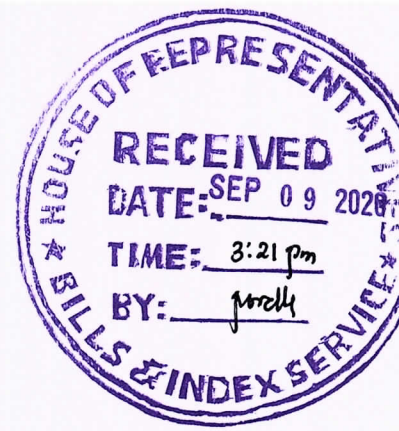




Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City

EIGHTEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 7624



Introduced by Representative Sharon S. Garin

EXPLANATORY NOTE

Globalization and the advancement of technology and integrated financial markets pose significant challenges to the regulation of securities markets. Regulators should build international cooperation and linkages to develop a common set of guiding principles and shared regulatory objectives not only to protect the market and investors, but also reduce systemic risk.

The 1998 Asian Financial Crisis pushed Congress to enact the Securities Regulation Code in 2000 to serve as the enabling charter of the Securities and Exchange Commission (SEC) with a mandate to promote the development of the capital market, protect investors and maintain market integrity. The SEC is also responsible in ensuring that the rules and regulations affecting securities transactions are pertinent, current, and aligned with international best practices and with principles espoused by international regulatory bodies.

Consistent with its mandate to formulate policies and recommendations on issues concerning the securities market, the SEC became a member of the International Organization of Securities Commission (IOSCO). The IOSCO is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. Its membership includes the biggest economies in the world. It regulates more than 95% of the world's securities markets with 226 members in more than 115 jurisdictions of members comprised of securities regulators and other affiliate institutions. The IOSCO has built a global community which seeks to foster close coordination and cooperation between regulators and stakeholders as well as improve

regulatory and industry practices for more transparency and investor protection in the financial market.

In 2002, the IOSCO developed the Multilateral Memorandum of Understanding (MMOU) Concerning Consultation and Cooperation and the Exchange of Information to address the increasing international activity in the securities and derivatives markets, and the corresponding need for mutual cooperation and consultation among securities regulators to ensure compliance with, and enforcement of, their securities and derivatives laws and regulations. The IOSCO envisioned the MMOU to serve as the international benchmark for cross-border cooperation and provide securities regulators with the tools for combating cross-border fraud and misconduct that can weaken global markets and undermine investor confidence.

Knowing the importance of cooperation and information-sharing among securities regulators and the benefits of being a signatory to the MMOU, the Philippines applied to become an IOSCO MMOU signatory. Unfortunately, the Philippines was deemed unable to comply with all the provisions of the MMOU concerning the inability of the SEC to directly obtain information on bank records and deposits and disclose that information to foreign securities regulators.

Hence, this proposed measure seeks to grant the SEC direct access to bank records and information in the course of the conduct of a formal investigation on securities violations or pursuant to a request from a foreign securities regulator. This will be considered as an exception to Republic Act No. 1405, as amended, also known as the "*Law on the Secrecy of Bank Deposits*." The proposed amendments further include limitations on the use of the information obtained or shared with the requesting foreign securities regulator.

This bill will also allow the SEC to more effectively exercise its operational mandate of protecting investors, increasing investor confidence, and maintaining the integrity of the country's securities and derivatives market.

In view of the foregoing, approval of this bill is earnestly sought.



SHARON S. GARIN
AAMBIS-Owa Party-list



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AN ACT

**AUTHORIZING THE SECURITIES AND EXCHANGE COMMISSION TO
INSPECT BANK RECORDS RELATING TO SECURITIES TRANSACTIONS,
AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 8799, 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. Section 5 of Republic Act No. 8799 is amended to read as follows:

"SEC. 5. Powers and Functions of the Commission. – 5.1. The
Commission shall act with transparency and shall have the powers and
functions provided by this Code, Presidential Decree No. 902-A, the
Corporation Code, the Investment Houses Law, the Financing Company Act
and other existing laws. Pursuant thereto the Commission shall have,
among others, the following powers and functions:

17 “(a) Have jurisdiction and supervision over all corporations, partnerships or
18 associations, which are the grantees of primary franchises and/or a license or
19 permit issued by the Government;

20 “(b) Formulate policies and recommendations on issues concerning
21 the securities market, **CORPORATE GOVERNANCE, CAPITAL MARKET**
22 **DEVELOPMENT, AND SECURITIES AND MARKET REGULATION, AS**
23 **WELL AS** advise Congress and other government agencies on all aspects
24 of the securities market and propose legislation and amendments thereto;

25 “(c) Approve, reject, suspend, revoke or require amendments to
26 registration statements, and registration and licensing applications;

27 “(d) Regulate, investigate or supervise the activities of persons to
28 ensure compliance **WITH THIS CODE, AND INVESTIGATE ANY**
29 **VIOLATION OF THE PROVISIONS OF THIS CODE AND OTHER**
30 **APPLICABLE LAWS, OR UPON REQUEST FOR INFORMATION FROM**
31 **A FOREIGN SECURITIES REGULATOR;**

32 “(e) Supervise, monitor, suspend, or take over the activities of
33 exchanges, clearing agencies and other SROs;

34 “xxx xxx xxx;

35 “(l) Issue *subpoena duces tecum* and summon witnesses to appear
36 in any proceedings of the Commission and in appropriate cases, order the
37 examination, search and seizure of all documents, papers, files and records,
38 tax returns, and books of accounts of any entity or person under
39 investigation as may be necessary for the proper disposition of the cases

before it, subject to the provisions of existing laws. **THE COMMISSION
MAY ALSO ISSUE THE FOLLOWING:**

**"(i) *SUBPOENA DUCES TECUM* AGAINST ANY PERSON,
INCLUDING BANKS AND FINANCIAL INSTITUTIONS, ITS
OFFICERS AND EMPLOYEES, FOR THE EXAMINATION,
PRODUCTION, OR SEARCH AND SEIZURE OF ALL DOCUMENTS,
RECORDS AND EFFECTS, INCLUDING GOVERNMENT SECURITIES
AND FOREIGN CURRENCY DEPOSIT OF ANY PERSON, NECESSARY
FOR THE PROPER DISPOSITION OF CASES INVOLVING ANY
VIOLATION OF THIS CODE AND OTHER APPLICABLE LAWS, RULES
AND REGULATIONS, OR UPON THE REQUEST FOR ASSISTANCE OF
A FOREIGN SECURITIES REGULATOR, PURSUANT TO SECTION
65.5 OF THIS CODE. THIS IS AN EXCEPTION TO THE PROVISIONS
OF REPUBLIC ACT NO. 1405, AS AMENDED, ENTITLED "*AN ACT
PROHIBITING DISCLOSURE OF OR INQUIRY INTO, DEPOSITS
WITH ANY BANKING INSTITUTION AND PROVIDING PENALTY
THEREFOR,*" AND OTHER APPLICABLE LAWS, RULES AND
REGULATIONS; AND**

**"(ii) *SUBPOENA AD TESTIFICANDUM* OR SUMMON AGAINST
ANY PERSON, REPRESENTATIVES OF BANKS AND FINANCIAL
INSTITUTIONS INCLUDING ITS OFFICERS AND EMPLOYEES, TO
APPEAR AND TO TESTIFY IN ANY PROCEEDINGS OF THE
COMMISSION NECESSARY FOR THE PROPER DISPOSITION OF**

63 **CASES INVOLVING ANY VIOLATION OF THIS CODE AND OTHER**
64 **APPLICABLE LAWS, RULES AND REGULATIONS, OR UPON THE**
65 **REQUEST FOR ASSISTANCE OF A FOREIGN SECURITIES**
66 **REGULATOR PURSUANT TO SECTION 65.5 OF THIS CODE AS AN**
67 **EXCEPTION TO THE PROVISIONS OF REPUBLIC ACT NO. 1405, AS**
68 **AMENDED, AND OTHER APPLICABLE LAWS, RULES AND**
69 **REGULATIONS;**

