Republic of the Philippines
Department of Finance
Securities and Exchange Commission

ROBERTO V. ONGPIN,
Appellant,

- versus -

SEC *En Banc* Case No. 03-15-367

ENFORCEMENT AND INVESTOR PROTECTION DEPARTMENT,
Appellee.

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DECISION

For the consideration of the Commission *En Banc* is the *Memorandum on Appeal*[1] filed by appellant Roberto V. Ongpin on 26 March 2015 assailing the *Order* (Assailed Order) dated 10 March 2015 issued by appellee Enforcement and Investor Protection Department (EIPD) of the Commission. The pertinent portion of the *Assailed Order*[2] of the EIPD reads as follows:

> "**PREMISES CONSIDERED**, *Mr. Roberto V. Ongpin* is hereby found liable for committing 174 counts of Insider Trading in violation of Section 27(27.1) of R.A. No. 8799 otherwise known as the Securities Regulation Code and is hereby **ORDERED** to pay a fine in the amount of **Seventeen Million Four Hundred Thousand Pesos (P17,400,000.00)** in accordance with SEC Memorandum Circular No. 6, Series of 200[5] within 15 days upon receipt hereof.
>
> Further, the penalty of **DISQUALIFICATION** from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer corporation pursuant to Section 54.1 (iii) of the SRC is further imposed on **Mr. Roberto V. Ongpin** and is hereby **ORDERED,** upon the finality of this Order, to relinquish and/or resign from any and all positions he is presently holding as officer, member of the Board of Directors. x x x"

FACTS

In 2007, appellant acquired his first block of PHILEX shares from Banco de Oro (BDO) amounting to 5% of the total outstanding shares thereof. Thereafter, he acquired additional PHILEX shares which were held by John Gokongwei and Manuel Zamora. On account of these shares, he eventually became a director of PHILEX in 2007.[3]

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[1] *Memorandum on Appeal* dated 25 March 2015.
[2] *Id*, Annex "C" (Assailed Order, pp. 25-26).
[3] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 2 and Annex "C" (Appellant's Paid Advertisement in the Philippine Daily Inquirer dated 13 October 2011).

On 12 September 2008, PHILEX disclosed to the Philippine Stock Exchange (PSE) that it had engaged in negotiations for the sale of 20% of its issued shares with several foreign investors, which included First Pacific Company Limited (First Pacific), a Hong Kong based investment holding company, of which Manuel V. Pangilinan is a Managing Director and Chief Executive Officer.[4]

On 3 October 2008, PHILEX announced that it agreed to the sale to Asia Link B.V. (Asia Link), a corporation wholly-owned by First Pacific, of 778,620,792 PHILEX shares which represents 20.06% of the total issued shares of PHILEX at the price of Seven Pesos and Ninety-Two Centavos (Php 7.92) per share.[5] The agreement provides for the appointment of two directors of the wholly-owned subsidiary of First Pacific to the PHILEX board and that it is intended that Manuel V. Pangilinan will be nominated to take the first of the two board seats.[6]

On 6 October 2008, First Pacific publicized its intention to acquire additional shares to increase its aggregate interests in PHILEX up to 40%, which would give its wholly-owned subsidiary Asia Link increased "board representation".[7]

On 28 November 2008, PHILEX disclosed to the PSE that it closed the transaction for the sale of the above-mentioned shares with First Pacific, through Asia Link. It was further disclosed that Manuel V. Pangilinan and Robert C. Nicholson, who were the nominees of the wholly-owned subsidiary of First Pacific (Asia Link), were elected as directors of PHILEX during the special election held on even date.[8]

On 19 August 2009, it was reported that Manuel V. Pangilinan made an offer to Social Security System (SSS) for its block of shares, but was turned down.[9]

On 4 November 2009, appellant acquired indirectly, through his owned and controlled corporation Golden Media Corporation, Fifty Million (50,000,000) PHILEX shares from Development Bank of the Philippines (DBP).[10]

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[4] *Memorandum on Appeal*, par. 4.5 and Annex "B" (Answer dated 28 November 2014 of appellant and Annex "1" [PHILEX's disclosures to the PSE dated 12 September 2008]).

[5] *Id.*, par. 4.6 and Annex "B" (Answer dated 28 November 2014 of appellant and Annex "2" [PHILEX's disclosures to the PSE dated 3 October 2008]).

[6] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 4 and Annex "E" (Discloseable Transaction Acquisition of Interest in Philex Mining Operations).

[7] *Id.*

[8] *Memorandum on Appeal*, par. 4.11 and Annex "B" (Answer dated 28 November 2014 of appellant, Annexes "7" and "7-A" [PHILEX's disclosures to the PSE dated 28 November 2008 and 8 December 2008]).

[9] *Id.*, par. 7.23.10.

[10] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 5 and Annex "G" (Lala Rimando, *DBP Ongpin Philex Controversial Deals Detailed*, ABS-CBNews.com, 25 May 2011).

On 9 November 2009, appellant purchased an additional Fifty million (50,000,000) shares of PHILEX in anticipation of a bidding war between Manuel V. Pangilinan and Ramon Ang of San Miguel Corporation.[11]

On 16 November 2009, it was reported that the Government Service Insurance System (GSIS), together with the group of appellant, was "trying to build up a strategic stake in anticipation of another battle royale."[12]

On 23 November 2009, appellant reported to the Commission, through SEC Form 23-B, that he owned directly and indirectly, through his owned and controlled corporations Golden Media Corporation, Boerstar Corporation, Elkhound Resources and G.A.M.E. Equities, Inc. (RVO Companies), Three Hundred Twenty One Million, Eight Hundred and Ten Thousand and Three Hundred Eighty Six (321,810,386) PHILEX shares. Such shares accounted for a 6.58% stake in PHILEX through his companies.[13]

During the week of 24 November 2009, Manuel V. Pangilinan and appellant entered into negotiations with respect the possible purchase by the First Pacific group of 550,000,000 PHILEX shares from the latter.[14] The parties settled on the selling price of Php 21.00 on 1 December 2009.[15]

By 28 November 2009, First Pacific increased its aggregate stake in PHILEX to 31.5%, or a total of One Billion Five Hundred Forty-Two Million Five Hundred Eighty-Nine Thousand Three Hundred Fifty-Two (1,542,589,352) common shares (inclusive of the 20.06% shares indirectly acquired through Asia Link).[16]

Having just concluded a deal the previous day with Manuel V. Pangilinan who expressed willingness to buy 550 million shares from him at Php 21.00 per share, in the morning of 2 December 2009, appellant admitted[17] that he purchased, through Golden Media Corporation, an additional 45,964,500 PHILEX from the open market at the market price of Php 19.25 – 19.50 per share.[18] Per PSE Trade Ledger,[19] the purchase involved 174 separate transactions.

