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

THE PHILIPPINE STOCK EXCHANGE, INC.
Appellant,

-*versus*-

SEC *En Banc* Case No. 02-15-358
For: Violation of "Status Quo Order"

MARKETS AND SECURITIES REGULATION DEPARTMENT OF THE SECURITIES AND EXCHANGE COMMISSION, REPRESENTED BY DIRECTOR VICENTE GRACIANO P. FELIZMENIO JR.,
Appellee.

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DECISION

Before the Commission is the *Memorandum on Appeal*[1] filed on February 26, 2015 (the "Appeal") by The Philippine Stock Exchange, Inc. ("PSE" or the "Exchange") praying for the reversal and the setting aside of the *Order* dated February 20, 2015 ("Assailed Order")[2] issued by the Markets and Securities Regulation Department ("MSRD"), represented by Director Vicente Graciano P. Felizmenio, Jr., on the ground of lack of jurisdiction and merit, the dispositive portion of which reads:

> "In view of the foregoing, the following directives are hereby issued:
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> 1. PSE is hereby declared in violation of a standing order of the Commission and is hereby ordered to pay, on or before February 27, 2015, the penalty of One Hundred Thousand Pesos (Php100,000) pursuant to Section 54.1 of the Securities Regulation Code;
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> 2. PSE is once again directed to strictly OBSERVE the STATUS QUO ORDER and defer the implementation of the questioned listing requirement in the meantime that the same is not yet approved by the Commission."

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[1] Notice of Appeal and Memorandum on Appeal dated February 26, 2015.
[2] Annex "A" of the Memorandum on Appeal.

STATEMENT OF RELEVANT FACTS

In a letter-complaint dated September 20, 2011[3] (the "Complaint"), the Philippine Association of Stock Transfer and Registry Agencies, Inc. ("PASTRA") informed the Commission that PSE has required applicant companies to only engage the services of Transfer Agents owned by universal or commercial banks or their subsidiaries as a condition to their listing in the PSE (the "New Listing Requirement"), an act that is allegedly contrary to Rule 36.4.1 (Registration of Transfer Agents) of the Implementing Rules and Regulations of the Securities Regulation Code ("SRC Rules"). The same letter-complaint was referred to the MSRD.

Acting on PASTRA's Complaint, the MSRD, in a letter dated September 29, 2011[4], directed the PSE to address the matter, reiterating that the SRC Rules[5] merely require that a Transfer Agent ("TA") be a corporation. MSRD opined that if PASTRA's allegation is true, PSE is in effect imposing a more stringent requirement than what the Securities Regulation Code ("SRC")[6] prescribes. Thus, pursuant to SRC Rule 40.3 (Commission Review Procedures), the MSRD concluded that the New Listing Requirement needs the prior approval of the Commission before it can be implemented by the PSE.

In its letter-reply dated November 17, 2011[7], the PSE informed the MSRD that pursuant to PSE Board Resolution dated August 24, 2011, listed companies were henceforth required to comply with the New Listing Requirement. The Exchange further informed MSRD that in its subsequent meeting, the Board considered the re-assessment of the New Listing Requirement to allow both bank-owned and non-bank owned institutions to act as TAs of listed companies provided that they meet certain standards and conditions that ensure investor protection and address issues on service quality.

In its letter dated 17 November 2011[8], PASTRA informed and provided evidence to the MSRD that five (5) companies/issuers were already required by PSE to change their non-bank owned TAs.

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[3] Annex "1" of MSRD's Reply Memorandum.
[4] Annex "C" of the Memorandum on Appeal.
[5] SRC Rule 36.4.1. Registration of Transfer Agents.
[6] Republic Act (RA) 8799, July 19, 2000.
[7] Annex "D" of the Memorandum on Appeal.
[8] Attachments of Annex "E" of the Memorandum on Appeal.

On 23 November 2011,[9] the MSRD issued a SHOW CAUSE Letter directing PSE to explain why it should not be sanctioned for implementing the New Listing Requirement without the prior approval of the Commission, and to observe the status quo prior to its implementation of the New Listing Requirement (the "Status Quo Order").

