

Deadline extended on public-float level

LISTED companies whose public float fall below the mandatory 10-percent minimum public-ownership (MPO) level may breathe a sigh of relief; the Securities and Exchange Commission (SEC) has just approved the latest amendments proposed by the Philippine Stock Exchange Inc. (PSE) to the PSE Rule on Minimum Public Ownership (the "Amended MPO Rule"); which took effect on January 1, 2012. Pursuant to the MPO Rule—both the old and the new—a listed company's securities, which are held by the public must comprise at least 10 percent of its total issued and outstanding shares, treasury shares excluded.

Under the old MPO rule, which was only reinstated on November 30, 2010, listed companies were allowed a 12-month grace period which expired on November 30, 2011, within which to reach the minimum MPO limit, and after which noncompliance should have merited the imposition of additional annual listing maintenance fees (ALMF), the amount depending on the percentage shortfall in the public float and the duration of non-compliance. Additionally, continued noncompliance for 36 months after the supposed grace period should have warranted compulsory trading suspensions, followed by delisting procedures. Thus, theoretically, under the old MPO rule, tightly held listed companies which are non-compliant by 2012 could already be charged ALMF by the PSE.

However, fortunately for the noncompliant listed companies, the Amended MPO Rule, which became effective on January 1, 2012, grants a fresh grace period to comply with the minimum MPO level, which period shall not go beyond December 31, 2012, unless otherwise extended for meritorious reasons. Thus, listed companies not compliant as of January 1, 2012, or those whose public ownership level subsequently falls below the 10-percent minimum, have until the end of this year to transfer enough of their shares to the public to be deemed to comply with the Amended MPO Rule and to escape the penalties attendant to the failure to comply.

While a second chance may have



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been granted by the Amended MPO Rule to noncompliant listed companies in the form of the fresh grace period, it might also prove to be their last. The Amended MPO Rule provides for a more stringent penalty for noncompliance after the grace period—a mandatory imposition of a six-month trading suspension, followed by automatic delisting against the securities of the companies that continue to fail to comply. And once a company is delisted in accordance with the provisions of the Amended MPO Rule, it may not relist its securities until after the lapse of five years.

The Amended MPO Rule grants a certain leeway in favor of listed companies that become noncompliant subsequent to January 1, 2012, but prior to December 31, 2012, and those which become noncompliant on or after January 1, 2013, by allowing the former to apply with the PSE for an extension of the grace period beyond December 31, 2012, and by allowing the latter to apply for a grace period, prior to the application of the mandatory trading suspension. The PSE,

in turn, may recommend to the SEC the approval of the extension or the granting of the grace period, as the case may be, if it should determine that the failure to comply with the minimum MPO level is due to justifiable causes (e.g., tender offer, merger and acquisition transaction) and that the company has a concrete program

to restore its public ownership level to the required percentage.

Meanwhile, the Bureau of Internal Revenue (BIR) reportedly plans to impose capital-gains tax, instead of stock-transaction tax, on stock sales made by listed companies whose public ownership level falls below the minimum 10 percent starting January 1, 2012. The plan supposedly met with strong opposition from the PSE, which maintains that capital-gains tax should only be imposed against sales of shares of such companies once they are delisted.

As far as the law is concerned, the National Internal Revenue Code of 1997, as amended, provides that sales of shares listed and traded through the local stock exchange shall be subject to a stock transaction of one-half of 1 percent of the gross selling price. On the other hand, sales of shares not traded through the stock exchange shall be subject to capital-gains tax of 5 percent or 10 percent on the net capital gains realized therefrom.

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