

MEMO FOR TRADING PARTICIPANTS

No. 45-2007

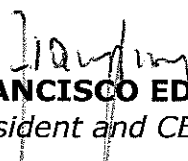
	Trading Rules		Computer System Update
	Membership Rules		Administrative Matters
	Listing & Disclosure Rules	X	Others: PSE Rules on Securities Borrowing and Lending

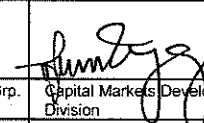
DATE : **01 February 2007**

SUBJECT : **PSE Rules on Securities Borrowing and Lending**

Please be informed that the Securities and Exchange Commission (SEC) has approved The Philippine Stock Exchange's **Rules on Securities Borrowing and Lending** (the "Rules"). Attached is a copy of the Rules for your reference. The Rules shall take effect on **February 15, 2007**.

For you information and guidance.


FRANCISCO ED. LIM
 President and CEO

					
Finance / Admin / Membership	Compliance & Surveillance Grp.	Listing & Disclosures Grp.	OSVP / Automated Trading Grp.	Capital Markets Development Division	OP / Legal
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PART 1 – RULES ON SECURITIES BORROWING & LENDING

A. General Provisions

In order to avail of the tax treatment of the Securities Borrowing and Lending (SBL) transactions under BIR Revenue Regulations No. 10-2006 dated June 23, 2006, these Rules set out the requirements for the conduct of SBL transactions under the SBL Program administered and supervised by the Exchange.

1.01 DEFINITION OF TERMS

When used under these Rules, the following terms shall have the meaning indicated, unless the context provides otherwise:

- (a) **Borrower.** Any person who borrows shares or securities listed and traded in the PSE from a Lender/Lending Agent's portfolio to support his/its trading activities or for any of the specified purposes under the SBL Revenue Regulations
- (b) **BIR.** Bureau of Internal Revenue.
- (c) **Collateral.** Cash, equity securities, or government securities, or combination thereof or any collateral as may be allowed by the Exchange from time to time and provided to the Lender/Lending Agent as guarantee until the obligations of the Borrower under the MSLA and SLAA are fully complied with.
- (d) **Commission.** Securities and Exchange Commission.
- (e) **Exchange or PSE.** The Philippine Stock Exchange, Inc.
- (f) **Lender.** Any person who lends securities from his/its pool of assets as principal or from the assets of its clients.
- (g) **Lending Agent.** Any juridical person or institution that has the financial and technical capabilities to perform the required functions of an SBL intermediary as required under the Rules of the Commission.
- (h) **Mark-to-Market.** The practice of periodically valuing borrowed securities and securities used as Collateral based on their current market prices in order to reflect their current market prices.
- (i) **Master Securities Lending Agreement (MSLA).** An written contract between a Lender/Lending Agent and the Borrower that defines and specifies the general terms and conditions under which shares of stock listed and traded through the PSE are lent or borrowed under an SBL arrangement. Aside from compliance with applicable Philippine laws, the MSLA shall conform to the Global Master Securities Lending Agreement (GMSLA) text/outline by the International Securities Lending Association format.
- (j) **PSE-MRD.** The Market Regulatory Division of The Philippine Stock Exchange, Inc.
- (k) **SBL Revenue Regulations.** Revenue Regulations No. 10-2006 dated June 23, 2006 entitled "Prescribing the Guidelines and Conditions for the Tax treatment of Securities Borrowing and Lending Transactions Involving Shares of Stock or Securities Listed in the Philippine Stock Exchange", or any amendment or revision thereof.
- (l) **SEC SBL Circular.** SEC Memorandum Circular No. 7, series of 2006 entitled "Rules on Securities Borrowing and Lending", or any amendment or revision thereof.
- (m) **Securities Lending Authorization Agreement (SLAA).** A written contract between the beneficial owner of the securities and the Lending Agent/Agent-Facilitator by which the former authorizes the latter to offer his securities for lending under the terms agreed between them.
- (n) **Securities Borrowing and Lending (SBL).** The lending of Shares of Stock from a Lender/Lending Agent's portfolio on a given date to a Borrower's portfolio to support the Borrower's trading activities or

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for other purposes in accordance with Section 6(f) of the SBL Revenue Regulations with a commitment of the Borrower to return and deliver the Shares of Stock or its equivalent to the Lender/Lending Agent.

- (o) **Shares of Stock.** Shares of stock or securities or derivatives thereof listed and traded in The Philippine Stock Exchange, Inc.
- (p) **Trading Participant.** A broker and/or dealer who is authorized to operate a trading right in the Exchange, pursuant to PSE rules.
- (q) **Trading Participant/Agent-Facilitator.** A Trading Participant who acts on behalf of a client before a Lending Agent to facilitate the lending and borrowing of securities.

1.02 COVERAGE

- (a) SBL Transactions shall comply with these Rules in order to qualify for tax-free treatment provided in Section 5 of the SBL Revenue Regulations and Republic Act No. 9243 entitled "An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and for other purposes".
- (b) These Rules shall govern SBL transactions by and between:
 - (i) Local Borrowers and Local Lender/Lending Agents ;
 - (ii) Local Borrowers and Foreign Lender/Lending Agents;
 - (iii) Foreign Borrowers and Local Lender/Lending Agents; and
 - (iv) Foreign Borrowers and Foreign Lender/Lending Agents.

whether executed within or without the Philippines as long as the subject matter pertains to Shares of Stock issued by companies listed in the PSE.

1.03 REGISTRATION

- (a) Any person who wishes to act as Lending Agent shall be duly registered with the Commission in accordance with the SEC SBL Circular.
- (b) A Lending Agent shall furnish the Exchange a certified true copy of its registration as a Lending Agent with the SEC before entering into an SBL transaction in such capacity.

1.04 DOCUMENTATION

- (a) **Master Securities Lending Agreement (MSLA)-** The Lender/Lending Agent and 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 Regulations prior to the execution of the first SBL transaction.
 - (ii) The Borrower shall inform its counter-party as soon as practicable, of the fact of registration of the MSLA with the BIR.

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(b) Securities Lending Authorization Agreement (SLAA)

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

(c) Confirmation Notice

- (i) 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.

In addition, the signatories in the SBLF3 shall be specified.

(d) Bi-Annual Summary Reports of Outstanding and Liquidated SBL Transactions and Stock Returns

- (i) The Borrower shall submit to the Exchange a Certification (*in the format substantially prescribed in SBLF5*) that it has filed the Bi-Annual Summary Report of Outstanding and Liquidated SBL Transactions and Stock Returns and its attachments required by the SBL Revenue Regulations, within five (5) calendar days from the filing thereof with the BIR.

1.05 COLLATERAL AND COLLATERAL MANAGEMENT

- (a) For every SBL transaction, the Borrower shall provide and deliver to the Lender/Lending Agent, prior to or simultaneous with the delivery to the Borrower of the borrowed Shares of Stock, the Collateral in such amount or value as provided in the SEC SBL Circular (the "Prescribed Collateral Value").
- (b) For every SBL transaction, simultaneous with the return and delivery by the Borrower to the Lender of the borrowed Shares of Stock, the Lender shall return and deliver the Collateral to the Borrower in its Prescribed Collateral Value at the time of the return and delivery of the Shares of Stock.
- (c) If the value of the Collateral becomes less than the Prescribed Collateral Value, the Lender/Lending Agent shall require the Borrower to increase the amount of Collateral. When the value of the Collateral becomes greater than the Prescribed Collateral Value, the Borrower may require the Lender/Lending Agent to release the Collateral that is in excess of Prescribed Collateral Value.
- (d) A Lender/Lending Agent must ensure that its books and records for Collateral received are sufficiently updated and will enable prompt and proper accounting.
- (e) In case of failure of the Borrower to return the borrowed Shares of Stock to the Lender/Lending Agent or in case of default on the part of the Borrower under the MSLA, upon written notice to the Borrower, the Lender/Lending Agent shall have the option to dispose of the assigned Collateral and offset the market value of the Collateral against the borrowed Shares of Stock and the balance, if any, shall be promptly returned or refunded to the Borrower. This right is not exclusive and shall be without prejudice to the other rights and remedies that the Lender/Lending Agent may have against the Borrower under the MSLA, existing laws and regulations.

B. Trading Participants

- 2.01 A Trading Participant who wishes to engage in SBL as Agent-Facilitator shall execute an SLAA with its client before the first SBL transaction on behalf of the client and as a Lender, with the Lending Agent.