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[11] *Memorandum on Appeal*, par. 4.15.
[12] *Id.*, par. 4.16.
[13] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 5 and Annex "F" (SEC Form 23-B dated 23 November 2009 filed by appellant).
[14] *Memorandum on Appeal*, Annex "D" (Affidavit of Manuel V. Pangilinan published in the Philippine Daily Inquirer on 5 December 2011).
[15] *Id.*, par. 7.12, and Annex "B" (Answer dated 28 November 2014 of appellant, par. 24).
[16] *Id.*, par. 4.12 and Annex "B" (Answer dated 28 November 2014 of appellant, Annexes "8" [PHILEX's disclosures to the PSE dated 4 December 2009 attaching SEC Form 23-A dated 3 December 2009] and "8-A" [PHILEX's disclosures to the PSE dated 4 December 2009]).
[17] *Id.*, par. 4.19, and Annex "B" (Answer dated 28 November 2014 of appellant, par. 18); and *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 9 and Annex "L" (SEC Form 23-B filed on 9 December 2009 filed by appellant).
[18] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 9 and Annex "L" (SEC Form 23-B filed on 9 December 2009 filed by appellant).

Thereafter, in the evening of 2 December 2009, appellant, his RVO Companies, DBP, and CEO and Director of PHILEX Walter Brown, sold to First Pacific's subsidiary, Two Rivers Pacific Holdings Corporation (Two Rivers), a total of 452,088,160 PHILEX shares representing a 9.24% stake in the corporation, as stated in their Share Purchase Agreement. The sale is broken down as follows: (i) Three Hundred Sixty-Seven Million, Seven Hundred and Seventy-Four Thousand, and Seven Hundred Eighty-Six (367,774,786) shares from appellant and RVO Companies, (ii) Fifty-Nine Million, Three Hundred Thirty- Nine Thousand (59,339,000) shares from DBP, (iii) Twenty-Four Million, Nine Hundred Seventy-Four Thousand and Three Hundred Seventy-Four (24,974,374) shares from Walter Brown. The price per share was Php 21.00 and the aggregate purchase price involved was Nine Billion Four Hundred Ninety-Three Million Eight Hundred Fifty-One Thousand, Three Hundred Sixty Pesos (Php 9,493,851,360).[20] On account of this transaction, First Pacific upped its stake in PHILEX to 40.84%.[21]

On 3 December 2009, PHILEX filed a disclosure with the PSE covering the above-mentioned transfer of shares as stated in the Share Purchase Agreement.[22]

On 8 December 2009, PHILEX filed another disclosure with the PSE[23] informing the latter the following changes in the Board of Directors and officers of the former:

> "***[Appellant] (Director and Vice-Chairman)***, Walter W. Brown (Director and Chief Executive Officer), Eric O. Recto (Director), and Mr. Reynaldo G. David (Independent Director), RESIGNED. Mr. Rodolfo Ma. A. Ponferrada, Asst. Corporate Secretary, also RESIGNED.
>
> 2. The following were elected as Directors of [PHILEX]: Mr. Edward A. Tortorici, Mr. Albert F. del Rosario, and Ms. Marilyn A. Victorio-Aquino. Mr. Oscar J. Hilado and Mr. Eric O. Recto were ELECTED as Independent Directors.
>
> 3. Mr. Manuel V. Pangilinan, Chairman of [PHILEX], was ELECTED concurrent Chief Executive Officer.
>
> The foregoing changes were effected at the regular meeting of the Board of Directors of [PHILEX] held on 7 December 2009. x x x" (Emphasis ours)

Next, it must be noted that the closing price of PHILEX shares from 1 October 2009 to 10 December 2009 is as follows:[24]

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[19] *Id*, par. 6 and Annex "H" (Daily Transaction Report of the PSE on 2 December 2009.).
[20] *Memorandum on Appeal*, par. 4.20 and Annex "B" (Answer dated 28 November 2014 of appellant, Annex "10" [Share Purchase Agreement]); and *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 6.
[21] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 6.
[22] *Id.*, par. 7 and Annex "J" (PHILEX's disclosure to the PSE dated 3 December 2009).
[23] *Id.*, par. 7 and Annex "K" (PHILEX's disclosure to the PSE dated 8 December 2009).
[24] *Memorandum on Appeal*, Annex "B" (Answer dated 28 November 2014 of appellant, Annex "9" [A List of the Closing Prices of PHILEX Shares of Stock]).

TABLE 1

DATE	STOCK	CLOSE	VOLUME	DATE	STOCK	CLOSE	VOLUME
01 Oct. 2009	PX	8.60	12,606,000	16 Oct. 2009	PX	9.00	4,669,000
02 Oct. 2009	PX	8.60	4,553,000	19 Oct. 2009	PX	9.00	3,723,000
05 Oct. 2009	PX	8.60	1,582,000	20 Oct. 2009	PX	9.00	21,293,000
06 Oct. 2009	PX	8.70	6,187,000	21 Oct. 2009	PX	9.10	6,877,000
07 Oct. 2009	PX	9.10	52,779,000	22 Oct. 2009	PX	9.50	45,578,000
08 Oct. 2009	PX	9.30	17,218,000	23 Oct. 2009	PX	9.60	4,997,000
09 Oct. 2009	PX	9.10	8,928,000	26 Oct. 2009	PX	10.00	38,241,000
12 Oct. 2009	PX	9.10	9,980,000	27 Oct. 2009	PX	9.90	6,995,000
13 Oct. 2009	PX	9.00	9,149,000	28 Oct. 2009	PX	10.50	45,552,000
14 Oct. 2009	PX	9.00	9,125,000	29 Oct. 2009	PX	10.75	44,303,500
15 Oct. 2009	PX	9.00	11,675,000	30 Oct. 2009	PX	11.50	129,319,400

DATE	STOCK	CLOSE	VOLUME	DATE	STOCK	CLOSE	VOLUME
03 Nov. 2009	PX	13.00	389,107,600	18 Nov. 2009	PX	15.25	22,435,900
04 Nov. 2009	PX	12.75	36,693,900	19 Nov. 2009	PX	16.50	22,004,500
05 Nov. 2009	PX	13.25	80,506,300	20 Nov. 2009	PX	17.50	14,817,200
06 Nov. 2009	PX	13.50	19,462,400	23 Nov. 2009	PX	18.25	12,521,500
09 Nov. 2009	PX	15.75	52,983,600	24 Nov. 2009	PX	19.00	21,115,900
10 Nov. 2009	PX	18.00	73,909,700	25 Nov. 2009	PX	19.25	12,865,900
11 Nov. 2009	PX	19.50	87,017,800	26 Nov. 2009	PX	19.25	17,648,200
12 Nov. 2009	PX	19.50	53,964,800	27 Nov. 2009	PX	18.00	14,746,300
13 Nov. 2009	PX	16.75	59,788,900	01 Dec. 2009	PX	19.00	18,817,200
16 Nov. 2009	PX	14.25	29,526,300	02 Dec. 2009	PX	19.50	63,031,900
17 Nov. 2009	PX	14.00	23,000,900	03 Dec. 2009	PX	17.75	18,821,200

DATE	STOCK	CLOSE	VOLUME
04 Dec. 2009	PX	15.50	15,678,800
07 Dec. 2009	PX	16.00	16,943,700
08 Dec. 2009	PX	15.75	3,587,700
09 Dec. 2009	PX	15.25	6,121,700
10 Dec. 2009	PX	15.25	6,368,300
11 Dec. 2009	PX	16.00	3,772,000
14 Dec. 2009	PX	15.75	6,155,600
15 Dec. 2009	PX	16.25	7,068,100
16 Dec. 2009	PX	16.00	2,989,300
17 Dec. 2009	PX	15.75	2,197,200

On 12 November 2014, the EIPD issued a *Show Cause Order* directing appellant to show cause why no administrative sanctions should be imposed on him for committing 174 counts of insider trading for his purchase of PHILEX shares in the morning of 2 December 2009, in violation of Section 27.1 of the Securities Regulation Code[25] (SRC).[26]

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[25] Republic Act No. 8799 (2000).

[26] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 10 and Annex "M" (Show Cause Order dated 12 November 2014 of the EIPD).

In response, appellant filed his *Answer* stating that there has been no commission of insider trading by him.[27]

The EIPD found the response of appellant without merit. Thus, it issued the Assailed Order dated 10 March 2015 finding appellant liable for insider trading for purchasing shares of PHILEX in 174 transactions without disclosing the material non-public information in his possession.

Hence, this instant appeal.

In his appeal, appellant argues the following: (i) any action to hold him administratively liable for insider trading has prescribed pursuant to Section 62.2 of the SRC; (ii) the information was not gained by him due to his relationship to the issuer PHILEX; (iii) the EIPD erred in ruling that the "inside" information was intended for a "corporate purpose"; (iv) he had reason to believe the selling stockholders were also in possession of the information; and (v) he does not have an obligation to disclose to the selling stockholders the details of the sale to the subsidiary of First Pacific.

On the other hand, the EIPD stated the following in its Reply Memorandum dated 24 April 2015: (i) the period for an action to hold appellant for insider trading has not prescribed since Section 62.2 of the SRC pertains to the prescriptive period for the enforcement of civil liabilities; (ii) appellant gained the information since he is a Director of PHILEX; (iii) The EIPD did not err in ruling that the "inside" information was intended for a "corporate purpose"; (iv) the selling stockholders did not possess information of the sale since it was exclusively made between appellant and the subsidiary of First Pacific; and (v) appellant had an obligation to disclose to the selling stockholders such information due to his fiduciary relationship with the other stockholders of PHILEX.

On 21 September 2015, the Commission issued an *Order* directing, among others, both parties to file their respective memoranda attaching therewith certified true copies of documents which they intend to present in evidence.

In compliance with the Order dated 21 September 2015, appellant filed his Memorandum reiterating his argument that there is no commission of insider trading; on the other hand, the EIPD filed its Memorandum reiterating its argument that appellant is liable for insider trading and attaching documents in support of its argument.[28]

ISSUE

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[27] *Memorandum on Appeal*, Annex "B" (Answer dated 28 November 2014 of appellant)

[28] Memorandum dated 9 October 2015 and filed by appellant on even date; and Memorandum dated 5 October 2015 and filed by the EIPD on 7 October 2015.

The main issue to be resolved is whether appellant is liable for insider trading under Section 27.1 of the SRC for his purchase of PHILEX shares, in the open market, while in possession of material non-public information on 2 December 2009.

RULING

Before discussing the main issue in this case, we deem it proper to discuss appellant's argument that the action to hold him liable for insider trading has prescribed under Section 62.2 of the SRC. Section 62 of the SRC provides the following:

> "**Section 62.** *Limitation of Actions.* – 62.1. No action shall be maintained to enforce any liability created under Section 56 [**Civil Liabilities** on Account of False Registration Statement].or 57 [**Civil Liabilities** Arising in Connection With Prospectus, Communications and Reports] of this Code unless brought within two (2) years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1 (a), unless, brought within two (2) yeas after the violation upon which it is based. In no event shall an such action be brought to enforce a liability created under Section 56 or Subsection 57.1 (a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1(b) more than five (5) years after the sale.
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> **62.2. No action shall be maintained to enforce ANY LIABILITY created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued**." (Emphasis Ours)

The argument of appellant is misplaced. In the Supreme Court case of *Citibank N.A. and the Citigroup Private Bank v. Tanco-Gabaldon*, et al.,[29] the administrative and criminal investigation was initially terminated by the Commission due to prescription. However, the Court stated the following:

> "Thus, bearing in mind that Section 62.1 merely addressed the prescriptive period for the CIVIL LIABILITY provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, **Section 62.2, deals with the other CIVIL LIABILITIES that were not covered by Section 62.1, namely Sections 59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61, the trial court**

[29] G.R. No. 198444, 4 September 2013.

having jurisdiction over such actions, the persons liable and the extent of their liability.

