Republic of the Philippines
Department of Finance
Securities and Exchange Commission
COMMISSION EN BANC

MANUEL M. LOPEZ, OSCAR M. LOPEZ, NESTOR J. PADILLA, MIGUEL ESRNESTO L. LOPEZ, EUGENIO L. IBANEZ, JOSE T. GUINGONA, BANJAMIN R. LOPEZ, RODOLFO R. WAGA, JR., VELERIE JANE LOPEZ-SOLIVEN, MARIA LOURDES LACSON-PINEDA, ESTELA Y. DASMARINAS, ELLEN V. ALMODIEL, ENGR. JULIUS A. MARZONIA, MA. VICTORIA ORTEGA-POLLISCO, JOSE PATRICIO S. MASAKAYAN, AND DAVY T. TAN,

Appellants,

SEC En Banc Case No. 08-12-265

DIRECTOR JUSTINA F. CALLANGAN AND CORPORATION FINANCE DEPARTMENT,

Appellees.

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DECISION

For consideration of this Commission is the Memorandum on Appeal dated 1 August 2012 which was filed on an even date by Manuel M. Lopez, Oscar M. Lopez, Nestor J. Padilla, Miguel Ernesto L. Lopez, Eugenio L. Ibanez, Jose T. Guingona, Banjamin R. Lopez, Rodolfo R. Waga, Jr., Velerie Jane Lopez-Soliven, Maria Lourdes Lacson-Pineda, Estala Y. Dasmarinas, Ellen V. Almodiel, Engr. Julius A. Marzona, Ma. Victoria Ortega-Pollisco, Jose Patricio S. Masakayan, and Davy T. Tan (the "Appellants"), assailing the Letter-Order dated 22 June 2012 (the "Assailed Order") of the then Corporation Finance Department, now Corporate Governance and Finance Department (CGFD) which imposed the penalty of "Reprimand" for the late filing of Form 23 under Section 23.1 of the Securities Regulation Code (SRC) and Rule 23 (1)(A) of its Revised Implementing Rules and Regulations (SRC-IRR).

THE RELEVANT FACTS

On 20 April 2012, Meralco filed with the Securities and Exchange Commission (the "Commission") an application for the approval of property Dividend Distribution declared by its Board of Directors, which was approved by the Commission in an Order dated 25 April 2012.

On 23 March 2012, Rockwell Land Corporation (RLC) filed its Registration Statement for the distribution of 3,176,474,995 common shares as property dividend which represent 51% of its outstanding issued common shares, and the listing by way of introduction of 6,228,382,334 common shares on the First Board of the Philippine Stock Exchange (PSE), representing 100% of its issued and outstanding common shares.

On 3 May 2012, Appellee CFD issued a Certificate of Permit to Sell Securities in favor of RLC.

On 11 May 2012, the property dividends of Meralco were received by its shareholders. On an even date, the common shares of RLC became listed in PSE and RLC filed with the Commission its SEC Form 23-A.

On 15 May 2012, Appellants, as directors and officers of RLC, filed their SEC Form 23-A (Initial Statement of Beneficial Ownership) with the Commission.

Appellee CFD issued Show-Cause Letters dated 25 May 2012 to Appellants requiring them to explain why the filing of their SEC Form 23-A does not constitute a violation of Section 23 of the SRC.

In a Letter dated 15 June 2012, Appellants, through counsel, claimed that they filed their Form 23-A within the period prescribed by law, arguing that RLC only became subject to the reportorial requirements under Section 17.2 of the SRC on 11 May 2012 which was the listing dated of the RLC shares. On the basis of the foregoing premises, Appellants posited that the ten (10) day period prescribed under Section 23 of the SRC commenced only on 11 May 2012, the date when they became directors and officers of the issuer, RLC.

On 22 May 2012, CFD issued the Assailed Order finding the Appellants explanation to be devoid of merit, and imposing upon them the penalty of Reprimand for violation of Rule 23(1)(A) of the SRC-IRR.

Hence, this Appeal.

ISSUE

Whether or not Appellee CFD committed reversible error in imposing the penalty of "Reprimand" on Appellants for violation of Rule 23(1)(A) of the SRC-IRR.

RULING

In its Appeal, Appellants do not dispute that they are required under Rule 23-A of the SRC-IRR to file Form 23-A before the Commission. The records show that Appellants filed their respective Form 23-A on 15 May 2012. Appellants, however, take exception to and assail the finding of CFD that they belatedly filed their Form 23-A, and the consequent imposition of the penalty of a "Reprimand".

Appellants maintained that they filed their Form 23-A on time, arguing that the reckoning date for the ten (10) day period within which to file the same is on 11 May 2012, the day when RLC listed its shares for trading.[1] In support of the foregoing argument, Appellants proffered a theory that Section 23 of the SRC will only apply after the requirements under Subsection 17 (b) and (c)[2] of the SRC are complied with.

Appellee CFD did not agree with Appellants. Appellee CFD maintained that Appellants had only until 14 May 2012 within which to file their Form 23-A on the ground that RLC's Registration Statement was approved on 3 May 2012. Appellee CFD argued that Appellants, as directors and officers of RLC, became subject to the provisions of Section 23 of the SRC after RLC became a public company with the approval of its Registration Statement on 3 May 2012.