70 "(m) Suspend, or revoke, after proper notice and hearing, the
71 franchise or certificate of registration of corporations, partnership or
72 associations, upon any of the grounds provided [~~by law; and~~] **UNDER**
73 **THIS CODE AND OTHER APPLICABLE LAWS, RULES AND**
74 **REGULATIONS;**

75 **"(N) ENTER INTO INTERNATIONAL COOPERATION**
76 **AGREEMENTS AND ARRANGEMENTS WITH SECURITIES**
77 **REGULATORS AND OTHER SIMILAR ENTITIES FOR THE**
78 **DEVELOPMENT AND REGULATION OF THE CAPITAL MARKET;**

79 ~~"[(n)]~~ **(O)** Exercise such other powers as may be provided by law as
80 well as those which may be implied from, or which are necessary or
81 incidental to the carrying out of, the express powers granted the
82 Commission to achieve the objectives and purposes of these laws.

83 "xxx xxx xxx."

84 SEC. 2. Section 53 of the same Act is amended to read as follows:

85 "SEC. 53. *Investigations, Injunctions and Prosecution of*
86 **Offenses.** – 53.1 The Commission may, in its discretion, make such
87 investigations as it deems necessary to determine whether any person has
88 violated or is about to violate any provision of this Code, any rule, regulation
89 or order thereunder, or any rule of an Exchange, registered securities
90 association, clearing agency, other self-regulatory organization, **OR UPON**
91 **THE REQUEST FOR ASSISTANCE BY A FOREIGN SECURITIES**
92 **REGULATOR**, and may require or permit any person to file with it a
93 statement in writing, under oath or otherwise, as the Commission shall
94 determine, as to all facts and circumstances concerning the matter to be
95 investigated. The Commission may publish information concerning any such
96 violations, and to investigate any fact, condition, practice or matter which
97 it may deem necessary or proper to aid in the enforcement of the provisions
98 of this Code, in the prescribing of rules or regulations thereunder, or in
99 securing information to serve as a basis for recommending further
100 legislation concerning the matters to which this Code relates: *Provided,*
101 *however,* That any person requested or subpoenaed to produce documents
102 or testify in any investigation shall simultaneously be notified in writing of
103 the purpose of such investigation: *Provided, further,* That all criminal
104 complaints for violations of this Code, and the implementing rules and
105 regulations enforced or administered by the Commission shall be referred
106 to the Department of Justice for preliminary investigation and prosecution
107 before the proper court: *Provided, furthermore,* That in instances where the

108 law allows independent civil or criminal proceedings of violations arising
109 from the same act, the Commission shall take appropriate action to
110 implement the same: *Provided, finally,* That the investigation, prosecution,
111 and trial of such cases shall be given priority **BY THE COMMISSION.**

112 "53.2. For the purpose of any such investigation, or any other
113 proceeding under this Code, the Commission or any officer designated by it
114 is empowered to administer oaths and affirmations, *subpoena* witnesses,
115 compel attendance, take evidence, require the production of any book,
116 paper, correspondence, memorandum, or other record which the
117 Commission deems relevant or material to the inquiry, and to perform such
118 other acts necessary in the conduct of such investigation or proceedings.

119 **THE COMMISSION MAY REQUIRE THE PRODUCTION OF**
120 **DOCUMENTS AND RECORDS INCLUDING THOSE OF FINANCIAL**
121 **INSTITUTIONS OR BANKS, AS AN EXCEPTION TO THE**
122 **PROVISIONS OF REPUBLIC ACT NO. 1405, AS AMENDED.**
123 **FURTHERMORE, THE COMMISSION IS AUTHORIZED TO KEEP IN**
124 **ITS CUSTODY THE DOCUMENTS AND RECORDS PRODUCED OR**
125 **SEIZED UNTIL IT CONCLUDES ITS INVESTIGATION. IN THE**
126 **COURSE OF THE TAKING OF A PERSON'S STATEMENT OR**
127 **TESTIMONY, ORAL OR WRITTEN DEPOSITION, PURSUANT TO A**
128 **REQUEST FOR ASSISTANCE OF A FOREIGN SECURITIES**
129 **REGULATOR, THE COMMISSION MAY ALLOW THE PRESENCE OF A**
130 **REPRESENTATIVE FROM SUCH REQUESTING AUTHORITY.**

131 "xxx xxx xxx."

132 SEC. 3. Section 66 of the same Act is amended to read as follows:

133 "SEC. 66. ***Revelation of Information Filed with the***
134 ***Commission. –***

135 "xxx

136 "66.5. Notwithstanding anything in Subsection 66.4 to the contrary,
137 on request from a foreign [~~enforcement authority~~] **SECURITIES**
138 **REGULATOR** of any country whose laws grant reciprocal assistance as
139 herein provided, the Commission [~~may~~] **SHALL** provide assistance in
140 accordance with this subsection, including the disclosure of any information
141 filed with or transmitted to the Commission, if the requesting [~~authority~~]
142 **FOREIGN SECURITIES REGULATOR** states that it is conducting an
143 investigation which it deems necessary to determine whether any person
144 has violated, is violating, or is about to violate any **APPLICABLE** laws,
145 **RULES AND REGULATIONS**, relating to securities or commodities
146 matters that the requesting [~~authority~~] **FOREIGN SECURITIES**
147 **REGULATOR** administers or enforces. Such assistance may be provided
148 without regard to whether the facts stated in the request would also
149 constitute a violation of law of the Philippines.

150 **"ANY INFORMATION REQUESTED BY THE FOREIGN**
151 **SECURITIES REGULATOR MAY BE USED BY SUCH REGULATOR FOR**
152 **THE PURPOSES SET FORTH IN THE REQUEST, INCLUDING THE**
153 **CONDUCT OF ANY CIVIL, ADMINISTRATIVE OR CRIMINAL**

154 **PROCEEDING. IF THE REQUESTING FOREIGN SECURITIES**
155 **REGULATOR INTENDS TO USE THE INFORMATION FOR ANY**
156 **PURPOSE OTHER THAN THOSE STATED IN THE REQUEST, IT MUST**
157 **FIRST OBTAIN THE CONSENT OF THE REQUESTED PARTY.**

158 **"66.6. THE COMMISSION SHALL NOT DISCLOSE THE**
159 **EXISTENCE OF A REQUEST FOR ASSISTANCE AS WELL AS ANY**
160 **DOCUMENTS, RECORDS OR TESTIMONIES OBTAINED FROM A**
161 **FOREIGN SECURITIES REGULATOR IN CONNECTION TO A**
162 **REQUEST FOR ASSISTANCE MADE BY THE COMMISSION, OR**
163 **REQUEST FOR ASSISTANCE RECEIVED BY THE COMMISSION**
164 **FROM A FOREIGN SECURITIES REGULATOR PURSUANT TO A**
165 **MEMORANDUM OF UNDERSTANDING AND OTHER INFORMATION**
166 **SHARING PROCEDURE.**

167 **"66.7. THE DISCLOSURE OF THE EXISTENCE OF THE**
168 **REQUEST FOR ASSISTANCE SHALL BE MADE ONLY WHEN**
169 **NECESSARY TO CARRY OUT SUCH REQUEST. ALL OTHER**
170 **INFORMATION OBTAINED UNDER SECTION 66.6 SHALL BE USED**
171 **ONLY AS INDICATED IN THE REQUEST AND IN ACCORDANCE**
172 **WITH APPLICABLE LAWS, RULES AND REGULATIONS."**

173 SEC. 4. Within sixty (60) days from the approval of this Act, the Securities and
174 Exchange Commission shall promulgate the necessary rules and regulations for the
175 effective implementation of this Act.

176 SEC. 5. This Act shall take effect fifteen (15) days after its publication in the
177 *Official Gazette* or in a newspaper of general circulation.

178 Approved,