Clearly, the intent is to encompass in Section 62 the prescriptive periods only of the civil liability in cases of violations of the SRC." (Emphasis ours)

In the case at bar, Section 62.2 of the SRC refers to the prescriptive period for civil actions for damages to be filed with the trial court which has jurisdiction over such actions as provided in the above-mentioned case. The provision does not refer to the prescriptive period for administrative actions. Thus, the action to hold appellant liable for insider trading in this instant administrative action has not prescribed.

In the same case, the Supreme Court has pointed out that the SRC does not provide for a prescriptive period for the filing of administrative complaints for violations of the law and that an administrative complaint shall only be barred if it is clear that there is laches on the part of the plaintiff/complainant. Thus:

> "Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders. Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law. And though laches applies even to imprescriptible actions, its elements must be proved positively. Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations."

In this case, laches was not established. Thus, the filing of this action is not barred by prescription nor laches.

We now go to the main issue of whether appellant should be held liable under Section 27.1 of the SRC for the commission of 174 counts of insider trading.

Section 27.1 of the SRC provides the following:

> "**Section 27.** *Insider's Duty to Disclose When Trading.* – 27.1. It shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of material information with respect to the issuer or the security that is not generally available to the public, unless: (a) The insider proves that the information was not gained from

> such relationship; or (b) If the other party selling to or buying from the insider (or his agent) is identified, the insider proves: (i) that he disclosed the information to the other party, or (ii) that he had reason to believe that the other party otherwise is also in possession of the information. A purchase or sale of a security of the issuer made by an insider defined in Subsection 3.8, or such insider's spouse or relatives by affinity or consanguinity within the second degree, legitimate or common-law, shall be presumed to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for market to absorb such information: *Provided, however*, That this presumption shall be rebutted upon a showing by the purchaser or seller that he was aware of the material non-public information at the time of the purchase or sale"

Based on Section 27.1 of the SRC, there are four (4) elements that must be established in an insider trading case: (i) an insider as defined under Section 3.8 of the SRC; (ii) who buys or sells a security of an issuer; (iii) while in possession of material non-public information; and (4) said information pertains to the issuer OR its securities.

In the concurring opinion in the case of *Securities and Exchange Commission v. Interport Resources Corporation, et al.*,[30] Justice Tinga had the occasion to discuss the concept of insider trading:

> **"The securities market, when active and vibrant, is an effective engine of economic growth. It is more able to channel capital as it tends to favor start-up and venture capital companies. To remain attractive to investors, however, the stock market should be fair and orderly. All the regulations, all the requirements, all the procedures and all the people in the industry should strive to achieve this avowed objective. <u>Manipulative devices and deceptive practices, including *insider trading*, throw a monkey wrench right into the heart of the securities industry.</u> <u>When someone trades in the market with unfair advantage in the form of highly valuable secret inside information, all other participants are DEFRAUDED.</u> <u>All of the mechanisms become worthless</u>. Given enough of stock market scandals coupled with the related loss of faith in the market, such abuses could presage a severe drain of capital. And <u>investors would eventually feel more secure with their money invested elsewhere</u>.**

> **The securities market is imbued with public interest and as such it is regulated. Specifically, the reasons given for securities regulation are (1) to protect investors, (2) to supply the informational needs of investors, (3) to ensure that stock prices conform to the fundamental value of the companies**

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[30] G.R. No. 135808, 6 October 2008.

traded, (4) to allow shareholders to gain greater control over their corporate managers, and (5) to foster economic growth, innovation and access to capital. " (Emphasis ours)

In the case at bar, the four (4) elements of insider trading are present.

1. An Insider as Defined under Section 3.8 of the SRC

Under Section 3.8 of the SRC, an "insider" means (a) the issuer; (b) a *director* or officer (or any person performing similar functions) of, or a person controlling the issuer; (c) *any person whose relationship to the issuer gives or gave him access to material information about the issuer or the security that is not generally available to the public*; (d) A government employee, director, or officer of an exchange, clearing agency and/or self-regulatory organization who has access to material information about an issuer or a security that is not generally available to the public; or is a person who learns such information by a communication from any forgoing insiders.

In the case at bar, appellant admits that he was a director and officer of the issuer (PHILEX). However, he argues that he was not an insider because he did not control PHILEX, considering he did not own a majority of PHILEX's outstanding shares and neither did he control a majority of the seats in its Board of Directors.[31]

Contrary to the assertion of appellant, he was an insider considering he had a relationship with PHILEX based on his 6.5% stake therein arising from the shares he acquired, directly or indirectly, from BDO, John Gokongwei, Manuel Zamora and DBP. This allowed him to gain access to material non-public information to be discussed below. It is of no moment that appellant did not own a majority of the outstanding shares of PHILEX nor controlled a majority of the seats in its Board of Directors.

Further, it must be noted that, because of his stake in PHILEX, appellant cannot be considered an ordinary shareholder since he was able to be become a director and Vice Chairman. Appellant's stake entitled him to two (2) seats in the Board of Directors. In fact, the First Pacific group would not have been able to obtain control over PHILEX without appellant's block of shares considering other shareholders, including SSS, refused to sell their block of shares to the said group. The First Pacific group was able to obtain control over PHILEX only when appellant consolidated his block of shares, supplemented by additional shares bought from the open market, and sold the same to the subsidiary of First Pacific.

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[31] *Memorandum on Appeal*, pars. 7.7 and 7.7.1.

Moreover, no ordinary broker would have been able to help the First Pacific group to accomplish its goal of obtaining control over PHILEX as will be discussed subsequently. Clearly, appellant was an insider (as conceded by appellant) considering he was a director and holder of a coveted block of shares in the midst of a bidding war, which gave him access to information about the issuer and security not generally available to the public.

2. Who Buys or Sells a Security of an Issuer

The next element is that the insider buys or sells a security of the issuer. In the case at bar, appellant, in the morning of 2 December 2009, purchased, through Golden Media Corporation, 45,964,500 PHILEX shares from the open market in 174 separate transactions at the market price of Php 19.25 – 19.50 per share.