On December 7, 2011, the PSE filed a supplemental letter[10] informing the MSRD that pursuant to its powers and authority as a Self–Regulatory Organization ("SRO"), it will adopt the Guidelines for Engagement of Stock TAs of Listed Companies (the "Guidelines") which provides an interpretative guidance to aid listed companies in complying with the Revised Listing Rules of the Exchange, specifically Section 6, Part A, Article III (Section 6 of the Listing Rules) thereof. The notable provisions of the Guidelines are as follows:

> "Policy Framework
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> Section 6, Part A, Article III of the Revised Listing Rules of the Exchange provides that:
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> "Section 6. Engagement of Stock Transfer Agent – The applicant company shall engage the services of a duly licensed stock transfer agent acceptable to the Exchange.
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> xxx xxx xxx
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> The Revised Listing Agreement of the Exchange likewise stipulates that:
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> 12. The Company shall engage and maintain at all times the services of a duly licensed independent or bank-owned transfer agent acceptable to the Exchange. Xxx"

In response to the Status Quo Order, the PSE, in its letter-reply dated 12 December 2011[11], reiterated its position that the provision in the Guidelines requiring listed companies to engage independent or bank-owned transfer agent is allegedly consistent with and sanctioned by Section 6 of the Listing Rules which grants the Exchange the authority to prescribe qualifications of TAs that are acceptable to it. Moreover, PSE also maintained that the New Listing Requirement provided in the Guidelines constitutes a mere interpretation of an existing rule which, under SRC Rule 40.3, do not require prior approval of the Commission as embodied in SRC Rule 40.3.3, to wit:

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[9] Annex "E" of the Memorandum on Appeal.
[10] Annex "F" of the Memorandum on Appeal.
[11] Annex "G" of the Memorandum on Appeal.

> "40.3.3. Notwithstanding paragraph 2 above, a proposal may take effect within ten (10) business days after its submission to the Commission if designated by the SRO as constituting a policy, practice or interpretation of an existing rule, establishing or concerning solely matters of administration of the SRO (e.g. setting of dues, fees and charges) or such other matters as the Commission by rule or order, may prescribe, unless the Commission, within the ten (10) day period, provides written notice to the SRO of its determination to review such proposal for prior approval pursuant to paragraphs 1 and 2 above."

In its letter dated 5 December 2014[12], the MSRD directed the PSE to confirm if it has proceeded to implement the Guidelines based on the report filed by Abacus Capital & Investment Corp. relating to the application for initial public offering of Crown Asia Chemicals Corp. which disclosed that the PSE was requiring the engagement of a bank-owned stock transfer agent.

In its letter-reply dated December 12, 2014[13], the PSE informed the Commission that the Guidelines which provides for the New Listing Requirement took effect and was implemented in August 2011 pursuant to and in the exercise of PSE's power/authority as an SRO to provide interpretative guidance to aid in the implementation of Section 6 of the Listing Rules.

On 15 December 2014, the MSRD issued another Show Cause letter[14] directing the PSE to show cause why it should not be penalized for its continued violation of the Status Quo Order which it earlier issued. The PSE was further directed to (i) immediately desist from implementing the New Listing Requirement and observe the status quo prior to its implementation, and (ii) come up with criteria in its rules on what is "acceptable to the Exchange" as regards to TAs of applicant companies, subject to the approval of the Commission.

In its letter-reply dated December 22, 2014[15], the PSE explained that the 32 newly listed companies voluntarily engaged bank-owned TAs without being compelled by the Exchange. The PSE maintained that since the New Listing Requirement embodied in the standard Listing Agreement which is a private contract involving a commercial matter, the same is outside the ambit of the oversight and regulatory functions of the MSRD.