After a careful consideration and review of the allegations and the evidence presented by the parties, this Commission finds the Appeal to be devoid of merit, and hereby sustains the Order of Appellee CFD.

The parties agree and the records of the case will readily show that the crux of the issue relates to the reckoning date of the ten (10) day period in filing Form 23-A as far as Appellants, in their capacity as directors and officers of RLC, are concerned.

Rule 23(1)(a) of the Implementing Rules and Regulations of the Securities Regulation Code, IRR of RA 8799[3] (the "2000 SRC-IRR")

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[1] See Page 10 of the Appeal.
[2] Appellants posit that Subsection 17(a) of the SRC is not applicable since RLC did not sell its shares to the public.
[3] December 15, 2000.

provides that:

> "SRC RULE 23. Reports to be Filed by Directors, Officers and Principal Stockholders
>
> 1. <u>Every person</u> who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a company which satisfies the requirements of Subsection 17.2 of the Code, or <u>who is a director or an officer of the issuer of such security, shall</u>:
>
>   a. within ten (10) days after the effective date of the registration statement for that security, or within ten (10) days after he becomes such beneficial owner, director or officer, subsequent to the effective date of the registration statement, <u>whichever is earlier</u>, file a statement with the Commission, and with an Exchange if the security is listed on that Exchange, on Form 23-A indicating the amount of all equity securities of such issuer of which he is the beneficial owner;" (Emphasis ours)

In relation to Appellants, the afore-quoted provision of the 2000 SRC-IRR requires any person who is a director or officer of the issuer of any equity security in a corporation, which satisfies the requirements of Subsection 17.2 of the SRC, to file with the Commission Form 23-A indicating therein the amount of securities of such issuer of which he is the beneficial owner (a) within ten (10) calendar days after the effective date of the registration statement for the security <u>OR</u> (b) within ten (10) calendar days after he becomes a beneficial owner, director or officer subsequent to the effective date of the registration statement, <u>whichever is earlier</u>.

It should be emphasized that Section 23 of the SRC in relation to Rule 23(1)(a) of the 2000 SRC-IRR relates to and regulates the filing of reports covering transactions of, *inter alia*, directors and officers of an issuer. In particular, the said provisions specify the period when Form 23-A should be filed by directors and officers i.e. within ten (10) calendar days after the effective date of the registration statement for the security <u>OR</u> within ten (10) calendar days after he becomes a beneficial owner, director or officer subsequent to the effective date of the registration statement, <u>whichever is earlier</u>.

It is thus important to determine which of the (a) tenth (10^{th}) calendar day after the effective date of the registration statement for the security of RLC <u>OR</u> (b) the tenth (10^{th}) calendar day after Respondents became directors or officers of RLC subsequent to the effective date of the registration statement, occurred earlier.

In the context of the foregoing parameters, the facts attendant to, and the evidence presented in the instant case will readily reveal the following:

(a) **14 May 2012** was the tenth (10^{th}) calendar day after the effective date of the registration statement for the security of RLC considering that the Registration Statement of RLC was approved on 03 May 2012, the day when Appellee CFD issued a Certificate of Permit to Sell Securities in favor of RLC; and

(b) **13 August 2012** was the tenth (10^{th}) calendar day after Appellants became directors or officers of RLC subsequent to the effective date of the registration statement.[4]

Applying the clear and unambiguous provision of Rule 23(1)(a) of the 2000 SRC-IRR that Form 23-A should be filed on the earlier date of either **14 May 2012** which was the tenth (10^{th}) calendar day after the effective date of the registration statement for the security of RLC OR (b) **13 August 2012** which was the tenth (10^{th}) calendar day after Appellants became directors or officers of RLC subsequent to the effective date of the registration statement, it is clear that Appellants were required to file their respective Form 23-A on or before 14 May 2012 as the same was the earlier of the two (2) dates.

Appellee CFD was thus correct in finding that Appellants belatedly filed their Form 23-A on 15 May 2012, and in imposing the penalty of "Reprimand".

Appellants, however, insisted that the due date for the submission of Form 23-A should be reckoned from 11 May 2012 (and not 3 May 2012) because it was the date when the shares of RLC were publicly listed and the payment for the property dividends of Meralco was made. Appellants, thus posited that the date when the RLC shares were publicly listed was the date when the registration statement of RLC became effective. Stated otherwise, Appellants argued that public listing was the operative act that rendered RLC's registration statement effective.

This Commission cannot sustain Appellants' argument.

Section 12.6 of the SRC provides that:

> "12.6. Within forty-five (45) days after the date of filing of the registration statement, or by such later date to which the issuer has consented, the Commission shall declare the registration statement effective or rejected, unless the applicant is allowed to amend the registration statement as provided in Section 14 hereof. The Commission shall enter an order declaring the registration statement to be effective if it finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements have been

[4] The 2012 GIS filed by RLC disclosed that the actual date of the Annual Stockholders Meeting (pursuant to request) was 3 August 2012. Form 17-C of RLC filed with the Commission on 3 August 2012 disclosed that Respondents we elected and/or appointed directors and/or officers of RLC.

