shall prescribe. The registration
 14 statement shall include any prospectus required or permitted to be
 15 delivered under Subsections 5.2, 5.3 and 5.4.

16 9.2. In promulgating rules governing the content of any
 17 registration statement (including any prospectus made a part thereof or
 18 annexed thereto), the Commission may require the registration
 19 statement to contain the information or documents described in
 20 Schedule A appended to this Act, may dispense with any such
 21 requirement, or may require additional information or documents,
 22 including written information from an expert, depending on the
 23 necessity thereof or their applicability to the class of securities sought
 24 to be registered.

25 9.3. The information required for the registration of any kind,

1 and all securities, shall include, among others, the effect of the
2 securities issue on ownership, on the mix of ownership, especially
3 foreign and local ownership.

4 9.4. The registration statement shall be signed by the issuer, its
5 principal executive officer, its principal operating officer, its principal
6 financial officer, its comptroller or principal accounting officer, a
7 majority of members of its board of directors, or persons performing
8 functions similar to any of the foregoing. The written consent of the
9 expert named as having certified any part of the registration statement
10 or any document used in connection therewith shall also be filed.
11 Where the registration statement includes shares to be sold by selling
12 shareholders, a written certification by such selling shareholders as to
13 the accuracy of any part of the registration statement contributed to by
14 such selling shareholders shall also be filed.

15 9.5. a) Upon filing of the registration statement, the issuer shall
16 pay to the Commission a fee of not more than one-tenth (1/10) of one
17 *per centum* (1%) of the maximum aggregate price at which such
18 securities are proposed to be offered.

19 b) Notice of the filing of the registration statement shall be
20 immediately published by the issuer, at its own expense, in two (2)
21 newspapers of general circulation in the Philippines, once a week for
22 two (2) consecutive weeks, or in such other manner as the Commission
23 by rule shall prescribe, reciting that a registration statement for the sale
24 of such security has been filed, and that the aforesaid registration
25 statement, as well as the papers attached thereto are open to inspection

1 at the Commission during business hours, and copies thereof,
2 photostatic or otherwise, shall be furnished to interested parties at
3 such reasonable charge as the Commission may prescribe.

4 : 9.6. Within forty-five (45) days after the date of filing of the
5 registration statement, or by such later date to which the issuer has
6 consented, the Commission shall declare the registration statement
7 effective or rejected, unless the applicant is allowed to amend the
8 registration statement as provided in Section 10 hereof. The
9 Commission shall enter an order declaring the registration statement to
10 be effective if it finds that the registration statement together with all
11 the other papers and documents attached thereto, is on its face
12 complete and that the requirements have been complied with. The
13 Commission may impose such terms and conditions as may be
14 necessary or appropriate for the protection of the investors.

15 9.7. Upon effectivity of the registration statement, the issuer shall
16 state in every prospectus that such effectivity shall not be deemed a
17 finding by the Commission that the registration statement is true and
18 accurate on its face or that it does not contain an untrue statement of
19 fact or omit to state a material fact, or be held to mean that the
20 Commission has in any way recommended, endorsed or given approval
21 to the security included in the registration statement. It shall be
22 unlawful to make, or cause to be made, to any prospective purchaser
23 any representation contrary to the foregoing.

24 9.8. The Commission, for the guidance of investors, may require
25 the issuer to submit the security for rating by rating agencies accredited

1 by the Commission and to include such rating in the registration
2 statement and prospectus.

3 SEC. 10. *Rejection and Revocation of Registration of*
4 *Securities.* -

5 10.1. The Commission may, after due notice and hearing, reject a
6 registration statement and refuse registration of the security
7 thereunder, or revoke the effectivity of a registration statement and the
8 registration of the security thereunder by issuing an order to such
9 effect, setting forth its findings in respect thereto, if it finds that:

10 a) The issuer:

11 (i) Has been judicially declared insolvent;

12 (ii) Has violated any of the provisions of this Act, the rules
13 promulgated pursuant thereto, or any order of the Commission of which
14 the issuer has notice in connection with the offering for which a
15 registration statement has been filed;

16 (iii) Has been or is engaged or is about to engage in fraudulent
17 transactions;

18 (iv) Has made any false or misleading representation of material
19 facts in any prospectus concerning the issuer or its securities;

20 (v) Has failed to comply with any requirement that the
21 Commission may impose as a condition for registration of the security
22 for which the registration statement has been filed; or

23 b) The registration statement is on its face incomplete or
24 inaccurate in any material respect or includes any untrue statement of
25 a material fact or omits to state a material fact required to be stated

674

1 therein or necessary to make the statements therein not misleading; or

2 c) The issuer, any officer, director or controlling person of the
3 issuer, or person performing similar functions, or any underwriter:

4 (i) Has been convicted, by a competent judicial or administrative
5 body, upon plea of guilty, or otherwise, of an offense involving moral
6 turpitude, fraud, embezzlement, counterfeiting, theft, estafa,
7 misappropriation, forgery, bribery, false oath, or perjury, or of a
8 violation of securities, commodities, banking, real estate, insurance,
9 mining, investment and other related laws; or

10 (ii) Is enjoined or restrained by the Commission or other
11 competent judicial or administrative body from engaging in securities,
12 commodities, banking, real estate, insurance, mining, investment and
13 other related laws or from willfully violating laws governing such
14 activities; or

15 (iii) Is subject to an Order of the Commission or other competent
16 judicial or administrative body refusing, revoking or suspending any
17 registration, license or other permit required under this Act, the rules
18 and regulations promulgated thereunder, or any other law, to engage
19 in any activity involving securities, commodities, banking, real estate,
20 insurance, mining, investment or other related activities;

21 (iv) Is subject to an order of a self-regulatory organization
22 suspending or expelling him from membership or participation therein
23 or from association with a member or participant thereof;

24 (v) Has been found by final Order of the Commission or other
25 competent judicial or administrative body to have willfully violated any

1 provisions of securities, commodities, banking, real estate, insurance,
2 mining, investment or other related laws, or have willfully aided,
3 abetted, counseled, commanded, induced or procured such violation.

4 For purposes of this subsection, the term "competent judicial or
5 administrative body" shall include a foreign court of competent
6 jurisdiction and a foreign financial regulator.

7 10.2. The Commission may compel the production of all the books
8 and papers of such issuer, and may administer oaths to, and examine
9 the officers of such issuer or any other person connected therewith as
10 to its business and affairs, and may also require the financial statements
11 of any such issuer to be certified to by an independent certified public
12 accountant.

13 10.3. If any issuer shall refuse to permit an examination to be made
14 by the Commission, its refusal shall be ground for the refusal or
15 revocation of the registration of its securities.

16 10.4. If the Commission deems it necessary, it may issue an Order
17 suspending the offer and sale of the securities pending any
18 investigation. The Order shall state the grounds for taking such action,
19 but such Order of suspension although binding upon the persons
20 notified thereof, shall be deemed confidential, and shall not be
21 published. Upon the issuance of the Suspension Order, no further offer
22 or sale of such security shall be made until the same is lifted or set aside
23 by the Commission. Otherwise, such sale shall be void.

24 10.5. Notice of issuance of such Order shall be given to the issuer
25 and every dealer and broker who shall have notified the Commission

1 of an intention to sell such security.

2 10.6. A registration statement may be withdrawn by the issuer
3 only with the consent of the Commission.

4 : SEC. 11. *Amendments to the Registration Statement.* -

5 11.1. If a registration statement is on its face incomplete or
6 inaccurate in any material respect, the Commission shall issue an Order
7 directing the amendment of the registration statement. Upon
8 compliance with such Order, the amended registration statement shall
9 become effective in accordance with the procedure mentioned in
10 Subsection 9.5 hereof.

11 11.2. An amendment filed prior to the effective date of the
12 registration statement shall recommence the forty-five (45) day period
13 within which the Commission shall act on a registration statement. An
14 amendment filed after the effective date of the registration statement
15 shall become effective only upon such date as determined by the
16 Commission.

17 11.3. If any change occurs in the facts set forth in a registration
18 statement, the issuer shall file an amendment thereto setting forth the
19 change.

20 11.4. If, at any time, the Commission finds that a registration
21 statement contains any false statement or omits to state any fact
22 required to be stated therein or necessary to make the statements
23 therein not misleading, the Commission may conduct an examination,
24 and, after due notice and hearing, issue an Order suspending the
25 effectivity of the registration statement. If the statement is duly

1 amended, the Suspension Order may be lifted.

2 11.5. In making such examination the Commission or any officer
3 or officers designated by it may administer oaths and affirmations and
4 shall have access to, and may demand the production of, any books,
5 records or documents relevant to the examination. Failure of the issuer,
6 underwriter, or any other person to cooperate, or his obstruction or
7 refusal to undergo an examination, shall be a ground for the issuance
8 of a Suspension Order.

9 SEC. 12. *Suspension of Registration.* -

10 12.1. If, at any time, the information contained in the registration
11 statement filed is or has become misleading, incorrect, inadequate or
12 incomplete in any material respect, or the sale or offering for sale of the
13 security registered thereunder may work or tend to work a fraud, the
14 Commission may require from the issuer such further information as
15 may in its judgment be necessary to enable the Commission to ascertain
16 whether the registration of such security should be revoked on any
17 ground specified in this Act. The Commission may also suspend the
18 right to sell and offer for sale such security pending further
19 investigation, by entering an order specifying the grounds for such
20 action, and by notifying the issuer, underwriter, dealer or broker known
21 as participating in such offering.

22 12.2. The refusal to furnish information required by the
23 Commission may be a ground for the issuance of an Order of
24 Suspension pursuant to Subsection 12.1. Upon the issuance of any
25 such Order and notification to the issuer, underwriter, dealer or broker

1 known as participating in such offering, no further offer or sale of any
2 such security shall be made until the same is lifted or set aside by the
3 Commission. Otherwise, such sale shall be void.

4 12.3. Upon issuance of an Order of Suspension, the Commission
5 shall conduct a hearing. If the Commission determines that the sale of
6 any security should be revoked, it shall issue an Order prohibiting sale
7 of such security.

8 Until the issuance of a final Order, the suspension of the right to
9 sell, though binding upon the persons notified thereof, shall be deemed
10 confidential, and shall not be published, unless it shall appear that the
11 Order of Suspension has been violated after notice. If, however, the
12 Commission finds that the sale of the security will neither be fraudulent
13 nor result in fraud, it shall forthwith issue an Order revoking the Order
14 of Suspension, and such security shall be restored to its status as a
15 registered security as of the date of such Order of Suspension.

16 CHAPTER III

17 Regulation of Pre-Need Plans

18 SEC. 13. *Pre-Need Plans.* - No person shall sell or offer for sale
19 to the public any pre-need plan except in accordance with rules and
20 regulations which the Commission shall prescribe. Such rules shall
21 regulate the sale of pre-need plans by, among other things, requiring
22 the registration of pre-need plans, licensing persons involved in the
23 sale of pre-need plans, requiring disclosures to prospective plan
24 holders, prescribing advertising guidelines, providing for uniform
25 accounting system, reports and record keeping with respect to such

1 plans, imposing capital, bonding and other financial responsibility, and
2 establishing trust funds for the payment of benefits under such plans.

3 CHAPTER IV

4 Reportorial Requirements

5 SEC. 14. *Periodic and Other Reports of Issuers.* -

6 14.1. Every issuer satisfying the requirements in Subsection 14.2
7 hereof shall file with the Commission:

8 a) Within one hundred thirty-five (135) days, after the end of the
9 issuer's fiscal year, or such other time as the Commission may
10 prescribe, an annual report which shall include, among others, a balance
11 sheet, profit and loss statement and statement of cash flows, for such
12 last fiscal year, certified by an independent certified public accountant,
13 and a management discussion and analysis of results of operations;
14 and

15 b) Such other periodical reports for interim fiscal periods and
16 current reports on significant developments of the issuer as the
17 Commission may prescribe as necessary to keep current information on
18 the operation of the business and financial condition of the issuer.

19 14.2. The reportorial requirements of Subsection 14.1 shall apply
20 to the following:

21 a) An issuer which has sold a class of its securities pursuant to
22 a registration under Section 9 hereof: *Provided, however,* That the
23 obligation of such issuer to file reports shall be suspended for any
24 fiscal year after the year such registration became effective if such
25 issuer, as of the first day of any such fiscal year, has less than one

1 hundred (100) holders of such class of securities or such other number
2 as the Commission shall prescribe and it notifies the Commission of
3 such;

4 b) An issuer with a class of securities listed for trading on an
5 Exchange; and

6 c) An issuer with assets of at least Fifty million pesos
7 (P50,000,000.00) or such other amount as the Commission shall
8 prescribe, and having Two hundred (200) or more holders each holding
9 at least One hundred (100) shares of a class of its equity securities:
10 *Provided, however,* That the obligation of such issuer to file reports
11 shall be terminated ninety (90) days after notification to the Commission
12 by the issuer that the number of its holders holding at least one
13 hundred (100) shares is reduced to less than One hundred (100).

14 14.3. Every issuer of a security listed for trading on an Exchange
15 shall file with the Exchange a copy of any report filed with the
16 Commission under Subsection 14.1 hereof.

17 14.4. All reports (including financial statements) required to be
18 filed with the Commission pursuant to Subsection 14.1 hereof shall be
19 in such form, contain such information and be filed at such times as the
20 Commission shall prescribe, and shall be in lieu of any periodical or
21 current reports or financial statements otherwise required to be filed
22 under the Corporation Code.

23 14.5. Every issuer which has a class of equity securities satisfying
24 any of the requirements in Subsection 14.2 shall furnish to each holder
25 of such equity security an annual report in such form and containing

1 such information as the Commission shall prescribe.

2 14.6. Within such period as the Commission may prescribe
3 preceding the annual meeting of the holders of any equity security of
4 a class entitled to vote at such meeting, the issuer shall transmit to such
5 holders an annual report in conformity with Subsection 14.5.

6 14.7. The Commission may exempt any issuer from the provisions
7 of this Section.

8 SEC. 15. *Reports by Five per centum (5%) Holders of Equity*
9 *Securities.* -

10 15.1. In every case in which an issuer satisfies the requirements
11 of Subsection 14.2 hereof, any person who acquires directly or
12 indirectly the beneficial ownership of more than *five per centum (5%)*
13 of such class or in excess of such lesser per centum as the Commission
14 by rule may prescribe, shall, within ten (10) days after such acquisition
15 or such reasonable time as fixed by the Commission, submit to the
16 issuer of the security, to the Exchange where the security is traded, and
17 to the Commission a sworn statement' containing the following
18 information and such other information as the Commission may require
19 in the public interest or for the protection of investors:

20 a) The personal background, identity, residence, and citizenship
21 of, and the nature of such beneficial ownership by, such person and
22 all other persons by whom or on whose behalf the purchases are
23 effected; in the event the beneficial owner is a juridical person, the lines
24 of business of the beneficial owner shall also be reported;

25 b) If the purpose of the purchases or prospective purchases is

1 to acquire control of the business of the issuer of the securities, any
2 plans or proposals which such persons may have that will effect a major
3 change in its business or corporate structure;

4 c) The number of shares of such security which are beneficially
5 owned, and the number of shares concerning which there is a right to
6 acquire, directly or indirectly, by: (i) such person, and (ii) each associate
7 of such person, giving the background, identity, residence, and
8 citizenship of each such associate; and

9 d) Information as to any contracts, arrangements, or
10 understanding with any person with respect to any securities of the
11 issuer including but not limited to transfer, joint ventures, loan or
12 option arrangements, puts or calls, guarantees or division of losses or
13 profits, or proxies naming the persons with whom such contracts,
14 arrangements, or understanding have been entered into, and giving the
15 details thereof.

16 15.2.If any change occurs in the facts set forth in the statements,
17 an amendment shall be transmitted to the issuer, the Exchange and the
18 Commission.

19 15.3.The Commission, may permit any person to file in lieu of the
20 statement required by Subsection 14.1 hereof, a notice stating the name
21 of such person, the shares of any equity securities subject to
22 Subsection 14.1 which are owned by him, the date of their acquisition
23 and such other information as the Commission may specify, if it appears
24 to the Commission that such securities were acquired by such person
25 in the ordinary course of his business and were not acquired for the

1 purpose of and do not have the effect of changing or influencing the
2 control of the issuer nor in connection with any transaction having
3 such purpose or effect.

4

5 CHAPTER V

6 Protection of Shareholder Interests

7 SEC. 16. *Tender Offers.* -

8 16.1. a) It shall be unlawful for any person, directly or indirectly,
9 to make a tender offer for, or a request or invitation for tenders of, any
10 class of any equity security which satisfies the requirements of
11 Subsection 14.2 if, after consummation thereof, such person would,
12 directly or indirectly, be the beneficial owner of more than ten *per*
13 *centum* (10%) of such class, or in excess of such lesser *per centum* as
14 the Commission may prescribe, unless at the time copies of the offer
15 or request or invitation are first published or sent or given to security
16 holders, such person has filed with the Commission and furnished the
17 issuer a statement containing such of the information required in
18 Section 15 of this Act as the Commission may prescribe. All requests
19 or invitations for tender, or advertisements making a tender offer or
20 requesting or inviting tenders of such a security, shall be filed as a part
21 of such statement as the Commission may prescribe. Copies of any
22 additional material soliciting or requesting such tender offers
23 subsequent to the initial solicitation or request shall contain such
24 information as the Commission may prescribe, and shall be filed with
25 the Commission and sent to the issuer not later than the time copies

1 of such materials are first published or sent or given to security holders.

2 b) Any solicitation or recommendation to the holders of such a
3 security to accept or reject a tender offer or request or invitation for
4 tenders shall be made in accordance with such rules and regulations as
5 the Commission may prescribe.

6 c) Securities deposited pursuant to a tender offer or request or
7 invitation for tenders may be withdrawn by or on behalf of the
8 depositor at any time throughout the period that the tender offer
9 remains open and if the securities deposited have not been previously
10 accepted for payment, and at any time after sixty (60) days from the date
11 of the original tender offer or request or invitation, except as the
12 Commission may otherwise prescribe.

13 d) Where any person makes a tender offer, or request or
14 invitation for tenders, for less than all the outstanding equity securities
15 of a class, and where a greater number of securities is deposited
16 pursuant thereto within the period the tender offer remains open than
17 such person is bound or willing to take up and pay for, the securities
18 taken up shall be taken up as nearly as may be *pro rata*, disregarding
19 fractions, according to the number of securities deposited by each
20 depositor. The provisions of this subsection shall also apply to
21 securities deposited within ten (10) days after notice of an increase in
22 the consideration offered to security holders, as described in paragraph
23 (e) of this subsection, is first published or sent or given to security
24 holders.

25 e) Where any person varies the terms of a tender offer or request

1 or invitation for tenders before the expiration thereof by increasing the
2 consideration offered to holders of such securities, such person shall
3 pay the increased consideration to each security holder whose
4 securities are taken up and paid for whether or not such securities have
5 been taken up by such person before the variation of the tender offer
6 or request or invitation.

7 16.2. The provisions of Subsections 15.1 and 16.1 (a) shall not
8 apply to the ownership of, or to any offer for, or request or invitation
9 for tenders of, any equity security:

10 a) If the acquisition of such security, together with all other
11 acquisitions by the same person of securities of the same class during
12 the preceding twelve months would not exceed two *per centum* (2%)
13 of that class; or

14 b) By the issuer of such security; or

15 c) Which the Commission, by rules or regulations or by order,
16 shall exempt as not entered into for the purpose of, and not having the
17 effect of, changing or influencing the control of the issuer or otherwise
18 as not comprehended within the purpose of said Sections.

19 16.3. When two or more persons act as a partnership, limited
20 partnership, syndicate, or other group for the purpose of acquiring,
21 holding, or disposing of securities of an issuer, such syndicate or
22 group shall be deemed a "person" for the purposes of Section 14 and
23 Subsection 16.1 (a).

24 16.4. In determining, for purposes of Section 15 and Subsection
25 16.1 (a), any percentage of a class of any security, such class shall be

1 deemed to consist of the amount of the outstanding securities of such
2 class, exclusive of any securities of such class held by or for the
3 account of the issuer or a subsidiary of the issuer.

4 16.5. It shall be unlawful for any person to make any untrue
5 statement of a material fact or omit to state any material fact necessary
6 in order to make the statements made, in the light of the circumstances
7 under which they are made, not misleading, or to engage in any
8 fraudulent, deceptive, or manipulative acts or practices, in connection
9 with any tender offer or request or invitation for tenders, or any
10 solicitation of security holders in opposition to or in favor of any such
11 offer, request, or invitation. The Commission shall, for the purposes of
12 this subsection, by rules and regulations define, and prescribe means
13 reasonably designed to prevent, such acts and practices as are
14 fraudulent, deceptive, or manipulative.

15 SEC. 17. *Purchases by Issuers.* -

16 17.1. The Commission shall promulgate rules and regulations
17 providing for reporting, disclosure and the prevention of fraudulent,
18 deceptive or manipulative practices in connection with the purchase by
19 an issuer, by tender offer or otherwise, of any equity security of a class
20 issued by it that satisfies the requirements of Subsection 14.2. Such
21 rules and regulations may require such issuer to provide holders of
22 equity securities of such class with such information relating to the
23 reasons for such purchase, the source of funds, the number of shares
24 to be purchased, the price to be paid for such securities, the method
25 of purchase and such additional information as the Commission deems

1 necessary or appropriate in the public interest or for the protection of
2 investors, or which the Commission deems to be material to a
3 determination by holders whether such security should be sold.

4 17.2. For the purpose of this Section, a purchase by or for the
5 issuer or any person controlling, controlled by, or under common
6 control with the issuer, or a purchase subject to the control of the
7 issuer or any such person, shall be deemed to be a purchase by the
8 issuer. The Commission shall have the power to make rules and
9 regulations implementing this subsection, including exemptive rules
10 and regulations covering situations in which the Commission deems it
11 unnecessary or inappropriate that a purchase of the type described in
12 this subsection shall be deemed to be a purchase by the issuer for the
13 purpose of some or all of the provisions of Subsection 17.1.

14 SEC. 18. *Proxy Solicitations.* - With respect to any class of
15 equity security that satisfies the requirements of Subsection 14.2:

16 18.1. The Commission is authorized to promulgate rules and
17 regulations governing the solicitation of proxies, consents and
18 authorizations with respect to any such class of equity security.
19 Notwithstanding any provision of the Corporation Code to the
20 contrary, such rules and regulations may, among other things, require
21 the filing with the Commission of a proxy statement and other materials
22 proposed for use in any solicitation, prescribe the form and content of
23 such materials and of any proxy, consent or authorization, fix the
24 periods within which a solicitation may occur, impose restrictions on
25 the time in which and the purpose for which a proxy, consent or

688

1 authorization may be effective, and prevent fraudulent and deceptive
2 practices in connection therewith.

3 18.2. The Commission is authorized to promulgate rules and
4 regulations governing the obligations of any member of an Exchange,
5 any broker or dealer, or any bank, association, or other entity that
6 exercises fiduciary powers, to give, or to refrain from giving a proxy,
7 consent or authorization with respect to any such class of equity
8 security, and which is carried for the account of a customer thereof.

9 18.3. Unless proxies, consents, or authorizations with respect to
10 any such class of equity security are solicited by or on behalf of the
11 management of the issuer from the holders of record of such security
12 in accordance with the rules and regulations prescribed under
13 Subsection 18.1, such issuer shall, prior to any annual or other meeting
14 of the holders of such security (or the taking of any action without a
15 meeting) and in accordance with rules and regulations prescribed by
16 the Commission, file with the Commission and transmit to all holders of
17 record of such security an information statement containing information
18 substantially equivalent to that which would be required in a proxy
19 statement if a solicitation were made.

20 18.4. Notwithstanding any provision of the Corporation Code to
21 the contrary, notice of any annual or special meeting of the holders of
22 any equity security of a class entitled to vote at such meeting shall be
23 mailed or otherwise transmitted at least fifteen (15) days prior thereto.

24 18.5. No solicitation of a proxy, consent or authorization shall be
25 made by means of a proxy statement, form of proxy or consent, notice

1 of meeting or other communication, written or oral, which is materially
2 false or misleading, or which fails to disclose material facts necessary
3 to correct any statement in an earlier communication made with respect
4 to the solicitation of a proxy, consent or authorization for the same
5 meeting or subject matter, which has become false or misleading.

6 SEC. 19. *Fees for Tender Offers and Certain Proxy Solicitations.*

7 - At the time of filing with the Commission of any statement required
8 under Section 16 for any tender offer or Section 17 for issuer
9 repurchases, or Section 18 for proxy or consent solicitation, the
10 Commission may require that the person making such filing pay a fee
11 of one-tenth (1/10) of one *percentum* (1%) of:

12 19.1. The proposed aggregate purchase price in the case of a
13 transaction under Section 16 or 17; or

14 19.2. The proposed payment in cash, and the value of any
15 securities or property to be transferred in the acquisition, merger or
16 consolidation, or the cash and value of any securities proposed to be
17 received upon the sale or disposition of such assets in the case of a
18 solicitation under Section 18.

19 SEC. 20. *Internal Record Keeping and Accounting Controls.* -

20 Every issuer which has a class of securities that satisfies the
21 requirements of Subsection 14.2 shall:

22 20.1. Make and keep books, records, and accounts which, in
23 reasonable detail accurately and fairly reflect the transactions and
24 dispositions of assets of the issuer;

25 20.2. Devise and maintain a system of internal accounting

1 controls sufficient to provide reasonable assurances that: (a)
2 Transactions and access to assets are pursuant to management
3 authorization; (b) Financial statements are prepared in conformity with
4 generally accepted accounting principles that are adopted by the
5 Accounting Standards Council and the rules promulgated by the
6 Commission with regard to the preparation of financial statements; and
7 (c) Recorded assets are compared with existing assets at reasonable
8 intervals and differences are reconciled.

9 SEC. 21. *Transactions of Directors, Officers and Principal*
10 *Stockholders.* -

11 21.1. Every person who is directly or indirectly the beneficial
12 owner of more than ten *per centum* (10%) of any class of any equity
13 security which satisfies the requirements of Subsection 14.2, or who is
14 a director or an officer of the issuer of such security, shall file, at the
15 time either such requirement is first satisfied or within ten days after he
16 becomes such a beneficial owner, director, or officer, a statement with
17 the Commission and, if such security is listed for trading on an
18 Exchange, also with the Exchange, of the amount of all equity securities
19 of such issuer of which he is the beneficial owner, and within ten (10)
20 days after the close of each calendar month thereafter, if there has been
21 a change in such ownership during such month, shall file with the
22 Commission, and if such security is listed for trading on an Exchange,
23 shall also file with the Exchange, a statement indicating his ownership
24 at the close of the calendar month and such changes in his ownership
25 as have occurred during such calendar month.

1 21.2. For the purpose of preventing the unfair use of information
2 which may have been obtained by such beneficial owner, director, or
3 officer by reason of his relationship to the issuer, any profit realized by
4 him from any purchase and sale, or any sale and purchase, of any
5 equity security of such issuer within any period of less than six months,
6 unless such security was acquired in good faith in connection with a
7 debt previously contracted, shall inure to and be recoverable by the
8 issuer, irrespective of any intention of holding the security purchased
9 or of not repurchasing the security sold for a period exceeding six (6)
10 months. Suit to recover such profit may be instituted before the
11 Commission by the issuer, or by the owner of any security of the issuer
12 in the name and in behalf of the issuer if the issuer shall fail or refuse
13 to bring such suit within sixty (60) days after request or shall fail
14 diligently to prosecute the same thereafter, but no such suit shall be
15 brought more than two (2) years after the date such profit was realized.
16 This subsection shall not be construed to cover any transaction where
17 such beneficial owner was not such both at the time of the purchase
18 and sale, or the sale and purchase, of the security involved, or any
19 transaction or transactions which the Commission by rules and
20 regulations may exempt as not comprehended within the purpose of
21 this subsection.

22 21.3. It shall be unlawful for any such beneficial owner, director,
23 or officer, directly or indirectly, to sell any equity security of such
24 issuer if the person selling the security or his principal: (a) Does not
25 own the security sold; or (b) If owning the security, does not deliver

1 it against such sale within twenty (20) days thereafter, or does not
2 within five (5) days after such sale deposit it in the mails or other usual
3 channels of transportation; but no person shall be deemed to have
4 : violated this subsection if he proves that notwithstanding the exercise
5 of good faith he was unable to make such delivery or deposit within
6 such time, or that to do so would cause undue inconvenience or
7 expense.

8 21.4. The provisions of Subsection 21.2 shall not apply to any
9 purchase and sale, or sale and purchase, and the provisions of
10 Subsection 21.3 shall not apply to any sale, of an equity security not
11 then or thereafter held by him in an investment account, by a dealer in
12 the ordinary course of his business and incident to the establishment
13 or maintenance by him of a primary or secondary market, otherwise than
14 on an Exchange, for such security. The Commission may, by such rules
15 and regulations as it deems necessary or appropriate in the public
16 interest, define and prescribe terms and conditions with respect to
17 securities held in an investment account and transactions made in the
18 ordinary course of business and incident to the establishment or
19 maintenance of a primary or secondary market.

20 CHAPTER VI

21 Prohibitions on Fraud, Manipulation and Insider Trading

22 SEC. 22. *Manipulation of Security Prices; Devices and*
23 *Practices.* -

24 22.1 It shall be unlawful for any person, directly or indirectly:

25 a) To create a false or misleading appearance of active trading in

1 so false or misleading, regarding any security listed or traded on an
2 Exchange or transacted on any other trading market for the purpose of
3 inducing the purchase or sale of such security.

4 e) For a consideration received directly or indirectly from a dealer
5 or broker or other person selling or offering for sale or purchasing or
6 offering to purchase the security, to induce the purchase or sale of any
7 security on an Exchange or transacted on any other trading market by
8 the circulation or dissemination of information to the effect that the
9 price of any such security will or is likely to rise or fall because of the
10 market operations of any one or more persons conducted for the
11 purpose of raising or depressing the price of such security.

12 f) To effect, either alone or with one or more other persons, any
13 series of transactions for the purchase and/or sale of any security listed
14 for trading on an Exchange or transacted on any other trading market
15 for the purpose of pegging, fixing or stabilizing the price of such
16 security.

17 22.2. No person, by use of any facility of any Exchange or of any
18 other trading market, shall:

19 a) Effect a short sale, or use or employ any stop-loss order in
20 connection with the purchase or sale of any security on an Exchange
21 or effected on any other trading market except in accordance with such
22 rules and regulations as the Commission may prescribe as necessary or
23 appropriate in the public interest or for the protection of investors.

24 b) Use or employ, in connection with the purchase or sale of any
25 security, any manipulative or deceptive device or contrivance.

694

1 any listed security for trading on an Exchange or any other trading
2 market:

3 (i) By effecting any transaction in such security which involves
4 no change in the beneficial ownership thereof, or

5 (ii) By entering an order or orders for the purchase or sale of such
6 security with the knowledge that an order or orders of substantially the
7 same size, time and price, for the sale or purchase of any such security,
8 has or have been or will be entered by or for the same or different
9 parties.

10 b) To effect, alone or with one or more other persons, a series of
11 transactions in securities that: (i) Raises their price to induce the
12 purchase of a security, whether of the same or a different class of the
13 same issuer or of a controlling, controlled, or commonly controlled
14 company by others; (ii) Depresses their price to induce the sale of a
15 security, whether of the same or a different class, of the same issuer
16 or of a controlling, controlled, or commonly controlled company by
17 others; or (iii) Creates active trading to induce such a purchase or sale.

18 c) To induce the purchase or sale of any security listed for
19 trading on an Exchange or transacted on any other trading market by
20 the circulating or disseminating of information that the price of any
21 such security will or is likely to rise or fall because of market operations
22 of any one or more persons conducted with the purpose of raising or
23 depressing the price of such security.

24 d) To make false or misleading statement with respect to any
25 material fact, which he knew or had reasonable ground to believe was

1 SEC. 24. *Fraudulent Transactions.* - It shall be unlawful for any
2 person, directly or indirectly, in connection with the purchase or sale
3 of any securities to:

4 : 24.1. Employ any device, scheme, or artifice to defraud;

5 24.2. Obtain money or property by means of any untrue statement
6 of a material fact or any omission to state a material fact necessary in
7 order to make the statements made, in the light of the circumstances
8 under which they were made, not misleading; or

9 24.3. Engage in any act, transaction, practice or course of
10 business which operates or would operate as a fraud or deceit upon
11 any person.

12 SEC. 25. *Insider's Duty to Disclose When Trading.* -

13 25.1. It shall be unlawful for an insider to sell or buy a security
14 of the issuer, while in possession of material information with respect
15 to the issuer or the security that is not generally available to the public,
16 unless: (a) The insider proves that the information was not gained from
17 such relationship; or (b) If the other party selling to or buying from the
18 insider (or his agent) is identified, the insider proves: (i) that he
19 disclosed the information to the other party, or (ii) that he had reason
20 to believe that the other party otherwise is also in possession of the
21 information. A purchase or sale of a security of the issuer made by an
22 insider defined in Subsection 3.19, or such insider's spouse, parents,
23 siblings or children, shall be presumed to have been effected while in
24 possession of material non-public information if transacted after such
25 information came into existence but prior to dissemination of such

1 22.3. It shall be unlawful for any Exchange or any other self-
2 regulatory organization administering a trading market to adopt and
3 enforce artificial measures of price control of any nature whatsoever
4 without the prior approval of the Commission which may be given only
5 if it serves the public interest and benefits investors.

6 22.4. The foregoing provisions notwithstanding, the Commission,
7 having due regard to the public interest and the protection of investors,
8 may, by rules and regulations, allow certain acts or transactions that
9 may otherwise be prohibited under this Section.

10 SEC. 23. *Regulation of Option Trading.* -

11 23.1. No person shall offer, sell, enter into, acquire an interest in,
12 or, in the case of a member of an Exchange or other self-regulatory
13 organization, guarantee an option or privilege (including any put, call,
14 or straddle) on a security, a certificate of deposit, or a group or index
15 of securities (including any interest therein or based on the value
16 thereof) except in accordance with rules and regulations promulgated
17 by the Commission.

18 23.2. The Commission is authorized to regulate trading of any
19 option or privilege by permitting such transactions on such terms and
20 conditions as the Commission may prescribe, and may prohibit any
21 option transaction if it determines that such prohibition is necessary
22 and appropriate in the public interest or for the protection of investors.

23 23.3. The terms "put", "call", "straddle", "option", or "privilege"
24 as used in this Section shall not include any registered warrant, right
25 or convertible security.

1 directly or indirectly from the tender offeror, those acting on its behalf,
2 the issuer of the securities sought or to be sought by such tender offer,
3 or any insider of such issuer; and

4 : (ii) Any tender offeror, those acting on its behalf, the issuer of
5 the securities sought or to be sought by such tender offer, and any
6 insider of such issuer to communicate material non-public information
7 relating to the tender offer to any other person where such
8 communication is likely to result in a violation of Subsection 25.4 (a)(i)
9 of this subsection.

10 (b) For purposes of this subsection the term "securities of the
11 issuer sought or to be sought by such tender offer" shall include any
12 securities convertible or exchangeable into such securities or any
13 options or rights in any of the foregoing securities.

14 25.5. It shall be unlawful for a person controlling any person who
15 violates Subsection 25.1, 25.3 or 25.4 to knowingly or recklessly
16 disregard that such controlled person was likely to engage in such
17 violation and fail to take appropriate steps or adopt procedures to
18 prevent such violations.

19 CHAPTER VII

20 Regulation of Securities Market Professionals

21 SEC. 26. *Registration of Brokers, Dealers, Salesmen and*
22 *Associated Persons.* -

23 26.1. No person shall engage in the business of buying or
24 selling securities in the Philippines as a broker or dealer, or act as a
25 salesman, or an associated person of any broker or dealer unless

1 information to the public and the lapse of a reasonable time for the
 2 market to absorb such information: *Provided, however,* That this
 3 presumption shall be rebutted upon a showing by the purchaser or
 4 seller that he was not aware of the material non-public information at
 5 the time of the purchase or sale.

6 25.2 For purposes of this Section, information is "material non-
 7 public" if: (a) It has not been generally disclosed to the public and
 8 would likely affect the market price of the security after being
 9 disseminated to the public and the lapse of a reasonable time for the
 10 market to absorb the information; or (b) would be considered by a
 11 reasonable person important under the circumstances in determining
 12 his course of action whether to buy, sell or hold a security.

13 25.3. It shall be unlawful for any insider to communicate material
 14 non-public information about the issuer or the security to any person
 15 who, by virtue of the communication, becomes an insider as defined in
 16 Subsection 3.19, where the insider communicating the information
 17 knows or has reason to believe that such person will likely buy or sell
 18 a security of the issuer while in possession of such information.

19 25.4. a) It shall be unlawful where a tender offer has commenced
 20 or is about to commence for:

21 (i) Any person (other than the tender offeror) who is in
 22 possession of material non-public information relating to such tender
 23 offer, to buy or sell the securities of the issuer that are sought or to
 24 be sought by such tender offer if such person knows or has reason to
 25 believe that the information is non-public and has been acquired

1 such information and documents concerning such broker or dealer as
2 the Commission by rule shall prescribe.

3 26.6. Registration of a salesman or of an associated person of
4 a registered broker or dealer may be made upon written application filed
5 with the Commission by such salesman or associated person. The
6 application shall be separately signed and certified by the registered
7 broker or dealer to which such salesman or associated person is to
8 become affiliated, or by the issuer in the case of a salesman employed,
9 appointed or authorized solely by such issuer. The application shall
10 be in such form and contain such information and documents
11 concerning the salesman or associated person as the Commission by
12 rule shall prescribe. For purposes of this Section, a salesman shall not
13 include any employee of an issuer whose compensation is not
14 determined directly or indirectly on sales of securities of the issuer.

15 26.7. Applications filed pursuant to Subsections 26.5 and 26.6
16 shall be accompanied by a registration fee in such reasonable amount
17 prescribed by the Commission.

18 26.8. Within thirty (30) days after the filing of any application
19 under this Section, the Commission shall by order: (a) Grant registration
20 if it determines that the requirements of this Section and the
21 qualifications for registration set forth in its rules and regulations have
22 been satisfied; or (b) Deny said registration.

23 26.9. The names and addresses of all persons approved for
24 registration as brokers, dealers, associated persons or salesmen and all
25 orders of the Commission with respect thereto shall be recorded in a

1 registered as such with the Commission.

2 26.2. No registered broker or dealer shall employ any salesman
3 or any associated person, and no issuer shall employ any salesman,
4 who is not registered as such with the Commission.

5 26.3. The Commission, by rule or order, may conditionally or
6 unconditionally exempt from Subsections 26.1 and 26.2 any broker,
7 dealer, salesman, associated person of any broker or dealer, or any
8 class of the foregoing, as it deems consistent with the public interest
9 and the protection of investors.

10 26.4. The Commission shall promulgate rules and regulations
11 prescribing the qualifications for registration of each category of
12 applicant, which shall, among other things, require as a condition for
13 registration that:

14 a) If a natural person, the applicant satisfactorily pass a written
15 examination as to his proficiency and knowledge in the area of activity
16 for which registration is sought;

17 b) In the case of a broker or dealer, the applicant satisfy a
18 minimum net capital as prescribed by the Commission, and provide a
19 bond or other security as the Commission may prescribe to secure
20 compliance with the provisions of this Act; and

21 c) If located outside of the Philippines, the applicant files a
22 written consent to service of process upon the Commission pursuant
23 to Section 61 hereof.

24 26.5. A broker or dealer may apply for registration by filing with
25 the Commission a written application in such form and containing

1 hearing, the Commission determines the applicant or registrant:

2 a) Has willfully violated any provision of this Act, any rule,
3 regulation or order made hereunder, or any other law administered by
4 the Commission, or in the case of a registered broker, dealer or
5 associated person has failed to supervise, with a view to preventing
6 such violation, another person who commits such violation;

7 b) Has willfully made or caused to be made a materially false or
8 misleading statement in any application for registration or report filed
9 with the Commission or a self-regulatory organization, or has willfully
10 omitted to state any material fact that is required to be stated therein;

11 c) Has failed to satisfy the qualifications or requirements for
12 registration prescribed under Section 26 and the rules and regulations
13 of the Commission promulgated thereunder;

14 d) Has been convicted, by a competent judicial or administrative
15 body of an offense involving moral turpitude, fraud, embezzlement,
16 counterfeiting, theft, estafa, misappropriation, forgery, bribery, false
17 oath, or perjury, or of a violation of securities, commodities, banking,
18 real estate or insurance laws;

19 e) Is enjoined or restrained by a competent judicial or
20 administrative body from engaging in securities, commodities, banking,
21 real estate or insurance activities or from willfully violating laws
22 governing such activities;

23 f) Is subject to an order of a competent judicial or administrative
24 body refusing, revoking or suspending any registration, license or
25 other permit under this Act, the rules and regulations promulgated

1 Register of Securities Market Professionals kept in the office of the
2 Commission which shall be open to public inspection.

3 26.10. Every person registered pursuant to this Section shall
4 file with the Commission, in such form as the Commission shall
5 prescribe, information necessary to keep the application for registration
6 current and accurate, including in the case of a broker or dealer changes
7 in salesmen, associated persons and owners thereof.

8 26.11. Every person registered pursuant to this Section shall pay
9 to the Commission an annual fee at such time and in such reasonable
10 amount as the Commission shall prescribe. Upon notice by the
11 Commission that such annual fee has not been paid as required, the
12 registration of such person shall be suspended until payment has been
13 made.

14 26.12. The registration of a salesman or associated person shall
15 be automatically terminated upon the cessation of his affiliation with
16 said registered broker or dealer, or with an issuer in the case of a
17 salesman employed, appointed or authorized by such issuer. Promptly
18 following any such cessation of affiliation, the registered broker or
19 dealer, or issuer, as the case may be, shall file with the Commission a
20 notice of separation of such salesman or associated person.

21 SEC. 27. *Revocation, Refusal or Suspension of Registration of*
22 *Brokers, Dealers, Salesmen and Associated Persons.* -

23 27.1. Registration under Section 26 of this Act may be refused,
24 or any registration granted thereunder may be revoked, suspended, or
25 limitations placed thereon, by the Commission if, after due notice and

707

1 thereunder, any other law administered by the Commission;

2 g) Is subject to an order of a self-regulatory organization
3 suspending or expelling him from membership or participation therein
4 or from association with a member or participant thereof;

5 h) Has been found by a competent judicial or administrative
6 body to have willfully violated any provisions of securities,
7 commodities, banking, real estate or insurance laws, or has willfully
8 aided, abetted, counseled, commanded, induced or procured such
9 violation; or

10 i) Has been judicially declared insolvent.

11 For purposes of this subsection, the term "competent judicial or
12 administrative body" shall include a foreign court of competent
13 jurisdiction and a foreign financial regulator.

14 27.2. a) In cases of charges against a salesman or associated
15 person, notice thereof shall also be given the broker, dealer or issuer
16 employing such salesman or associated person.

17 b) Pending the hearing, the Commission shall have the power to
18 order the suspension of such broker's, dealer's, associated person's or
19 salesman's registration: *Provided*, That such order shall state the cause
20 for such suspension. Until the entry of a final order, the suspension
21 of such registration, though binding upon the persons notified thereof,
22 shall be deemed confidential, and shall not be published, unless it shall
23 appear that the order of suspension has been violated after notice.

24 27.3. The order of the Commission refusing, revoking, suspending
25 or placing limitations on a registration as herein above provided,

704

1 together with its findings, shall be entered in the Register of Securities
2 Market Professionals. The suspension or revocation of the registration
3 of a dealer or broker shall also automatically suspend the registration
4 of all salesmen and associated persons affiliated with such broker or
5 dealer.

6 27.4. It shall be sufficient cause for refusal, revocation or
7 suspension of a broker's or dealer's registration, if any associated
8 person thereof or any juridical entity controlled by such associated
9 person has committed any act or omission or is subject to any disability
10 enumerated in paragraphs (a) through (i) of Subsection 27.1 hereof.

11 SEC. 28. *Transactions and Responsibility of Brokers and*
12 *Dealers.* -

13 28. No broker or dealer shall deal in or otherwise buy or sell, for
14 its own account or for the account of customers, securities listed on
15 an Exchange issued by any corporation where any stockholder,
16 director, associated person or salesman, or authorized clerk of said
17 broker or dealer and all the relatives of the foregoing within the fourth
18 civil degree of consanguinity or affinity, is at the time holding office in
19 said issuer corporation as a director, president, vice-president, manager,
20 treasurer, comptroller, secretary or any office of trust and responsibility,
21 or is a controlling person of the issuer.

22 28.2. No broker or dealer shall effect any transaction in securities
23 or induce or attempt to induce the purchase or sale of any security
24 except in compliance with such rules and regulations as the
25 Commission shall prescribe to ensure fair and honest dealings in

1 securities and provide financial safeguards and other standards for the
2 operation of brokers and dealers, including the establishment of
3 minimum net capital requirements, the acceptance of custody and use
4 of securities of customers, and the carrying and use of deposits and
5 credit balances of customers.

6 SEC. 29. *Development of Securities Market Professionals.* -
7 The Commission, in joint undertaking with self regulatory
8 organizations, organizations and associations of finance professionals
9 as well as private educational and research institutions shall undertake
10 or facilitate/organize continuing training, conferences/ seminars,
11 updating programs, research and development as well as technology
12 transfer at the latest and advanced trends in issuance and trading of
13 securities, derivatives, commodity trades and other financial
14 instruments, as well as securities markets of other countries.

15 CHAPTER VIII

16 Exchanges and Other Securities Trading Markets

17 SEC. 30. *Prohibition on Use of Unregistered Exchange;*
18 *Regulation of Over-the-Counter Markets.* -

19 30.1. No broker, dealer, salesman, associated person of a broker
20 or dealer, or Exchange, directly or indirectly, shall make use of any
21 facility of an Exchange in the Philippines to effect any transaction in
22 a security, or to report such transaction, unless such Exchange is
23 registered as such under Section 31 of this Act.

24 30.2. a) No broker, dealer, salesman or associated person of a
25 broker or dealer, singly or in concert with any other person, shall make,

1 create or operate, or enable another to make, create or operate, any
2 trading market, otherwise than on a registered Exchange, for the buying
3 and selling of any security, except in accordance with rules and
4 regulations the Commission may prescribe.

5 b) The Commission may promulgate rules and regulations
6 governing transactions by brokers, dealers, salesmen or associated
7 persons of a broker or dealer, over any facilities of such trading market
8 and may require such market to be administered by a self-regulatory
9 organization determined by the Commission as capable of insuring the
10 protection of investors comparable to that provided in the case of a
11 registered Exchange. Such self-regulatory organization must provide a
12 centralized marketplace for trading and must satisfy requirements
13 comparable to those prescribed for registration of Exchanges in Section
14 31 of this Act.

15 SEC. 31. *Registration of Exchanges.* -

16 31.1. Any Exchange may be registered as such with the
17 Commission under the terms and conditions hereinafter provided in this
18 Section and Section 36 hereof, by filing an application for registration
19 in such form and containing such information and supporting
20 documents as the Commission by rule shall prescribe, including the
21 following:

22 a) An undertaking to comply and enforce compliance by its
23 members with the provisions of this Act, its implementing rules or
24 regulations and the rules of the Exchange;

25 b) The organizational charts of the Exchange, rules of procedure,

1 and a list of its officers and members;

2 c) Copies of the rules of the Exchange; and

3 d) An undertaking that in the event a member firm becomes
4 insolvent or when the Exchange shall have found that the financial
5 condition of its member firm has so deteriorated that it cannot readily
6 meet the demands of its customers for the delivery of securities and/
7 or payment of sales proceeds, the Exchange shall, upon order of the
8 Commission, take over the operation of the insolvent member firm and
9 immediately proceed to settle the member firm's liabilities to its
10 customers.

11 31.2. Any provision of the Corporation Code to the contrary
12 notwithstanding, no registration of an Exchange shall be granted unless
13 the rules of the Exchange provide for:

14 a) The expulsion, suspension, or disciplining of a member and
15 persons associated with a member for conduct or proceeding
16 inconsistent with just and equitable principles of fair trade, and for
17 violations of provisions of this Act, or any other Act administered by
18 the Commission, the rules, regulations and orders thereunder, or the
19 rules of the Exchange;

20 b) A fair procedure for the disciplining of members and persons
21 associated with members, the denial of membership to any person
22 seeking to be a member, the barring of any person from association with
23 a member, and the prohibition or limitation of any person from access
24 to services offered by the Exchange;

25 c) A fair representation of its members to serve on the Board of

708

1 Directors of the Exchange and in the administration of its affairs, and
2 that any natural person associated with a juridical entity that is a
3 member shall himself be deemed to be a member for this purpose;

4 d) The Board of Directors of the Exchange to include in its
5 composition: (i) the president of the Exchange, and (ii) persons who
6 represent the interests of issuers and public investors and who are not
7 associated with any broker or dealer or member of the Exchange;

8 e) The president and other management of the Exchange to
9 consist only of persons who are not members and are not associated
10 with any broker or dealer or member of the Exchange;

11 f) The transparency of transactions on the Exchange;

12 g) The equitable allocation of reasonable dues, fees, and other
13 charges among members and issuers and other persons using any
14 facility or system which the Exchange operates or controls;

15 h) Prevention of fraudulent and manipulative acts and practices,
16 promotion of just and equitable principles of trade, and, in general,
17 protection of investors and the public interest; and

18 i) The transparent, prompt and accurate clearance and settlement
19 of transactions effected on the Exchange.

20 31.3. If the Commission finds that the applicant Exchange is
21 capable of complying and enforcing compliance by its members, and
22 persons associated with such members, with the provisions of this Act,
23 its rules and regulations, and the rules of the Exchange, and that the
24 rules of the Exchange are fair, just and adequate, the Commission shall
25 cause such Exchange to be registered. If, after notice due and hearing,

709

1 the Commission finds otherwise, the application shall be denied.

2 31.4. Within ninety (90) days after the filing of the application the
3 Commission may issue an order either granting or denying registration
4 as an Exchange, unless the Exchange applying for registration shall
5 withdraw its application or shall consent to the Commission's deferring
6 action on its application for a stated longer period after the date of
7 filing. The filing with the Commission of an application for registration
8 by an Exchange shall be deemed to have taken place upon the receipt
9 thereof. Amendments to an application may be made upon such terms
10 as the Commission may prescribe.

11 31.5. Upon the registration of an Exchange, it shall pay a fee in
12 such amount and within such period as the Commission may fix.

13 31.6. Upon appropriate application in accordance with the rules
14 and regulations of the Commission and upon such terms as the
15 Commission may deem necessary for the protection of investors, an
16 Exchange may withdraw its registration or suspend its operations or
17 resume the same.

18 SEC. 32. *Segregation and Limitation of Functions of Members,*
19 *Brokers and Dealers.* -

20 32.1. It shall be unlawful for any member-broker of an exchange
21 to effect any transaction on such exchange for its own account, the
22 account of an associated person, or an account with respect to which
23 it or an associated person thereof exercises investment discretion:
24 *Provided, however,* That this section shall not make unlawful -

25 a) any transaction by a member-broker acting in the capacity of

1 a market maker;

2 b) any transaction reasonably necessary to carry on an odd-lot
3 transactions;

4 c) any transaction to offset a transaction made in error; and

5 d) any other transaction of a similar nature.

6 32.2. In all instances where the member-broker effects a
7 transaction on an Exchange for its own account or the account of an
8 associated person or an account with respect to which it exercises
9 investment discretion, it shall disclose to such customer at or before the
10 completion of the transaction it is acting for its own account: *Provided,*
11 *further,* That this fact shall be reflected in the order ticket and the
12 confirmation slip.

13 32.3. Any member-broker who violates the provisions of this
14 section shall be subject to the administrative sanctions provided in
15 Section 51 of this Act.

16 SEC. 33. *Additional Fees of Exchanges.* - In addition to the
17 registration fee prescribed in Section 31 of this Act, every Exchange
18 shall pay to the Commission, on or before March 15 of each calendar
19 year, a fee in such an amount as the Commission shall prescribe, but
20 not more than one-hundredth of one *per centum* (1%) of the aggregate
21 amount of the sales of securities transacted on such Exchange during
22 the preceding calendar year, for the privilege of doing business, during
23 the preceding calendar year or any part thereof.

24 SEC. 34. *Powers with Respect to Exchanges and Other Trading*
25 *Market.* -

1 34.1. The Commission is authorized, if in its opinion such action
2 is necessary or appropriate for the protection of investors and the
3 public interest so requires, summarily to suspend trading in any listed
4 security on any Exchange or other trading market for a period not
5 exceeding thirty (30) days or, with the approval of the President of the
6 Philippines, summarily to suspend all trading on any securities
7 Exchange or other trading market for a period of more than thirty (30)
8 but not exceeding ninety (90) days: *Provided, however,* That the
9 Commission, promptly following the issuance of the order of
10 suspension, shall notify the affected issuer of the reasons for such
11 suspension and provide such issuer with an opportunity for hearing to
12 determine whether the suspension should be lifted.

13 34.2. Wherever two or more Exchanges or other trading markets
14 exist, the Commission may require and enforce uniformity of trading
15 regulations in and/or between or among said Exchanges or other
16 trading markets.

17 34.3. In addition to the existing Philippine Stock Exchange, the
18 Commission shall have the authority to determine the number, size and
19 location of stock Exchanges, other trading markets and commodity
20 Exchanges and other similar organizations in the light of national or
21 regional requirements for such activities with the view to promote,
22 enhance, protect, conserve or rationalize investment.

23 34.4. The Commission, having due regard to the public interest,
24 the protection of investors, the safeguarding of securities and funds,
25 and maintenance of fair competition among brokers, dealers, clearing

712

1 SEC. 35. *Associations of Securities Brokers, and Dealers, and*
2 *Other Securities Related Organizations.* -

3 35.1. The Commission shall have the power to register as a self-
4 regulatory organization, or otherwise grant licenses, and to regulate,
5 supervise, examine, suspend or otherwise discontinue, as a condition
6 for the operation of organizations whose operations are related to or
7 connected with the securities market such as but not limited to
8 associations of brokers and dealers, transfer agents, custodians, fiscal
9 and paying agents, computer services, news disseminating services,
10 proxy solicitors, statistical agencies, securities rating agencies, and
11 securities information processors which are engaged in the business of:

12 (a) Collecting, processing, or preparing for distribution or publication,
13 or assisting, participating in, or coordinating the distribution or
14 publication of, information with respect to transactions in or quotations
15 for any security; or (b) Distributing or publishing, whether by means
16 of a ticker tape, a communications network, a terminal display device,
17 or otherwise, on a current and continuing basis, information with
18 respect to such transactions or quotations. The Commission may
19 prescribe rules and regulations which are necessary or appropriate in
20 the public interest or for the protection of investors to govern self-
21 regulatory organizations and other organizations licensed or regulated
22 pursuant to the authority granted in Subsection 35.1.

23 35.2. An association of brokers and dealers may be registered as
24 a securities association pursuant to Subsection 35.3 by filing with the
25 Commission an application for registration in such form as the

1 Commission, by rule, may prescribe containing the rules of the
2 association and such other information and documents as the
3 Commission, by rule, may prescribe as necessary or appropriate in the
4 public interest or for the protection of investors.

5 35.3. An association of brokers and dealers shall not be registered
6 as a securities association unless the Commission determines that:

7 a) The association is so organized and has the capacity to be able
8 to carry out the purposes of this Act and to comply with, and to
9 enforce compliance by its members and persons associated with its
10 members, with the provisions of this Act, the rules and regulations
11 thereunder, and the rules of the association.

12 b) The rules of the association, notwithstanding anything in the
13 Corporation Code to the contrary, provide that:

14 (i) Any registered broker or dealer may become a member of the
15 association;

16 (ii) There exist a fair representation of its members to serve on the
17 Board of Directors of the association and in the administration of its
18 affairs, and that any natural person associated with a juridical entity
19 that is a member shall himself be deemed to be a member for this
20 purpose;

21 (iii) The Board of Directors of the association includes in its
22 composition: (a) The president of the association and (b) Persons who
23 represent the interests of issuers and public investors and are not
24 associated with any broker or dealer or member of the association; that
25 the president and other management of the association not be a member

1 agencies, and transfer agents, shall promulgate rules and regulations
2 for the prompt and accurate clearance and settlement of securities
3 transactions.

4 34.5. a) The Commission may establish or facilitate the
5 establishment of trust funds which shall be contributed by Exchanges,
6 brokers, dealers, underwriters, transfer agents, salesmen and other
7 persons transacting in securities, as the Commission may require, for
8 the purpose of compensating investors for the extraordinary losses or
9 damage they may suffer due to business failure or fraud or
10 mismanagement of the persons with whom they transact, under such
11 rules and regulations as the Commission may from time to time
12 prescribe or approve in the public interest.

13 b) The Commission may, having due regard to the public interest
14 or the protection of investors, regulate, supervise, examine, suspend or
15 otherwise discontinue such and other similar funds under such rules
16 and regulations which the Commission may promulgate, and which may
17 include taking custody and management of the fund itself as well as
18 investments in and disbursements from the funds under such forms of
19 control and supervision by the Commission as it may from time to time
20 require. The authority granted to the Commission under this
21 subsection shall also apply to all funds established for the protection
22 of investors, whether established by the Commission or otherwise.

23 CHAPTER IX

24 Registration, Responsibilities and

25 Oversight of Self-Regulatory Organizations

1 or associated with any broker, dealer or member of the association;

2 (iv) For the equitable allocation of reasonable dues, fees, and
3 other charges among members and issuers and other persons using any
4 facility or system which the association operates or controls;

5 (v) For the prevention of fraudulent and manipulative acts and
6 practices, the promotion of just and equitable principles of trade, and,
7 in general, the protection of investors and the public interest;

8 (vi) That its members and persons associated with its members
9 shall be appropriately disciplined for violation of any provision of this
10 Act, the rules or regulations thereunder, or the rules of the association;

11 (vii) That a fair procedure for the disciplining of members and
12 persons associated with members, the denial of membership to any
13 person seeking membership therein, the barring of any person from
14 becoming associated with a member thereof, and the prohibition or
15 limitation by the association of any person with respect to access to
16 services offered by the association or a member thereof.

17 35.4. a) A registered securities association shall deny
18 membership to any person who is not a registered broker or dealer.

19 b) A registered securities association may deny membership to,
20 or condition the membership of, a registered broker or dealer if such
21 broker or dealer:

22 (i) Does not meet the standards of financial responsibility,
23 operational capability, training, experience, or competence that are
24 prescribed by the rules of the association; or

25 (ii) Has engaged, and there is a reasonable likelihood it will again

1 engage, in acts or practices inconsistent with just and equitable
2 principles of fair trade.

3 c) A registered securities association may deny membership to a
4 registered broker or dealer not engaged in a type of business in which
5 the rules of the association require members to be engaged: *Provided,*
6 *however,* That no registered securities association may deny
7 membership to a registered broker or dealer by reason of the amount
8 of business done by the broker or dealer.

9 A registered securities association may examine and verify the
10 qualifications of an applicant to become a member in accordance with
11 procedures established by the rules of the association.

12 d) A registered securities association may bar a salesman or
13 person associated with a broker or dealer from being employed by a
14 member or set conditions for the employment of a salesman or
15 associated if such person:

16 (i) Does not meet the standards of training, experience, or
17 competence that are prescribed by the rules of the association; or

18 (ii) Has engaged, and there is a reasonable likelihood he will again
19 engage, in acts or practices inconsistent with just and equitable
20 principles of fair trade.

21 A registered securities association may examine and verify the
22 qualifications of an applicant to become a salesman or associated
23 person employed by a member in accordance with procedures
24 established by the rules of the association. A registered association
25 also may require a salesman or associated person employed by a

1 member to be registered with the association in accordance with
2 procedures prescribed in the rules of the association.

3 35.5. In any proceeding by a registered securities association to
4 determine whether a person shall be denied membership, or barred from
5 association with a member, the association shall provide notice to the
6 person under review of the specific grounds being considered for
7 denial, afford him an opportunity to defend against the allegations, and
8 keep a record of the proceedings. A determination by the association
9 to deny membership shall be supported by a statement setting forth the
10 specific grounds on which the denial is based.

11 SEC. 36. *Powers with Respect to Self-Regulatory*
12 *Organizations.* -

13 36.1. Upon the filing of an application for registration as an
14 Exchange under Section 31, a registered securities association under
15 Section 35, a registered clearing agency under Section 38, or other self-
16 regulatory organization under this Section, the Commission shall have
17 ninety (90) days within which to either grant registration or institute a
18 proceeding to determine whether registration should be denied. In the
19 event proceedings are instituted, the Commission shall have two
20 hundred seventy (270) days within which to conclude such
21 proceedings at which time it shall, by order, grant or deny such
22 registration.

23 36.2. Every self-regulatory organization shall comply with the
24 provisions of this Act, the rules and regulations thereunder, and its
25 own rules, and enforce compliance therewith, notwithstanding any

7/8

1 provision of the Corporation Code to the contrary, by its members,
2 persons associated with its members or its participants.

3 36.3. a) Each self-regulatory organization shall submit to the
4 Commission for prior approval any proposed rule or amendment
5 thereto, together with a concise statement of the reason and effect of
6 the proposed amendment.

7 b) Within sixty (60) days after submission of a proposed
8 amendment, the Commission shall, by order, approve the proposed
9 amendment. Otherwise, the same may be made effective by the self-
10 regulatory organization.

11 c) In the event of an emergency requiring action for the
12 protection of investors, the maintenance of fair and orderly markets, or
13 the safeguarding of securities and funds, a self-regulatory organization
14 may put a proposed amendment into effect summarily: *Provided,*
15 *however,* That a copy of the same shall be immediately submitted to the
16 Commission.

17 36.4. The Commission is further authorized, if after making
18 appropriate request in writing to a self-regulatory organization that
19 such organization effect on its own behalf specified changes in its rules
20 and practices and, after due notice and hearing it determines that such
21 changes have not been effected, and that such changes are necessary,
22 by rule or regulation or by order, may alter, abrogate or supplement the
23 rules of such self-regulatory organization in so far as necessary or
24 appropriate to effect such changes in respect of such matters as:

25 a) Safeguards in respect of the financial responsibility of members

2/9

1 and adequate provision against the evasion of financial responsibility
2 through the use of corporate forms or special partnerships;

3 b) The supervision of trading practices;

4 c) The listing or striking from listing of any security;

5 d) Hours of trading;

6 e) The manner, method, and place of soliciting business;

7 f) Fictitious accounts;

8 g) The time and method of making settlements, payments, and
9 deliveries, and of closing accounts;

10 h) The transparency of securities transactions and prices;

11 i) The fixing of reasonable rates of fees, interest, listing and other
12 charges, but not rates of commission;

13 j) Minimum units of trading;

14 k) Odd-lot purchases and sales;

15 l) Minimum deposits on margin accounts; and

16 m) The supervision, auditing and disciplining of members or
17 participants

18 36.5. The Commission is authorized, by order, if it is necessary in
19 the public interest, for the protection of investors, or otherwise in
20 furtherance of the purposes of this Act, after due notice and hearing:

21 a) To suspend for a period not exceeding twelve (12) months or
22 to revoke the registration of a self-regulatory organization, or to
23 censure or impose limitations on the activities, functions, and
24 operations of such self-regulatory organization, if the Commission finds
25 that such a self-regulatory organization has willfully violated or is

70

1 unable to comply with any provision of this Act or of the rules and
2 regulations thereunder, or its own rules, or has failed to enforce
3 compliance therewith by a member of, person associated with a member,
4 or a participant in such self-regulatory organization;

5 b) To suspend for a period not exceeding twelve (12) months or
6 to expel from a self-regulatory organization any member thereof or any
7 participant therein who is subject to an order of the Commission under
8 Section 26 of this Act or is found to have willfully violated any
9 provision of this Act, any other laws administered by the Commission,
10 or the rules and regulations thereunder, or effected, directly or
11 indirectly, any transaction for any person who, such member or
12 participant had reason to believe, was violating in respect of such
13 transaction any of such provisions; and

14 c) To remove from office or censure any officer or director of a
15 self-regulatory organization if it finds that such officer or director has
16 willfully violated any provision of this Act, any other law administered
17 by the Commission, the rules or regulations thereunder, or the rules of
18 such self-regulatory organization, willfully abused his authority, or
19 without reasonable justification or excuse has failed to enforce
20 compliance with any of such provisions.

