



ASIAN ROUNDTABLE ON CORPORATE GOVERNANCE

**OFFICIAL PRESENTATION of the WHITE PAPER on
CORPORATE GOVERNANCE IN ASIA**

QUESTIONNAIRE

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Questions for Asian Roundtable Workshop - Philippines

1. Please describe how the following factors affect the decision to pursue criminal, civil or administrative sanctions:

a. Efficacy of sanction/enforcement powers and procedures under applicable law

SEC conferred upon PSE the self-regulatory organization (SRO) status to maintain market integrity in order to protect the investing public. As SRO, PSE enforcement power is mainly administrative in character that may lead to civil or criminal cases over which regular courts have jurisdiction. Sanctions imposed are commensurate to the gravity of violation that may range from censure, fines or suspension. Revocation of the brokerage license is solely within the purview of SEC.

The principal enforcement power of PSE is through administrative sanctions and is exercised by the Compliance and Surveillance Group (CSG) on brokers and the Disclosure Department (DD) on listed companies. Compliance by brokers and listed companies depend largely on efficacy of sanctions and effective enforcement, and thus are important considerations.

CSG'S principal responsibility is to audit operations of brokers, discuss findings with the broker and where appropriate, make recommendations for consideration of the Governance and Ethics Committee with responsibility for market integrity through compliance with ethical conduct and trading rules. In addition to the annual audit function, CSG also monitors and investigates unusual volume and price movements that might indicate violation of trading rules, whereupon a report is made with recommendation for sanctions. As a self-regulatory organization (SRO), findings of CSG are simultaneously submitted to SEC and with recommendation, to the Governance and Ethics Committee. Upon approval or denial of the recommendations by the Committee, decisions are submitted to the board for information and to SEC that has the power to review the decision.

In case of listed companies, DD monitors compliance through the submission of reports as required by SEC and disclosure rules of PSE. Full and timely disclosure of information on listed companies is essential to maintain a playing field and allow investors to arrive at informed decisions regarding their investments. Violation of disclosure rules are investigated and referred to the Listing Committee, which decides on sanctions to be imposed on listed companies. The decisions of the Committee are submitted for action to the PSE Board. Violations by, as well as the sanctions imposed on, listed companies are reported to the SEC on a monthly basis.

b. Value of successful enforcement action in deterring other potential wrongdoers

For enforcement to be effective, the results as well as the conduct of investigation should be credible. The rules and norms of behavior should be sensible, reasonable and clear, and sanctions should be commensurate to the gravity of the violation. Sanction deters future violations but early detection and intervention are better measures in dissuading violations. PSE has recently started taking a pro-active stance in enforcement by giving out warnings when possible wrongdoing is caught early on to halt such activities. In recognition of the importance of effective enforcement, PSE has committed resources to improve its capability to detect violations at an early stage, conduct investigation and enforce rules through training, foreign and local, as well as upgrading of surveillance systems.

c. Your own resource constraints in investigating and pursuing an enforcement action

There are three main resource constraints in investigating and pursuing an enforcement action by the PSE. These are the lack in the number of skilled manpower, infrastructure or tools to be utilised in aid of investigation and continuing education needed to enhance the knowledge and expertise of existing members of its staff. The Human Resources Department is focused on recruiting competent personnel to fill-up the needs of the various departments in the Exchange. The PSE is also acquiring IT infrastructure to enhance its surveillance and investigation functions. At the same time, the office automation project is underway in order to aid the monitoring functions of the department concerned. Finally, the PSE acknowledges the fact that there is cost involved in providing continuing education to its staff and looks to agencies such as the Asian Development Bank for assistance and grants. In its effort to enhance the skills of its staff, it is looking into opportunities for possible cross-posting assignments with different stock exchanges within the region to enable its people to acquire the necessary knowledge needed to address the problem areas that the staff encounter in carrying out their enforcement action.

d. Capacity constraints (expertise, even-handedness, timelines) of courts

The main instrument of PSE in deterring wrongdoers is through the imposition of administrative sanctions. Consultations with brokers and listed companies complement this instrument in minimizing cases that are brought before the courts. Most issues are resolved in the administrative level and only matters of judicial nature reach the courts for civil or criminal actions. In this regard, there are courts designated to handle issues concerning securities.