> complied with. The Commission may impose such terms and conditions as may be necessary or appropriate for the protection of the investors." (Emphasis ours)

Contrary to the position of Appellants, the afore-quoted provision categorically states that a registration statement only becomes effective after the same is declared, through an order, to be effective by this Commission and after a finding that it is complete and has complied with all the requirements prescribed by law and/or applicable laws, rules and regulations.

The foregoing is consistent with the exercise by this Commission of the power and authority to "*approve, reject, suspend, revoke or require amendments to registration statements, and registration and licensing applications*" expressly granted under Section 5(c) of the SRC.

In the case of ***Provident International Resources Corp. v. Venus***[5], the Supreme Court explained the nature and extent of regulatory powers of this Commission, to wit:

> "It can be said that the SEC's regulatory authority over private corporations encompasses a wide margin of areas, touching nearly all of a corporation's concerns. This authority more vividly springs from the fact that a corporation owes its existence to the concession of its corporate franchise from the state. Under its regulatory responsibilities, the SEC may pass upon applications for, or may suspend or revoke (after due notice and hearing), certificates of registration of corporations, partnerships and associations (excluding cooperatives, homeowners' association, and labor unions); compel legal and regulatory compliances; conduct inspections; and impose fines or other penalties for violations of the Revised Securities Act, as well as implementing rules and directives of the SEC, such as may be warranted."

On the basis of the foregoing, Appellee CFD was thus correct in holding that the registration statement of RLC became effective on the day it was approved i.e. on 3 May 2012. The tenth (10th) calendar day after the effective date of the registration statement provided for in Rule 23(1)(a) should thus be reckoned from 3 May 2012 and not from 11 May 2012.

Finally, this Commission notes that Appellants questioned and assailed the validity of Rule 23 of the 2000 SRC-IRR on the alleged ground that it varied/modified the provisions of Section 23 of the SRC. The foregoing however constitutes a collateral attack on the 2000 SRC-IRR which should not be countenanced as the same enjoys the presumption of validity unless nullified by a court of competent jurisdiction in a direct proceeding. This is

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[5] G.R. No. 167041, June 17, 2008.

clear in the case of ***Land Bank of the Philippines v. American Rubber Corporation***[6] where the Supreme Court ruled that:

> "It is elementary that rules and regulations issued by administrative bodies to interpret the law which they are entrusted to enforce, have the force of law, and are entitled to great respect. Administrative issuances partake of the nature of a statute and have in their favor a presumption of legality. As such, courts cannot ignore administrative issuances especially when, as in this case, its validity was not put in issue. Unless an administrative order is declared invalid, courts have no option but to apply the same."

The rationale for the grant to administrative agencies, which include this Commission, of discretionary powers to interpret laws, rules and regulations was explained in the case of ***Nestle Philippines, Inc. v. Court of Appeals***[7], to wit:

> "The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; **it also relates to accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute**. In Asturias Sugar Central, Inc. v. Commissioner of Customs the Court stressed that **executive officials are presumed to have familiarized themselves with all the considerations pertinent to the meaning and purpose of the law, and to have formed an independent, conscientious and competent expert opinion thereon**." (Emphasis ours)

In the case of ***International Service for the Acquisition of Agri-Biotech Applications, Inc. v. Greenpeace Southeast Asia (Philippines)***[8], the Supreme Court reiterated the time-honored doctrine proscribing the collateral attack on administrative rules and regulations, to wit:

> "This attempt to assail the constitutionality of the public information and consultation requirements under DAO 08-2002 and the NBF constitutes a collateral attack on the said provisions of law that runs afoul of the well-settled rule that the constitutionality of a statute cannot be collaterally attacked as constitutionality issues must be pleaded directly and not collaterally. Verily, the policy of the courts is to avoid ruling on constitutional questions and to presume that the acts of the political departments are valid, absent a clear and unmistakable showing to the contrary, in deference to the doctrine of separation of powers. This means that the measure had first been carefully studied by the executive department and found to be in accord with the Constitution before it was finally enacted and approved."

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[6] G.R. No. 188046, July 24, 2013.
[7] G.R. No. 86738, November 13, 1991.
[8] G.R. Nos. 209271, 209276, 209301 & G.R. No. 209430 (Resolution), July 26, 2016.

Applying the foregoing doctrines, the Securities and Exchange Commission is the primary agency tasked to implement the provisions of the Securities Regulation Code through the issuance of the appropriate implementing rules and regulation due to the Commission's expertise in the capital market. In fact, this power has already been established by Section 5 (g) and (n) of the same Code. As such, the issuance of the 2000 SRC-IRR by the Commission enjoys a presumption of regularity and any issues regarding its legality must be raised in the appropriate forum.

In view of the foregoing, this Commission finds no cogent reason to reverse the findings of Appellee CFD.

WHEREFORE, premises considered, the Memorandum on Appeal is hereby **DENIED** for lack of merit.

SO ORDERED.

Pasay City, Philippines, 31 March 2020.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner