Securities and Exchange Commission
PHILIPPINES

SEC MEMORANDUM CIRCULAR NO. 10
Series of 2018.

TO : ***ALL CONCERNED***

SUBJECT : ***RULES AND REGULATIONS ON DETERMINATION OF TRUST FUND AS A QUALIFIED BUYER***

Section 1 – Coverage

These Rules shall apply to unit investment trust funds ("UITFs") and other funds managed by persons authorized by the Bangko Sentral ng Pilipinas ("BSP") to engage in trust functions or investment management activities ("IMA") and not enumerated in SRC Sec 10.1 (l).

Section 2 – Qualification of Trust Funds as Qualified Buyers

2.1 UITFs that are established in accordance with rules and regulations of the BSP are deemed qualified buyers.

2.2 A fund established and covered by a trust or IMA agreement under a **discretionary** arrangement, as expressly stipulated, shall be considered a qualified buyer; *provided that*, the entity managing said fund is authorized by the BSP to engage in trust and/or IMA functions; and *provided also that*, the entity strictly adheres to the standards in the administration of the fund as required by BSP. A discretionary arrangement means that the entity managing the fund is granted authority to decide on the investment of the trust funds or IMA funds.

2.3 A fund established and covered by a trust or IMA agreement under a **non-discretionary** arrangement shall be considered a qualified buyer provided that the following conditions are met:

i. the entity managing said fund is authorized by the BSP to engage in trust and/or IMA functions;
ii. the entity strictly adheres to the standards in the administration of the fund as required by BSP;
iii. the beneficial owner/s or principal/s of such fund possess the qualifications on financial capacity and sophistication as specified in 2015 SRC Rules 10.1.11.1 for natural persons, and 10.1.11.2 for juridical persons; and,

iv. the treatment of such fund as qualified buyer does not contravene the trust or IMA agreement.

2.4 A fund established and covered by a trust or IMA agreement wherein the beneficial owner or principal of the fund has been deemed or conferred as a qualified buyer under SRC Sec. 10.1 (l) or SRC Rule 10.1.11 shall be considered a qualified buyer.

2.5 The fund under Sections 2.3 and 2.4 herein shall cease to be treated as a qualified buyer in case of non-compliance with any of the prescribed conditions, except the sale or disposition of the asset holding.

Section 3 – Recordkeeping and Reporting

3.1 All funds under UITFs, IMA accounts and other funds established under a trust arrangement shall make, keep and preserve for such periods, records, furnish such copies thereof, and make such reports, as the Commission and BSP by its rules and regulations may prescribe. Such accounts, correspondence, memoranda, papers, books, and other records shall be subject at any time to such reasonable periodic, special or other examinations by representatives of the Commission as the Commission may deem necessary or appropriate in the public interest or for the protection of investors.

3.2 In addition, fund established under section 2.3 shall keep, maintain and update the list and records of the fund that it has determined as qualified buyers. The records and supporting documents that shall be maintained and required for evaluation shall those information and documents required under Rule 39.1.4.5 of the 2015 SRC Rules. In addition to the required information enumerated in said Rule 39.1.4.5, it shall also include in the listing the name/ identity of funds and the date of conferment of status as qualified buyer.

The fund established under section 2.3 shall make available for inspection to the Commission's representatives the documents used by the trustee or investment manager such as application forms, beneficial owners' or principals' information sheets and proof of qualifications for a period of at least five (5) years. It shall retain the records that relate to an on-going investigation beyond this point until the Commission declares the case closed and terminated.

The fund shall likewise submit to the Commission the aforementioned list upon the request.

Section 4 – Fund with more than one beneficial owner/principal

4.1 A fund comprising of two or more beneficial owners/principals shall be evaluated based on the arrangement among the beneficial owners/principals (individually or joint) which they have represented to the trust entity.

4.2 A joint account with an "OR" or "AND/OR" arrangement shall be evaluated based on the income or portfolio investment or net worth or gross assets of each beneficial owner/principal. A joint account with an "AND" arrangement shall be evaluated based on the combined income or portfolio investment or net worth or gross assets of all the beneficial owners/principals.

4.3 For both types of joint account, continuing compliance with the qualifications in the abovementioned 2015 SRC Rules is required. For the "OR" or "AND/OR" arrangement, each beneficial owner/principal shall continuously comply with the required aforementioned qualifications. Subsequent purchases of "OR" or "AND/OR" arrangement that has lost its qualified buyer status shall not be allowed.

Section 5 – Sanctions and Penalties for Non-Compliance

Non-compliance with any of the requirements and procedures prescribed herein shall subject a covered entity or person to the administrative sanctions provided under Section 54 of the SRC.

Section 6 – Effectivity

These Rules shall take effect immediately following the completion of its publication in two (2) newspapers of general circulation in the Philippines.

Pasay City, Metro Manila, August 6 2018.

For the Commission:

EMILIO B. AQUINO
Chairperson