3. While in Possession of Material Non-public Information with Respect to the Issuer OR the Security

As above-stated, Section 27 of the SRC provides that a purchase of a security of the issuer made by an insider shall be *presumed* to have been effected while in possession of material non-public information if transacted after such information came into existence but prior to dissemination of such information to the public and the lapse of a reasonable time for market to absorb such information. Section 27 further provides that this presumption shall be *rebutted* only if the insider proves that the information was not gained from such relationship, or, if the other party is identified, the insider proves that 1) he disclosed the information to the other party, or 2) he had reason the other party is also in possession of the information.

In the case at bar, appellant gained possession of the material information when such information came into existence, that was, when Manuel V. Pangilinan and appellant entered into negotiations with respect to the possible purchase by First Pacific (Asia Link) of appellant's 550,000,000 PHILEX shares in PHILEX.[32] On 1 December 2009, the parties agreed at a purchase price of Php 21.00 per share.[33] By all indications, it is a private agreement between appellant and Manuel V. Pangilinan, specifically on the price of Php 21.00. He likewise possessed such information prior to the public disclosure on 3 December 2009 by PHILEX of its purchase of the shares of appellant.

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[32] *Id.*, Annex "D" (Affidavit of Manuel V. Pangilinan published in the Philippine Daily Inquirer on 5 December 2011).
[33] *Id.*, par. 7.12, and Annex "B" (Answer dated 28 November 2014 of appellant, par. 24).

Further, there was heavy trading of PHILEX shares prior to the sale on 2 December 2009 in anticipation of the outcome of the bidding war, as can be seen in TABLE 1 above in page 5 of this Decision. Due to the heavy trading, the closing price of the PHILEX shares gradually increased. However, once appellant sold his shares on 2 December 2009 to the subsidiary of First Pacific and information regarding the Share Purchase Agreement trickled into the market, the closing price then decreased. Clearly, the information possessed by appellant was material non-public information, which, if disclosed to the public, would influence their trading disposition as to the PHILEX shares. In this case, appellant was able to consolidate the required number of shares, supplementing his block of shares with the shares bought from the open market, sold them to the subsidiary of First Pacific at the privately agreed price of Php 21.00 per share, thereafter giving the First Pacific group control over PHILEX. The bidding war having ended, the price of the PHILEX shares softened in the market.

In fact, appellant does not deny that he possessed the material information. His contention is that it is NOT in the nature of "insider information". He clearly was aware of the materiality of the information after he created it by negotiating the selling price of PHILEX's shares at Php 21.00 with Manuel V. Pangilinan in order for the latter to gain control over PHILEX.

Next, as to the concept of "material information", Section 27.2 of the SRC provides that information is considered "material" if: (a) it has not been generally disclosed to the public and would likely *affect the market price* of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person *important* under the circumstances in determining his course of action whether to buy, sell or hold a security.

Section 27 of the SRC is based on the former Section 30 of the Revised Securities Act's (RSA)[34] prohibition on insider trading, which was viewed as too restrictive and wholly inadequate to deter insider trading. The basic defect in the RSA was that a violation cannot be established unless the insider trades on non-public information "of special significance". In turn, "of special significance" was defined as a fact that likely impacts the market price to a significant extent or is "especially" important to an investment decision. Because of the difficulty in meeting this test, insiders were free to use clearly important information they gain as a result of their relationship with the issuer to reap profits at the expense of public investors.[35]

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[34] Batas Pambansa Bilang 178 (1982).
[35] History/Background of the Securities Regulation Code.

Now, Section 27 of the SRC modified the insider trading provisions in a number of major respects. One of which is that, under Section 27.1, insiders are in violation if they trade simply on "material" information that has not been publicly disclosed. Section 27.2 defines "material" to include the type of information that would be important to a reasonable investor since, if it is, an insider should not be allowed to have this information advantage.[36]

In the case at bar, appellant obtained the following material information: (i) the selling price in the amount of Php 21.00 to the subsidiary of First Pacific; and (ii) the resulting change in control over PHILEX on a definite date (i.e., 2 December 2009) as a consequence of the sale by appellant of his PHILEX shares to First Pacific.

As to the *first* (i.e., selling price in the amount of Php 21.00), reasonable people, or the investing public in general, would consider such information important in determining their course of action whether they would buy, sell or hold such shares had appellant disclosed such information to them. If reasonable people had knowledge of such information as to the premium selling price of the shares in the amount Php 21.00 in favor of the subsidiary of First Pacific, they would not have sold their shares to appellant at a discounted price ranging from Php 19.25 – 19.50. Instead, such persons would have sold them at a premium price in the amount of Php 21.00 directly to the subsidiary of First Pacific. Clearly, the selling stockholders were misled by appellant when they sold their shares to him at only Php 19.25-19.50 considering that appellant purchased their shares with the unfair advantage of a highly valuable secret inside information (i.e., the sale to the subsidiary of First Pacific at a premium price of P21). Such purchase by appellant allowed him to profit from the selling stockholders.

As to the *second* (i.e., the change in control as a result of the sale of shares on a definite date, i.e., 2 December 2009), although it was publicized that First Pacific had the intention of increasing its interests in PHILEX up to 40%, reasonable people, or the investing public in general, would likewise still consider important the information as to when the change in control will take effect (i.e. 2 December 2009) as a result of the sale to the subsidiary of First Pacific. Such information should have influenced their decision in determining their course of action whether they should buy, sell or hold their PHILEX shares. The investing public had reason to believe that the PHILEX shares may increase or decrease in value once there is a definite date (i.e. 2 December 2009) as to the change of control in favor of First Pacific.

In fact, the closing price of the shares of PHILEX decreased significantly, or approximately 8.9%, from the closing price of Php 19.50 on the day the subsidiary of First

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[36] *Id.*

Pacific purchased the shares from appellant to a closing price of Php 17.75 the next day on 3 December 2009. On 4 December 2009, the closing price of PHILEX dropped Php 15.50. As can be seen, the market price of PHILEX dropped 20.5% within a span of two (2) days from 2 December 2009 to 4 December 2009. This clearly indicated that the investing public in general deemed the sale of the PHILEX shares to the subsidiary of First Pacific by appellant and the change in control on 2 December 2009 as material information.