On the basis of the foregoing, the MSRD issued the *Assailed Order,* directing it to pay a penalty of One Hundred Thousand Pesos (Php100,000.00) based on a finding of violation of the Status Quo Order. The PSE was likewise

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[12] Annex "H" of the Memorandum on Appeal
[13] Annex "I" of the Memorandum on Appeal.
[14] "Annex J" of the Memorandum on Appeal.
[15] Annex "K" of the Memorandum on Appeal.

directed to strictly observe the Status Quo Order until the New Listing Requirement is approved by the Commission.

Hence, this *Appeal*.

ISSUE

Does the implementation of the New Listing Requirement provided in the Guidelines require the prior approval of the Commission?

RULING

The Commission denies the Appeal for lack of merit.

(1) In implementing the Guidelines which provided for the New Listing Requirement, the PSE performed a rule-making function which modified the SRC and its implementing rule.

In its *Appeal*[16], the PSE maintained that the MSRD committed reversible error in finding that it violated the Status Quo Order when it implemented the Guidelines which provided for the New Listing Requirement without the prior approval of the Commission.

The PSE argued that as a SRO, it has the authority to implement rules as well as impose penalties on trading participants and listed companies. In the exercise of the said authority, PSE issues guidelines on the requirements that are embodied in the existing Listing Rules, which interprets the provisions thereof, one of which is the Guidelines that is the subject of the instant case. In relation to the implementation of the Guidelines which prescribes the New Listing Requirement, the PSE argued that the same was made pursuant to Section 6 of the Listing Rules which provides that the "*applicant company shall engage the services of a duly licensed stock transfer agent acceptable to the Exchange*". The Guidelines does not require the prior approval of the Commission since the same merely interprets Section 6 of the Listing Rules, clarifies and specifies the stock and transfer agents that are acceptable to the Exchange.

The Commission does not agree with PSE.

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[16] See note 1, *supra*.

Section 36.4. of the SRC provides:

> "The Commission, having due regard to the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers, dealers, clearing agencies, and transfer agents, shall promulgate rules and regulations for the prompt and accurate clearance and settlement of securities transactions."

In implementing the afore-quoted provision, specifically in relation to the regulation of, and transactions involving transfer agents, SRC Rule 36.4 (Registration of Transfer Agents and Clearing & Settlement) provides:

> "36.4.1. Registration of Transfer Agents
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> 36.4.1.1. No person shall act as a transfer agent for a security which is listed or traded on an Exchange, over-the-counter, or any other trading market without being registered with the Commission in accordance with the provisions of this Rule. **The Commission may, for the protection of investors, require Issuers to engage the services of transfer agents that are neither affiliated nor in a conflict-of-interest situation with the Issuer.**
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> 36.4.1.2. To apply for registration under this Rule, **a transfer agent shall**:
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> 36.4.1.2.1. Be a corporation;
> 36.4.1.2.2. Have unimpaired paid-up capital of at least One Million Pesos (PhP 1,000,000.00) or such amount as the Commission may determine;
> 36.4.1.2.3. Have an officer who is a certified public accountant;
> 36.4.1.2.4. Submit an undertaking that it shall comply with the Rules, orders, memorandum circulars and policies promulgated by the Commission, and of other rules, procedures, standards and policies set by other market participants and duly approved by the Commission, and its own internal rules and procedures;
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> 36.4.1.2.5. Submit schedule of fees and charges for approval of the Commission. Such schedule shall not be effective until and unless approved by the Commission; and; xxx (Emphasis supplied.)

The afore-quoted provision specifically authorizes the Commission, among others, to prescribe and implement rules and guidelines that will ensure the integrity of the conduct of business and transactions carried out by issuers. Under the said provision, the Commission is directed to ensure that no conflict of interest will result in the engagement of transfer agents by issuers.

Moreover, in the context of the specific objective of said provision i.e. the protection of investors, which is one of the state policies promoted by the SRC[17], the Commission is necessarily authorized to prescribe and implement additional/supplemental rules and regulations to actualize the same, and to effectively carry out its mandate. This authority to prescribe and approve rules and regulations intended to ensure compliance on the part of all regulated entities is provided in Section 5(g) of the SRC, to wit:

> SECTION 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:
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> xxx xxx xxx
>
> (g) **Prepare, approve, amend or repeal rules**, regulations and orders, and issue opinions and provide guidance on **and supervise compliance with such rules, regulations** and orders; xxx"(Emphasis supplied)

The power of the Commission to prescribe, approve and implement rules and regulations, commonly called a quasi-legislative or rule-making power, has been recognized as essential and even indispensable in the effective administration and implementation of the SRC because it is carried out pursuant to a validly delegated authority. Given the technical and complex nature of capital market regulation, the Congress has delegated to the Commission the implementation of the broad policies laid down in the SRC by filling in the details, through rules and regulations, which Congress may not have the opportunity or competence to provide. This was emphasized in *Cemco Holdings, Inc. v. National Life Insurance Co. of the Philippines, Inc.*[18], where the Supreme Court ruled, to wit:

> "**The power conferred upon the SEC to promulgate rules and regulations is a legislative recognition of the complexity and the constantly-fluctuating nature of the market and the impossibility of foreseeing all the possible contingencies that cannot be addressed in advance.** As enunciated in Victorias Milling Co., Inc. v. Social Security Commission:
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> > Rules and regulations when promulgated in pursuance of the procedure or authority conferred upon the administrative agency by law, partake of the nature of a statute, and compliance

[17] Section 2 of the SRC provides: "The State shall establish a socially conscious, free market that regulates itself, encourage the widest participation of ownership in enterprises, enhance the democratization of wealth, promote the development of the capital market, protect investors, ensure full and fair disclosure about securities, minimize if not totally eliminate insider trading and other fraudulent or manipulative devices and practices which create distortions in the free market."

[18] G.R. No. 171815, August 7, 2007.

> **rules, guidelines, or policies earlier approved by the Commission without the prior approval of the latter.**" (Emphasis supplied)

The need for the prior approval of the Commission is not difficult to understand. The Commission is mandated under the SRC to administer and implement its provisions. This mandate, its concomitant responsibilities and accountabilities are exclusive to the Commission and are not shared with the PSE. Thus, the exercise by PSE and other market participants of their self-regulatory functions which include coming up with, and implementing the "*rules, procedures, standards and policies*" recognized under SRC Rule 36.4.1.2.4. cannot be considered an exercise of a delegated authority. This is consistent with the rule that what has been delegated to the Commission under the SRC cannot be further delegated. This doctrine is based on the ethical principle that such a delegated power constitutes not only a right but a duty to be performed by the delegate using the instrumentality of his own judgment acting immediately upon the matter of legislation and not through the intervening mind of another.[20]

The need for these "*rules, procedures, standards and policies*" adopted and implemented by the PSE to strictly comply with SRC Rule 36.4 was explained by the Supreme Court in *People vs Maceren*[21], to wit:

> "Administrative agencies are clothed with rule-making powers because the lawmaking body finds it impracticable, if not impossible, to anticipate and provide for the multifarious and complex situations that may be encountered in enforcing the law. **All that is required is that the regulation should be germane to the objects and purposes of the law and that it should conform to the standards that the law prescribes.**
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> xxx xxx xxx
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> Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of the law, and should be for the sole purpose of carrying into effect its general provisions. By such regulations, of course, the law itself cannot be extended. (U.S. vs. Tupasi Molina, supra). An administrative agency cannot amend an act of Congress.
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> The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. **The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned.**"

In relation to the instant case, We note that all registered TAs are considered capable and competent to carry out their businesses as such

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[20] Rodrigo vs Sandiganbayan (G.R. No. 125498 July 2, 1999)
[21] G.R. No. L-32166, October 18, 1977

because they have fully complied with the requirements set forth in SRC Rule 36.4., as well as the other applicable regulations of the Commission. This fact places all TAs on equal footing and qualifies them to become TA's of listed companies unless they are conflicted as specifically proscribed by law. **Thus, the determination of whether to require listed companies to engage only in bank-owned TAs is a matter that is within the regulatory power of the Commission who, under SRC Rule 36.4, is mandated to regulate the engagement by issuers of transfer agents for the protection of investors.** This is clearly outside the powers or authority granted to the PSE.

The New Listing Requirement provided in the Guidelines cannot be considered a mere interpretation of Section 6 of the Listing Rules because it has the effect of impliedly modifying the requirements provided under SRC Rule 36.4.1.2. by adding the requirement that a TA needs to be owned by a commercial or universal bank for it to be eligible for engagement by an issuer of securities. The law is clear that except for a conflict of interest, the Commission may not modify the requirements provided therein by imposing a new condition. For the PSE to unilaterally disqualify, through the Guidelines, the TAs that are not bank owned (but are nonetheless registered with the Commission) in the guise of ensuring the provision of quality services and the protection of the investing public from fly-by-night operators[22], constitutes not only a clear usurpation of the functions of the Commission, but an unauthorized amendment of the SRC and its IRR as well. This cannot be permitted by the Commission.

The fact that the New Listing Requirement in the Guidelines impose a more stringent requirement on issuers and affect the substantial rights of the TAs that are not bank-owned further militates against the position of the PSE that the same merely constituted an interpretation of Section 6 of the Listing Rules. In *Cawad v. Abad*[23], the Supreme Court emphasized that a rule or an issuance can only be considered interpretative if it does not affect the substantial rights of any person, to wit:

> "Indeed, publication, as a basic postulate of procedural due process, is required by law in order for administrative rules and regulations to be effective. There are, however, several exceptions, one of which are **interpretative regulations which "need nothing further than their bare issuance for they give no real consequence more than what the law itself has already prescribed." These regulations need not be published for they add nothing to the law and do not affect substantial rights of any person.**
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> In this case, **the DBM-DOH Joint Circular in question gives no real consequence more than what the law itself had already prescribed**. As previously discussed, the qualification of actual exposure to danger for the

[22] Paragraph 35 of the Appeal
[23] G.R. No. 207145, July 28, 2015.

> PHW's entitlement to hazard pay, the rates of P50 and P25 subsistence allowance, and the entitlement to longevity pay on the basis of PHW's status in the plantilla of regular positions were already prescribed and authorized by pre-existing law. **There is really no new obligation or duty imposed by the subject circular for it merely reiterated those embodied in RA No. 7305 and its Revised IRR**. The Joint Circular did not modify, amend nor supplant the Revised IRR, the validity of which is undisputed. Consequently, whether it was duly published and filed with the UP Law Center-ONAR is necessarily immaterial to its validity because in view of the pronouncements above, interpretative regulations, such as the DBM-DOH circular herein, need not be published nor filed with the UP Law Center-ONAR in order to be effective. Neither is prior hearing or consultation mandatory." (Emphasis supplied)

In the instant case, the PSE in fact admitted that the requirement for issuers to engage bank-owned TAs only is because the latter are better equipped to discharge the functions of a TA, considering that they are required to maintain significantly higher capital and to comply with more stringent standards under the Manual of Regulations for Banks and other pertinent regulations of the BSP. This shows how the PSE modified the requirements of the law by including a qualification that TAs need to be bank-owned if they are to enjoy the privilege and benefit of being engaged by an issuer. The New Listing Requirement definitely affected the substantial rights of TAs that are not bank-owned.

Granting *ex gratia*, that the "*rules, procedures, standards and policies*" are within the authority of the PSE to prescribe and implement, the exercise of the same should strictly comply with the provisions of SRC Rule 36.4.1.2.4. i.e. the prior approval of the same by the Commission is a condition precedent for its validity. This is wanting in the instant case.

On the basis thereof, We hold that the Guidelines which directs all listed companies to engage only an independent or bank-owned transfer agent partakes of the nature of a rule which requires the prior approval of the Commission. The records show that the required approval was not obtained by the PSE. Consequently, We hold that the Guidelines are invalid and ineffective.

2. The PSE cannot disregard and indirectly amend the SRC and its implementing rules by means of the Listing Agreements.

In its Appeal, the PSE disclosed that the New Listing Requirement is found not only in the Guidelines, but in the Listing Agreements that it executed with relevant companies. Considering that the Listing Agreements are private contracts, the PSE argued that same are outside the regulatory powers and oversight functions of the Commission, acting through the MSRD.[24]

The argument of the PSE is misplaced.

The principle of autonomy of contracts enshrined in Article 1306 of the Civil Code[25] is not absolute. The validity of contracts executed by the contracting parties are always conditioned on their compliance with the Constitution, existing and applicable laws, rules and regulations, and are subject to the considerations of public policy.

It is an established doctrine that the Constitution and the laws are deemed written into every contract. Hence, the principle that a contract is the law between the parties is not violated by the incorporation of the provisions of positive law which necessarily limit and govern the relations between the parties.[26]

Considering that, as explained and established earlier, the issuance and implementation of the Guidelines which contains the New Listing Requirement constitutes an exercise of a rule-making function which is proper to the Commission, its inclusion in the Listing Agreements renders the latter infirm for being contrary to law and public policy. It is contrary to law and public policy[27] because, the SRC and its IRR have categorically lodged this rule-making function solely and exclusively with the Commission. The PSE cannot legally and validly perform such function and indirectly arrogate unto itself the authority to promulgate and implement rules without the prior approval of the Commission through the Listing Agreements.

More importantly, and lest it should be forgotten, the Commission has absolute jurisdiction over all corporations[28], including the PSE. In the context

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[24] Paragraphs 28 and 30 of the Appeal

[25] "The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient **provided they are not contrary to law**, morals, good customs, public order or **public policy**." (Emphasis supplied)

[26] Heirs of San Miguel vs the Court of Appeals (G.R. No. 136054. September 5, 2001)

[27] Public policy has been defined as that principle under which freedom of contract or private dealing is restricted for the good of the community. Under the principles relating to the doctrine of public policy, as applied to the law of contracts, courts of justice will not recognize or uphold a transaction when its object, operation, or tendency is calculated to be prejudicial to the public welfare, to sound morality or to civic honesty. (Power Sector Assets and Liabilities Management Corporation vs Pzzolanic Philippines Inc. (G.R. No. 183789. August 24, 2011)

[28] "It must be recalled that the complaint of private respondent alleged that the articles of incorporation of petitioner contained this prohibition: "without, however, engaging in pawnbroking as defined in PD 114" and despite this restriction, petitioner allegedly continued to actually operate and do business as a pawnshop. The complaint thus treats of a violation of petitioner's primary franchise. Section 5 of PD 114, the same law

of its mandate to administer and implement the provisions of the SRC and its IRR, an act that violates the SRC or its IRR, or usurps any of its functions provided therein is always within its jurisdiction, regulatory control and supervision, notwithstanding the fact that the same is embodied in a contract. The PSE cannot, in the guise of a private contract[29], circumvent what the SRC and its IRR provide.

3. The Guidelines could not have possibly been acted upon as it was not submitted to the Commission for approval.

In its Appeal, the PSE maintained that the Guidelines have lapsed into effectivity as a consequence of the inaction of the MSRD.[30] In support thereof, the PSE argues that the same is based on SRC Rule 40.3 which was designed to compel the MSRD to promptly act on the amendments to the rules proposed by PSE.[31] The PSE even went to the extent of accusing the MSRD to have improperly and conveniently used the Status Quo Order to shirk from its responsibility to promptly act on PSE's application within the period provided under SRC Rule 40.3.

PSE's reliance on SRC Rule 40.3 is misplaced.

SRC Rule 40.3.2 is only applicable in cases where an SRO submits to the Commission, through the MSRD, for prior approval, any proposed rule or amendment thereto, pursuant to SRC Rule 40.3.1, thus:

> "40.3.1. **An SRO shall submit to the Commission for prior approval any proposed rule or amendment thereto** (hereinafter collectively referred to as "proposal"), together with a concise statement of the reason and effect of the proposal. xxx
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> 40.3.2. Except as provided in SRC Rule 40.3.3, **<u>within sixty (60) days after submission of the proposal or summary of comments</u> required to be filed with the Commission pursuant to SRC Rule 40.3.1, the Commission shall, by order, approve the proposal, or institute proceedings to determine whether the proposal should be disapproved. <u>If the Commission does not institute proceedings to disapprove the</u>**

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invoked by petitioner, mandates that a corporation desiring to engage in the pawnshop business must first register with the SEC. Without question, the complaint filed by private respondent against petitioner called upon the SEC to exercise its adjudicatory and supervisory powers. <u>By law, **the SEC has absolute jurisdiction, supervision and control over all corporations that are enfranchised to act as corporate entities.**</u> <u>A violation by a corporation of its franchise is properly within the jurisdiction of the SEC</u>. (*Pilipinas Loan Company, Inc. vs Securities and Exchange Commission.* G.R. No. 104720, April 4, 2001)

[29] See page 22, paragraph 6 of PSE's Letter Reply dated December 12, 2014.

[30] Paragraph 34 of the Appeal

[31] Paragraph 32 of the Appeal

> **proposal within such period, the proposal may be declared effective by the SRO.** If a proceeding is instituted, the Commission shall provide notice to the SRO of the proposed grounds for disapproval, and an opportunity for hearing, at the conclusion of which the Commission shall grant or deny approval of the proposal. The Commission shall approve a proposal where it finds that the proposal is consistent with the requirements of the securities law. If the proceeding is not concluded within ninety (90) days following its commencement, the proposal shall be made effective by the SRO." (Emphasis supplied)

A careful examination of the records will readily show that the PSE never submitted the Guidelines which contains the New Listing Requirement to the Commission, through the MSRD for approval. We note that the PSE's Appeal which is the subject of the instant Decision embodies the consistent position of the PSE that the Guidelines does not require the prior approval of the Commission as it merely interprets Section 6 of the Listing Rules. The validity and effectivity of the Guidelines were elevated to the Commission not by virtue of a prior submission that remain unacted by the MSRD, but by virtue of the conflict in the positions of the latter and PSE on the same.

Thus, SRC Rule 40.3.2 finds no application to the instant case. The Commission, through the MSRD, cannot possibly act on the Guidelines which PSE adamantly considered as not requiring the prior approval of the Commission and within the ambit of the regulatory function of the Commission. It would be absurd for the PSE to wait for an action from the Commission on a matter that the PSE was not willing to submit (and in fact did not formally submit) based on its position that it was merely an interpretative regulation that is within its authority and competence to implement.

On the basis of the foregoing disquisitions, We find no cogent reason to disturb the Assailed Order of the MSRD penalizing the PSE for its failure to comply with the Status Quo Order of the Commission. The records show that the PSE proceed to implement the Guidelines, by incorporating the New Listing Requirement in the Listing Agreement, notwithstanding the standing directive from the MSRD to defer implementation until the required approval is obtained. The imposition of the monetary penalty is warranted under Section 5.1(f)[32] in relation to Section 54.1(a)[33] of the SRC.

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[32] "SECTION 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:

(f) Impose sanctions for the violation of laws and the rules, regulations and orders issued pursuant thereto; xxx"

[33] "Administrative Sanctions. — 54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; xxx"

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WHEREFORE, premises considered, the *Memorandum on Appeal* filed by the PSE is hereby **DENIED** for lack of merit. The Order of the MSRD dated February 20, 2015 is hereby **AFFIRMED**.

SO ORDERED.

Pasay City, Philippines; 07 June 2021.

EMILIO B. AQUINO
Chairperson

EPHYRO LUIS B. AMATONG
Commissioner

JAVEY PAUL D. FRANCISCO
Commissioner

KELVIN LESTER K. LEE
Commissioner

KARLO S. BELLO
Commissioner