



MEMORANDUM – 2020-005

TO : THE INVESTING PUBLIC AND THE TRADING PARTICIPANTS

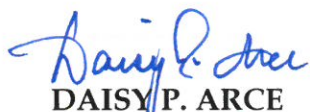
SUBJECT : APPROVAL AND EFFECTIVITY OF THE IMPLEMENTING GUIDELINES
ON SECURITIES BORROWING AND LENDING AND SHORT SELLING

DATE : 10 February 2020

The Securities and Exchange Commission ("SEC") approved the *Implementing Guidelines on Securities Borrowing and Lending ("SBL") and Short Selling* that had been proposed by the Capital Markets Integrity Corporation ("CMIC").

The implementing guidelines shall take effect fifteen (15) calendar days after publication on the CMIC website or on 25 February 2020.

For your perusal, attached is a copy of the said implementing guidelines, signed by representatives of SEC and CMIC.


DAISY P. ARCE
President

			
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CAPITAL MARKETS INTEGRITY CORPORATION
PROFESSIONALISM. INTEGRITY. TEAMWORK. COURAGE. HONESTY AND FAIRNESS

IMPLEMENTING GUIDELINES ON
SECURITIES BORROWING AND LENDING ("SBL")
AND SHORT SELLING

I. GENERAL GUIDELINES

1. Short sale transactions shall only be limited to "eligible securities", which shall refer to securities of listed companies in the PSEi and exchange traded funds. Short selling of non-eligible securities is strictly prohibited.
2. Upon receiving an order to sell short, the order should be indicated on the selling order and throughout all the records pertinent to the sale.
3. Short sale transactions shall be distinguished from selling error transactions. Short sale transactions shall be recorded directly on the account ledger of the customer while selling error transactions shall be recorded in the TP's error account.
4. TPs shall ascertain that the parties have entered into the necessary borrowing arrangements prior to entering a short sale transaction, specifically:
 - a. A TP who lends securities of one client to another client must be registered with the Securities and Exchange Commission ("SEC") and have a Securities Lending Authorization Agreement ("SLAA") in place;
 - b. TPs who are lending and borrowing shares with their counterparties should have a Master Securities Lending Agreement ("MSLA"); and
5. Naked short selling is not allowed. Customers are required to execute a notarized undertaking prior to entering a short sale specifying, among others, that the customers understand the securities laws, rules, and guidelines related to short selling, including the prohibition against naked short selling. Refer to Annex "B" for the suggested Affidavit of Undertaking.
6. Regulation of short sale transactions shall be governed by the pertinent securities laws, including, but not limited to the CMIC Rules, these Implementing Guidelines, and other applicable rules.

II. GUIDELINES ON FAIR PRESENTATION AND REPORTING

1. The lending of securities shall be recorded in the following manner:
 - 1.1. For borrowing shares:
 - 1.1.1. Stock credit memo for the entry of securities for the borrower.
 - 1.1.2. Stock debit memo for securities of the lender.
 - 1.2. For the return of the shares:
 - 1.2.1. Stock debit memo for the entry of securities for the borrower.
 - 1.2.2. Stock credit memo for the securities of the lender.
2. As necessary borrowing arrangements shall be made prior to entering a short selling order, the mere presentation of authorization letters from lending clients shall not be sufficient to prove compliance with the rules on short selling.
3. Short selling orders must be clearly noted as "short" in the order tickets and confirmation invoices issued by the TP to the client.
4. The TP, through its account with the Philippine Depository and Trust Corporation ("PDTC"), shall indicate whether a transfer of shares to another depository participant is for the purpose of short selling through express comments in the depository system, as shown below:

PDTC Customized Off Exchange Trade Window

Home Create Correct Check Query Reports Help Buttons Logout

Create >> Off Exchange >> Trade

TRADE

Instituting Party: PDTC
Seller BP ID: PDTC
Buyer BP ID: PDTC
Trade Date: 01/10/2017
Security ID: PNT
CBO:
Trade Price:
Remarks:
EQTRADE 2 Settlement Amount For The Account Of: Buy
Settlement Type: DFP
Seller Ac No.:
Buyer Ac No.:
Settlement Date: 01/10/2017
Trade Quantity:
Hold/Release: Released
Settlement Amount:
Comment:
Release Clear Back

SBL Borrow - Short Selling
SBL Borrow - Settlement Purpose
SBL Return - Short Selling
SBL Return - Settlement Purpose

Note: If the transfer is within the same omnibus account in the depository, the TPs shall submit a Daily Depository Participants Report for SBL transactions to the Philippine Stock Exchange.