As a consequence of his possession of the material information, appellant was prohibited from purchasing PHILEX shares on 02 December 2009 to the prejudice of the selling shareholders since the former owes a fiduciary duty to the latter based on a relationship of trust and confidence between them.

It must be pointed out that, even though Sections 23.2 (Short Swing Profit)[37] and 27.1 (Insider Trading) of the SRC are different provisions regulating securities transactions, appellant is likewise forbidden from buying and selling PHILEX shares pursuant to Section 23.2 because he was vested with a fiduciary duty as a director.

Furthermore, appellant argues that he did not gain the material information (i.e., date as to the change in control resulting from the sale, which is 2 December 2009 AND the agreed selling price of the PHILEX shares between him and Pangilinan in the amount of Php 21.00) from his relationship with PHILEX as the latter's director or officer.[38] However, the argument is misplaced.

To recall, after PHILEX announced that it would undertake the sale of 20.06% of its stock to the subsidiary of First Pacific (Asia Link), First Pacific announced that it had the intention of acquiring additional PHILEX shares in order to increase its aggregate interest therein up to 40%. Further, First Pacific stated that this will enable it to further control PHILEX and enable to it *gain additional seats* in the Board of Directors of the latter other than that held by Manuel V. Pangilinan and Robert C. Nicholson. On the other hand, appellant was a director, and was the Vice-Chairman of PHILEX.

In this case, Manuel V. Pangilinan and appellant entered into negotiations with respect the possible purchase by the First Pacific group of appellant's stake 6.58% in PHILEX during the last week of November 2009. The First Pacific group wanted to buy out shares

[37] The pertinent portion of Section 23.2 of the SRC provides:

"23.2. For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director or officer by reason of his relationship to the issuer, any profit realized by him from any purchase or sale, or any sale or purchase, of any equity security of such issuer within any period of less than (6) months unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention of holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months."

[38] Memorandum on Appeal, par. 7.8.

owned by appellant which would allow the former to further gain control PHILEX and additional seats in the Board of Directors of the latter. Manuel V. Pangilinan was interested in appellant's block of PHILEX shares and chose to deal with appellant who would be "able to assemble (sic) the PHILEX shares needed by the *First Pacific* group to gain control of PHILEX".[39] The parties negotiated and eventually settled on a price of Php 21.00 per share, which is material information. Further, as a result of the negotiations, the parties had knowledge when the sale of the shares to the subsidiary of First Pacific will take effect that would result in the change of control, which is likewise material information. It must be pointed that, after the sale of the PHILEX shares to the First Pacific group, appellant resigned as a director based on the disclosure by PHILEX with the PSE on 8 December 2009. The resignation as a director indicates that the First Pacific group accomplished its goal of gaining additional seats in the Board of Directors of PHILEX and control thereof. Clearly, the material information was gained by appellant due to his relationship with the issuer, PHILEX, as a director and his highly coveted stake therein.

Additionally, appellant argues that an insider is allowed to purchase shares of the issuer if he had reason to believe that the other party is also in possession of the information as provided in Section 27.1 of the SRC. He claims that the public should have known appellant should have reason to believe that the selling stockholders had foreseen that First Pacific offered to purchase his shares, and that such sale to First Pacific would allow it to gain control of PHILEX. The argument of appellant is misplaced.

It is true that PHILEX confirmed publicly[40] of First Pacific's desire of acquiring 40% stake in the company, however, the public, including the selling stockholders of the PHILEX shares to appellant, were not aware of the selling price of Php 21.00. Moreover, the said public was also not aware of the definite date (i.e., 2 December 2009) of the sale of shares to the subsidiary of First Pacific which conferred control over PHILEX. The public only gained knowledge of the price and the date of the sale of the said shares resulting in the change in control after it was disclosed to them after the sale took place. It must pointed out that the 174 purchase transactions between the selling stockholders and appellant took place in the morning of 2 December 2009, a date after the latter had agreed to sell the PHILEX shares to First Pacific at Php 21.00 per share.

In fact, the public cannot be aware of the sale of shares to the subsidiary of First Pacific considering that it was reported that there was a bidding war between Manuel V. Pangilinan and Ramon Ang of San Miguel Corporation; it was further reported that GSIS was also building up its stake in PHILEX by accumulating more shares therein. Thus, would it be reasonable to presume that the public should have divined/foreseen that appellant would at a certain date sell to the First Pacific group at a premium price of Php 21.00 per share? Definitely NOT as the material information was kept very much private and non-public considering that Ramon Ang of San Miguel Corporation and the GSIS were likewise building up their respective stake in PHILEX.

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[39] *Id.*, par. 7.19.
[40] *Id.*, par. 4.10.

"*United States v. O'Hagan*, 92 F.3d 612 (8th Cir. 1996), is instructive in this regard. The case involved an attorney at a law firm engaged by the bidder (GrandMet) in a highly publicized takeover attempt of Pillsbury. The attorney, O'Hagan, argued among other things that the information was already public because there had been media reports that Pillsbury would be taken over by GrandMet. The court rejected this argument, noting that the media reports concerned only speculation and had not moved the share price. O'Hagan, on the other hand, had "firsthand, concrete knowledge that a client and his law firm were preparing a plan to take over Pillsbury. The information that O'Hagan obtained went beyond that which had been publicly disseminated."[41]

And lastly, appellant failed to prove that the selling stockholders were identified nor that he disclosed the material information to them prior to his purchase of their PHILEX shares in the morning of 2 December 2009.

4. Information Pertains to the Security OR Issuer

As to the last element, appellant argues that "material information" refers to information pertaining to corporate information, or information relating to the intrinsic value of the issuer primarily its business and operations.[42] Moreover, appellant argues that material information refers to that type of information that emanates within the corporation and is not for the personal benefit of anyone.[43] In which case, he argues that the information on the sale of PHILEX shares does not relate to the issuer. However, his argument is misplaced.

"Information" refers generally to two categories: "corporate" information and "market" information. "Corporate information" concerns information relating to the intrinsic value of the issuer, primarily its business and operations; while "market information" encompasses a residual category of non-corporate information, such as information on a potential tender offer.[44]

The material information on the price of Php 21.00 is considered "market information" since it, as correctly pointed out by appellant, does not relate to the business and operations of PHILEX; it relates to the security of PHILEX. On the other hand, the material information as to the date of the sale (i.e., 2 December 2009) resulting in the change of control of PHILEX is considered as "corporate information" since it relates to the business and operations of PHILEX.

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[41] 92 F.3d 612, 648, cited on page 281 of Draft Commentary on the SRC by the Economic Governance Technical Assistance of the USAID.
[42] *Memorandum on Appeal*, par. 7.14.4.
[43] *Id.*, par. 7.14.6.
[44] An Outsider Looks at Insider Trading: Chiarella, Dirks and the Duty to Disclose Material Non Public Information published by Frank P. Luberti, Frank Jr. in Fordham Urban Law Journal, Volume No. 12, 1983, Issue No. 4, citing Langevoort, Insider Trading and the Fiduciary Principle: A Post-Chiarella Restatement, 70 CAL. L. REV. 1 (1982) http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1246&context=ulj, last accessed on 11 March 2016.

The pertinent portion of Section 27.1 of the SRC states, to wit: "*[i]t shall be unlawful for an insider to sell or buy a security of the issuer, while in possession of* ***material information with respect to the issuer or the security*** *that is not generally available to the public x x x*". Section 27.2 of the SRC discusses the type of information contemplated in Section 27.1, to wit: "*For purposes of this Section,* ***information is "material non-public"*** *if: (a) It has not been generally disclosed to the public and would likely affect the market price of the security after being disseminated to the public and the lapse of a reasonable time for the market to absorb the information; or (b) would be considered by a reasonable person important under the circumstances in determining his course of action whether to buy, sell or hold a security.*"

The language of Sections 27.1 and 27.2 of the SRC is clear. It cannot be interpreted in such manner as argued by appellant because of the cardinal rule in statutory construction known as the "plain meaning rule" or *verba legis*. The "plain meaning rule" or *verba legis* provides that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without any attempt at interpretation.[45] Thus, applying the "plain meaning rule" or *verba legis*, Section 27.1 and 27.2 of the SRC must be given its literal meaning and material information cannot be interpreted to mean only corporate information.

COMPUTATION OF THE IMPOSABLE PENALTY

The Revised Scale of Fines under SEC Memorandum Circular No. 06, Series of 2005 (SEC MC 06-05) provides the following penalties for insider trading committed by brokers, dealers, associated persons or salesmen, to wit:

SRC/IRR PROVISION	DESCRIPTION	PENALTY FOR FIRST OFFENSE
Section 27	INSIDER TRADING	BD – Php 100,000.00 AP/S - Php 50,000.00

On the other hand, for insider trading committed by other persons not mentioned in SEC MC 06-05, Section 54.1 of the SRC provides the following:

> "**Section 54.** *Administrative Sanctions.* – **If, after due notice and hearing, the Commission finds that: (a) There is a violation of this [SRC]**, x x x **it shall**, in its discretion, and subject only to the limitations hereinafter prescribed, **impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances**:
>
> (i) Suspension, or revocation of any registration for the offering of securities;

[45] Bolos v. Bolos, G.R. No. 186400, 20 October 2010.

(ii) **A FINE of no less than Ten thousand pesos (P10,000.00) nor more than ONE MILLION PESOS (P1,000,000.00)** plus not more than Two thousand pesos (P2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and **27, DISQUALIFICATION from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;**

(iv) In the case of a violation of *Section 34*, a FINE of no more than three (3) times the profit gained or loss avoided as result of the purchase, sale or communication proscribed by such Section, and

(v) Other penalties within the power of the Commission to impose." (Emphasis ours)

It must be noted that Congress intended, in Section 54.1(iv) of the SRC, to impose a sanction in insider trading cases of triple the profits derived or losses avoided. Section 54.1(iv) of the SRC provides: *"In the case of a* ***violation of Section 34****, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such section"*. However, the reference is to the wrong section – should read Section 27 of the SRC, not Section 34 thereof.[46] By gearing the sanction to a multiple of the benefit derived from the improper trading, the incentive that one may escape a severe sanction was supposed to be eliminated. This is validated by an examination of the earlier versions of the bills filed with the Eleventh Congress. Thus, in the House Bill (consolidating House Bill No. 297 and House Bill No. 3349, with SEC proposals), item 4 of Section 61 (Administrative Sanctions), which eventually became Section 54.1(iv) of the SRC, provided

> *(4) In the case of a violation of Section 32, a fine of no more than three times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such section.*

Section 32 (cited in the abovequoted item (4)) referred to "Insider's duty to disclose when trading." In that House Bill, the provision, under the *"Segregation and Limitation of functions of Members, Broker and Dealers"*, was contained in Section 41. At any rate, it is reasonably clear that item (iv) of Section 54.1 is referring to insider trading.[47]

In which case, appellant should have been liable for the payment of a fine of three times the profit in the amount of Php 80,437,875.00, or Php 241,313,625.00 total, pursuant to the intent of Congress in Section 54.1(iv) of the SRC, considering that he sold PHILEX

[46] Section 34 of the SRC refers to the "*Segregation and Limitation of functions of Members, Broker and Dealers*".
[47] The Philippine Securities Regulation Code (Annotated), Rafael A. Morales (2005 Ed.), p. 323.

shares in the amount of Php 965,254,500.00 after purchasing them for the amount of 884,816,625.00. Below is an illustration of the computation:

Php 965,254,500.00 (45,964,500 shares sold at Php 21.00)
\- Php 884,816,625.00 (45,964,500 shares purchased at Php 19.25)[48]
Php 80,437,875.00 (profit gained from the sale)

Php 80,437,875.00 (profit gained from the sale)
x 3 (three times the profit gained from the sale)
Php 241,313,625.00 (intended fine of Congress)

As can be seen, appellant would have been liable for the payment of a fine in the amount of Php 241,313,625.00. Instead, appellant was directed, in the Assailed Order of the EIPD, to pay the fine in the total amount of Php P17,400,000.00, or the amount of Php 100,000.00 for each of the 174 transactions as provided by the PSE Trade Ledger,[49] pursuant to SEC MC 06-05.