21 36.6. a) A self-regulatory organization is authorized to discipline
22 a member of or participant in such self-regulatory organization, or any
23 person associated with a member, including the suspension or
24 expulsion of such member or participant, and the suspension or bar
25 from being associated with a member, if such person has engaged in

721

1 acts or practices inconsistent with just and equitable principles of fair
2 trade or in willful violation of any provision of the Act, any other law
3 administered by the Commission, the rules or regulations thereunder, or
4 the rules of the self-regulatory organization. In any disciplinary
5 proceeding by a self-regulatory organization (other than a summary
6 proceeding pursuant to paragraph (b) of this subsection) the self-
7 regulatory organization shall bring specific charges, provide notice to
8 the person charged, afford the person charged with an opportunity to
9 defend against the charges, and keep a record of the proceedings. A
10 determination to impose a disciplinary sanction shall be supported by
11 a written statement of the offense, a summary of the evidence presented
12 and a statement of the sanction imposed.

13 b) A self-regulatory organization may summarily: (i) Suspend a
14 member, participant or person associated with a member who has been
15 or is expelled or suspended from any other self-regulatory organization;
16 or (ii) Suspend a member who the self-regulatory organization finds to
17 be in such financial or operating difficulty that the member or
18 participant cannot be permitted to continue to do business as a member
19 with safety to investors, creditors, other members, participants or the
20 self-regulatory organization: *Provided*, That the self-regulatory
21 organization immediately notifies the Commission of the action taken.
22 Any person aggrieved by a summary action pursuant to this paragraph
23 shall be promptly afforded an opportunity for a hearing by the
24 association in accordance with the provisions of paragraph a) of this
25 subsection. The Commission, by order, may stay a summary action on

722

1 its own motion or upon application by any person aggrieved thereby,
2 if the Commission determines summarily or after due notice and hearing
3 (which hearing may consist solely of the submission of affidavits or
4 presentation of oral arguments) that a stay is consistent with the public
5 interest and the protection of investors.

6 36.7. A self-regulatory organization shall promptly notify the
7 Commission of any disciplinary sanction on any member thereof or
8 participant therein, any denial of membership or participation in such
9 organization, or the imposition of any disciplinary sanction on a person
10 associated with a member or a bar of such person from becoming so
11 associated. Within thirty (30) days after such notice, any aggrieved
12 person may appeal to the Commission from, or the Commission on its
13 own motion within such period, may institute review of, the decision
14 of the self-regulatory organization, at the conclusion of which, after due
15 notice and hearing (which may consist solely of review of the record
16 before the self-regulatory organization), the Commission shall affirm,
17 modify or set aside the sanction. In such proceeding the Commission
18 shall determine whether the aggrieved person has engaged or omitted
19 to engage in the acts and practices as found by the self-regulatory
20 organization, whether such acts and practices constitute willful
21 violations of this Act, any other law administered by the Commission,
22 the rules or regulations thereunder, or the rules of the self-regulatory
23 organization as specified by such organization, whether such
24 provisions were applied in a manner consistent with the purposes of
25 this Act, and whether, with due regard for the public interest and the

1 protection of investors the sanction is excessive or oppressive.

2 CHAPTER X

3 Acquisition and Transfer of Securities and

4 Settlement of Transactions in Securities

5 SEC. 37. *Prohibition on Use of Unregistered Clearing Agency.*

6 - It shall be unlawful for any broker, dealer, salesman, associated
7 person of a broker or dealer, or clearing agency, directly or indirectly,
8 to make use of any facility of a clearing agency in the Philippines to
9 make deliveries in connection with transactions in securities or to
10 reduce the number of settlements of securities transactions or to
11 allocate securities settlement responsibilities or to provide for the
12 central handling of securities so that transfers, loans and pledges and
13 similar transactions can be made by bookkeeping entry or otherwise to
14 facilitate the settlement of securities transactions without physical
15 delivery of securities certificates, unless such clearing agency is
16 registered as such under Section 45 of this Act or is exempted from
17 such registration upon application by the clearing agency because, in
18 the opinion of the Commission, by reason of the limited volume of
19 transactions which are settled using the clearing agency, it is not
20 practicable and not necessary or appropriate in the public interest or
21 for the protection of investors to require such registration.

22 SEC. 38. *Registration of Clearing Agencies.* -

23 38.1. Any clearing agency may be registered as such with the
24 Commission under the terms and conditions hereinafter provided in this
25 Section, by filing an application for registration in such form and

1 containing such information and supporting documents as the
2 Commission by rule shall prescribe, including the following:

3 a) An undertaking to comply and enforce compliance by its
4 participants with the provisions of this Act, and any amendment
5 thereto, and the implementing rules or regulations made or to be made
6 thereunder, and the clearing agency's rules;

7 b) The organizational charts of the Exchange, its rules of
8 procedure, and a list of its officers and participants;

9 c) Copies of the clearing agency's rules.

10 38.2. No registration of a clearing agency shall be granted unless
11 the rules of the clearing agency include provision for:

12 a) The expulsion, suspension, or disciplining of a participant for
13 violations of this Act, or any other Act administered by the
14 Commission, the rules, regulations and orders thereunder, or the
15 clearing agency's rules;

16 b) A fair procedure for the disciplining of participants, the denial
17 of participation rights to any person seeking to be a participant, and
18 the prohibition or limitation of any person from access to services
19 offered by the clearing agency;

20 c) The equitable allocation of reasonable dues, fees, and other
21 charges among participants;

22 d) Prevention of fraudulent and manipulative acts and practices,
23 promotion of just and equitable principles of trade, and, in general,
24 protection of investors and the public interest; and

25 e) The transparent, prompt and accurate clearance and settlement

725

1 of transactions in securities handled by the clearing agency.

2 38.3: In the case of an application filed pursuant to this Section,
3 the Commission shall grant registration if it finds that the requirements
4 of this Act and the rules and regulations thereunder with respect to the
5 applicant have been satisfied, and shall deny registration if it does not
6 make such finding.

7 38.4. Upon appropriate application in accordance with the rules
8 and regulations of the Commission and upon such terms as the
9 Commission may deem necessary for the protection of investors, a
10 clearing agency may withdraw its registration or suspend its operation
11 or resume the same.

12 38.5. Section 30 of this Act shall apply to every registered
13 clearing agency.

14 SEC. 39. *Uncertificated Securities.* - Notwithstanding Section 63
15 of the Corporation Code of the Philippines:

16 39.1. A corporation whose securities are registered pursuant to
17 this Act or listed on a securities Exchange may:

18 a) If so resolved by its Board of Directors and agreed by a
19 securities intermediary, issue shares to, or record the transfer of some
20 or all of its shares into the name of, that securities intermediary in the
21 form of uncertificated securities. The use of uncertificated securities in
22 these circumstances shall be without prejudice to the rights of the
23 securities intermediary subsequently to require the corporation to issue
24 a certificate in respect of any shares recorded in its name; and

25 b) If so provided in its articles of incorporation and by-laws, issue

926

1 all of the shares of a particular class in the form of uncertificated
2 securities and subject to a condition that investors may not require the
3 corporation to issue a certificate in respect of any shares recorded in
4 their name.

5 39.2. The Commission by rule may allow other corporations to
6 provide in their articles of incorporation and by-laws for the use of
7 uncertificated securities.

8 39.3. Transfers of securities, including an uncertificated
9 securities, may be validly made and consummated by appropriate book-
10 entries in the securities accounts maintained by securities
11 intermediaries and such bookkeeping entries shall be binding on the
12 parties to the transfer. A transfer under this subsection has the effect
13 of the delivery of a security in bearer form or duly indorsed in blank
14 representing the quantity or amount of security or right transferred,
15 including the unrestricted negotiability of that security by reason of
16 such delivery.

17 However, nothing in the provisions of this Act shall preclude
18 compliance by banking and other institutions under the supervision of
19 the *Bangko Sentral ng Pilipinas* and their stockholders with the
20 applicable ceilings on shareholdings prescribed under pertinent
21 banking laws and regulations.

22 SEC. 40. *Evidentiary Value of Clearing Agency Record.* -
23 Notwithstanding Section 63 of the Corporation Code, the official
24 records and book entries of a clearing agency shall prevail over any
25 internal record of a clearing agency's participants or member and shall

1 constitute, with respect to any book-entry transactions, the best
 2 evidence of such transactions, without prejudice to the right of
 3 participants' or members' clients to prove their rights, title and
 4 entitlement with respect to the book-entry security holdings of the
 5 participants or members held on behalf of the clients.

6 SEC. 41. *Pledging a Security or Interest Therein.* - In addition
 7 to other methods recognized by law, a pledge of, or release of a pledge
 8 of, a security, including an uncertificated security, is properly
 9 constituted and the instrument proving the right pledged shall be
 10 considered delivered to the creditor under Articles 2093 and 2095 of the
 11 Civil Code if a securities intermediary indicates by book-entry that such
 12 security has been credited to a specially designated pledge account in
 13 favor of the pledgee. A pledge under this subsection has the effect
 14 of the delivery of a security in bearer form or duly indorsed in blank
 15 representing the quantity or amount of such security or right pledged.
 16 In the case of a registered clearing agency, the procedures by which,
 17 and the exact time at which, such book-entries are created shall be
 18 governed by the registered clearing agency's rules.

19 SEC. 42. *Issuer's Responsibility for Wrongful Transfer to*
 20 *Registered Clearing Agency.* - The registration of a transfer of a
 21 security into the name of and by a registered clearing agency or its
 22 nominee shall be final and conclusive unless the clearing agency had
 23 notice of an adverse claim before the registration was made. The above
 24 provision shall be without prejudice to any rights which the claimant
 25 may have against the issuer for wrongful registration in such

778

1 circumstances.

2 SEC. 43. *Power of the Commission With Respect to Securities*
3 *Ownership.* - The Commission is authorized, having due regard to the
4 public interest and the protection of investors, to promulgate rules and
5 regulations which:

6 43.1. Validate the transfer of securities by book-entries rather
7 than the delivery of physical certificates;

8 43.2. Establish when a person acquires a security or an interest
9 therein and when delivery of a security to a purchaser occurs;

10 43.3. Establish which records constitute the best evidence of a
11 person's interests in a security and the effect of any errors in electronic
12 records of ownership;

13 43.4. Codify the rights of investors who choose to hold their
14 securities indirectly through a registered clearing agency and/or other
15 securities intermediaries;

16 43.5. Codify the duties of securities intermediaries (including
17 clearing agencies) who hold securities on behalf of investors; and

18 43.6. Give first priority to any claims of a registered clearing
19 agency against a participant arising from a failure by the participant to
20 meet its obligations under the clearing agency's rules in respect of the
21 clearing and settlement of transactions in securities, in a dissolution of
22 the participant, and any such rules and regulations shall bind the
23 issuers of the securities, investors in the securities, any third parties
24 with interests in the securities, and the creditors of a participant of a

74

1 registered clearing agency.

2 CHAPTER XI

3 Margin and Credit

4 SEC. 44. *Margin Requirements.* -

5 44.1. For the purpose of preventing the excessive use of credit
6 for the purchase or carrying of securities, the Commission, in
7 accordance with the credit and monetary policies that may be
8 promulgated from time to time by the Monetary Board of the *Bangko*
9 *Sentral ng Pilipinas*, shall prescribe rules and regulations with respect
10 to the amount of credit that may be extended on any security. For the
11 extension of credit, such rules and regulations shall be based upon the
12 following standard:

13 An amount not greater than whichever is the higher of -

14 a) Sixty-five *per centum* (65%) of the current market price of the
15 security, or

16 b) One hundred *per centum* (100%) of the lowest market price of
17 the security during the preceding thirty-six (36) calendar months, but
18 not more than seventy-five *per centum* (75%) of the current market
19 price.

20 However, the Monetary Board may increase or decrease the
21 above percentages, in order to achieve the objectives of the
22 Government with due regard for promotion of the economy and
23 prevention of the use of excessive credit.

24 Such rules and regulations may make appropriate provision with
25 respect to the carrying of undermargined accounts for limited periods

1 and under specified conditions; the withdrawal of funds or securities;
2 the transfer of accounts from one lender to another; special or different
3 margin requirements for delayed deliveries, short sales, arbitrage
4 transactions, and securities to which letter (b) of the second paragraph
5 of this subsection does not apply; the bases and the methods to be
6 used in calculating loans, and margins and market prices; and similar
7 administrative adjustments and details.

8 44.2. No member of an Exchange or broker or dealer shall,
9 directly or indirectly, extend or maintain credit or arrange for the
10 extension or maintenance of credit to or for any customer:

11 a) On any security unless such credit is extended and maintained
12 in accordance with the rules and regulations which the Commission
13 shall prescribe under this Section including rules setting credit in
14 relation to net capital of such member, broker or dealer;

15 b) Without collateral or on any collateral other than securities,
16 except (i) to maintain a credit initially extended in conformity with the
17 rules and regulations of the Commission and (ii) in cases where the
18 extension or maintenance of credit is not for the purpose of purchasing
19 or carrying securities or of evading or circumventing the provisions of
20 paragraph (a) of this subsection.

21 44.3. Any person not subject to Subsection 44.2. hereof shall
22 extend or maintain credit or arrange for the extension or maintenance
23 of credit for the purpose of purchasing or carrying any security, only
24 in accordance with such rules and regulations as the Commission shall
25 prescribe to prevent the excessive use of credit for the purchasing or

331

1 carrying of or trading in securities in circumvention of the other
2 provisions of this Section. Such rules and regulations may impose
3 upon all loans made for the purpose of purchasing or carrying
4 securities limitations similar to those imposed upon members, brokers,
5 or dealers by Subsection 44.2 and the rules and regulations thereunder.
6 This subsection and the rules and regulations thereunder shall not
7 apply: (a) To a credit extension made by a person not in the ordinary
8 course of business; (b) To a loan to a dealer to aid in the financing of
9 the distribution of securities to customers not through the medium of
10 an Exchange; or (c) To such other credit extension as the Commission
11 shall exempt from the operation of this subsection and the rules and
12 regulations thereunder upon specified terms and conditions or for
13 stated period.

14 SEC. 45. *Restrictions on Borrowings by Members, Brokers, and*
15 *Dealers.* - It shall be unlawful for any registered broker or dealer, or
16 member of an Exchange, directly or indirectly:

17 45.1. To permit in the ordinary course of business as a broker
18 or dealer his aggregate indebtedness including customers' credit
19 balances, to exceed such percentage of the net capital (exclusive of
20 fixed assets and value of Exchange membership) employed in the
21 business, but not exceeding in any case two thousand *per centum*
22 (2,000%), as the Commission may by rules and regulations prescribe as
23 necessary or appropriate in the public interest or for the protection of
24 investors.

25 45.2. To pledge, mortgage, or otherwise encumber or arrange

1 for the pledge, mortgage or encumbrance of any security carried for the
2 account of any customer under circumstances: (a) That will permit the
3 commingling of his securities, without his written consent, with the
4 securities of any customer; (b) That will permit such securities to be
5 commingled with the securities of any person other than a *bona fide*
6 customer; or (c) That will permit such securities to be pledged,
7 mortgaged or encumbered, or subjected to any lien or claim of the
8 pledgee, for a sum in excess of the aggregate indebtedness of such
9 customers in respect of such securities. However, the Commission,
10 having due regard to the protection of investors, may, by rules and
11 regulations, allow certain transactions that may otherwise be prohibited
12 under this subsection.

13 45.3. To lend or arrange for the lending of any security carried
14 for the account of any customer without the written consent of such
15 customer or in contravention of such rules and regulations as the
16 Commission shall prescribe.