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**PSE RULES AND GUIDELINES ON
SECURITIES BORROWING & LENDING**

- 2.02 A Trading Participant whether acting as an Agent-Facilitator or a principal with respect to securities that it owns shall engage a Lending Agent in its conduct of SBL transactions.
- 2.03 Administrative and reporting requirements prescribed for the Trading Participant should be clearly set out in the MSLA.
- 2.04 A Trading Participant who engages in SBL is required to maintain SBL forms (*SBLF 2a – 2b, 3 and 4a – 4d*), whether in manual or electronic form in accordance with Section 52 of the Securities Regulation Code (“SRC”) with respect to records retention. The ledgers must be kept up-to-date and must record the full and complete details of all SBL transactions. In addition, such Trading Participant shall comply with Sections 232 – 235 of the National Internal Revenue Code of 1997, as amended, on Keeping of Books of Accounts and Records.
- 2.05 The SBL ledgers shall be subject to reasonable periodic, special, or other examinations by examiners or other representatives of the Commission or the PSE-MRD as may be deemed necessary or appropriate for the public interest or for the protection of investors.
- 2.06 All Trading Participants 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 PSE-MRD of the Exchange as additional report to the Risk-Based Capital Adequacy requirement.
- 2.07 Trading Participant acting as principal shall be permitted to borrow or lend securities in accordance with applicable laws, and their implementing rules, including the SEC SBL Circular and SBL Revenue Regulations.
- 2.08 In no case will a Trading Participant allow a client to lend their shares to the SBL facility if the result would be that the Trading Participant will have a negative exposure from their clients as defined under the Risk Based Capital Adequacy Requirement as stated in SEC Memorandum Circular 16, series of 2004.
- 2.09 Any Trading Participant engaged in SBL who violates any of the provisions of these Rules shall be penalized under the applicable rules of the PSE-MRD.

C. Miscellaneous Provisions

- 3.01 The Exchange may restrict or prohibit a listed Share of Stock or security from being borrowed and loaned or a Trading Participant acting on his behalf from borrowing and lending securities, indefinitely or temporarily for the protection of investors.
- 3.02 The SBL transaction shall in no way be used to circumvent Sections 24, 26, 30.1 and 30.2 of the SRC, Manipulation of Security Prices, Devices and Practices, Fraudulent Transactions, Prohibited Transactions in Securities Where Broker or Dealer and Issuer are Linked and other similar laws, rules and regulations prohibiting fraud, manipulation and insider trading of securities.
- 3.03 Any party which conducts or engages in an SBL transaction shall be deemed to have provided the Exchange an indemnity holding free and harmless and indemnifying the Exchange and its directors, officers and employees against all tax liabilities arising from, or in connection with, the SBL transaction.
- 3.04 Any and all violations of these Rules either by the Trading Participant or non-Trading Participant shall be immediately reported by the Exchange to the Commission and the BIR within a reasonable time from the discovery thereof.

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D. Applicability of SEC Memorandum

Circular No. 7, series of 2006

- 4.01 SEC Memorandum Circular No. 7, series of 2006, shall be considered part and parcel of these Rules and shall have supplementary or suppletory application insofar as the lending and borrowing of shares of stock listed in the PSE are concerned.

E. Separability Clause

- 5.01 If any portion or provision of these Rules is declared unconstitutional or invalid, the other portions or provisions hereof, which are not affected thereby shall constitute in full force and effect.

F. Transitory Provisions

- 6.01 Within twelve (12) months from the effectivity of these Rules and notwithstanding the requirements under Section 2.02 of these Rules, Trading Participants may engage in SBL transactions either through direct lending or a Lending Agent.
- 6.02 Within said period, an SBL transaction by a Trading Participant conducted through direct lending may be entitled to the tax treatment under Section 5 of SBL Revenue Regulations and Republic Act No. 9243, provided an MSLA is executed by the parties and registered with and approved by the BIR, and the SBL SEC Circular and these Rules are complied with.
- 6.03 After the lapse of said period, Trading Participants shall strictly comply with the all the requirements of the SBL program administered and supervised by the Exchange.

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THE PHILIPPINE STOCK EXCHANGE, INC:

FRANCISCO ED. LIM
President and CEO

MELCHOR C. GUERRERO

Vice President

Capital Markets Development Division.



**PSE RULES AND GUIDELINES ON
SECURITIES BORROWING & LENDING**

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SECURITIES AND EXCHANGE COMMISSION

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