


THIRTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
First Regular Session)

'04 JUN 30 P10:32

SENATE
S.B. No. 1195

RECEIVED BY: 

Introduced by Senator Magsaysay, Jr.

EXPLANATORY NOTE

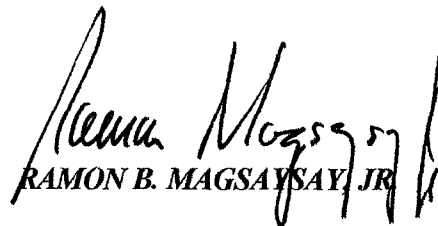
This bill seeks to amend some pertinent provisions of Republic Act No. 8791, otherwise known as the Securities Regulation Code, by updating them and allow these statutory policies to adopt with competitive market structure.

Among the salient provisions of this legislation are as follows:

1. The increasing of the threshold level to trigger a mandatory tender:
 - 35% - if acquired through a privately negotiated transaction, a mandatory tender offer to all stockholder shall be required and when the acquisition is *not through private negotiation*, a *pro-rata* tender is required instead;
 - 50% - mandatory tender to all stockholders; and
 - 67% - for those who already own 50% or more, a mandatory tender offer to all stockholders.
2. The amendment of the provision on the broker-director prohibition. This prohibition was included to address the widespread affiliations and interlocking directors and officers between brokerage firms and listed companies which resulted to opportunities for insider trading. As it is recognized that while the prohibition may be labelled as unduly restrictive, it is proposed that a disclosure approach to regulation by the Securities and Exchange Commission be ordained instead.
3. The provision on listing in different exchanges. Under the bill, it is specifically mentioned that as a policy, any securities registered with the Commission and approved for listing in an Exchange shall not be deemed automatically listed in any other exchange.

The other amendatory provisions are all geared towards protection the interests of people involved in risks business and securities as a whole and at the same time, making it administratively feasible to effectively implement.

Early approval of this bill is earnestly sought.


RAMON B. MAGSAYSAY, JR.

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AN ACT
AMENDING REPUBLIC ACT NUMBERED EIGHT THOUSAND SEVEN
HUNDRED NINETY ONE (RA 8791), OTHERWISE KNOWN AS THE
SECURITIES REGULATION CODE

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

SECTION 1. Subsections 19.1(a) and 19(d) of Republic Act 8791, otherwise known as the Securities Regulation Code is hereby amended to read as follows:

"19.1(a) - Any person or group of persons acting in concert who intends to acquire, AT ANY ONE TIME OR WITHIN A CONSECUTIVE PERIOD OF TWELVE MONTHS OR LESS, at least [fifteen percent (15%)] THIRTY-FIVE PERCENT (35%) OF THE VOTING RIGHTS of any class of any equity security of a listed corporation or of any class of any equity security of a corporation with assets of at least Fifty million pesos (P50,000,000.00) and having two hundred (200) or more stockholders with at least one hundred (100) shares each [or intends to acquire at least thirty percent (30%) of such equity over a load a period of twelve (12) months] shall make A PRO RATA tender offer to ALL stockholders by filing with the Commission a declaration to that effect. HOWEVER, IF THE ACQUISITION IS THROUGH A PRIVATELY NEGOTIATED TRANSACTION OR TRANSACTIONS, SUCH PERSON OR GROUP OF PERSONS SHALL EXECUTE A TENDER OFFER TO ALL STOCKHOLDERS FOR THE REMAINDER OF THE VOTING RIGHTS OF THE SUBJECT CORPORATION IN ACCORDANCE WITH THE RULES THAT THE COMMISSION SHALL PRESCRIBE.

ANY ACQUISITION THAT RESULT ANY ACQUISITION THAT RESULTS IN THE BENEFICIAL OWNERSHIP BY ANY PERSON OR GROUP OF PERSONS OF FIFTY PERCENT (50%) OR MORE OF THE VOTING RIGHTS OF A SUBJECT CORPORATION OR IF THEY ALREADY OWN 50% OR MORE, ANY ACQUISITION THAT RESULTS IN THE BENEFICIAL OWNERSHIP OF SIXTY-SEVEN PERCENT (67%) OR MORE OF THE VOTING RIGHTS THEREOF SHALL BE EXECUTED PURSUANT TO A TENDER OFFER TO ALL STOCKHOLDERS FOR THE REMAINDER OF THE VOTING RIGHTS OF SUCH CORPORATION IN ACCORDANCE WITH RULES THAT THE COMMISSION SHALL PRESCRIBE. Such person or group of persons making a tender offer shall file with the Commission a declaration to that effect; and furnish the issuer, a statement containing such [of the] information required in [Section 17] SECTIONS 18 AND 23 of this Code as the

Commission may prescribe. Such person or group of persons shall publish all requests or invitations for tender, or materials making a tender offer or requesting or inviting letters of such a security. Copies of any additional material soliciting or requesting such tender offers subsequent to the initial solicitation or request shall contain such information as the Commission may prescribe, and shall be filed with the Commission and sent to the issuer no later than the time copies of such materials are first published or sent or given to security holders.

SEC. 2. - Section 21 and subsections 21.1 and 21.2 of the same Code are hereby amended to read as follows:

21 - Fees for Tender Offers, Repurchases and Certain Proxy Solicitation - At the time of filing with the Commission of any statement required under Section 19 for any tender offer or Section 72.2 for issuer repurchases, [or Section 20 for proxy or consent solicitation,] the Commission may require that the person making such filing pay a fee of not more than one-tenth (1/10) of one *percentum* (1%) of **THE PROPOSED AGGREGATE PURCHASE PRICE IN THE CASE OF A TRANSACTION UNDER SECTIONS 19 OR 72.2. THE COMMISSION SHALL PRESCRIBE BY RULE DIMINISHING FEES IN INVERSE PROPORTION TO THE VALUE OF THE AGGREGATE PRICE OF THE OFFERING.**

THE COMMISSION SHALL SET THE FEES FOR SOLICITATION OF PROXIES.

21.1 - [The proposed aggregate purchase price in the case of a transaction under Sections 20 or 72.2; Or]

21.2 - [The proposed payment in cash, and the value of any securities or property to be transferred in the acquisition, merger or consolidation, or the cash and value of any securities proposed to be received upon the sale or disposition of such assets in the case of a solicitation under Section 20. The Commission shall prescribe by rule diminishing fees in inverse proportion to the value of aggregate price of the offering.]

SEC. 3. - Section 24 of the same Code is hereby amended to read as follows:

24.1 - It shall be unlawful for any person acting for himself or through a dealer or broker, directly or indirectly:

SEC. 4. Section 30.1. of the same Code is hereby amended to read as follows:

30.1. - EXCEPT IN ACCORDANCE WITH RULES PRESCRIBED BY THE COMMISSION REQUIRING STOCKHOLDERS, DIRECTORS, ASSOCIATED PERSONS, SALESMEN AND CLERKS OR A BROKER OR DEALER TO DISCLOSE ANY AFFILIATION WITH LISTED ISSUERS PRIOR TO ENGAGING IN ANY SECURITIES TRANSACTIONS THEREIN AND TO DISCLOSE ANY SUCH TRANSACTION THEREIN NO LATER THAN FIVE DAYS AFTER THE EXECUTION THEREOF, no broker or dealer shall deal in or otherwise buy or sell, DIRECTLY OR INDIRECTLY, for its own account or for the account of customers, securities listed on an

Exchange issued by any corporation where any stockholder, director, associated person of said broker or dealer [and tall the relatives of the foregoing within the fourth civil degree of consanguinity or affinity,] is at the time holding office in said issuer corporation as a director, president, vice-president, manager, treasurer, comptroller, secretary or any office of trust and responsibility, or is a controlling person of the issuer.

SEC. 5. - Subsection 34.1 of the same Code is hereby repealed and Subsection 34.2 and 34.3 are hereby renumbered as Subsection 34.1 and Subsection 34.2, respectively.

SEC. 6. - Section 36.3 of the same Code is hereby amended to read as follows:

36.3 - In addition to the existing Philippine Stock Exchange, the Commission shall have the authority to determine the number, size and location of stock Exchange, other trading markets and commodity, Exchanges and other similar organizations in the light of national or regional requirements for such activities with the view to promote, enhance, protect, conserve or rationalize investment; **PROVIDED, THAT ANY SECURITIES REGISTERED WITH THE COMMISSION AND APPROVED FOR LISTING IN AN EXCHANGE SHALL NOT BE DEEMED AUTOMATICALLY LISTED IN ANY OTHER EXCHANGE.**

SEC. 7. - Section 42.1 of the same Code is hereby amended to read as follows:

42.1 - Any clearing agency may be registered as such with the Commission under the terms and conditions hereinafter provided in this Section, by filing an application for registration in such form and containing such information and supporting documents as the Commission by rule shall prescribe, including the following:

x x x

b. The organizational charts of the [Exchange] **CLEARING AGENCY**, its rules of procedure, and a list of its officers and participants;

x x x

42.2 - Section [32] **40** of this Code shall apply to every registered clearing agency.

SEC. 8. - Section 54 of the same Code are hereby amended to read as follows:

54. Administrative Sanction - 54.1. If, after due notice and hearing, the Commission finds that : xxx it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

x x x

- (iv) In the case of a violation of Section [34] 17, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication prescribed by such Section; and

SEC. 9. - Subsection 72.3 of the same Code is hereby amended to read as follows:

72.3 For the purpose of Subsection 72.2, a purchase by or for the issuer or any person controlling, controlled by, or under common control with the issuer, or a purchase subject to the control of the issuer or any such person, shall be deemed to be a [purchased] **PURCHASE** by the issuer. The Commission shall have the power to make rules and regulations implementing this subsection, including exemptive rules and regulations covering situations in which the Commission deems it unnecessary or inappropriate that a purchase of the type described in this subsection shall be deemed to be a purchase by the issuer for the purpose of some or all of the provisions of Subsection 72.2

SEC. 10. - Any provisions of existing law, decree, order, rules and regulations inconsistent with this Decree, are hereby repealed, amended or modified accordingly. **PD 167 (April 2, 1973) PROVIDING FOR THE AUTOMATIC LISTING OF SECURITIES ON ALL EXCHANGES IS HEREBY EXPRESSLY REPEALED.**

SEC. 11. - Effectively. This Act shall take effect fifteen (15) days after its complete publication in at least two (2) national newspapers of general circulation.

Approved,