17 SEC. 46. *Enforcement of Margin Requirements and Restrictions*
18 *on Borrowing.* - To prevent indirect violations of the margin
19 requirements under Section 44, the broker or dealer shall require the
20 customer in non-margin transactions to pay the price of the security
21 purchased for his account within such period as the Commission may
22 prescribe, which shall in no case exceed the prescribed settlement date.
23 Otherwise, the broker shall sell the security purchased starting on the
24 next trading day but not beyond ten (10) trading days following the last
25 day for the customer to pay such purchase price, unless such sale

1 cannot be effected within said period for justifiable reasons. The sale
2 shall be without prejudice to the right of the broker or dealer to recover
3 any deficiency from the customer. To prevent indirect violation of the
4 restrictions on borrowings under Section 45, the broker shall, unless
5 otherwise directed by the customer, pay the net sales price of the
6 securities sold for a customer within the same period as above
7 prescribed by the Commission: *Provided*, That the customer shall be
8 required to deliver the instruments evidencing the securities as a
9 condition for such payment upon demand by the broker.

10 CHAPTER XII

11 Exclusions from Corporation Code

12 SEC. 47. *Special Provisions for Publicly-Held Companies.* -

13 47.1. Notwithstanding any provision in the Corporation Code to
14 the contrary, the following shall apply to corporations of the types
15 specified in Subsection 47.2.

16 a) Founders' shares classified as such in the articles of
17 incorporation of such a corporation shall not, by reason of such
18 classification, possess voting or other rights and privileges not enjoyed
19 by the owners of other stock.

20 b) The authorized capital stock of such a corporation may
21 through amendment to the articles of incorporation be increased or
22 decreased, and bonded indebtedness may be incurred, created or
23 increased, upon approval by a majority vote of the Board of Directors
24 and by a majority of the votes of outstanding capital stock entitled to
25 vote at a stockholders' meeting called for such purpose, or upon the

1 vote of such greater percentage as may be provided in the articles of
2 incorporation.

3 c) The articles of incorporation of such a corporation may deny
4 pre-emptive rights to its stockholders upon approval of an amendment
5 providing for such denial by a majority of the votes of outstanding
6 capital stock entitled to vote at a stockholders' meeting called for such
7 purpose, or upon the vote of such greater percentage as may be
8 provided in the articles of incorporation.

9 d) (i) Unless otherwise provided in its articles of incorporation or
10 by-laws, the Board of Directors of such a corporation may declare and
11 pay stock and property dividends out of unrestricted retained earnings
12 without the approval of stockholders.

13 (ii) The Board of Directors of such a corporation is permitted to
14 retain surplus profits for any lawful purpose.

15 e) (i) Unless a greater percentage is provided in its articles of
16 incorporation, a director of such a corporation may be removed from
17 office by a majority of the votes of outstanding capital stock entitled
18 to vote at a stockholders' meeting called for such purpose.

19 (ii) The Board of Directors may fix reasonable compensation for
20 service as a director, which may be a *per diem*, annual stipend or other
21 remuneration: *Provided, however,* That such compensation may be
22 changed or rescinded by a majority of the votes of outstanding capital
23 stock entitled to vote at a regular or special stockholders' meeting at
24 which such action is considered. The fixing of compensation of
25 directors shall not be limited to any percentage of net income before

735

1 income tax of such corporation during the preceding year.

2 (iii) In the case only of a corporation of the type specified in
3 subsection 47.2 (a), the Board of Directors thereof shall consist of at
4 least two (2) independent directors or such independent directors shall
5 constitute at least twenty percent (20%) of the members of such board,
6 whichever is the lesser. For this purpose, an "independent director"
7 shall mean a person other than an officer or employee of the
8 corporation, its parent or subsidiaries, or any other individual having
9 a relationship with the corporation, which would interfere with the
10 exercise of independent judgment in carrying out the responsibilities of
11 a director.

12 f) The president and other officers of such a corporation shall not
13 be required to be directors and, except for the treasurer and secretary,
14 need not be residents in the Philippines.

15 g) Every officer and director shall exercise such care in the
16 management of the affairs of such a corporation as is required of a
17 prudent man in the management of his own property, and shall be liable
18 to the corporation and its shareholders for damages resulting from the
19 intentional or negligent failure to exercise such care: *Provided,*
20 *however,* That no liability shall be incurred for any business judgment
21 exercised in good faith and upon consideration of all facts material to
22 the act or transaction.

23 47.2. Subsection 47.1 shall apply to -

24 a) Any corporation with a class of equity securities listed for
25 trading on an Exchange;

1 liable, unless the controlling person proves that, despite the exercise of
2 due diligence on his part, he has no knowledge of the existence of the
3 facts by reason of which the liability of the controlled person is alleged
4 to exist.

5 48.2. It shall be unlawful for any person, directly or indirectly, to
6 do any act or thing which it would be unlawful for such person to do
7 under the provisions of this Act or any rule or regulation thereunder.

8 48.3. It shall be unlawful for any director or officer of, or any
9 owner of any securities issued by, any issuer required to file any
10 document, report or other information under this Act or any rule or
11 regulation of the Commission thereunder, without just cause, to hinder,
12 delay or obstruct the making or filing of any such document, report, or
13 information.

14 48.4. It shall be unlawful for any person to aid, abet, counsel,
15 command, induce or procure any violation of this Act, or any rule,
16 regulation or order of the Commission thereunder.

17 48.5. Every person who substantially assists the act or omission
18 of any person primarily liable under Sections 53, 54, 55 and 56 of this
19 Act, with knowledge or in reckless disregard that such act or omission
20 is wrongful, shall be jointly and severally liable as an aider and abettor
21 for damages resulting from the conduct of the person primarily liable:
22 *Provided, however,* That an aider and abettor shall be liable only to the
23 extent of his relative contribution in causing such damages in
24 comparison to that of the person primarily liable, or the extent to which
25 the aider and abettor was unjustly enriched thereby, whichever is

1 greater.

2 SEC. 49. *Accounts and Records, Reports, Examination of*
3 *Exchanges, Members, and Others.* -

4 49.1. Every Exchange, broker or dealer, transfer agent, clearing
5 agency, registered securities association, and other self-regulatory
6 organization, shall make, keep and preserve for such periods, such
7 accounts, correspondence, memoranda, papers, books, reports and
8 other records, furnish such copies thereof, as the Commission by its
9 rules and regulations may prescribe. Such accounts, correspondence,
10 memoranda, papers, books, and other records shall be subject at any
11 time to such reasonable examinations by representatives of the
12 Commission as the Commission may deem necessary or appropriate in
13 the public interest or for the protection of investors.

14 49.2. Any broker, dealer or other person extending credit, who
15 is subject to the rules and regulations prescribed by the Commission
16 pursuant to this Act, shall make such reports to the Commission as may
17 be necessary or appropriate to enable it to perform the functions
18 conferred upon it by this Act.

19 SEC. 50. *Investigations, Injunctions and Prosecution of*
20 *Offenses.* -

21 50.1. The Commission may, in its discretion, make such
22 investigations as it deems necessary to determine whether any person
23 has violated or is about to violate any provision of this Act, any rule,
24 regulation or order thereunder, or any rule of an Exchange, registered
25 securities association, clearing agency, other self-regulatory

1 organization, and may require or permit any person to file with it a
 2 statement in writing, under oath or otherwise, as the Commission shall
 3 determine, as to all facts and circumstances concerning the matter to
 4 be investigated. The Commission may publish information concerning
 5 any such violations, and to investigate any fact, condition, practice or
 6 matter which it may deem necessary or proper to aid in the enforcement
 7 of the provisions of this Act, in the prescribing of rules and regulations
 8 thereunder, or in securing information to serve as a basis for
 9 recommending further legislation concerning the matters to which this
 10 Act relates: *Provided, however,* That any person requested or
 11 subpoenaed to produce documents or testify in any investigation shall
 12 simultaneously be notified in writing of the purpose of such
 13 investigation: *Provided, further,* That all criminal complaints for
 14 violations of this Act, and the implementing rules and regulations
 15 enforced or administered by the Commission shall be referred to the
 16 Department of Justice for preliminary investigation and prosecution
 17 before the proper court: *Provided, furthermore,* That in instances
 18 where the law allows independent civil or criminal proceedings of
 19 violations arising from the same act, the Commission shall take
 20 appropriate action to implement the same: *Provided, finally,* That the
 21 investigation, prosecution, and trial of such cases shall be given
 22 priority.

23 50.2. For the purpose of any such investigation, or any other
 24 proceeding under this Act, the Commission or any officer designated
 25 by it is empowered to administer oaths and affirmations, *subpoena*

746

1 witnesses, compel attendance, take evidence, require the production of
2 any book, paper, correspondence, memorandum, or other record which
3 the Commission deems relevant or material to the inquiry, and to
4 perform such other acts necessary in the conduct of such investigation
5 or proceedings.

6 50.3. Whenever it shall appear to the Commission that any person
7 has engaged or is about to engage in any act or practice constituting
8 a violation of any provision of this Act, any rule, regulation or order
9 thereunder, or any rule of an Exchange, registered securities
10 association, clearing agency or other self-regulatory organization, it
11 may issue an order to such person to desist from committing such act
12 or practice: *Provided, however,* That the Commission shall not charge
13 any person with violation of the rules of an Exchange or other self
14 regulatory organization unless it appears to the Commission that such
15 Exchange or other self-regulatory organization is unable or unwilling
16 to take action against such person. After finding that such person has
17 engaged in any such act or practice and that there is a reasonable
18 likelihood of continuing, further or future violations by such person,
19 the Commission may issue: (a) an order of permanent or temporary
20 injunction after due notice and hearing; or (b) an *ex parte* temporary
21 restraining order for a maximum period of twenty (20) days, enjoining
22 the violation and compelling compliance with such provision. The
23 Commission may transmit such evidence as may be available
24 concerning any violation of any provision of this Act, or any rule,
25 regulation or order thereunder, to the Department of Justice, which may

7/11

1 institute the appropriate criminal proceedings under this Act.

2 50.4. Any person who, within his power but without cause, fails
3 or refuses to comply with any lawful order, decision or *subpoena*
4 issued by the Commission under Subsection 50.2 or Subsection 50.3 or
5 Section 62 of this Act, shall after due notice and hearing, be guilty of
6 contempt of the Commission. Such person shall be fined in such
7 reasonable amount as the Commission may determine, or when such
8 failure or refusal is a clear and open defiance of the Commission's order,
9 decision or *subpoena*, shall be detained under an arrest order issued by
10 the Commission, until such order, decision or *subpoena* is complied
11 with.

12 SEC. 51. *Administrative Sanctions.* -

13 51.1. If, after due notice and hearing, the Commission finds that:
14 (a) There is a willful violation of this Act, its rules, or its orders; (b) Any
15 registered broker or dealer, associated person thereof has failed
16 reasonably to supervise, with a view to preventing violations, another
17 person subject to supervision who commits any such violation; (c) Any
18 registrant or other person has, in a registration statement or in other
19 reports, applications, accounts, records or documents required by law
20 or rules to be filed with the Commission, made any untrue statement of
21 a material fact, or omitted to state any material fact required to be stated
22 therein or necessary to make the statements therein not misleading; or,
23 in the case of an underwriter, has failed to conduct an inquiry with
24 reasonable diligence to insure that a registration statement is accurate
25 and complete in all material respects; or (d) Any person has refused to

9/2

1 permit any lawful examinations into its affairs, it shall, in its discretion,
2 and subject only to the limitations hereinafter prescribed, impose any
3 or all of the following sanctions as may be appropriate in light of the
4 facts and circumstances:

5 (i) Suspension, or revocation of any registration for the offering
6 of securities;

7 (ii) A fine of no less than Ten thousand pesos (P10,000.00) nor
8 more than One million pesos (P1,000,000.00) plus not more than Two
9 thousand pesos (P2,000.00) for each day of continuing violation;

10 (iii) In the case of a violation of Subsections 16.5, 18.5, 22, 24 and
11 25; disqualification from being an officer, member of the Board of
12 Directors, or person performing similar functions, of an issuer required
13 to file reports under Section 14 of this Act or any other act, rule or
14 regulation administered by the Commission;

15 (iv) In the case of a violation of Section 32, a fine of no more
16 than three (3) times the profit gained or loss avoided as a result of the
17 purchase, sale or communication proscribed by such Section; and

18 (v) Other penalties within the power of the Commission to
19 impose.

20 51.2. The imposition of the foregoing administrative sanctions
21 shall be without prejudice to the filing of criminal charges against the
22 individuals responsible for the violation.

23 51.3. The Commission shall have the power to issue writs of
24 execution to enforce the provisions of this Section and to enforce
25 payment of the fees and other dues collectible under this Act.

743

1 SEC. 52. *Civil Liabilities on Account of False Registration*
2 *Statement.* -

3 52.1. Any person acquiring a security, the registration statement
4 of which or any part thereof contains on its effectivity an untrue
5 statement of a material fact or omits to state a material fact required to
6 be stated therein or necessary to make such statements not misleading,
7 and who suffers damage, may sue and recover damages from the
8 following enumerated persons, unless it is proved that at the time of
9 such acquisition he knew of such untrue statement or omission:

10 a) The issuer and every person who signed the registration
11 statement;

12 b) Every person who was a director of, or any other person
13 performing similar functions, or a partner in, the issuer at the time of
14 the filing of the registration statement or any part, supplement or
15 amendment thereof with respect to which his liability is asserted;

16 c) Every person who is named in the registration statement as
17 being or about to become a director of, or a person performing similar
18 functions, or a partner in, the issuer and whose written consent thereto
19 is filed with the registration statement;

20 d) Every auditor or auditing firm named as having certified any
21 financial statements used in connection with the registration statement
22 or prospectus.

23 e) Every person who, with his written consent, which shall be
24 filed with the registration statement, has been named as having
25 prepared or certified any part of the registration statement, or as having

744

1 prepared or certified any report or valuation which is used in
2 connection with the registration statement, with respect to the
3 statement, report, or valuation, which purports to have been prepared
4 or certified by him.

5 f) Every selling shareholder who contributed to and certified as
6 to the accuracy of a portion of the registration statement, with respect
7 to that portion of the registration statement which purports to have
8 been contributed by him.

9 g) Every underwriter with respect to such security.

10 52.2. If the person who acquired the security did so after the
11 issuer has made generally available to its security holders an income
12 statement covering a period of at least twelve months beginning from
13 the effective date of the registration statement, then the right of
14 recovery under this subsection shall be conditioned on proof that such
15 person acquired the security relying upon such untrue statement in the
16 registration statement or relying upon the registration statement and
17 not knowing of such income statement, but such reliance may be
18 established without proof of the reading of the registration statement
19 by such person.

20 SEC. 53. *Civil Liabilities Arising in Connection With*
21 *Prospectus, Communications and Reports.* -

22 53.1. Any person who:

23 a) Offers to sell or sells a security in violation of Chapter II, or

24 b) Offers to sell or sells a security, whether or not exempted by
25 the provisions of this act, by the use of any means or instruments of

1 transportation or communication, by means of a prospectus or other
 2 written or oral communication, which includes an untrue statement of
 3 a material fact or omits to state a material fact necessary in order to
 4 make the statements, in the light of the circumstances under which they
 5 were made, not misleading (the purchaser not knowing of such untruth
 6 or omission), and who shall fail in the burden of proof that he did not
 7 know, and in the exercise of reasonable care could not have known, of
 8 such untruth or omission, shall be liable to the person purchasing such
 9 security from him, who may sue to recover the consideration paid for
 10 such security with interest thereon, less the amount of any income
 11 received thereon, upon the tender of such security, or for damages if
 12 he no longer owns the security.

13 53.2. Any person who shall make or cause to be made any
 14 statement in any report, or document filed pursuant to this Act or any
 15 rule or regulation thereunder, which statement was at the time and in
 16 the light of the circumstances under which it was made false or
 17 misleading with respect to any material fact, shall be liable to any
 18 person who, not knowing that such statement was false or misleading,
 19 and relying upon such statements shall have purchased or sold a
 20 security at a price which was affected by such statement, for damages
 21 caused by such reliance, unless the person sued shall prove that he
 22 acted in good faith and had no knowledge that such statement was
 23 false or misleading.

24 SEC. 54. *Civil Liability For Fraud in Connection With*
 25 *Securities Transactions.* - Any person who engages in any act or

746

1 transaction in violation of Subsections 16.5 or 18.5, or Section 24,
2 or any rule or regulation of the Commission thereunder, shall be liable
3 to any other person who purchases or sells any security, grants or
4 : refuses to grant any proxy, consent or authorization, or accepts or
5 declines an invitation for tender of a security, as the case may be, for
6 the damages sustained by such other person as a result of such act or
7 transaction.