5. Impact on Risk Based Capital Adequacy (RBCA) Requirement

ACCOUNTS AFFECTED	IMPACT ON RBCA
a. CASH	ELIGIBLE ASSET INCREASE IN NLC ¹
b. TRADING ACCOUNT SECURITIES ("TAS") /OTHER LONG-TERM INVESTMENTS ("OLTI") <i>Depending on the classification of securities borrowed or lent, corresponding debit or credit on these accounts is to be recorded.</i>	ELIGIBLE ASSET INCREASE IN NLC INCREASE IN PRR ² (if classified as TAS)
c. RECEIVABLE FOR SECURITIES BORROWED <i>For lender: in the delivery (debit) and return (credit) of lent shares to the borrower.</i>	ELIGIBLE ASSET INCREASE IN NLC INCREASE IN CRR ³
d. PAYABLE FOR SECURITIES LOANED <i>For borrower: in the delivery (credit) and return (debit) of borrowed shares from the lender</i>	NO EFFECT IN AI/NLC ⁴
e. RECEIVABLE FOR SECURITIES FAILED TO DELIVER <i>For borrower: in the delivery (debit) and return (credit) of collateral to the lender.</i>	ELIGIBLE ASSET INCREASE IN NLC INCREASE IN CRR
f. PAYABLE FOR SECURITIES FAILED TO RECEIVE <i>For lender: in the delivery (credit) and return (debit) of collateral from the borrower</i>	NO EFFECT IN AI/NLC

6. Required Entries in the Ledgers of the Borrower and the Lender for Shares Movement

a. OUT-LENT

In the lender's ledger for the delivery of lent shares to the borrower.

b. IN-LENT

In the lender's ledger for the return of lent shares by the borrower.

c. IN-BORROWED

In the borrower's ledger for the acceptance of borrowed shares from the lender.

¹Net Liquid Capital

²Position Risk Requirement

³Credit Risk Requirement

⁴Aggregate Indebtedness/Net Liquid Capital

d. OUT-BORROWED

In the borrower's ledger for the return of borrowed shares to the lender.

e. OUT-COLLATERAL

In the borrower's ledger for the delivery of securities collateral to the lender.

In the lender's ledger for the return of securities collateral to the borrower.

f. IN-COLLATERAL

In the borrower's ledger for the return of securities collateral from the lender.

In the lender's ledger for the delivery of securities collateral from the borrower.

7. All entries shall be in accordance with the applicable accounting standards such as Philippine Financial Reporting Standards (PFRS).

III. REPORTORIAL REQUIREMENTS

In accordance with Article VII, Section 10 of the CMIC Rules, the reportorial requirements in relation to the short selling transactions of a TP are as follows:

"Short selling transactions shall be governed by these rules and the revised Rules on Short Selling and implementing guidelines.

"(a) Calculation. The Trading Participant shall calculate, as of 15th day and as of the last day of each calendar month, the aggregate short position of each individual account in respect of each security.

"(b) Written Report. The Trading Participant shall file a written report of the calculation of the short position to CMIC within two (2) days following the date of computation."

Refer to Annex "A" for the suggested Short Position Report Template.

In addition to the above requirements, the following are requirements that must be complied with in relation to short selling transactions:

1. Master Securities Lending Agreement (MSLA)

The Lender/Lending Agent and the Borrower shall execute an MSLA which shall comply with the requirements provided in Sections 6 and 7 of the SBL Revenue Regulations. In addition:

- (i) The Borrower shall register the MSLA with the BIR in accordance with Section 8 of the SBL Revenue Regulation prior to the execution of the first SBL transaction; and*
- (ii) The Borrower shall inform its counterparty as soon as practicable, of the fact of the registration of the MSLA with the BIR.*

2. Securities Lending Authorization Agreement (SLAA)

A person acting as Lending Agent on behalf of another person shall execute an SLAA duly executed by the latter before the first SBL transaction on behalf of the said person.

3. Confirmation Notice

Each SBL transaction shall be evidenced by a Confirmation Notice (in the format substantially prescribed in SBLF3) that specifies the details of the SBL transaction and shall be kept and maintained by both parties.

4. Certification of Submission of Bi-annual Summary Reports of Outstanding and Liquidated SBL Transactions and Stock Returns

In the format substantially prescribed in the SBLF5, said report must be submitted **within five (5) calendar days from the filing thereof with the BIR.**

5. Bi-annual Summary reports of the Outstanding and Liquidated SBL Transactions and Stock Returns

All TPs who participate in SBL shall submit, **within fifteen (15) calendar days after the end of every six months**, a summary of all its SBL transactions (in the format provided in SBLF2a & 2b) to the CMIC as additional report to the RBCA requirement.

IV. PENAL PROVISIONS

Failure to abide by any provisions of these Guidelines and the other rules related to the regulation of short sale may be considered as a violation, pursuant to Article XII, Section 3 of the CMIC Rules, which expressly provides, in part, the following:

Grave violations

- Unauthorized use or disposition of funds or securities entrusted by a client to a Trading Participant in the course of its trading business including violation of securities borrowing and lending rules (as indicated in subparagraph (ii) of Section 3 (a) of Article XII of the CMIC Rules).

Major violations

- Violation of SRC Rule 49.2 on Customer Protection Reserves and Custody of Securities other than the violation set out in subparagraph (ii) of Section (3) (a) of this Article XII;

Major violations shall include, but not limited to, the following:

- 1.) Short sale transactions of director, officer or principal stockholder involving securities of the corporation in which they are director, officer or principal stockholders as provided for in CMIC Rule Article VII Section 10 (h) in relation to Article IV, Section 5.3, paragraph (a) of the Revised Trading Rules
- 2.) Naked Short Selling, as provided for in Article IV, Section 5.2, paragraph (d) on the Revised Trading Rules

3.) *Violation of Up Tick Rule as provided for in CMIC Rule Article VII Section 10 (e) in relation to Article IV, Section 5.2, paragraph (b) of the Revised Trading Rules*

Minor violations

- *All violations other than those mentioned in paragraphs (a) and (b) Section 3 of Article XII shall be considered minor violations of the Securities Laws.*

The appropriate disciplinary actions may be meted out by CMIC on the erring TP after the conduct of an investigation, in accordance with Article II of the CMIC Rules.

V. EFFECTIVITY

These Guidelines shall take effect fifteen (15) calendar days after publication in the CMIC website.

PM

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ANNEX "A"

SHORT POSITION REPORT

Trading Participant Name: _____

Short Selling Transactions from: ☐ 1-15 ☐ 16-31 Month/Year: _____
 Aggregate Short Position as of: ☐ 15th ☐ End

ACCOUNT NAME	PSE TC CODE	SHORT SELLING TRANSACTION			NAME OF LENDER (Other broker's name if outside the TP)	AGGREGATE SHORT SELL TRANSACTIONS
		SECURITY CODE	DATE	VOLUME		

Prepared by: _____
 (Name and Designation)

Submission date: _____

ANNEX "B"

A. AFFIDAVIT OF UNDERTAKING - As Individual

REPUBLIC OF THE PHILIPPINES)
_____, METRO MANILA) S.S.

AFFIDAVIT OF UNDERTAKING

I, [name], of legal age, [civil status], [citizenship], a resident of _____ and with address at _____, after having subscribed to an oath, hereby depose and say that:

1. I am an investor and client of _____, a trading participant duly licensed by the Securities and Exchange Commission ("SEC" or "Commission") and authorized to exercise a trading right pursuant to the rules of The Philippine Stock Exchange, Inc. ("PSE" or "Exchange"), intending to engage in securities borrowing and lending ("SBL") and short selling.
2. I have read and understood the terms and conditions laid down by the PSE's Guidelines for Short Selling Transactions ("Short Selling Guidelines") and other provisions material to short selling, as stated by the Securities Regulation Code ("SRC"), its Implementing Rules and Regulations, and the Capital Markets Integrity Corporation Rules, among other securities laws.
3. Thus, in adherence to the foregoing, I undertake the following:



- a. To only place short sell orders for Eligible Securities, as defined by the Short Selling Guidelines and other relevant securities laws;
 - b. If I have direct market access ("DMA"), to course said short sell orders through my trading participant; however, if my trading participant has the capability to determine that I have borrowed the subject securities prior to the entry of any short selling order, and upon compliance with such requirements that may be imposed by the Exchange, then I may be allowed to enter short selling orders without the intervention of my trading participant;
 - c. To adhere to the requirements of the PSE and the SEC, among other authorities, on SBL for the purpose of complying with the PSE Trading Rules' prohibition on "naked short sales".
 - d. To use the same trading participant that executed my short selling transaction in cases where I need to buy back the same shares subject of the short selling transaction.
 - e. To submit to the same trading participant that would execute any of my short selling transactions the following documents, as applicable:
 - i. Master Securities Lending Agreement;
 - ii. Securities Lending Agent Agreement (between the lending client and the trading participant acting as the agent lender);
 - iii. Service agreements (between the borrower client and the trading participant acting as agent borrower); and
 - iv. Confirmation notice (for every short selling transaction).
4. Finally, I undertake to comply with all my duties and obligations as an investor and client of a trading participant, as provided by the applicable laws, rules, and regulations.
5. I execute this Affidavit of Undertaking in order to attest to the truth of the above facts for all legal intents and purposes it may serve.



In witness hereof, I hereby set my hand this ____ day of _____, 20__, in _____.

(Affiant)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__, Affiant exhibited to me his/her Identification Card as indicated below his name above.

NOTARY PUBLIC

Doc. No. _____;

Page No. _____;

Book No. _____;

Series of 201_. 





B. AFFIDAVIT OF UNDERTAKING - As Corporation

REPUBLIC OF THE PHILIPPINES)
_____, METRO MANILA) S.S.

AFFIDAVIT OF UNDERTAKING

I, _____, of legal age, [civil
status], _____ [citizenship], a _____ resident of
_____ and with business address at
_____, after having subscribed to
an oath, hereby depose and say that:

1. I am the incumbent [position of affiant] and duly authorized representative of [name of corporation], a domestic/foreign corporation organized under Philippine Laws/[Foreign State].
2. [Name of Corporation] ("Company") is an investor and client of _____, a trading participant duly licensed by the Securities and Exchange Commission ("SEC" or "Commission") and authorized to exercise a trading right pursuant to the rules of The Philippine Stock Exchange, Inc. ("PSE" or "Exchange"), intending to engage in securities borrowing and lending ("SBL") and short selling.
3. I have read and understood the terms and conditions laid down by the PSE's Guidelines for Short Selling Transactions ("Short Selling Guidelines") and other provisions material to short selling, as stated by the Securities Regulation Code ("SRC"), its Implementing Rules and Regulations, and the Capital Markets Integrity Corporation Rules, among other securities laws.
4. Thus, in adherence to the foregoing, the Company undertakes the following: 

- a. To only place short sell orders for Eligible Securities, as defined by the Short Selling Guidelines and other relevant securities laws;
- b. If the Company has direct market access ("DMA"), to course said short sell orders through its trading participant; however, if its trading participant has the capability to determine that I have borrowed the subject securities prior to the entry of any short selling order, and upon compliance with such requirements that may be imposed by the Exchange, then the Company may be allowed to enter short selling orders without the intervention of its trading participant;
- c. To adhere to the requirements of the PSE and the SEC, among other authorities, on SBL for the purpose of complying with the PSE Trading Rules' prohibition on "naked short sales".
- d. To use the same trading participant that executed the short selling transaction in cases where the same shares subject of the short selling transaction needs to be bought back.
- e. To submit to the same trading participant that would execute any of the short selling transactions the following documents, as applicable:
 - i. Master Securities Lending Agreement;
 - ii. Securities Lending Agent Agreement (between the lending client and the trading participant acting as the agent lender);
 - iii. Service agreements (between the borrower client and the trading participant acting as agent borrower); and
 - iv. Confirmation notice (for every short selling transaction).

5. Finally, the Company undertakes to comply with all its duties and obligations as an investor and client of a trading participant, as provided by the applicable laws, rules, and regulations.

6. I execute this Affidavit of Undertaking for the Company in order to attest to the truth of the above facts for all legal intents and purposes it may serve.



In witness hereof, I hereby set my hand this ____ day of _____, 20__, in _____.

(Affiant)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 20__, Affiant exhibited to me his/her Identification Card as indicated below his name above.

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