



Republic of the Philippines
HOUSE OF REPRESENTATIVES
Quezon City, Metro Manila



NINETEENTH CONGRESS
Second Regular Session

HOUSE BILL NO. 10526

Introduced by Representative Irwin C. Tieng

AN ACT FURTHER STRENGTHENING THE CONFIDENCE IN THE CAPITAL MARKET, PROTECTING INVESTORS, AND PROMOTING INTERNATIONAL COOPERATION AMONG FINANCIAL REGULATORS, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 1405, ENTITLED “AN ACT PROHIBITING DISCLOSURE OF OR INQUIRY INTO, DEPOSITS WITH ANY BANKING INSTITUTION AND PROVIDING PENALTY THEREFORE”

EXPLANATORY NOTE

In light of the prevalent investment fraud and scams that utilize more complex mechanisms through online transactions and cross borders to evade investigation and prosecution, it has become necessary to further equip the Securities and Exchange Commission with the necessary capabilities to conduct its investigation effectively.

The common types of Securities Regulation Code (“SRC”) violations are public offering and selling of securities without a permit or license from the Securities Exchange Commission (“SEC”) and other types of investment fraud, such as the *Ponzi Scheme*. A *Ponzi Scheme* is an investment program that offers investors impossibly high returns and pays these returns to early investors out of the capital contributed by later investors.¹ Eventually, however, such a scheme fails as more and more people are recruited, requiring an ever-increasing amount of money to be paid to later investors. Other SRC violations include, among others, insider trading, wash sales, and other investment frauds.

One example of a Ponzi Scheme is KAPA, considered among the biggest scams in the Philippines, collecting approximately Php 50 Billion from its members. KAPA provides an investment program that offers impossibly high returns and pays these returns to early investors

¹ Briefer on KAPA As of 24 July 2020, Securities and Exchange Commission, retrieved from https://www.sec.gov.ph/wp-content/uploads/2020/07/2020Visuals_Briefer-on-KAPA-As-of-07242020.pdf

out of the capital contributed by later investors. Members are enticed to make “donations” with a promise of “blessings” equivalent to 30% of their lifetime donations to be paid out monthly. Yet, KAPA does not have any concrete and stable business or source of income that will sustain the payment of guaranteed returns to all its investors; thus, the investment scheme is doomed to fail. It cannot possibly sustain paying out a 30% monthly interest without recruiting new members and soliciting more money from the public.²

Another one is the Aman Futures Group, which has defrauded more than Php 12 Billion from more than ten thousand investors in the country.³ The scam operators could easily benefit from their fraudulent investment-taking activities through the banking system as the funds can be easily kept and transferred through banks. The ease with which scam operators can use the banking system to shield their funds from law enforcement authorities further encourages the former. Investment fraud thus continues to thrive because the scam operators can easily launder the funds through banks. Further, scammers can conveniently bring their ill-gotten gains out of the country. It is thus imperative that timely action be taken.

Throughout its investigation, the SEC discovered that the banking system enhances and facilitates the commission of investment fraud. Scam operators can accumulate huge amounts of money in a relatively short period and later transfer or withdraw the bulk of their loot before any action to recover illegal proceeds can be taken against them.

More often than not, the money derived from such scams is deposited in banks, where they will eventually be laundered. The ease with which scam operators can use the banking system to shield their money from law enforcement authorities further encourages them. Investment fraud thus continues to thrive because scam operators can easily launder money through banks. Therefore, one of the most effective ways of combating investment scams is by depriving the investment fraud operators of the ease of keeping, transacting, transferring, and moving the proceeds of their illicit activities through the banking system.

Considering how these scams spread alarmingly and how swiftly the scammers can mask their transactions through technology and banking systems, SEC investigations must be conducted efficiently, especially in accessing and gathering pertinent bank documents and information that may be integral to case build-up and eventual prosecution.

During the Concluding Meeting of the Financial Sector Assessment Program (“FSAP”) held on 21 October 2020, the World Bank (“WB”) and International Monetary Fund (“IMF”) mentioned R.A. No. 1405, “An Act Prohibiting Disclosure or Inquiry Into, Deposits with any Banking Institution and Providing Penalty Therefor” or “The Bank Secrecy Law” and emphasized the need for legislation that will allow financial regulators access to banking information to effectively carry out their duties to maintain the confidence in and stability of the capital market and protecting investors.

Granting the SEC the ability to share bank information in connection with the investigation of investment fraud, whether committed here or in other jurisdictions, with counterpart regulators in different jurisdictions to assist them in their investment fraud investigations would likewise enhance the standing of the Philippines in the international financial community. Specifically, this will facilitate the acceptance of the Philippines as an “Appendix A” member of the

² Ibid.

³ “What Went Before: P12-B Aman Futures scam,” Philippine Daily Inquirer, 26 January 2013, <https://newsinfo.inquirer.net/347161/what-went-before-p12-b-aman-futures-scam>, (accessed 22 September 2022)

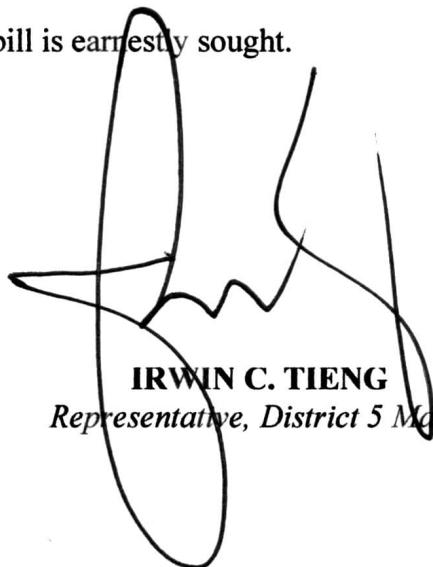
International Organization of Securities Commission (“IOSCO”) Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information (“MMoU”) and be able to avail of the resources of such international organization in enhancing the SEC’s capacity and effectiveness in the performance of its mandate in protecting investors and promoting the development of the capital market.

The IOSCO mechanism is a perfect way to empower financial regulators worldwide. In exchange for information from our local banks, the Philippines will have access to bank information from more than a hundred countries worldwide, independent of any interest such countries may have in the information requested. The IOSCO mechanism assures us access to a worldwide wealth of bank and investor information; it will also enable us to follow the money trail to other jurisdictions and avail of their laws to protect our financial consumers.

Further, the SRC already recognizes the importance of international cooperation among financial regulators in combating investor protection; in fact, Section 66.5 of the SRC empowers the SEC to assist in the disclosure of any information filed with or transmitted to the SEC to foreign enforcement authority of any country whose laws grant reciprocal assistance upon their request.⁴

Thus, there is a need for more transparent financial records, especially in relation to the investigation of financial fraud and violations of securities laws. SEC should be empowered to look into bank records when there is reasonable ground to believe that the concerned entity or person is engaged in the commission of investment fraud.

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



IRWIN C. TIENG
Representative, District 5 Manila

⁴ Section 66. *Revelation of Information Filed with the Commission.* – 66.1. All information filed with the commission in compliance with the requirements of this Code shall be made available to any member of the general public, upon request, in the premises and during regular office hours of the Commission, except as set forth in this Section.

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66.4. It shall be unlawful for any member, officer, or employee of the Commission to disclose to any person other than a member, officer or employee of the Commission or to use for personal benefit, any information contained in any application, report, or document filed with the Commission which is not made available to the public pursuant to Subsection 66.3.

66.5. Notwithstanding anything in Subsection 66.4 to the contrary, on request from a foreign enforcement authority of any country whose laws grant reciprocal assistance as herein provided, the Commission may provide assistance in accordance with this subsection, including the disclosure of any information filed with or transmitted to the Commission. If the requesting authority states that it is conducting an investigation which it deems necessary to determine whether any person has violated, is violating, or is about to violate any laws relating to securities or commodities matters that the requesting authority administers or enforces. Such assistance may be provided without regard to whether the facts stated in the request would also constitute a violation of law of the Philippines.



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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. Section 2 of Republic Act No. 1405, **entitled: “*An Act Prohibiting Disclosure of or Inquiry Into, Deposits With Any Banking Institution And Providing Penalty Therefore*”** is hereby amended to read, as follows:

“SECTION 2. All deposits are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office, except upon written permission of the depositor, or in cases of impeachment, or upon order of a competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited is the subject matter of the litigation, **OR IN CASES WHERE THE INQUIRY OR EXAMINATION IS MADE BY THE SECURITIES AND EXCHANGE COMMISSION (SEC) IN CONDUCTING INVESTIGATIONS ON SECURITIES AND/OR INVESTMENT FRAUD AND OTHER SECURITIES VIOLATIONS.**

IN RELATION TO THE CONDUCT BY THE SEC OF INVESTIGATIONS ON SECURITIES AND/OR INVESTMENT FRAUD AND OTHER SECURITIES VIOLATIONS, IT SHALL HAVE THE POWER TO SUBPOENA AND/OR INQUIRE INTO THE BANK RECORDS OF DEPOSITS AND OTHER

RELATED INFORMATION HELD BY BANKS AND OTHER FINANCIAL INSTITUTIONS OF PERSONS OR ENTITIES IN THE FOLLOWING INSTANCES:

- (1) WHERE THERE IS REASONABLE GROUND TO BELIEVE THAT SUCH PERSONS OR ENTITIES ARE OR HAVE BEEN ENGAGED IN THE COMMISSION OF SECURITIES AND/OR INVESTMENT FRAUD AND OTHER SECURITIES VIOLATIONS;**
- (2) SUCH BANK RECORDS OF DEPOSITS AND OTHER RELATED INFORMATION ARE IN ANY WAY RELATED TO THE COMMISSION OF SECURITIES AND INVESTMENT FRAUD OR OTHER SECURITIES VIOLATIONS;**
- (3) WHERE THERE IS REASONABLE GROUND TO BELIEVE THAT SUCH BANK RECORDS OF DEPOSITS AND OTHER RELATED INFORMATION HELD BY BANKS AND OTHER FINANCIAL INSTITUTIONS ARE IN ANY WAY RELATED TO THE COMMISSION OF SIMILAR FORMS OF SECURITIES AND/OR INVESTMENT FRAUD AND OTHER SECURITIES VIOLATIONS IN OTHER JURISDICTIONS, UPON A FORMAL WRITTEN REQUEST FROM COUNTERPART REGULATORS FOR USE IN INVESTIGATIONS OR AS EVIDENCE IN CIVIL, ADMINISTRATIVE OR CRIMINAL ENFORCEMENT PROCEEDINGS IN SUCH JURISDICTIONS; PROVIDED, THAT A SIMILAR ASSISTANCE IS GIVEN TO THE SEC ON THE BASIS OF RECIPROCITY BY SUCH COUNTERPART REGULATORS.**

THE RESULTS OF THE INQUIRY OR EXAMINATION CONDUCTED BY THE SEC SHALL BE TREATED WITH CONFIDENTIALITY AND SHALL NOT BE MADE AVAILABLE TO ANY PERSON OR ENTITY, WHETHER PUBLIC OR PRIVATE, EXCEPT TO THE ABOVEMENTIONED COUNTERPART REGULATORS WHICH SHALL TREAT THE INFORMATION WITH THE SAME CONFIDENTIALITY.

AS USED IN THIS ACT, *DEPOSITS* SHALL REFER TO MONEY OR ITS EQUIVALENT RECEIVED BY A BANK IN THE USUAL COURSE OF BUSINESS, EVIDENCED BY A PASSBOOK, CERTIFICATE OF DEPOSIT, OR OTHER EVIDENCE OF DEPOSIT, ISSUED IN ACCORDANCE WITH *BSP* RULES AND REGULATIONS AND OTHER APPLICABLE LAWS, AS WELL AS SUCH OTHER OBLIGATION OF A BANK THAT FORMS PART OF ITS DEPOSIT LIABILITIES PURSUANT TO *BSP* RULES AND REGULATIONS.

THE EXEMPTIONS UNDER THIS SECTION SHALL APPLY TO FOREIGN CURRENCY DEPOSITS IN BANKS OPERATING IN THE PHILIPPINES INCLUDING OFF-SHORE BRANCHES OF DOMESTIC BANKS.

SEC. 2. Section 3 of the same Act, is hereby amended to read as follows:

“SECTION 3. NO BANK OR FINANCIAL INSTITUTION, OR ANY OF ITS DIRECTORS, OFFICERS OR EMPLOYEES, SHALL BE SUBJECT TO ANY ACTION, CLAIM OR DEMAND IN CONNECTION WITH, AND SHALL BE HELD FREE AND HARMLESS FROM LIABILITY FOR, ANY ACT DONE IN COMPLIANCE WITH AN ORDER FOR INQUIRY OR EXAMINATION OF DEPOSITS FROM THE SEC.

HOWEVER, it shall be unlawful for any official or employee, of a banking institution, to disclose ANY INFORMATION CONCERNING SAID DEPOSITS to any person AND UNDER SUCH CONDITIONS other than those mentioned in Section ~~two~~ 2 hereof. IT SHALL ALSO BE UNLAWFUL FOR ANY PERSON TO USE THIS ACT FOR PERSECUTION OR HARASSMENT OR AS AN INSTRUMENT TO HAMPER COMPETITION IN TRADE AND COMMERCE.”

SEC. 3. *Separability Clause.* If any provision or section of this Act is held to be unconstitutional or invalid, the other provisions or sections hereof, which are not affected thereby shall continue to be in full force and effect.

SEC. 4. *Repealing Clause.* All other Acts or parts of Acts, Special Charters, Executive Orders, Rules, and Regulations, that are inconsistent with the provisions of this Act, are hereby repealed or amended.

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

Approved,