8 SEC. 55. *Civil Liability For Manipulation of Security Prices.* -

9 Any person who willfully participates in any act or transaction in
10 violation of Section 22 shall be liable to any person who shall purchase
11 or sell any security at a price which was affected by such act or
12 transaction, and the person so injured may sue to recover the damages
13 sustained as a result of such act or transaction.

14 SEC. 56. *Civil Liability With Respect to Commodity Futures*
15 *Contracts and Pre-need Plans.* -

16 56.1. Any person who engages in any act or transaction in willful
17 violation of any rule or regulation promulgated by the Commission
18 under Section 8 or 13, which the Commission denominates at the time
19 of issuance as intended to prohibit fraud in the offer and sale of pre-
20 need plans or to prohibit fraud, manipulation, fictitious transactions,
21 undue speculation, or other unfair or abusive practices with respect to
22 commodity future contracts, shall be liable to any other person
23 sustaining damage as a result of such act or transaction.

24 56.2. As to each such rule or regulation so denominated, the
25 Commission by rule shall prescribe the elements of proof required for

1 recovery and any limitations on the amount of damages that may be
2 imposed.

3 SEC. 57. *Civil Liability on Account of Insider Trading.* -

4 57.1. Any insider who violates Subsection 25.1 and any person
5 in the case of a tender offer who violates Subsection 25.4 (a)(i), or any
6 rule or regulation thereunder, by purchasing or selling a security while
7 in possession of material information not generally available to the
8 public, shall be liable in a suit brought by any investor who,
9 contemporaneously with the purchase or sale of securities that is the
10 subject of the violation, purchased or sold securities of the same class
11 unless such insider, or such person in the case of a tender offer, proves
12 that such investor knew the information or would have purchased or
13 sold at the same price regardless of disclosure of the information to him.

14 57.2. An insider who violates Subsection 25.3 or any person in
15 the case of a tender offer who violates Subsection 25.4 (a), or any rule
16 or regulation thereunder, by communicating material non-public
17 information, shall be jointly and severally liable under Subsection 57.1
18 with, and to the same extent as, the insider, or person in the case of
19 a tender offer, to whom the communication was directed and who is
20 liable under Subsection 57.1 by reason of his purchase or sale of a
21 security.

22 SEC. 58. *Limitation of Actions.* -

23 58.1. No action shall be maintained to enforce any liability
24 created under Sections 52 or 53 of this Act unless brought within two
25 (2) years after the discovery of the untrue statement or the omission,

1 or, if the action is to enforce a liability created under Subsection 53.1(a),
 2 unless brought within two (2) years after the violation upon which it
 3 is based. In no event shall any such action be brought to enforce a
 4 liability created under Section 52 or Subsection 53.1 (a) more than five
 5 (5) years after the security was *bona fide* offered to the public, or under
 6 Subsection 53.1 (b) more than five (5) years after the sale.

7 58.2. No action shall be maintained to enforce any liability created
 8 under any other provision of this Act unless brought within two (2)
 9 years after the discovery of the facts constituting the cause of action
 10 and within five (5) years after such cause of action accrued.

11 SEC. 59. *Jurisdiction of the Commission to Award Damages;*
 12 *Amount of Damages to be Awarded. -*

13 59.1. All suits to recover damages pursuant to Sections 52, 53, 54,
 14 55, 56 and 57 shall be brought before the Commission, which shall have
 15 exclusive jurisdiction to hear and decide such suits. The Commission
 16 is hereby authorized to award damages in an amount not exceeding
 17 double the amount of the transaction plus actual damages, except in
 18 the case of insider trading where the Commission may award damages
 19 in an amount not exceeding triple the amount of the transaction plus
 20 actual damages.

21 Exemplary damages may also be awarded in cases of bad faith,
 22 fraud, malevolence or wantonnes in the violation of this Act or the rules
 23 and regulations promulgated thereunder.

24 The Commission is also authorized to award attorney's fees not
 25 exceeding twenty percent (20%) of the award.

749

1 59.2. The persons specified in Sections 52, 53, 54, 55, 56 and 57
2 hereof shall be jointly and severally liable for the payment of damages.
3 However, any person who becomes liable for the payment of such
4 damages may recover contribution from any other person who, if sued
5 separately, would have been liable to make the same payment, unless
6 the former was guilty of fraudulent representation and the latter was
7 not.

8 59.3. Notwithstanding any provision of law to the contrary, all
9 persons, including the issuer, held liable under the provisions of
10 Sections 52, 53, 54, 55, 56 and 57 shall contribute equally to the total
11 liability adjudged herein. In no case shall the principal stockholders,
12 directors and other officers of the issuer or persons occupying similar
13 positions therein, recover their contribution to the liability from the
14 issuer. However, the right of the issuer to recover from the guilty
15 parties the amount it has contributed under this Section shall not be
16 prejudiced.

17 SEC. 60. *Cease and Desist Order.* -

18 60.1. The Commission, after proper investigation or verification,
19 *motu proprio*, or upon verified complaint by any aggrieved party, may
20 issue a cease and desist order without the necessity of a prior hearing
21 if in its judgment the act or practice, unless restrained, will operate as
22 a fraud on investors or is otherwise likely to cause grave or irreparable
23 injury or prejudice to the investing public.

24 60.2. Until the Commission issues a cease and desist order, the
25 fact that an investigation has been initiated or that a complaint has

1 been filed, including the contents of the complaint, shall be
2 confidential. Upon issuance of a cease and desist order, the
3 Commission shall make public such order and a copy thereof shall be
4 immediately furnished to each person subject to the order.

5 60.3. Any person against whom a cease and desist order was
6 issued may, within five (5) days from receipt of the order, file a formal
7 request for a lifting thereof. Said request shall be set for hearing by
8 the Commission not later than fifteen (15) days from its filing and the
9 resolution thereof shall be made not later than ten (10) days from the
10 termination of the hearing. If the Commission fails to resolve the
11 request within the time herein prescribed, the cease and desist order
12 shall automatically be lifted.

13 SEC. 61. *Substituted Service Upon the Commission.* - Service of
14 summons or other process shall be made upon the Commission in
15 actions or legal proceedings against an issuer or any person liable
16 under this Act who is not domiciled in the Philippines. Upon receipt by
17 the Commission of such summons, the Commission shall within ten (10)
18 days thereafter, transmit by registered mail a copy of such summons
19 and the complaint or other legal process to such issuer or person at his
20 last known address or principal office. The sending thereof by the
21 Commission, the expenses for which shall be advanced by the party at
22 whose instance it is made, shall complete such service.

23 SEC. 62. *Revelation of Information Filed with the*
24 *Commission.* -

25 62.1. All information filed with the Commission in compliance

1 with the requirements of this Act shall be made available to any member
2 of the general public, upon request, in the premises and during regular
3 office hours of the Commission, except as set forth in this Section.

4 62.2. Nothing in this Act shall be construed to require, or to
5 authorize the Commission to require, the revealing of trade secrets or
6 processes in any application, report, or document filed with the
7 Commission.

8 62.3. Any person filing any such application, report or document
9 may make written objection to the public disclosure of information
10 contained therein, stating the grounds for such objection, and the
11 Commission may hear objections as it deems necessary. The
12 Commission may, in such cases, make available to the public the
13 information contained in any such application, report, or document only
14 when a disclosure of such information is required in the public interest
15 or for the protection of investors; and copies of information so made
16 available may be furnished to any person having a legitimate interest
17 therein at such reasonable charge and under such reasonable
18 limitations as the Commission may prescribe.

19 62.4. It shall be unlawful for any member, officer, or employee of
20 the Commission to disclose to any person other than a member, officer
21 or employee of the Commission or to use for personal benefit, any
22 information contained in any application, report, or document filed with
23 the Commission which is not made available to the public pursuant to
24 Subsection 62.3.

25 62.5. Notwithstanding anything in Subsection 62.4. to the

752

1 contrary, on request from a foreign enforcement authority of any
2 country whose laws grant reciprocal assistance as herein provided, the
3 Commission may provide assistance in accordance with this
4 subsection, including the disclosure of any information filed with or
5 transmitted to the Commission, if the requesting authority states that
6 it is conducting an investigation which it deems necessary to determine
7 whether any person has violated, is violating, or is about to violate any
8 laws relating to securities or commodities matters that the requesting
9 authority administers or enforces. Such assistance may be provided
10 without regard to whether the facts stated in the request would also
11 constitute a violation of law of the Philippines.

12 SEC. 63. *Effect of Action of Commission and Unlawful*
13 *Representations with Respect Thereto. -*

14 63.1. No action or failure to act by the Commission in the
15 administration of this Act shall be construed to mean that the
16 Commission has in any way passed upon the merits of or given
17 approval to any security or any transaction or transactions therein, nor
18 shall such action or failure to act with regard to any statement or report
19 filed with or examined by the Commission pursuant to this Act or the
20 rules and regulations thereunder to be deemed a finding by the
21 Commission that such statements or report is true and accurate on its
22 face or that it is not false or misleading. It shall be unlawful to make,
23 or cause to be made, to any prospective purchaser or seller of a security
24 any representation that any such action or failure to act by the
25 Commission is to be so construed or has such effect.

1 63.2. Nothing contained in Subsection 63.1 shall, however, be
 2 construed as an exemption from liability of an employee or officer of the
 3 Commission for any nonfeasance, misfeasance or malfeasance in the
 4 discharge of his official duties.

5 SEC. 64. *Special Accounting Rules.* - The Commission shall
 6 have the authority to make, amend, and rescind such accounting rules
 7 and regulations as may be necessary to carry out the provisions of this
 8 Act, including rules and regulations governing registration statements
 9 and prospectuses for various classes of securities and issuers, and
 10 defining accounting, technical and trade terms used in this Act.
 11 Among other things, the Commission may prescribe the form or forms
 12 in which required information shall be set forth, the items or details to
 13 be shown in the balance sheet and income statement, and the methods
 14 to be followed in the preparation of accounts, appraisal or valuation of
 15 assets and liabilities, determination of depreciation and depletion,
 16 differentiation of recurring and non-recurring income, differentiation of
 17 investment and operating income, and in the preparation, where the
 18 Commission deems it necessary or desirable, of consolidated balance
 19 sheets or income accounts of any person directly or indirectly
 20 controlling or controlled by the issuer, or any person under direct or
 21 indirect common control with, the issuer.

22 SEC. 65. *Effect on Existing Law.* - The rights and remedies
 23 provided by this Act shall be in addition to any and all other rights and
 24 remedies that may now exist. However, except as provided in Section
 25 52 hereof, no person permitted to maintain a suit for damages under the

1 provisions of this Act shall recover, through satisfaction of judgment
 2 in one or more actions, a total amount in excess of his actual damages
 3 on account of the act complained of: *Provided*, That exemplary
 4 damages may be awarded in cases of bad faith, fraud, malevolence or
 5 wantonness in the violation of this Act or the rules and regulations
 6 promulgated thereunder.

7 SEC. 66. *Class Actions; Consolidation of Actions.* - The
 8 Commission may promulgate rules and regulations as may be necessary
 9 or appropriate in the public interest or for the protection of investors
 10 which will govern:

11 66.1. Class actions involving any violation of this Act or the rules
 12 promulgated by the Commission;

13 66.2. The consolidation of actions brought pursuant to this Act
 14 or rules promulgated by the Commission; and

15 66.3. The compensation of counsel in class actions.

16 SEC. 67. *Judicial Review of Commission Orders.* - Any person
 17 aggrieved by an order of the Commission may appeal the order to the
 18 Court of Appeals by petition for review in accordance with the
 19 pertinent provisions of the Rules of Court.

20 SEC. 68. *Validity of Contracts.* -

21 68.1. Any condition, stipulation, provision binding any person
 22 to waive compliance with any provision of this Act or of any rule or
 23 regulation thereunder, or of any rule of an Exchange required thereby,
 24 as well as the waiver itself, shall be void.

25 68.2. Every contract made in violation of any provision of this

711

1 Act or of any rule or regulation thereunder, and every contract,
2 including any contract for listing a security on an Exchange heretofore
3 or hereafter made, the performance of which involves the violation of,
4 or the continuance of any relationship or practice in violation of, any
5 provision of this Act, or any rule or regulation thereunder, shall be
6 void:

7 a) As regards the rights of any person who, in violation of any
8 such provision, rule or regulation, shall have made or engaged in the
9 performance of any such contract, and

10 b) As regards the rights of any person who, not being a party
11 to such contract, shall have acquired any right thereunder with actual
12 knowledge of the facts by reason of which the making or performance
13 of such contract was in violation of any such provision, rule or
14 regulation.

15 68.3 Nothing in this Act shall be construed:

16 a) To affect the validity of any loan or extension of credit made
17 or of any lien created prior or subsequent to the effectivity of this Act,
18 unless at the time of the making of such loan or extension of credit or
19 the creating of such lien, the person making such loan or extension of
20 credit or acquiring such lien shall have actual knowledge of the facts
21 by reason of which the making of such loan or extension of credit or
22 the acquisition of such lien is a violation of the provisions of this Act
23 or any rules or regulations thereunder; or

24 b) To afford a defense to the collection of any debt, obligation
25 or the enforcement of any lien by any person who shall have acquired

752

1 such debt, obligation or lien in good faith, for value and without actual
2 knowledge of the violation of any provision of this Act or any rule or
3 regulation thereunder affecting the legality of such debt, obligation or
4 : lien.

5 SEC. 69. *Rules and Regulations; Effectivity.* -

6 69.1. The Commission may issue, amend, and rescind such rules
7 and regulations and orders necessary or appropriate to effect the
8 provisions and purposes of this Act, including rules and regulations
9 defining accounting, technical, and trade terms used in this Act, and
10 prescribing the form or forms in which information required in
11 registration statements, applications, and reports to the Commission
12 shall be set forth. For purposes of its rules or regulations, the
13 Commission may classify persons, securities, and other matters within
14 its jurisdiction, prescribe different requirements for different classes of
15 persons, securities, or matters, and by rule or order, conditionally or
16 unconditionally exempt any person, security, or transaction, or class or
17 classes of persons, securities or transactions, from any or all provisions
18 of this Act.

19 69.2. The rules and regulations promulgated by the Commission
20 shall be published in two (2) newspapers of general circulation in the
21 Philippines, and unless otherwise prescribed by the Commission, the
22 same shall be effective fifteen (15) days after the date of the last
23 publication.

24 SEC. 70. *Penalties.* - Any person who violates any of the
25 provisions of this Act, or the rules and regulations promulgated by the

1 Commission under authority thereof, or any person who, in a
2 registration statement filed under this Act, makes any untrue statement
3 of a material fact or omits to state any material fact required to be stated
4 therein or necessary to make the statements therein not misleading,
5 shall, upon conviction, suffer a fine of not less than Fifty thousand
6 pesos (P50,000.00) nor more than Five million pesos (P5,000,000.00) or
7 imprisonment of not less than seven (7) years nor more than twenty-
8 one (21) years, or both in the discretion of the court. If the offender
9 is a corporation, partnership or association or other juridical entity, the
10 penalty may in the discretion of the court be imposed upon such
11 juridical entity and upon the officer or officers of the corporation,
12 partnership, association or entity responsible for the violation, and if
13 such officer is an alien, he shall in addition to the penalties prescribed,
14 be deported without further proceedings after service of sentence.

15 SEC. 71. *Transitory Provisions.* - The Commission, as organized
16 under existing laws, shall continue to exist and exercise its powers,
17 functions and duties under such laws and this Act: *Provided*, That
18 until otherwise mandated by a subsequent law, the Commission shall
19 continue to regulate and supervise commodity futures contracts as
20 provided in Section 8 and pre-need plans and the pre-need industry
21 as provided in Section 13 of this Act.

22 All further requirements herein shall be complied with upon
23 approval of this Act: *Provided, however*, That compliance may be
24 deferred for such reasonable time as the Commission may determine but
25 not to exceed one (1) year from approval of this Act: *Provided, further*,

738

1 That securities which are being offered at the time of effectivity of this
2 Act pursuant to an effective registration and permit, may continue to
3 be offered and sold in accordance with the provisions of the Revised
4 Securities Act in effect immediately prior to approval of this Act:
5 *Provided, furthermore,* That the Chairman and Associate
6 Commissioners appointed pursuant to Section 2 of P.D. 902-A, as
7 amended, and serving in such positions on the effective date of
8 approval of this Act, shall thereupon assume and for the remaining
9 unexpired term of such positions serve in the capacities of
10 Commissioners under Section 4 hereof, and the Chairman appointed
11 under Section 2 of P.D. 902-A, as amended, and so serving on such
12 effective date shall also thereupon assume and serve as Chairman
13 pursuant to Section 4 hereof.