However, the PSE Trade Ledger provides for 174 transactions, which account for a total volume of 27,982,250 PHILEX shares out of the 45,964,500 shares admittedly purchased by appellant in the open market. In which case, 17,982,250 remain unaccounted for, and it is quite plausible that there are more than 174 transactions or violations of insider trading committed by appellant in the morning of 2 December 2009 which may have been purchased outside the PSE.

At any rate, considering that appellant was not a broker, dealer, associated person, or a salesman, in the commission of insider trading, the administrative penalty imposed on him in the amount of Php P17,400,000.00, as stated in the Assailed Order of the EIPD pursuant to SEC MC 06-05, is hereby MODIFIED. The proper penalty to be imposed on appellant is the maximum penalty in the amount of Php 1,000,000.00 under Section 54.1(ii) of the SRC for each transaction of insider trading. In which case, for the 174 transactions or violations of insider trading in the morning of 2 December 2009, the penalty of ONE HUNDRED SEVENTY FOUR MILLION PESOS (Php 174,000,000.00), or maximum penalty of Php 1,000,000.00 for each of the 174 transactions, is now imposed on appellant. The imposition on appellant of the maximum penalty of Php 1,000,000.00 for each transaction under Section 54.1(ii) of the SRC is due to the following aggravating factors for reasons of public policy: (i) the imposition of the maximum penalty is pursuant to the state policy under Section 2 of the SRC in protecting investors and minimizing if not totally eliminating insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market;

[48] The purchase price by the appellant is based on the 45,964,500 Philex shares purchased by him in the morning of 2 December 2009 multiplied by the acquisition price of Php 19.25, as disclosed by him to the Commission (*Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 9 and Annex "L" [SEC Form 23-B filed on 9 December 2009 filed by appellant].

[49] *Memorandum* dated 5 October 2015 and filed on 7 October 2015 by the EIPD, par. 6 and Annex "H" (Daily Transaction Report of the PSE on 2 December 2009).

(ii) the imposition of the penalty on appellant in the amount of Php 174,000,000.00 is proximate to the amount of Php 241,313,625.00, which would be the above mentioned intended fine of Congress; (iii) the deterrent effect of administrative fines for SRC violations would be defeated if appellant would be liable for the minimum penalty in the amount of Php 10,000.00 under Section 54.1(ii); (iv) appellant would have profited from the sale of PHILEX shares if the maximum penalty was not imposed on him; (v) the number of transactions (ie., 174 transactions) and profit gained (i.e., Php 80,437,875.00) is substantial; (vi) the imposition of a minimum penalty would send the wrong signal to the public that administrative penalties is not sufficient to quell fraudulent market activities; and (vii) future violators would not be disincentivized for breaking the law if the profit for doing such offenses far outweigh the fines imposed by the Commission. Hence, the imposition of the maximum fine Php 1,000,000.00 under Section 54.1(ii) of the SRC for each of the 174 counts of insider trading, or Php 174,000,000.00 total, is warranted.

Next, appellant is DISQUALIFIED, pursuant to Section 54.1(iii) of the SRC,[50] in relation to Section 17.2 thereof, from being an officer, member of the board of directors, or person performing similar functions, of any public company or publicly-listed company.

In sum, for his purchase of PHILEX shares at a discounted price as an insider while in possession of non-public material information (i.e., the sale of the PHILEX shares at a premium AND the change in control as a result of the sale of shares on a definite date) in the morning of 2 December 2009 in 174 transactions, in violation of Section 27.1 of the SRC, appellant is imposed a FINE in the amount ONE HUNDRED SEVENTY FOUR MILLION PESOS (Php 174,000,000.00) pursuant to Section 54.1(ii) of thereof. Appellant is further DISQUALIFIED, pursuant to Section 54.1(iii) of the SRC, in relation to Section 17.2 thereof, from being an officer, member of the board of directors, or person performing similar functions, of a publicly-listed company or public company. As a consequence, appellant is ordered to RELINQUISH and/or RESIGN from any and all positions he is presently holding as officer, member of the Board of Directors, or to which he is performing any similar functions, of a publicly-listed company or public company. The imposition of the foregoing penalties is without prejudice to further investigation and the imposition of additional penalties, for any additional purchases of the above-mentioned unaccounted 17,982,250 PHILEX shares on the morning of 2 December 2009 by appellant.

WHEREFORE, premises considered, the Order of the Enforcement and Investor Protection Department dated 10 March 2015 is hereby **MODIFIED.** Appellant Roberto V. Ongpin is now hereby ordered to pay the fine of ONE HUNDRED SEVENTY FOUR MILLION PESOS (Php 174,000,000.00), pursuant to Section 54.1(ii) of Republic Act No. 8799, otherwise known as the Securities Regulation Code (SRC), for the purchase in 174 transactions of PHILEX shares on 2 December 2009 as an insider while in possession of non-

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[50] Section 54.1(iii) of the SRC provides that, in the case of a violation of Sections 19.2, 20, 24, 26 and 27, the Commission shall impose the following sanctions which includes disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of **an ISSUER required to file reports under Section 17 of this Code** or any other act, rule or regulation administered by the Commission.

public material information in violation of Section 27.1 of thereof. Further, appellant is hereby **DISQUALIFIED**, pursuant to Section 54.1(iii) of the SRC, in relation to Section 17.2 thereof, from being an officer, member of the board of directors, or person performing similar functions, of a public company or a publicly listed company. Lastly, appellant is ordered to **RELINQUISH** and/or **RESIGN** from any and all positions he is presently holding as officer, member of the Board of Directors, or to which he is performing any similar functions, of a public company or publicly listed company.

The imposition of the foregoing penalties is WITHOUT PREJUDICE to further investigation and the imposition of additional penalties by the Commission, for any additional purchases of the unaccounted 17,982,250 PHILEX shares on the morning of 2 December 2009 by appellant.

Let a copy of this Decision be furnished to the Markets and Securities Regulation Department for its appropriate action.

SO ORDERED.

FAIL NOT UNDER PENALTY OF LAW.

Mandaluyong City, Philippines; 8 July 2016.

TERESITA J. HERBOSA
Chairperson

MANUEL HUBERTO B. GAITE
Commissioner

ANTONIETA F. IBE*
Commissioner

EPHYRO LUIS B. AMATONG
Commissioner

BLAS JAMES G. VITERBO
Commissioner

*On Leave