2. Please fill in the following tables for the latest year in which data are available:

Breakdown of investigations and enforcement actions by numbers

Basis: Actual data. Tables modified to reflect the same functions in an exchange. Enforcement actions against brokers are responsibilities of the CSG which is comprised of three departments namely: (1) Market Surveillance Department (MSD) to monitor the price and volume movement of listed shares; (2) Special Investigation Department (SID) to investigate investor complaints; (3) Compliance and Audit Department (CAD) to audit financials and sales practices of brokers. Enforcement of actions against listed companies is the responsibility of the Disclosure Department (DD)

1. MARKET SURVEILLANCE DEPARTMENT

Type of Action	Number of cases that triggered alerts A=B+C+D	Number of cases pending review B	Number of cases closed C	Number cases that required incident reports D=E+F	Number of cases requiring no further action E	Number of cases for investigation F=G+H+I	Number of Investigations On-going G	Number of cases with Sanctions H	Number of cases with no sanctions I	Number of cases forwarded to the SEC for further Investigation J
Administrative										
2002	87	0	6	81	0	81	0	4	77	10
2003	135	86	28	21	5	16	6	2	8	2

Alert is a tool for monitoring of trading transactions and is triggered off by unusual movements in volume and price that can result to incident reports for investigation. Results of investigations are reported with recommendations for appropriate sanctions to the Governance committee. Cases are forwarded to SEC when investigation reveals the participation of natural or juridical entities over which the PSE has no jurisdiction.

Source of information – Percentage of investigations triggered by:

Type of Action	News Report	Review of Regulatory Filing	Tip from Governmental Agency	Insiders	Tip from Investors	Tip from Supplier or Customer	Tip from Broker	Tip from other sources	Surveillance Parameters
Administrative									
2002	5% *	0	1%	0	0	0	0	0	94%
2003	0	0	0	0	0	0	0	0	100%

*Includes investigation which were triggered by both a news report and complaints from brokers

2. SPECIAL INVESTIGATION DEPARTMENT

Type of Action	Number of Complaints for Investigation	Number of Investigations Begun	Number of Investigations Closed	Number of Investigations on-going	Number of Complaints Closed with No Sanctions	Number of Complaints Closed with Sanctions
Administrative						
2001	7	7	4		4	0
2002	37	37	21		17	4
2003	61	61	2	59	2	0

Investigations by this department are triggered by complaints from clients generally against brokers and in few instances, other entities such as transfer agents that covers management of client's accounts, conduct of brokers and their employees, and demands for return of shares.

3. COMPLIANCE AUDIT DEPARTMENT

Type of Action	Number of brokers where audit has begun	Number of Audit with field work completed	Number of Audit awaiting management comment to findings	Number of cases finished for presentation to the Committee	Number sanctioned	Number admonished	Number fully compliant
Administrative							
2001	137	137	0	137	51	69	17
2002	135	135	0	135	38	75	22
(regular audit) 2003	43	43	27	16	3	*	*
(thematic audit) 2003	86	79	79	*	*	*	7

* No definite number pending preparation of report with recommendation and/or presentation to the Governance committee.

CAD conducts regular annual audit of all active brokers with audit findings reported to the Governance committee with recommendations of appropriate sanctions, where applicable. For the 2003, regular audit was conducted on 43 brokers until end of September where upon consultations, SEC directed the audit to focus on the theme of customer protection and net capital requirement through joint SEC-PSE thematic audit.

4. DISCLOSURE DEPARTMENT

Type of Action	Number of investigations	Number of enforcement actions concluded with sanction	Number of enforcement actions concluded without sanction
Administrative			
2002	78	75	3
2003	99	73	26

Source of information – Investigations were triggered by:

Type of Action	Review of Regulatory Filing	News Reports
Administrative		
2002	64%	36%
2003	36%	33%

CSG personnel for 135 brokers:

VP and Managers	1 VP and 2 managers
Auditors	14
Policy experts	0
Technical reviewers	0
Prosecutors	0
Support staff	1

DD personnel for 239 listed companies:

Senior Vice President & Managers	1 SVP and 2 Managers
Specialists	2
Analysts	2
Investigators	0 – cases for investigation are sent to CSG
Policy experts	0
Technical reviewers	0
Prosecutors	0
Support staff	1