14 SEC. 72. *Repealing Clause.* - The Revised Securities Act (Batas
15 Pambansa Blg. 178), as amended, in its entirety, and Sections 2 and 4
16 of Presidential Decree 902-A as amended, are hereby repealed. All other
17 laws, orders, rules and regulations, or parts thereof, inconsistent with
18 any provision of this Act are hereby repealed or modified accordingly.

19 SEC. 73. *Separability Clause.* - If any portion or provision of
20 this Act is declared unconstitutional or invalid, the other portions or
21 provisions hereof, which are not affected thereby shall continue in full
22 force and effect.

23 SEC. 74. *Effectivity.* - This Act shall take effect fifteen (15) days
24 after its publication in the *Official Gazette* or in two (2) newspapers of
25 general circulation.

Approved,

759

SCHEDULE A

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(1) Name of issuer and, if incorporated, place of incorporation.

(2) The location of the issuer's principal business office, and if such issuer is a non-resident or its place of office is outside of the Philippines, the name and address of its agent in the Philippines authorized to receive notice.

(3) The names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers and other principal executive officers, chosen or to be chosen, if the issuer be a corporation, association, trust or other entity; of all the partners, managing agents, trustees or other persons performing similar functions, if the issuer be a partnership, trust, unincorporated association or similar entity; and of the issuer, if the issuer be an individual; and also of the promoters in the case of a business to be formed.

(4) The names and addresses of the underwriters.

(5) The general character of the business actually transacted or to be transacted by, and the organization and financial structure of, the issuer including identities of all companies controlling, controlled by or commonly controlled with the issuer.

(6) The names and addresses of all persons, if any, owning of record or beneficially, if known, more than five *per centum* (5%) in the aggregate of the outstanding stock of the issuer, or in excess of such lesser *per centum* the Commission by rule may prescribe, as of a date within twenty (20) days prior to the filing of the registration

1 statement.

2 (7) The amount of securities of the issuer held by any person
3 specified in subparagraph (3), (4) and (6) of this schedule, as of a date
4 within twenty (20) days prior to the filing of the registration statement,
5 and the amount of the securities, for which the registration statement
6 is filed, to which such persons have indicated their intention to
7 subscribe.

8 (8) A statement of the capitalization of the issuer and of all
9 companies controlling, controlled by or commonly controlled with the
10 issuer, including the authorized and outstanding amounts of its capital
11 stock and the proportion thereof paid up; the number and classes of
12 shares in which such capital stock is divided; par value thereof, or if
13 it has no par value, the stated or assigned value thereof; a description
14 of the respective voting rights, preferences, conversion and Exchange
15 rights, rights to dividends, profits, or capital of each class, with respect
16 to each other class, including the retirement and liquidation rights or
17 values thereof.

18 (9) A specimen certificate, if applicable, of the security to be
19 offered.

20 (10) A copy of any circular, prospectus, advertisement, letter, or
21 other communication to be used for the public offering of the
22 security.

23 (11) A statement of the securities, if any, covered by
24 options outstanding or to be created in connection with the
25 security to be offered, together with the names and addresses of all

761

1 persons, if any, to be allotted more than five *per centum* (5%) in
2 the aggregate of such options, or in excess of such lesser *per*
3 *centum* the Commission by rule may prescribe.

4 (12) The amount of capital stock of each class issued or
5 included in the shares of stock to be offered.

6 (13) The amount of the funded indebtedness outstanding and
7 to be created by the security to be offered, with a brief statement
8 of the date, maturity, and character of such debt, rate of interest,
9 character or amortization provisions, other terms and conditions thereof
10 and the security, if any, therefor. If substitution of any security is
11 permissible, a summarized statement of the conditions under which
12 such substitution is permitted. If substitution is permissible without
13 notice, a specific statement to that effect.

14 (14) The specific purposes in detail and the approximate amounts
15 to be devoted to such purposes, so far as determinable, for which the
16 security to be offered is to supply funds, and if the funds are to be
17 raised in part from other sources, the amounts and the sources thereof.

18 (15) The remuneration paid, or estimated to be paid, by the issuer
19 or its predecessor, directly or indirectly, during the past year and the
20 ensuing year to (a) the directors or persons performing similar
21 functions, and (b) its officers or such other persons, naming each of
22 them whose remuneration exceeded during any such year such amount
23 as the Commission by rule may prescribe.

24 (16) The amount of issue of the security to be offered.

25 (17) The estimated net proceeds to be derived from the security

1 to be offered.

2 (18) The price at which the security is proposed to be offered to
3 the public or the method by which such price is computed and any
4 variation therefrom at which any portion of such security is proposed
5 to be offered to persons or classes of persons, other than the
6 underwriters, naming them or specifying the class. A variation in price
7 may be proposed prior to the date of the public offering of the security
8 by filing an amended registration statement.

9 (19) All commissions or discounts paid or to be paid, directly or
10 indirectly, by the issuer to the underwriters in respect of the sale of the
11 security to be offered. Commissions shall include all cash, securities,
12 contracts, or anything of value, paid, to be set aside, or disposed of,
13 or understandings with or for the benefit of any other person in which
14 any underwriter is interested, made in connection with the sale of such
15 security. A commission paid or to be paid in connection with the sale
16 of such security by a person in which the issuer has an interest or
17 which is controlled by, or under common control with, the issuer shall
18 be deemed to have been paid by the issuer. Where any such
19 commission is paid, the amount of such commission paid to each
20 underwriter shall be stated.

21 (20) The amount or estimated amounts, itemized in reasonable
22 detail, of expenses, other than commission specified in the next
23 preceding paragraph, incurred or to be incurred by or for the account
24 of the issuer in connection with the sale of the security to be offered
25 or properly chargeable thereto, including legal, engineering,

1 certification, authentication, and other charges.

2 (21) The net proceeds derived from any security sold by the
3 issuer during the two (2) years preceding the filing of the registration
4 statement, the price at which such security was offered to the public
5 or sold in any exempt transaction under Section 7 hereof, and the names
6 of the principal underwriters of such security if any.

7 (22) Any amount paid within two (2) years preceding the filing
8 of the registration statement or intended to be paid to any promoter and
9 the consideration for any such payment.

10 (23) The names and addresses of the vendors and the purchase
11 price of any property or goodwill, acquired or to be acquired, not in the
12 ordinary course of business, which is to be defrayed in whole or in part
13 from the proceeds of the security to be offered, the amount of any
14 commission payable to any person in connection with such acquisition,
15 and the name or names of such person or persons, together with any
16 expense incurred or to be incurred in connection with such acquisition,
17 including the cost of borrowing money to finance such acquisition.

18 (24) Full particulars of the nature and extent of the interest, if any,
19 of every director, principal executive officer, and of every stockholder
20 holding more than five *per centum* (5%) in the aggregate of the stock
21 of the issuer, or in excess of such other lesser *per centum* the
22 Commission by rule may prescribe, in any property acquired, not in the
23 ordinary course of business of the issuer, within two (2) years
24 preceding the filing of the registration statement or proposed to be
25 acquired at such date.

764

1 (25) The names and addresses of independent counsels who
2 have passed on the legality of the issue.

3 (26) Dates of and parties to, and the general effect concisely
4 stated of every material contract made, not in the ordinary course of
5 business, which contract is to be executed in whole or in part at or after
6 the filing of the registration statement or which has been executed not
7 more than two (2) years before such filing. Any management contract
8 or contracts providing for special bonuses or profit-sharing
9 arrangements, and every material patent or contract for a material patent
10 right, and every contract by or with a public utility company or an
11 affiliate thereof, providing for the giving or receiving of technical or
12 financial advice or service shall be deemed a material contract.

13 Any contract, whether or not made in the ordinary course of
14 business with any director or officer, or any stockholder, whether a
15 natural or juridical person, owning more than five *per centum* (5%) of
16 the shares of the issuer, or in excess of such lesser per centum as the
17 Commission by rule may prescribe, involving in excess of an amount
18 prescribed by the Commission, shall be deemed a material contract for
19 the purpose of this subparagraph.

20 (27) A balance sheet as of a date not more than ninety (90) days
21 prior to the date of the filing of the registration statement showing all
22 of the assets of the issuer, the nature and cost thereof, whenever
23 determinable with intangible items segregated, including any loan to or
24 from any officer, director, stockholder or person directly or indirectly
25 controlling or controlled by the issuer, or person under direct or indirect

1 common control with the issuer. In the event any such assets consist
 2 of shares of stock in other companies, the balance sheet and profit and
 3 loss statements of such companies for the past three (3) years shall
 4 likewise be enclosed. All the liabilities of the issuer, including surplus
 5 of the issuer, showing how and from what sources such surplus was
 6 created, all as of date not more than ninety (90) days prior to the filing
 7 of the registration statement. If such statement is not certified by an
 8 independent certified public accountant, in addition to the balance
 9 sheet required to be submitted under this schedule, a similar detailed
 10 balance sheet of the assets and liabilities of the issuer, certified by an
 11 independent certified public accountant, of a date not more than one
 12 year prior to the filing of the registration statement, shall be submitted.

13 (28) A profit and loss statement of the issuer showing earnings
 14 and income, the nature and source thereof, and the expenses and fixed
 15 charges in such detail and such form as the Commission shall prescribe
 16 for the latest fiscal year for which such statement is available and for
 17 the two (2) preceding fiscal years, year by year, or, if such issuer has
 18 been in actual business for less than three (3) years, then for such time
 19 as the issuer has been in actual business, year by year. If the date of
 20 the filing of the registration statement is more than six (6) months after
 21 the close of the last fiscal year, a statement from such closing date to
 22 the latest practicable date. Such statement shall show what the practice
 23 of the issuer has been during the three (3) years or less period as to
 24 the character of the charges, dividends or other distributions made
 25 against its various surplus accounts, and as to depreciation, depletion,

766

1 and maintenance charges, and if stock dividends or avails from the sale
2 of rights have credited to income, they shall be shown separately with
3 statement of the basis upon which credit is computed. Such statement
4 shall also differentiate between recurring and non recurring income and
5 between any investment and operating income. Such statement shall
6 be certified by an independent certified public accountant.

7 (29) Any liabilities of the issuer to companies controlling or
8 controlled by the issuer shall be disclosed in full detail as to use of the
9 proceeds thereof, the maturity and repayment schedule, nature of
10 security thereof, the rate of interest and other terms and conditions
11 thereof. If the proceeds, or any part of the proceeds, of the security
12 to be issued is to be applied directly or indirectly to the purchase of
13 any business, a profit and loss statement of such business, certified by
14 an independent certified public accountant, meeting the requirements of
15 subparagraph (28) hereof, for the three preceding fiscal years, together
16 with a balance sheet, similarly certified, of such business, meeting the
17 requirements of subparagraph (27) hereof of a date not more than
18 ninety (90) days prior to the filing of the registration statement or at the
19 date such business was acquired by the issuer more than ninety (90)
20 days prior to the filing of the registration statement.

21 (30) A copy of any agreement or agreements or, if identical
22 agreements are used, the forms thereof made with any underwriter,
23 including all contracts and agreements referred to in subparagraph 19
24 hereof.

25 (31) A copy of the opinion or opinions of independent counsel

1 in respect to the legality of the issue.

2 (32) A copy of all material contracts referred to in subparagraph
3 26 hereof, but no disclosure shall be required by the Commission of any
4 portion of any such contract if the disclosure of such portion would
5 impair the value of the contract and would not be necessary for the
6 protection of the investors.

7 (33) A detailed statement showing the items of cash, property,
8 services, patents, goodwill, and any other consideration for which
9 securities have been or are to be issued in payment.

10 (34) The amount of cash to be paid as promotion fees, or of
11 capital stock which is to be set aside and disposed of as promotion
12 stock, and a statement of all stock issued from time to time as promotion
13 stock.

14 (35) In connection with securities issued by a person engaged in
15 the business of developing, exploiting or operating mineral claims, a
16 sworn statement of a mining engineer stating the ore possibilities of the
17 mine and such other information in connection therewith as will show
18 the quality of the ore in such claims, and the unit cost of extracting it.

19 (36) Unless previously filed and registered with the Commission
20 and brought up to date:

21 (a) A copy of its articles of incorporation with all amendments
22 thereof and its existing by-laws or instruments corresponding thereto,
23 whatever the name, if the issuer be a corporation;

24 (b) A copy of all instruments by which the trust is created or
25 declared and in which it is accepted and acknowledged, if the issuer is

1 a trust;

2 (c) A copy of its articles of partnership or association and all the
3 papers pertaining to its organization, if the issuer is a partnership,
4 unincorporated association, joint-stock company, syndicate, or any
5 other form of organization.

6 (37) A copy of the underlying agreements or indentures affecting
7 any stock, bonds, or debentures offered or to be offered by the issuer
8 and outstanding on the part of companies controlling or controlled by
9 the issuer.

10 (38) Where the issuer or registrant is not formed, organized and
11 existing under the laws of the Philippines or is not domiciled in the
12 Philippines, a written power of attorney, certified and authenticated in
13 accordance with laws, designating some individual person, who must
14 be a resident of the Philippines, on whom any summons and other legal
15 processes may be served in all actions or other legal proceedings
16 against him, and consenting that service upon such resident agent shall
17 be admitted as valid and proper service upon the issuer or registrant,
18 and if at anytime that service cannot be made upon such resident agent,
19 services shall be made upon the Commission.

20 (39) For each promoter, director, chosen or to be chosen, principal
21 executive officer, partner, managing agent or other person performing
22 similar functions, and for each underwriter and each director and
23 principal executive officer of such underwriter, a description of the
24 following events (whether or not occurring in the Philippines) insofar
25 as they are material to an evaluation of the ability or integrity of such

7/29

1 person:

2 (a) the filing of a petition for, or a judicial declaration of
3 insolvency or bankruptcy with respect to any business with which
4 such person was associated, or a judicial declaration that such person
5 is a spendthrift or incapacitated to contract.

6 (b) the conviction of such person, whether after trial, upon plea
7 of guilty or similar plea, or the pendency of a pending criminal
8 proceeding against such person (excluding traffic and other minor
9 offenses).

10 (c) The issuance of a judicial or administrative order, judgment or
11 decree, not subsequently reversed, suspended or vacated, prohibiting
12 or limiting the involvement of such person in any type of securities,
13 commodities, banking, real estate, insurance or other business
14 activities, or enjoining or sanctioning such person for violations of
15 applicable law in connection with such activities.

16 (d) the judicial or administrative finding in a civil proceeding,
17 whether after hearing or upon consent, that such person has violated
18 securities, commodities, banking, real estate or insurance laws, or has
19 engaged in fraud, embezzlement, theft, or estafa.

20 (40) A statement of risk factors associated with the business of
21 the issuer and with investing in the securities to be offered by the
22 registration statement.

770

1 person:

2 (a) the filing of a petition for, or a judicial declaration of
3 insolvency or bankruptcy with respect to any business with which
4 such person was associated, or a judicial declaration that such person
5 is a spendthrift or incapacitated to contract.

6 (b) the conviction of such person, whether after trial, upon plea
7 of guilty or similar plea, or the pendency of a pending criminal
8 proceeding against such person (excluding traffic and other minor
9 offenses).

10 (c) The issuance of a judicial or administrative order, judgment or
11 decree, not subsequently reversed, suspended or vacated, prohibiting
12 or limiting the involvement of such person in any type of securities,
13 commodities, banking, real estate, insurance or other business
14 activities, or enjoining or sanctioning such person for violations of
15 applicable law in connection with such activities.

16 (d) the judicial or administrative finding in a civil proceeding,
17 whether after hearing or upon consent, that such person has violated
18 securities, commodities, banking, real estate or insurance laws, or has
19 engaged in fraud, embezzlement, theft, or estafa.

20 (40) A statement of risk factors associated with the business of
21 the issuer and with investing in the securities to be offered by the
22 registration statement.